



AFA Research Report

Review of National Policy Framework on Tenure Rights in the Context of VGGT



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In partnership with:



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Preface

The Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (or VGGT) is the first global document that addresses policy, legal and organizational frameworks that regulate tenure rights. Adopted by the Committee on World Food Security¹ (CFS) last May 2012, the VGGT provide guidance on responsible governance of tenure on land, fisheries and forests as a means to alleviate hunger and poverty, enhance the environment, support national and local development and reform public administration.

While the VG has far-reaching potentials, it however needs a strong push at the country level for it to be adapted and effectively implemented. Primordial task is to keep small-scale farmers aware of the VG so that they can exercise their claim-making efforts to pressure government to adapt it. In addition, concerned national government agencies also need to understand and appreciate the VG as an instrument to improve existing legal frameworks in addressing tenure of land, fisheries and forests.

The Asian Farmers Association for Sustainable Rural Development, (AFA) implemented the project entitled “Popularizing the VGGT Among Small Scale Farmers Organizations, Relevant National Government and Inter-governmental Organizations”, with the support of the International Land Coalition (ILC) . The project helped AFA produce country reports that examine national policy framework on land/fisheries/forest tenure and propose how to improve it using the VGGT.

In this publication, we compile the country reports of three partner FOs : Farmer and Nature Net and Farmer and Water Net in Cambodia; Kendrio Krishok Moitree and Action Aid Bangladesh in Bangladesh and Union of Water User Association in Kyrgyzstan.

The project itself, which ran from August 2014-August 2015, brought about better understanding of VGGT, more interaction among relevant stakeholders during local, national and regional consultations.

As the AFA members said during the regional consultation last August 2015 in Myanmar, LAND is LIFE . And small scale family farmers, through their organizations will continue efforts to claim their rights on their lands, waters, and forests, with VGGT as a powerful instrument for staking claim.

Ma. Estrella Penunia

Secretary General

Asian Farmers Association for Sustainable Rural Development

¹ CFS is the foremost inclusive international and intergovernmental platform for all stakeholders to work together to ensure food security and nutrition for all.

Policy Briefing paper on Tenure of Land, Fisheries and Forest in Cambodia

A. Introduction

Rationale/ Context

The establishment of agriculture solidarity groups was the only way to address the issue of farming and rescue millions of people from poverty. Thus, tenure especially of farm lands was in the hands of agriculture solidarity groups of 10-20 families per group. Gradually, land ownership became privatized and the land that used to belong to agriculture solidarity groups was distributed among concerned families. Finally, the Government of the former **State of Cambodia** decided to offer lands and houses occupied by people to all families in 1989.

Three years after the Government distributed lands and houses to the people, the Land Law was passed in 1992 recognizing private land ownership. The Law was amended in 2001 in response to the prevailing socioeconomic situation at the time.

The 2001 Land Law is totally based on the Constitution of the Kingdom of Cambodia, change of ownership regime and actual situation of the land tenure. In terms of Acquisition of Ownership, the Land Law states, “Possession of immovable property which was recognized since 1989 may constitute a right in rem over immovable property and lead to the acquisition of ownership by holder, in accordance with the conditions set by this law”¹. Any beginning of occupation for possession shall cease when land law comes into effect². However, a year before national election³, the term illegal occupancy was a bit vague after the Prime Minister issued a directive (001) that states all land occupations are legal.

Various regulations, such as Civil Code, Law on Implementation of Civil Code, Law on Forest, Fishery, and Farmer Community, sub-decree on forest and fishery management, sub-decree on economic land concession and social concession, and so on, were promulgated to guarantee people’s food security as well as tenure of land, fisheries and forest.

¹ Article 6 of the Land Law

² Land Law 2001 was enacted on August 30, 2001

³ National Election was done on 27 July 2013.

Objectives

This policy paper aims to do the following:

1. Review existing national policies on tenure of land, fisheries, and forest in Cambodia;
2. Compare the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) with existing Cambodian national policies related to tenure of land, fisheries and forest.
3. Identify current problems and the need to adopt suggested alternative course of actions;
4. Present the findings and recommendations of a research project to a non-specialized audience; and
5. Provide policy advice.

Process/Methodology

Development of this policy brief followed the project's prescribed process and methodology:

1. Literature review
 - Laws, policies, government circular and guidelines concerning land tenure, forest and fisheries.
 - FAO guidelines on VGGT.
 - Documents related to Land Matrix and the guideline on responsible agricultural investment (RAI)
 - Existing research work on utilisation of tenure of land, fisheries and forest.
 - Existing work on popularizing VGGT in several countries.
2. Focus group discussion /consultation with:
 - smallholder farmers' organisations, farmers from other marginalised communities, such as women farmers and indigenous communities.
 - CSOs and other relevant stakeholders.

Limitations

This paper covered only relevant secondary data, specifically legal instruments, such as national policies, laws, and regulations.

B. Main Findings

1. Principles of Responsible Governance of Tenure

Land Law of 2001

The 2001 Land Law identifies five types of land, namely: 1. State Public; 2. State Private; 3. Private; 4. Indigenous Community; and 4. Monastery Property. For the State Public Land, the government issued a sub-decree No. 118 on State Public Land Management dated 7 October 2005 allowing competent authority to identify and register type of state public land. The sub-decree implementing guidelines follow article 15 of the Land Law.⁴ State public cannot be subjected to ownership or be transferred except for public interest. Therefore, it can be transformed into state private land as determined under the law on land transformation.⁵ However, this law was not drafted or adopted by the National Assembly. The King, upon request from the Prime Minister, signed a Royal Kram, dated 3 August 2006, on Principle and Transitional Provision of Transformation of State Public Land and Public Juridical Person Property. The Royal Kram authorizes the government to transform any state public land to state private land. Such provision contradicts the Land Law.⁶

Only natural persons or legal entities of Khmer nationality have the right to ownership of land. Thus, the following persons or entities may be owners of land in Cambodia: Cambodian citizens; public territorial collectives; public institutions; Cambodian communities or associations; public enterprises; Cambodian civil or commercial enterprises; and any Cambodian organization recognized by law as a legal entity. Any foreigner who falsifies national identity to become an owner of land in Cambodia

⁴ Article 15 of Land Law said that The following property falls within the public property of the State and public legal entities:

- Any property that has a natural origin, such as forests, courses of navigable or floatable water, natural lakes, banks of navigable and floatable rivers and seashores;
- Any property that is specially developed for general use, such as quays of harbors, railways, railway stations and airports;
- Any property that is made available, either in its natural state or after development, for public use, such as roads, tracks, oxcart ways, pathways, gardens and public parks, and reserved land;
- Any property that is allocated to render a public service, such as public schools or educational institutions, administrative buildings and all public hospitals;
- Any property that constitutes a natural reserve protected by the law; -Archeological, cultural and historical patrimonies;

⁵ Article 16 (4) of Land Law.

⁶ Ibid.

shall be punished as determined under Article 251 of the Land Law. An enterprise registered in Cambodia, with 51 percent or more of its shares held by natural persons of Cambodian nationality or by Cambodian legal entities, may own land. Only percentages stipulated in the articles of incorporation are taken into account.

Acquisition of ownership

In principle, land ownership can be recognized legally provided the land was occupied prior to the enforcement of Land Law 2001. In addition, people, who enjoyed peaceful, uncontested possession of immovable property that can legally and privately possessed for no less than five years prior to the promulgation of the land law, have the right to request a definitive title of ownership. In case of opposition, the claimant has to prove that he or she has fulfilled the conditions of peaceful, uncontested possession for no less than five years over the contested immovable property, or he or she purchased the immovable property from the original possessor, his or her legal beneficiary, from the person to whom the ownership was transferred, or from their successors.

People who had been enjoying possession before the land law came into force may be authorized by the competent authority, if such people fulfill all requirements, to become an owner of the property, to extend his or her possession until he or she attains the legally prescribed period of five years, after which he or she will obtain a definitive title of ownership. The authorization to extend for a sufficient period of time cannot be denied by the competent authority if the possession is peaceful and uncontested. A competent authority that improperly refuses an authorization to extend the time is personally liable.

Immovable property cannot be owned by the occupant under this law in cases where the possessor does not fulfill the conditions of the law because of his status of speculative possessor, because of his behavior as a possessor who hides himself or possessor by force. Such immovable property will revert to the State and no longer be possessed for acquisition of ownership.

Requirement

For the transformation of ownership of immovable property, the possession shall be: 1. unambiguous; 2. non-violent; 3. notorious to the public; 4. continuous; and 5. in good faith.

The possessor shall occupy the land unambiguously means that, whether it is exercised by himself or by somebody else on his behalf, the possessor has to possess in his capacity as exclusive possessor acting on purpose for himself but not on the basis of some other rights. If the real possessor remains hidden behind an ostensible possessor, he cannot claim a title of possession allowing acquisition of ownership. His possession is null and void.

The possessor shall occupy the land non-violently means that any possession through violence is not considered under the law. However, if violence is used against third parties that try to get the immovable property without the right to do so, such violence does not interfere with the possession of the land which was initially acquired peacefully.

The possessor shall occupy the land notoriously to the public means that the possessor has to possess without hiding himself from those who would want to contest his rights on the immovable property.

The possessor shall occupy the land continuously means that the possessor has to act in a normal way during the required time to claim acquisition of ownership. The fact that occupation is interrupted for short periods of time or that the land is left uncultivated to recover its fertility does not constitute an obstacle to acquisition of ownership.

The possessor shall occupy the land in good faith means that the possessor is not aware of any possible rights of third parties over the property that the possessor has been possessing.

Indigenous property

An indigenous community is a group of people residing in a territory, manifesting ethnic, social, cultural, and economic unity, practicing a traditional lifestyle, and cultivating the lands in their possession to customary rules of collective use. Prior to their legal status determined under the law on communities, the group presently existing shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law.

An individual who meets the ethnic, cultural and social criteria of an indigenous community and accepts unity and subordination leading to acceptance into the community shall be considered as a member of the indigenous community and is eligible to have the rights, guarantees, and protections as provided by land law.

Lands of indigenous communities are lands where the said communities have established their residences and carry out traditional agriculture. These lands include not only lands actually cultivated but also reserved lands for shifting cultivation—an agricultural method they practice and administrative authorities recognize.

Ownership of immovable properties described above is granted by the State to indigenous communities as collective ownership. This collective ownership includes all ownership rights and protections private owners enjoy. The community, however, does not have the right to dispose of any collective ownership that is State public property to any person or group.

Exercise of all ownership rights related to immovable properties of a community and specific conditions of land use shall be subject to the responsibility of the traditional authorities and mechanisms for decision-making of the community based on their customs, and shall be subject to the laws of general enforcement related to immovable properties, such as the law on environmental protection.

Immovable property subject to such private individual ownership cannot fall under the general definition of public properties of the State. No authority outside the community may acquire any rights to immovable properties belonging to an indigenous community.

Civil Code

Under the Civil Code, dated May 31, 2011, some articles in the Land Law 2001 became null and void, because such are detailed in the Civil Code. The Civil Code is a basic law that sets forth the general principles governing legal relations in civil matters that apply to property related matters and family relations. The Civil Code was adopted in 2007 and became effective in December of 2012. Therefore, the section concerning the rights and obligations of individuals pertaining to immovable property as stated in 2001 Land Law shall follow the substance that is detailed in the Civil Code. Nevertheless, the two laws preserve the definition of immovable property management applied so far

by requiring immovable property be registered in the Land Registration Book. Also, the Civil Code allows the possessor to acquire ownership over one's ownership via prescription. It prohibits occupation over state land⁷.

In general, the 2007 Civil Code provides details on real rights, ownership, ownership acquisition, undividable ownership, haft-right, tenure, permanent lease right, usufructary real rights, rights to use, servitude rights, and obligations related to the right use, and others drawn from the 2001 Land Law.

Law on Fishery

Law on Fishery, dated 26 May 2006, allows people to create a fishery community in order to protect their natural resources for their own community and the next generation. Under this law, the State ensures the rights of local communities to traditional use of fishery resources. All Cambodian citizens have the right to form Community Fisheries in their own areas on a voluntary basis to take part in the sustainable management, conservation, development, and use of fishery resources. The procedures to form the Community Fisheries shall be determined by a Sub-decree.⁸

Law on Forest

The forestry law defines the framework for management, harvesting, use, development, and conservation of forests in the Kingdom of Cambodia. The law aims to ensure the sustainable management of forests for their social, economic and environmental benefits, including conservation of biological diversity and cultural heritage⁹.

For local communities living within or near the Permanent Forest Reserves, the State recognizes and ensures their traditional user rights for the purpose of traditional customs, beliefs, religions, and lifestyle. The traditional user rights of a local community for forest products & by-products shall not require permit. The traditional user rights under this article consist of: 1. collection of dead wood, picking wild fruit, collecting

⁷ Article 162, Civil Code: A person who peacefully and openly possesses an immovable for a period of 20 years with the intention of ownership shall acquire ownership thereof.

A person who peacefully and openly possesses an immovable for a period of 10 years with the intention of ownership shall acquire ownership thereof if the possession commenced in good faith and without negligence.

Neither Paragraph (1) or (2) shall apply to any immovable property belonging to the state, regardless of its kind.

⁸ Article 59 of Law on Fisheries

⁹ Article 1 of Law on Forest

bees' honeys, taking resin, and collecting other forest by-products; 2. using timbers to build houses, stables for animals, fences, and to make agricultural instruments; 3. grass cutting or unleashing livestock to graze within the forests; 4. using other forest products & by-products consistent with traditional family use; 5. right to barter or sell forest by-products shall not require the permit provided such activities do not cause significant threat to the sustainability of the forest. Customers or any third party who has collected forest by-products from local communities with the purposes of trade, in a manner consistent with the provisions of this law, shall have the permit for forest by-products transportation after royalty and premium payments. A local community cannot transfer any of these traditional user rights to a third party, even with mutual agreement or under contract. These traditional user rights shall be consistent with: 1. natural balance and sustainability of forest resources and respect the rights of other people; and 2. permissions and prohibitions under the law.¹⁰

Law on Agricultural Community

Royal Kram No. NS/RKM/0613/008, dated 6 June 2013, on Promulgation of the Law on Agricultural Communities. (L&R/Agr/Khm/2013) (Royal Gazette, Year 13, No. 47, dated June 27, 2013). This Kram requires all individuals and legal entities to receive a license/permit before operating their agricultural fertilizer business in Cambodia. It provides for the establishment of Agriculture Communities, Unions of Agriculture Communities, and the Alliance of Agriculture Communities. It encourages Cambodian nationals working in agricultural, agro-industrial, and agribusiness productions to participate in and to improve the Agriculture Community. The highest Competent Authority in this matter is the Ministry of Agriculture, Forestry and Fisheries ("MAFF").

Law on Management and Use of Agricultural Land

This law defines the framework for the management, use, and development of agriculture and land used for agriculture in the Kingdom of Cambodia. It aims to:

1. Ensure the sustainable management of agricultural land;
2. Bring about the increased productivity of agricultural land and the social and economic benefits; and
3. Ensure the protection of the environment, including the conservation of biological diversity and agricultural heritage of the Kingdom of Cambodia.

¹⁰ Article 40, Ibid

2. Safeguards on Governance Tenure of Land, Fishery, and Forest

Land

Land policy: legal recognition to the Public land, fisheries, and forests

As mentioned earlier, the Land Law 2001 provides for the procurement of ownership, public and private ownership, and types and forms of ownership. Types and forms of ownership include six categories,¹¹ namely: 1. any property that shows their existence naturally; 2. any property that is objective to special development for common interest; 3. any property that is made available for public use either in its natural state or after development; 4. any property that is put into use for public service; 5. any property that constitutes a natural reserve protect territory by law, archeological, cultural and historical patrimonies; and 6. immovable properties being royal properties that are not private properties of the royal family. Royal immovable properties are managed by the King and are included in the Civil Code 2007.

The 2002 Forestry Law defines the framework for management, harvesting, use, development and conservation of the forest¹². Various laws and regulations also protect fisheries and provide for the conduct of livelihood assessment studies before large-scale development projects or activities are implemented. In essence, these laws aim at conservation and/or sustainability.

As 80 percent of the Cambodian population are farmers, water quality protection and development of irrigation system in line with the principle of environmental protection, flood and drought prevention are key strategies.

Land policy: Transfer and Change to tenure rights

Social Land Concession

The Land Law and the Sub-decree 2003, No.19 on Social Land Concessions (SLCs) provide for the establishment of legal mechanisms aimed at allocating private state land for social purposes, in particular for residential and/or agricultural use, to land-poor and landless families or community groups, and families of demobilized, disabled

¹¹ Article 15 of the 2001 Land Law

¹² Its objective is to ensure the “Sustainable management” of these forests “for their social, economic and environment benefits” (Article 1). The law authorizes the establishment of forest concessions, and these may be revoked and cancelled by the government. Community may be allocated part of a forest as “Community Forest” in order to manage and use forest resources in a sustainable way.

or deceased soldiers. Purposes for which SLCs can be granted include resettlement and provision of land to victims of natural disasters. They can also be awarded to facilitate economic development for agricultural and residential purposes. SLCs are granted for free and may be converted to full private ownership after five years of use. SLCs are the sole mechanism that can be employed to regularize the status of illegal encroachers on state land.

The process for awarding SLCs is articulated in three phases. First, the land to be ceased for SLC purpose must be identified. As mentioned above, only private state lands can be allocated for SLCs. These include land seized following Order 01BB/May 10, 2006 on the Prevention of Clearing Forest Land for Ownership, and Circular No.02 on Illegal Encroachment of State Lands. However, as maintained by the government in its draft White Paper on Land, it is challenging to determine the nature of occupation and the status of the occupants; the actual location of the land that have been seized is often unclear and in many cases the seizure happens only on paper, while there is no actual land to be distributed or the land has already been continuously occupied. The second phase revolves around the selection of beneficiaries from landless families composed of at least two members. The list of all applicants should be publicly displayed and complaints can be filed within 20 days from the publication of the list of applicants who obtained the land. However, sometimes “the poorest of the poor do not apply for SLCs due to a number of reasons, such as health problems, illiteracy, and fear of not being able to comply with the regulations in the SLC certificates.” Moreover, villagers are rarely informed of the decision-making process that lacks transparency. The last phase includes the design of a plan to develop infrastructure (e.g., roads, sewage, and power supply) and social infrastructure (e.g., schools, health centers, etc). However, plans are rarely implemented, and no or little support is provided to communities during and after the settlement. As a result, new settlements lack infrastructures and land is not prepared for agricultural purposes. Often soil fertility in the SLC areas is extremely low and the land is not suitable for cultivation; access to water or sanitation is limited or non-existent; and SLCs sites are located in remote areas with lack of access to roads and market.

Economic Land Concession

Economic Land Concessions (ELCs) are “a mechanism to grant private state land through a specific ELC contract to a concessionaire to use for agricultural and

industrial-agricultural exploitation.”¹³ The 2001 Land Law sets procedures and conditions for the granting of ELCs, which are further implemented in Sub-Decree no. 146 on Economic Land Concessions. ELCs can be awarded for agro-industrial purposes for a maximum of 99 years. However, in September 2014, the government decided to reduce the maximum contract duration to 50 years with possibility for companies to apply for an extension if they perform well in the 40th or 45th year. ELCs cannot exceed the legal limit of 10,000 hectares. Article 59 expressly prohibits the granting of land concessions exceeding 10,000 hectares in different locations to the same person or legal entity. Only state private land can be leased. State public land, however, can be granted for ELCs after reclassification authorized by sub-decree after the land has lost its public interest.

The prioritized method for granting land concessions is through competitive solicited proposal. Unsolicited proposals by investors may be considered in exceptional circumstances, such as the introduction of new technology; the exceptional linkages between SLCs and ELCs; or the exceptional access to processing or export markets.¹⁴ In practice, the latter procedure has been the norm. The authority to grant ELCs lies only with the Ministry of Agriculture, Fisheries and Forestry (MAFF), but ELCs have often been awarded by other bodies, including the Ministry of Environment (MoE), which is responsible for the administration of Cambodia’s protected areas.

As already mentioned, Order 01BB instituted a moratorium on ELCs meant to provisionally halt the granting of new concessions. ELCs that are already under scrutiny and have received permits in principle from the Royal Government of Cambodia prior to the issuance of the regulation are excluded from its application. Such loophole is due to lack of transparency surrounding ELCs.¹⁵

ELCs can be revoked or cancelled by the government when legal and contractual requirements are not complied with.¹⁶ Order 01BB specifies that the Royal Government of Cambodia (RGC), “shall seize ELCs where companies/concessionaires that have already been given agreement from the RGC have not complied with the existing legal procedure or with the contract, in particular by having cut trees for sale

¹³ Article 2, Sub-Decree no. 146 on Economic Land Concessions, 2005

¹⁴ Article 18, Sub-Decree no. 146 on ELCs, 2005

¹⁵ See “A Turning Point”, 2012 and Land Situation in Cambodia 2013”

¹⁶ Article 55, Land Law, 2001

but not having done the concession developments, having encroached on additional land, having let part of the land unexploited for sale, having undertaken business deals that violate the conditions of the contract, having taken land from local people or indigenous community. The reverting concessions shall be under the direct management of the State.”

Directive 001BB also encourages ministries, institutions, and concerned competent authorities to implement the so-called “leopard skin” policy to cut out villages and rice fields of people on the ELC. As specified in the Draft White Paper on Land, framing the government’s policy on land, before granting ELC to any companies, authorities should conduct field visits to map existing villages inside the concessions. If there are people living in the area, the land must be cut from the concession and ceded to them as SLC. “Management and ongoing review of economic and other land concessions continue to suffer from a lack of transparency, accountability, independent monitoring, or public scrutiny.”¹⁷

While the government’s initiative is in theory laudable, it seems that the review is avoiding contested concessions, where long-running conflicts with local residents are still raging. No mechanism has been put in place to ensure accountability for concessionaires that violate the law or conditions of the contract, or exploit the land for logging, causing massive damages for the environment and livelihood of local residents.

Registration

To best safeguard and protect the people’s right to land, the government issued two sub-decrees on the procedure for land registration.

Sporadic land registration

The land possessor¹⁸ can apply for registration with the District/Khan Cadastral Administration through the Chief of Commune/Sangkat of the place where the land is located. The application shall contain:

¹⁷ Statement by the United Nations Special Rapporteur on the situation of human rights in Cambodia, Professor Surya P. Subedi Phnom Penh, 23 January 2015

¹⁸ Article 7 sub-decree on sporadic land registration

- the name and thumbprint of the applicant;
- a detailed description of the parcel to be registered and its location;
- a description of rights on the parcel to be registered; and
- all available documents and/or other evidence related to the parcel or rights related to the parcel to be registered.

The Officer¹⁹ in charge of adjudication can investigate available documents, evidence, and other written and oral information concerning the rights related to the parcel to be registered. As far as the lands that can be possessed are concerned, the adjudication must be based on the following principles:

1. Land to be registered must have been occupied before 30 August 2001;
2. Land to be registered must have been occupied peacefully and without contestation:
 - At least five years and if the points delimitating the boundaries of the parcel have clear coordinates, it can be asked to be provided with the right of ownership over the parcel to be registered;
 - At least five years but the points delimitating the boundaries of the parcel have not yet clear coordinates, it can be asked to be provided with the right of possession of this parcel;
 - Less than five years, it can be asked to be provided with the right of possession of this parcel;

Fee: The possessor is required to pay a fee to the government officer who does field visits as well as for measuring instrument. She/He also has to pay per-diem and transportation for government official if his/her land is 50 km from the district office. Also, the possessor shall pay 20 percent more if his/her land is located on a mountainous area.

Systematic land registration

To strengthen the security of land tenure, the Cadaster Administration shall push for clear ownership registration and the registration of other rights on all immovable properties and to officially transfer the rights attached to those properties in order to prevent and address land disputes, and to guarantee gains over trust and efficiency of land market.

¹⁹ Article 11, Ibid

The government white paper on land states that Land Management or Administration will comply with the system of land registration in the Land Register Book at the Cadastral Administration of the Ministry of Land Management, Urban Planning and Construction. This system is unlike the systems implemented in some countries that apply recording system, i.e., the creation, transfer, and alternation of real rights take effect in accordance with agreements between the parties concerned. Hence, even though Article 133 of the Civil Code specifies the creation, transfer and alternation of real rights by agreement, Article 135 of the Code prescribes that transfer of title by agreement pertaining to an immovable property shall not come into effect if registration is not done in accordance with the laws and other ordinances on registration. Land registration is a means for proper certification of the rights of an occupant over a land parcel in which the identity of the property owners and the location of the immovable property are recorded. The registration of land parcel strengthens land tenure security, contributes to the prevention and resolution of land dispute.

The Sub-Decree No. 46/ANK.BK., dated May 31, 2002 on the Procedures of establishment of Cadastral Index Map and Land Register or Systematic Land Registration, states that the government has the obligation to be responsible for the registration of the land for the people in the country. Article 16 of the sub-decree states, “The Provincial/Municipal Governor shall send an official letter describing and authorizing the systematic adjudication procedure to regional and local authorities of the adjudication area at least 15 days before the opening meeting.”

The Provincial/Municipal Governor will publicly inform about the time and venue of the opening meeting. The announcement will be placed for the public to see at least seven (7) days before the opening meeting in a prominent place in the village or in the adjudication area in question. The announcement must be, in co-operation with local authorities, spread widely and effectively in the adjudication area.

At the opening meeting of the systematic adjudication, which will be held in the adjudication area, the Field Manager or the representative of the Administrative Commission will explain the procedure, clarify legal matters, and answer any question related to the adjudication. Additional meetings at the village level will be arranged if the Field Manager or the local authorities consider this necessary.

The Demarcation Officer shall inform local leaders and give notice of demarcation in the adjudication area and of the time and place at which it will begin not less than seven (7) days before. Notice shall require every interested person to indicate boundaries of his/her immovable property in the manner specified in the notice. The Demarcation Officer shall, subject to the directions issued by the Field Manager, demarcate all pieces of immovable property, which should appear as a parcel in the cadastral index map. The Demarcation Officer shall obey the following rules during demarcation of parcel boundaries:

1. If the owners or holders of that particular parcel and adjacent parcels are present and agree with the boundaries, the boundaries shall be demarcated in accordance with reached agreement;
2. If an agreement prescribed under subsection (a) of this article, cannot be reached, or not all owners or holders of particular or adjacent parcels are present, the boundaries shall be demarcated on the grounds of all available documents and other physical, written and oral evidence related to the boundaries; and
3. The boundaries of parcels with adjacent public land and publicly held parcels shall be demarcated.

A public display of adjudication record, including the cadastral index map and the list of owners, shall take place for 30 days in a prominent and relevant place for public investigation in the village or area where the adjudication area is located. The Provincial/Municipal authority shall publish a notice of the public display according to the request of the Administrative Commission. During the period of public display, the Field Manager may correct any error or omission, which doesn't affect the lawful interests of any person. Any other alteration in the adjudication record may be done only with the consent of persons whose interests are affected by the alteration.

During the period of public display, any person named or claiming an interest in any parcel referred to in the adjudication record, who considers the adjudication record to be inaccurate or incomplete, may inform the Administrative Commission of his/her objection. The Administrative Commission, after giving reasonable notice to all parties concerned by the objection, and consulting parties making objections, shall try to reach settlement. Any objection or dispute, which cannot be settled, shall be submitted to the National Cadastral Commission in accordance with the procedure determined by the Sub Decree on Functioning and Organization of the Cadastral Commission.

Fee: All government's official mission and incidental payment are under government's responsibilities.

Acquisition of ownership

1. Sale

The contract of sale of immovable property is a contract that allows the transfer of the right to ownership of an immovable property from the seller to the purchaser in consideration of payment of a purchase price of the immovable property by the purchaser to the seller.

The transfer of ownership can be enforceable as against third parties only if the contract of sale of immovable property is made in writing in the authentic form drawn up by the competent authority and registered with the Cadastral Registry Unit.

The contract of sale itself is not a sufficient legal requirement for the transfer of the ownership of the subject matter.

A person of Khmer nationality and with capacity to enter into a contract may sell or purchase immovable property. However, the following may not sell:

- a person who is not the owner of the property offered for sale;
- a joint-owner of an undivided property without the consent of the other joint owner; and
- a person whose immovable property is the subject of seizure.

The following may not purchase:

- a guardian cannot purchase the property of his/her ward;
- a curator cannot purchase the property he/she administers;
- judges or government officers cannot purchase the property over which they have jurisdiction or that they are charged to sell;
- a person whose property is under foreclosure cannot purchase this property.

The transfer of ownership shall be considered valid upon the registration of the contract of sale with the Cadastral Registry Unit. The selling price shall be stated in the contract [and] if not the contract shall be considered null and void. A contract of sale of immovable property shall be registered only when all parties have proven by evidence that all taxes on the subject property have been paid.

2. *Exchange*

An exchange of immovable properties is a contract in which the parties agree to exchange immovable properties with each other. An exchange of immovable properties leads to transfer of immovable property ownership. An exchange shall be conducted with the same conditions as a sale.

3. *Heritage*

A transfer may be made by way of intestate succession or by inheritance by will or by bequest, for the following immovable properties:

- immovable property whose ownership title has been definitely established in accordance with the provisions of this law;
- any possession in compliance with the law, evidenced by a title, by a legal document or other kinds of evidence; and
- any limited proprietary right and any right in rem over immovable property.

Immovable property that has actually been possessed only and has not been registered or recorded by a governmental certificate, but was legally occupied in accordance with the legal requirements, may be transferred by succession.

When a property was possessed without any title and is transferred by way of succession, the successor who is the new possessor of the property may continue to manage it and benefit from protection as long as he/she meets all other requirements of the law.

In such case, the competent authorities or any other persons may not use the deceased's possession as a de facto possessor or use the absence of a formal distribution of the estate as a pretext to infringe upon the rights of successors and, in particular, to refuse to acknowledge and certify their possession.

4. *Gift*

A gift is a contract by which a person, called a giver or donor, transfers his/her property ownership to another person, called a receiver or donee, who accepts it. A gift of immovable property is only effective against third parties if it is made in writing in the form of an authentic deed and registered with the Cadastral Registry Unit. Immovable property may be the subject of a gift between living persons or gift by death or by legacy. If such a gift is a mutual gift, the operation constitutes an exchange.

The State may only donate immovable property to natural persons and for social reasons in order to allow them to reside or carry out subsistence farming. The value of the immovable property donated must be limited in relation to the purpose sought and not allow scope for speculation, or disproportionate enrichment taking into account the social level of the beneficiary.

Gifts of immovable property are irrevocable once they are accepted. The ownership right to such gifts can be transferred easily. However, the donor may retain the right of usufruct to the property, and the right of use and habitation to an immovable property. Such has to be stated in the contract and registered with the Cadastral Registry Unit.

Community Forest (CF)

Formation

A CF Community can be initiated and established by local communities or the Forestry Administration. In order to establish a CF Community, the local communities shall submit a written request to the Forestry Administration.

The local Forestry Administration shall assess and analyze the requirements and problems faced by the Local Communities that requested to establish a CF Community with the involvement of local authorities or Commune Councils.

Khmer citizens of either sex, who want to be members of a CF Community, shall meet the following conditions:

- Living within the community as defined in point 9 in Article 5 of this sub-decree; and
- with the age of 18 years and up. An individual may only be a member of one CF Community.

Roles and duties of CF Community members are as follows:

- Follow the instruction of the Forestry Administration and MAFF;
- Participate in developing and implementing Community Forestry Regulations, Community Forest Agreement and Community Forest Management Plan in compliance with Prakas of MAFF;

- Participate in forest resources management in compliance with Community Forestry Regulation, Community Forest Management Plan, and other legislation related to forestry sector;
- Participate in sharing benefits from the community forest;
- Participate in monitoring the use of community forest resources by secondary users; and
- Participate in conserving, protecting, and planting the forest to ensure the sustainability of forest resources and environment.

The User Rights of CF Community members include:

- Customary User Rights prescribed in Article 40 of the Forestry Law.
- Rights to barter, process, transport, and sell NTFPs as described in Article 40(B) in point 5 of the Forestry Law.
- CF Community may continue to practise traditional swidden agriculture during specific periods of time as determined in the Community Forest Management Plan, as authorized in Article 37 of the Forestry Law.
- Right to appeal decisions which impact CF Community rights.
- Rights granted under a Community Forest Agreement within a specific area that shall ensure the sustainable use of forest resources.

Communities under a Community Forest Agreement may harvest, process, transport, and sell forest products and NTFPs in accordance with the following conditions:

- Harvest of forest products for selling or bartering shall not be allowed within the first 5 years of approval of the Community Forest Management Plan. If the Community Forestry has been operating with a Community Forest Management Plan prior to the passage of this Sub-Decree, then the moratorium on harvesting forest products shall be considered from the date of approval on that Community Forest Management Plan;
- Payment of any required royalties or premiums on forest products and NTFPs as prescribed in Article 55 of Forestry Law; and
- Terms and conditions in an approved Community Forest Management Plan.

Based on the Community Forest Agreement, a CF Community has the rights to plant, manage, harvest forest products and NTFPs, and sell tree species as approved in a Community Forest Management Plan.

Registration

After the requirement and problem faced assessment and analysis and with the approval from the Forestry Administration, the local communities in the area shall be involved in the formation of the Community Forestry Management Committee facilitated by local authorities or the Commune Councils.

Cease

Draft Community Forest Agreement shall be announced at least 30 days in public places, at the offices of commune councils, district governors, and provincial governors before submitting the draft Community Forest Agreement to Forestry Administration Cantonment for review and approval.

If a conflict is discovered during the announcement period, the commune councils, district governors, and provincial governors shall help facilitate the Community Forestry Management Committee to resolve the conflict or modify the draft Community Forest Agreement at the request of the CF Community Management Committee.

Preparation procedures for Community Forest Agreements shall be determined by Prakas on guidelines for Community Forestry of Minister of MAFF. Community Forest Agreements shall be in effect not more than a period of fifteen (15) years from the date of approval by the Forestry Administration Cantonment Chief. One year prior to the expiration of the Community Forest Agreement, the Community Forestry Management Committee shall submit a written request to the Forestry Administration Cantonment Chief to renew the Community Forest Agreement for an additional fifteen (15) year term.

The request for renewal shall be approved through the notice of the Forestry Administration Cantonment within 30 days prior to the expiration date of the Community Forest Agreement. The Forestry Administration Cantonment may terminate the Community Forest Agreement or reject the request for renewal when the Cantonment Chief of Forestry Administration sends a written finding to the Community Forestry Management Committee. Such finding is based on monitoring and evaluation reports, with participation of the Community Forestry Management Committee, certifying the reasons and evidence that the previous community forest

management process is not in compliance with the Community Forest Agreement and Community Forest Management Plan.

If the Forestry Administration Cantonment does not give the notice on the request to renew the Community Forest Agreement within thirty (30) days prior to the expiration date, the Community Forest Agreement shall be renewed automatically.

The Community Forest Agreements may be terminated prior to the expiration date based on one or more conditions as follows:

1. Written agreement between all parties;
2. Agreement among Community Forestry Management Committee and at least 2/3 of the CF Community members;
3. Noncompliance with, or serious violation of, the terms and conditions in the Community Forest Agreement and other provisions causing the non-sustainable use of forest resources; and
4. An understanding of the Royal Government of Cambodia that there is another purpose which provides a higher social and public benefit to the Kingdom of Cambodia.

If the Royal Government of Cambodia terminates a Community Forest Agreement for the purpose of a higher social and public benefit to the Kingdom of Cambodia, then the Forestry Administration Cantonment shall give the Community Forestry Management Committee a written notice six (6) months prior to termination by certifying the reasons for termination. Within this period, the Forestry Administration Cantonment Chief shall discuss and negotiate with the Community Forestry Management Committee to determine the fair policy for the Community's loss.

Fishery community

All Khmer citizens have the right to jointly establish community fisheries in their own local areas on a voluntary basis and taking the initiative to improve their own standard of living by using fisheries resources sustainably to contribute to economic and social improvement and poverty alleviation²⁰.

²⁰ Article of Sub-decree on Fishery Community Management dated Feb 20, 2007

Community fisheries shall have by-laws, internal regulations, management plans, maps of their community fishing areas, and agreements recognized by competent authorities.

The government repealed Sub-Decree No. 80 ANKr.BK of 10 June 2005 on management of fishing communities. The Sub-Decree determines rules and procedures for establishing and managing fishing communities across the Kingdom of Cambodia. The Sub-Decree consists of 10 Chapters divided into 33 articles. These chapters are: General provisions (1); Establishment of fishing communities (2); Roles, duties and rights of fishing communities (3); Commission of fishing communities (4); Responsible institution (5); Agreement on fishing community sites (6); Management plan of fishing community sites (7); Financial resources (8); Penal provisions (9); and Final provisions (10).

The Sub-Decree aims to: 1. manage non-salt water fishing boundaries, family scale fishing sites, reserved fishing sites, flooded areas during the flood season, flood forests and inundated forests, and coastal fishing areas; 2. manage fishery resources; 3. make people aware of and clearly recognize the interest and importance of fishery resources through direct participation, management, use and protection of fishery resources; and 4. promote living conditions of Cambodian people to be able to contribute to the reduction of poverty. Community fishing sites shall be State public property. Any Cambodian citizen may establish a fishing community and participate in the management, conservation, development, and utilization of sustainable fishery resources. Fisheries Administration and local authorities shall cooperate to establish these fishing communities which shall possess their own statutes, internal regulations, management plan, and map of community fishing sites in accordance with the provisions of this Sub-Decree.

Farmer community

According to the law, an agriculture community is a private legal entity functioning as an establishment for agricultural economy. Members of the agriculture community must be physical persons, and the membership is open to any person on voluntary basis. The law requires one agriculture community to have at least fifteen members, all of whom must be of Cambodian nationality. The application for registration of an agriculture community is to be submitted to the Municipal or Provincial Agriculture

Office which will issue a Registration Certificate within twenty working days upon receipt of complete documents.

The law also stipulates the rights and obligations of members and of the Agriculture Community, the functioning of the agriculture community, and also stipulates the basically required clauses in the agriculture community's statute (or memorandum of the Agriculture Community). A Union of Agriculture Communities is the association of two or more agricultural communities with similar economic activities or which are within the same operational framework. Unlike an agriculture community, a Union of Agriculture Communities is not limited to the administrative boundary of a province. There are three levels, namely: 1. unions at national level; 2. unions at regional level; and 3. unions at local level.

The law leaves room to the MAFF for issuing a Prakas on how to establish and register a Union of Agriculture Communities. The Alliance of Agriculture Communities is the highest ranking organization. It has the Agriculture Communities and Unions of Agriculture Communities as members. Their membership is automatic. It must also be registered with the Department of Agriculture Community Development of the MAFF. The MAFF must issue another Prakas on statute and internal rule of the Alliance of Agriculture Communities.

Indigenous peoples and other communities with customary tenure systems

The indigenous peoples in Cambodia are protected by different laws, policies and international treaties. Indigenous communities in Cambodia are legally recognized and protected by the Land Law and the Forestry Law, entitling them to communal land titles. A number of national and international instruments, including the Cambodian Land Law of 2001, the UN Declaration on the Rights of Indigenous Peoples, the ILO Convention no. 169 on Indigenous and Tribal Peoples, and the World Bank Safeguard Policy recognize both collective and individual Indigenous Peoples' rights.

1993 Cambodian Constitution

The 1993 Cambodian Constitution does not provide for a specific provision on indigenous peoples' rights. However, it incorporates such rights by reference to certain

international conventions and covenants²¹. The government of Cambodia voted in favor of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) at the UN General Assembly in 2007. The contents of that declaration provide a strong commitment to recognizing the rights of indigenous peoples²². The Cambodian government also ratified the International Covenant on Economic, Social and Culture Rights and the Convention on Biological Diversity in 1992. Among others, the Covenant stipulates the rights to practice a specific culture and to livelihood.

The 1993 Cambodian Constitution confirms that indigenous peoples are considered citizens of Cambodia, having the same rights and equal access to the development of the country as other citizens of the country. It is observed, however, that the implementation of those laws and international treaties represents another challenge for Cambodia on its way to ensuring full protection of the rights of indigenous peoples.

ILO Convention

The ILO Convention no. 111 on Discrimination in Employment and occupation is equally relevant to the protection of indigenous peoples. Indigenous peoples depend almost totally on land and natural resources for their subsistence. They cultivate a special relationship with their land in a number of dimensions, including socially, economically and culturally. Therefore, the loss of control over land and resources in their territory has profound consequences on the economic and cultural survival of indigenous peoples, among others with regard to the practice of their traditional occupations, such as shifting cultivation. It is worth noting, therefore, that Cambodia has ratified ILO Convention no. 111, which provides for protection of the indigenous peoples' access to their traditional occupations.

²¹ Article 31, of the Constitution of Cambodia states that Cambodia recognizes and respects human rights that are enshrined in the UN Charter, the Universal Declaration of Human Rights and the Conventions and Covenants related to human, women and children's rights. In addition, the Article mentions the principle of equality before the law as well as the rights and freedom of the Cambodian people without regard to race, belief, ethnic origin etc.

²² Article 2 of the Declaration states that "indigenous peoples are free and equal to all other people and have the rights to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity".

ILO Convention no. 169 on the Lands of Indigenous Peoples is based on the concept that indigenous ownership and possession are inherent rights that existed before the creation of the nation state; and that the state should recognize, rather than regulate, those rights. The Convention also touches upon cultural and spiritual aspects, stipulating that the regime of land tenure is part of the indigenous peoples' culture.

Land Law 2001

The 2001 Land Law classifies Cambodian land into five categories: state public property, state private property, private individual property, monastery property and collective indigenous community property. In this context, state public property refers to land that is being used in the public interest, including land of natural origin such as forests. The law recognizes the rights of indigenous communities independently of formal titling, and acknowledges the use of traditional customary rules in managing the community and lands²³. As regards the titling process as such, the 2001 Land Law only provides a general foundation by briefly mentioning the interim protection of indigenous land²⁴.

2002 Forestry Law

Similar to the 2001 Land Law, the **2002 Forestry Law** includes specific provisions covering the rights of indigenous communities. These provisions include Article 15, requiring that companies receiving forest concessions do not interfere with “customary user rights taking place on land property of an indigenous community that is registered with the state consistent with the Land Law”.

Another important feature of the 2002 Forestry Law is the explicit recognition of the moral command to respect and conserve spirit forests, while stopping short of granting communities the ability to obtain legal ownership of these areas. Article 45 states, “The Ministry of Agriculture, Forestry and Fisheries shall recognize the religious forest of local communities, living within or near the forest, as Protection

²³ Article 23 of the 2001 Land Law stipulates that “prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall follow the provisions of this law”.

²⁴ Article 23 thus intentionally allows indigenous communities to continue their practices while waiting for administrative titling. Article 25 further stipulates that: “The lands of indigenous communities include not only lands actually cultivated but also reserves necessary for the shifting of cultivation which is required by the agricultural methods they currently practice”.

Forest serving religious, cultural or conservation purposes. It is prohibited to harvest any spirit trees, thus they may be specially marked and shall be identified in a Community Forest Management Plan.” Under this management model, spirit forests are classified as “Protection Forest,” a subset of “Permanent Forest Estates”. While local communities can retain customary rights within protection forests according to this arrangement, these areas are technically classified as public state land and officially under the authority of the Ministry of Agriculture, Forestry and Fisheries.

Article 29 of the Forestry Law prohibits the harvesting of trees that yield high-value resin, or that local communities tap to extract resin for customary use. Chapter 9 of the law further recognizes and ensures the traditional user rights of local communities to collect and use forest by-products. Traditional user rights include livestock grazing and the sale of forest by-products. Chapter 9 also enables the allocation of any part of a permanent forest reserve as a community forest, granting communities living inside or near the forest rights to manage and utilize the forest resources in a sustainable manner.

2008 Protected Areas Law

The 2008 Protected Areas Law came into force in January 2008 and defines the framework for the management, conservation, and development of protected areas. The original four categories of protected areas are expanded to additionally include national parks, wildlife sanctuaries, protected landscapes, multiple-use areas, Ramsar sites, biosphere reserves, natural heritage sites, and marine parks, defined by previous regulations on national resource management and environmental protection.

The 2008 Protected Areas Law introduces a new zoning system in order to effectively manage the conservation and development of protected areas. The law states that protected areas should be divided into four distinct zones: core zones, conservation zones, sustainable-use zones and community zones. No clearance or building is allowed in the core or conservation zones, and any development within the sustainable-use or community zones needs the approval of the government, at the request of the Ministry of the Environment. Any development in these areas or in areas adjacent to protected areas must first be subjected to an environmental and social impact assessment. In recent years, however, a number of Sub-Decrees have designated land within protected areas as sustainable-use zones and approved development projects therein, usually for agro-industry as will be discussed later.

The law defines conditions for the establishment or modification of protected areas and states that adjustments must be adopted by a specific Sub-Decree. The modification of the boundaries of each zone can only be carried out based on clear scientific information on the ecosystems that would be subject to change or even under threat; moreover, any change must be in compliance with the policies and strategies of the government. The Ministry of the Environment is in charge of mapping protected areas in cooperation with the Ministry of Land Management, Urban Planning and Construction (MLMUPC), local authorities and communities as well as relevant agencies.

Chapter 6 of the law determines the involvement and access rights of local communities and indigenous communities, and reaffirms the state's recognition of the right to secure access to traditional uses, local customs, beliefs, and religions of all local communities and indigenous ethnic-minority groups residing within and adjacent to protected areas. The law empowers the Ministry of the Environment to allocate land to communities residing within or adjacent to a protected area in the form of community protected areas.

In general, the Land Law and the Forestry Law recognize the collective land titling process to register indigenous community land. However, the important challenge is to define and distinguish between a State private and a Public land, with a majority of the lands in the northeastern provinces not clearly mapped in the State Public land register. Harmonization between the Forestry Law, the Protected Areas Law and the Land Law is another challenge in the area of collective land titling.

In order to help protect the traditional livelihoods of indigenous peoples, a legal framework and accompanying procedural requirements in Cambodia have put indigenous communities at particular risk of land grabbing and of losing their livelihood due to deforestation. Progress on land titling has been slow since the adoption of the Sub-Decree on indigenous land registration in 2009.

C. Analysis

The Royal Government of Cambodia (RGC) adopted laws and regulations in order to secure and strengthen the right of people to tenure of land, fishery, and forest resources. Per analysis of the contents of these laws and regulations, they conform to the principles of the VGGT. However, implementation of such laws and regulations and practice of responsible governance principles are another matter.

D. Policy Recommendations

The Cambodian legislator has a unique opportunity to elucidate and improve social land policy throughout the whole territory, particularly the rural areas where 80 percent of the population live. Therefore, land policy should include:

- Different property forms and tenure securities for land beyond the private property rights solution for the use of non-renewable natural resources and any immovable property;
- Effective and efficient State land management with non-transferable public property;
- Leasehold tenure contracts, eventually combined with innovative land taxation models (redistribution of the ground rent for the benefit of the people as an “add up”);
- Indigenous, customary and other informal land use rights, eventually combined with leasehold rights, in particular for agriculture land;
- Rural development and village renewal as essential elements of land use planning policy;
- Property steering function of the spatial/land use planning policy (property policy) and
- Reduced transaction costs for the access to arable land. Social land policy, State land management and spatial/land use planning policy need framework arrangements guaranteed by the institutions responsible for land use development in Cambodia. The Council of Ministers, national ministries, the legislature, the Council for Land Policy, the institutions of the provinces, districts, municipalities and the civil sector must consider these planning and property issues for the Cambodian people. Different institutions for the management of the non-renewable resource land have to be built up in the future.

E. Immediate Action Points

The RGC should ensure that existing laws are properly implemented, including by state authorities and the private sector.

CSOs and the RGC should closely collaborate in carrying out the following suggested immediate action points:

- Inform and educate communities about their rights;
- Produce detailed and concrete proposition for land reforms, developed in consultation with civil society actors and affected communities;
- Investigate independently, thoroughly and without bias cases of land disputes;
- Organize meaningful, inclusive, and public consultation with relevant stakeholders and affected communities when land concessions and development projects are going to take place. Consultations must start at the earliest stage and take place throughout the decision making process; and
- Assess the social and environmental impact of large-scale development projects according to international standards before the granting of land concession and in consultation with the affected communities.

On the Responsible Governance of Tenure of Land, Fisheries and Forest in the National Food Security Context of Bangladesh

A. Introduction

National Food Security Situation and Implication of the VGGT

Bangladesh has had impressive track record on economic growth with nearly six (6) percent per year in the last decade. More than 15 million Bangladeshis have moved out of poverty since 1992, thus increasing life expectancy, literacy, and per capita food intake. Despite these, however, 47 million or about 30 percent of the country's 160 million people still live below the poverty line (World Bank 2015). It is noted the wealthiest 20 percent of the population control 42.8 percent of the wealth while the poorest 20 percent control only 3.9 percent of the wealth¹. The country has increased rice production from 10 metric tons (MT) to over 30 MT yet 31.5 percent of its people live in food insecurity. The World Food Program (year?) reports that 37 million (or 25 percent) of the population are food insecure.

The country ranked 142nd of 186 countries in the 2014 Human Development Index (HDI) and 57th of 76 countries in the 2014 Global Hunger Index (GHI). Government documents (CIP: 2011) acknowledges that the country has made impressive achievements but has increasingly faced considerable challenges such as population growth (over 2 million per year), climate change (sea intrusion, natural disaster, increasing salinity), deteriorating access to natural resources, vulnerability to price shock (since 2008), persistent poverty (leading to poor access to food), and highest number of cases of malnutrition in the world (CIP: 2011:7). Such indicators are alarming given that Bangladesh aspires to be a middle income country by 2021.

The country's food insecurity is caused by a number of factors. These factors include large scale arable land erosion (6 percent yearly); unplanned infrastructural development and urbanization;² political instability; increasing population; food price

¹ Encyclopedia of the Nation. Bangladesh - Poverty and wealth. <http://www.nationsencyclopedia.com/economies/Asia-and-the-Pacific/Bangladesh-POVERTY-AND-WEALTH.html> . Accessed on 27 April, 2015

² Food Security in Bangladesh: Achievement and challenges. The Daily Star, March 20, 2013. Source: <http://archive.thedailystar.net/beta2/news/achievement-and-challenges/> . Accessed on 27 March, 2015

swing; lack of food storage system; inadequate agricultural services for smallholder farmers; corporate assault on agriculture; and lack of sustainable agricultural practices. Aggravating the situation is global climate change pushing the poor to extreme hunger and poverty.

At present, over half (62 percent) of the country's labor force are in the agricultural sector contributing to about 20 percent of the gross domestic product (GDP). Thus, it is crucial to consider the agriculture sector as part of the country's development priorities. Also, there is a need to engender an enabling environment that encourages synergies between food system and tenure of natural resources towards sustainable food security.

The FAO's Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) of Land, Fisheries, and Forest in the National Food Security Context is an important global instrument that can help provide an enabling environment and effect changes in the governance of tenure of natural resources in the country. Developed through inclusive consultations involving around 700 individuals from public and private sectors, civil society organizations and academia in 133 countries and endorsed in the Thirty-eighth (Special) session of FAO in 2012, the VGGT enjoins state parties to practice the responsible use, management, and control of tenure of land, fisheries and forests towards national food security.

Objectives

Given the above, this policy brief aims to do the following:

1. establish the relationship between productive resources (e.g., water, land and forest) and food security;
2. sensitize farmers to demand responsible governance of tenure;
3. reflect farmers' views on policy reforms and VGGT;
4. discuss the VGGT in relation to national policies;
5. identify action points and provide recommendations; and
6. influence the government to take action regarding responsible governance of tenure of land, fisheries and forest.

Process/Methodology

This policy brief was developed through the conduct of separate consultations with concerned women and men farmers and other vulnerable groups in Khodatpur

and Puiyagari villages, Dinajpur district and in Pandul and Maddhaykumorphur villages, Kurigram district. Also consulted were concerned CSOs and Government of Bangladesh (GoB) specifically on their opinions and recommendations on the VGGT.

B. Main Findings

The VGGT Guidelines in Relation to the National Policy Context

Development journeys have not been giving importance to the rights, specifically to access to resources, of marginalized people in developing countries in the last few decades. The practice, if any, of providing marginalized people access to resources in these countries has failed to improve the latter's lives. Ensuring people's rights to tenure has been a big concern. Development actors have been advocating for ensuring access to resources, even as the term access has been simplified to mean "opportunity to enter."

As mentioned earlier, the VGGT is an important global instrument that deals with tenure rights. The core essence of the VGGT is "to serve as a reference and to provide guidance to improve the governance to tenure of land, fisheries and forest with the overarching goal of achieving food security for all (VGGT: p. vi)." This section tries to establish the relationship between the VGGT and existing national policies on natural resources.

National policy context of public resources and tenure rights

National Land Use Policy of 2001

The 2001 National Land Use Policy highlights effective land use to ensure food security and commits to forest conservation (Article 2 (Cha-) and article 17.12). Ironically, each year arable lands are decreasing and are being used for various purposes. In 2013, the government approved the Rampal Power Plant project supposedly to improve the country's energy sector. The power plant is only 14 km away from the Sunderbans mangrove forest. This is an outright violation of the basic precondition that the project should be 25 km away from ecologically sensitive area the Department of Environment identified. The Sundarbans is marked as Ramsar site. The Rampal project goes against the Ramsar Convention the GoB signed in 1992. Also, it depletes the country's already depleting forest resources, thus adversely affecting climate change mitigation activities.

Forest Policy of 1994

Bangladesh is a forest poor country. UNESCO and FAO report that the total forest cover of Bangladesh is between nine and ten percent, considered as one of the lowest per capita forest ratios in the world³. The 1994 Forest Policy encourages local people's participation in forestry towards sustainable development and poverty alleviation. The forest policy and the 1993 Forestry Master Plan mandate the Forest Department (FD) as responsible for reforestation projects with the participation of forest dependent people.

At present, the FD is implementing donor funded projects that plant alien and exotic species of trees with commercial value in Madhupur Sal Forest Area. The forest area is home to indigenous peoples (IPs) whose livelihood depends largely on forest resources. FD officials have accused the latter of illegal logging activities. The land tenancy dispute between the FD and indigenous peoples is yet unresolved.

The Social Forestry Program is one of the largest participatory programs in the country. With WFP assistance and NGO involvement, the program especially encourages women participation. Unfortunately, the government has yet to acknowledge and recognize tenure rights of the people in areas declared as forest reserves. The state supports reforestation programs, such as social forestry, national park, eco-park, strip plantation, agro-forestry, and others. However, it does not protect, recognize or respect the tenure rights of the people who get alienated because of these programs. Such conduct runs counter to the VGGT guideline that enjoins the state to recognize, respect, and protect the customary tenure rights of the people to land, fisheries, and forests (Paragraph 8.2).

Phulbari Coal Mining Project

The Phulbari Coal Mining Project is another case of the state's large scale land acquisition, thus violating the country's land use policy (Article-2 (Ka) and Article-5 (5.5)). It is one of the biggest mine projects in Bangladesh history. It is projected to acquire about 135 km², affect nearly 656 km², and destroy a significant agricultural region. It will physically and economically displace around 220,000 people who

³ Forest of Bangladesh. source: <http://bonno-bangladesh.blogspot.com/2011/04/forest-of-bangladesh.html> . accessed on 24 March, 2015

are mainly farmers and indigenous peoples.⁴ If implemented, it will threaten food security, as it will turn thousands of farmers into wage laborers. Due to the open-pit acid mine drainage system, the project will affect hundreds of small rivers, deplete water levels, and affect water transport. UNESCO projects the impact will extend up to the Sundarban's mangrove forest, a resource for endangered species and source of livelihood for fisherfolks and other communities.

Large-scale transactions and investments on natural resources abuse human and legitimate tenure rights across the world. The VGGT aims to protect these rights. It states that investment models should ensure partnership and participation of local tenure right holders (VGGT. Paragraph. 12.5. 12.6 and 12.10). It affirms that home and host State, international investors and transnational corporation are obligated to observe the UN human rights principles. They should not violate human and legitimate tenure rights in relation to investments, such as mining, urbanization, and environmental and development projects. (VGGT. Section.12). The Rampal and the Phulbari projects deny the people their rights to tenure, livelihood, and food, notwithstanding the risks these projects pose to the environment.

Bangladesh suffers from an extreme level of land scarcity. The problem is worsening because of unplanned infrastructure development, urbanization, and population growth. The country's per capita land ratio is 27 Satak or 11,610 sq ft and arable land ratio is 17 Satak or 7,310 sq ft (National Land Use Policy: 2001:3). The 2001 Agriculture Census report reveals 68.8 percent of rural households are landless, up from 56.5 percent in 1983-84. Only 11.5 percent of agricultural *khas* (state-owned land) are distributed among landless people. The rest are occupied by the political elite and powerful rich (Raihan, Fatehin, and Haque: 2009. 25-27).

Given thus, there is a need to review land policies and the distribution of *khas* lands. Implementing land reform and redistributing *khas* land need political will. However, it is political suicide for any government to work on the said issues. Meanwhile, determining ownership of *char* lands (emerging lands due to erosion and accretion of rivers) and accelerated vulnerabilities of marginalized people is difficult. By the end of the twentieth century, an estimated 10.5 million Hindu households were affected

⁴ BankTrack. 2012. Dodgy Deal: Phulbari coal mine Bangladesh. Source: http://www.banktrack.org/manage/ajax/ems_dodgydeals/createPDF/phulbari_coal_mine . viewed on 25 March, 2015

by the Enemy Property Act (EPA. 1965. 1969) and Vested Property Act (VPA. 1974, 2001); religious minorities were unable to exchange their property and a ‘legitimate displacement’ occurred through the laws (Feldman and Charles. 2011. 8-10).

Women have limited legal rights on land in the country. Inheritance law, social practices, and patriarchy deny women the right to own land. Such poses a major challenge to women empowerment. Land tenure rearrangement can help in the equal use and control of land and other resources while a uniform law can help women to own resources.

Section 15 of the VGGT emphasizes redistributive reforms. It states, “Redistributive reforms should guarantee equal access of men and women to land, fisheries and forests” (VGGT. Paragraph. 15.3). Redistributive reforms should include sustainable policies, legislative frameworks, impact assessments, comprehensive support, and human rights principles. Redistribution and agrarian reform are fundamental means to the progressive realization of the right to food and elimination of rural poverty. Unfortunately, each year over 80,000 ha of agricultural lands in the country are converted into non-agricultural lands, thus seriously affecting agricultural production and food security.

National Water Policy of 1999

Bangladesh used to be a riverine country. Today, however, corruption, flawed government policies, and other factors have turned a number of the country’s once pristine rivers, canals, and other water bodies into sites reeking of pollution and filth.

The National Water Policy of 1999 does not protect water bodies from private ownership. The policy was passed into law as the National Water Act of 2013. According to the Act, all types of water, such as surface, ground, sea, rain, and atmospheric, within the territory belong to the government on behalf of the people (Article-3 (1). The Act provides for unlimited power to the Executive committee over water resources, even as it states that “water resources belong to the people.” This unlimited power may be abused by those vested with such power. The situation may get worse, as no individual or organization can file a lawsuit against other individuals, organizations, or government without prior written complaint from the Director General of Water Resources Planning Organization as provided for in the Act (National Water Act-2013, Chap. III).

To uphold the interest of fisherfolks, the government issued the Jalmahal Management Policy in 2009 (Jalmahal refers to water-bodies). But does it really protect the rights of the fisherfolks? Government statistics show about 28,000 public water bodies exist in the country.⁵ The 2009 management policy has a vital role to lease out these water bodies to marginalized fisherfolk communities. It stipulates that only genuine fisherfolk societies are eligible to obtain lease of public water bodies and they should be registered with the local Social Welfare Department or Cooperatives Department (Jalmahal Management Policy, 2009: Art. 5).

In practice, getting registered with the Cooperative Department remains a big challenge for marginalized and extremely poor fisherfolk communities, as the process is tedious and costly. Prior to registration with the department, they have yet to get certification as an authentic fisherfolk group or society from an Upazila fisheries officer on behalf of the Upazila Jalmahal Management Committee. Also, authentic fisherfolks' societies from *khas* lands are largely under the clout of a powerful section of the society—the local or national political elites. This issue has existed for a long time but the policy has failed to address such issue. Its implementing guidelines have failed to ensure fisherfolks' access to resources, thus denying them their tenure rights, even as section 9 of the VGGT expands the State's obligation to protect the customary tenure rights of "other communities."

National development instruments and tenure rights

The GoB prepared the Bangladesh Country Investment Plan (CIP) for 2011-2015 in association with the FAO. The CIP is considered as a tool for resource mobilization and investment in agricultural sector for the period indicated. It is aligned with the Sixth Five-Year Plan (Sixth FYP: 2011-2015), National Food Policy (2006), National Food Policy Plan of Action (NFPAP. 2008-2015), and all other relevant national policies, plans, and strategies on agriculture and food security.

The CIP is also aligned with the Perspective Plan of Bangladesh 2010-2021: Making Vision 2021 a Reality. Vision 2021 is the country's first ever long-term development plan crafted by the incumbent government. To improve food and nutrition security

⁵ Does it benefit fishers? The Daily Star, July 28, 2011. Source: <http://archive.thedailystar.net/newDesign/news-details.php?nid=196018> . Accessed on 22 March, 2015

in an integrated way, the CIP identifies 26 action areas in 12 priority investment programs with three major components, including food availability, food accessibility, and food utilization (CIP: 2011:6, 20,33). It has estimated an investment plan of US\$7.8 billion, US\$3.4 billion of which have been identified leaving a financial gap of US\$ 5.1 billion. Unfortunately, it does not provide any roadmap on how to fill the said financial gap. Indeed, the CIP is a programmatic approach to investments but with gaps in relation to the VGGT investment principles.

The VGGT recommends the endorsement of “investment models that do not result in the large-scale transfer of tenure rights to investors.” The CIP highlights “a progressive alignment of external sources of funds (from bilateral and multilateral donors) (CIP: 2012:8) but does not present any roadmap on how large-scale investments can protect and ensure tenure rights of smallholder producers.

In a developing country such as Bangladesh, smallholder producers are core investors that contribute towards economic growth. The VGGT advocates the “States should support investment by smallholders” (VGGT: Paragraph 12.2). The CIP does not mention about investment contribution by smallholder producers, even as the agriculture sector presently demands huge investments in order to protect access, rights, livelihoods, food security, and the environment from harmful impacts of large scale investments. In sum, the CIP promotes economic growth rather than the implementation of redistributive policies.

In 2010, the country adopted the Perspective Plan of Bangladesh to realize Vision 2021. Vision 2021 primarily aims to increase economic growth, eradicate poverty, and upgrade Bangladesh to middle income country (MIC) by 2021, the Golden Jubilee Year of national independence (Vision 2021: 1-2). Vision 2021 is clear in its goal to make the country an MIC by increasing per capita income to USD 2,000 by 2021 (Vision 2021: 19). But if the distribution of the national income is inequitable, will the MIC status help to eradicate poverty?

Vision 2021 is associated with two five-year plans--sixth and seventh five-year plans. Per review of the mid-term implementation of the Sixth Five-Year Plan by the General Economic Division of the Planning Commission, slow investment rate could lead to failure to achieve the average GDP growth rate of seven percent. Meanwhile, the

upcoming Seventh Five Year Plan (2016-2020) targets more than eight percent GDP growth rate in the first two years.

To become an MIC, development instruments cannot be simplified by merely aiming for economic growth. Required are sustainable development plans, including redistribution, equality, responsible governance system, and promotion of “broad based economic development ... a holistic and comprehensive approach to hunger and poverty reduction... to ensure access to adequate food as part of social safety net; investment in productive activities and projects to improve the livelihoods of the poor and hungry in a sustainable manner” (VG-R2F: Guideline-2: P. 10).

Rights and resources in relation to vulnerable groups

About 1.2 percent of the country’s total population are IPs. The country has around three million IPs from 45 different ethnic groups. Land is a big matter to the IPs. Land-related disputes have pushed the IPs to the margins. Across the country, indigenous land issues differ and mainstream individual property ownership clashes with indigenous communal ownership practices.

In the Chittagong Hill Tracts (CHT), around 13 indigenous groups are called ‘jumma people’, as they engage in the traditional *jum* cultivation (slash-and-burn). The State has imposed restrictions on *jum* cultivation and has totally banned it in some areas. In the 1960s, the Kaptai Dam and hydro-electric power plant were built at the CHT. The project caused massive displacement. It affected 40 percent of CHT’s cultivable land and displaced around 85,000 people. The displaced people were not compensated and rehabilitated. In the late 1970s, the State implemented a resettlement program for Bengali settlers affected by land problems in the CHT. Up until now, based on the law, customs and practices of the CHT people, their land issue has not been resolved despite the CHT Peace Accord of 1997 and CHT Land Commission.

The land issue of IPs on the plain has a different dimension. The Chhito Nagpur Tenancy Act of 1908 prohibits land transfer from ‘tribal to non-tribal people’ and the State Acquisition and Tenancy Act of 1950 requires permission from the District Commissioner to transfer land (Raihan, Fatehin, and Haque: 2009. 48-52). But in practice both Acts are violated and plain land IPs are dispossessed of their land by force or by law. These IPs do not know about their rights, the law, and government

development programs. The International Covenant on Economic, Social and Cultural Rights (ICESCR: Article 2.1) obligates the State “to respect, protect, and fulfill all human rights to the maximum of available resources.” The VGGT, on the other hand, provides for the recognition by the State of the customary tenure system and comprehensive relationship with nature of indigenous communities. Section 9 of the VGGT expands the States’ obligations to protect the tenure rights of IPs by acknowledging customary tenure rights, traditional systems and institutions, and ancestor lands. Given thus, the State needs to meet all the requirements associated with IPs and their communities’ tenure system before implementing programs that affect their resources.

In practice public resources

In Khodatpur, *khas* land supposedly serves as main public resource of poor and landless people who have the priority to own and regulate it. In reality, however, such land is owned by powerful sector of society. The villagers are fearful of confronting the issue, as they consider themselves poor and powerless. In consultation with the farmers, it was learned that nobody among them received any *khas* land, even as they are all eligible to receive so as small and marginalized farmers and vulnerable groups.

Delowar Hossain, 55, secretary of Upazila Khet-Majur Samity (KMS or Agricultural Workers’ Association) said Olipur Upazila, Kurigram district has about 1,900 acres or 769.90 ha of *khas* lands but the local poor people do not have access to these lands, as these lands are owned by the local elites. The former tried but failed to obtain *khas* land, even as they paid for an application form for the land. Also in Olipur Upazila, local muscle-men have been grabbing water-bodies (e.g., Shatkura, Shotiser dighi, Gopaler Chora, Pagla kura, Toper bazaar, etc.) in the name of “genuine fisherfolk association,” as the government allows for the distribution of public water bodies to “genuine fisherfolk community” or “vulnerable groups” (*Jalmahal Management Policy: 2009: Article-5 and (Amendment-2012) Article-4*). Khodatpur village in Kurigram district has a similar case as reflected in the *Noya-Pukur bill* case.

***Noya-Pukur bill*: A case of deprivation from public resource and customary right:**

The villagers of Khodatpur under Ghoraghat Union of Dinajpur district had been enjoying for a long time a water body named *Noya-Pukur bill*, which covers a total area of about five acres or 2.02 ha. Muhammad Omar Ali, 56, an inhabitant of Khodatpur

shared “In my years in the village, I have seen how the villagers have enjoyed Noya-Pukur bill as a public resource.” The Noya-Pukur bill was acquired through Upazila Parishad (local level administration) and local Masque and Madrasa Committee. The villagers had been able to get easy access to the bill by giving minimum revenue to the government every three years. But suddenly in 2007, they learned that the bill was a private property and owned by Shafi Chowdhuri, a local powerful elite. The villagers went to discuss the matter with Upazila Parishad. They were referred to the local revenue office. At the revenue office, they were informed that the district authority had banned the leasing of Noya-Pukur bill, as it was privately owned.

Also, the Khodatpur villagers shared that in Ghoraghat union, about 12 pools covering a total area of about 27 acres or 10.92 ha are *khas* lands but these were not distributed among the poor, landless villagers, even as they had long been accessing these pools traditionally. Recently, the villagers learned that these pools were also privately owned. They were kept from accessing them anymore. They used to use the pools for washing cloths and dishes, bathing, fishing, and as irrigation for their homestead gardens during dry season. They do not know anything about the laws, how to acquire or own these water bodies and lands, and where to go for assistance.

Agricultural Input Assistance Card (AIAC)

To assist marginalized farmers, the government issued the Agricultural Input Assistance Card (AIAC), locally known as farmers’ card, in FY 2009-10. The villagers of Khodatpur and Puiyagari, Dinajpur district and of Pandul and Maddhaykumorpur villages, Kurigram district said that most of them received the AIAC with the 400-1000 take single assistance two years ago. The second round of AIAC was issued in July 2014 but they did not receive any assistance. Under the program, the government allocated a total of Taka 9.99 crore for FY 2014-15. FY 2014-15 supposedly ended in April 2015. A total of 14,487,137 cards were distributed among small and marginalized farmers but only 244, 600 of them received free seeds and fertilizers.⁶ Farmers in the above mentioned villages were among those who did not receive any assistance. They had to buy all agricultural inputs from the local market.

⁶ Tk 5.75 crore allocated for increasing agri input cards, Matia tells. <http://www.bssnews.net/newsDetails.php?cat=7&id=421288&date=2014-07-03> . July 3, 2014. Accessed on 24 April, 2015

Government subsidies for agricultural development

According to Alauddin Shikdar, 45, general secretary of Kendiya Krishak Maitry (KKM or Central Farmers' Alliance), small and marginalized farmers are not able to receive subsidies earmarked for agricultural development. He cited, for instance, the issue on diesel subsidy for shallow irrigation machine. Small and marginalized farmers do not have funds to buy such machine. Instead, they use water irrigation and have to buy water for this purpose. Thus, the diesel subsidy merely goes to the pockets of middle or big farmers with shallow irrigation machines. The same holds true to fertilizers, electricity, and seeds sectors. Most small and marginalized farmers lack knowledge in modern technology. The government has programs that provide a lot of assistance to small and marginalized farmers. Unfortunately, these do not reach the intended beneficiaries especially at the grassroots level.

Partnership in social forestry program

On social forestry program, villagers said they were mainly involved as caretakers of the trees supposedly as part of their one-third partnership. They could not understand why alien and exotic species of trees were being planted, as these were harmful to farmlands. The trees consumed so much water, thus causing water scarcity. Khodadatpur dwellers said they preferred to plant local fruit trees and medicinal plants which could serve as sources of fruits and lumber. Unfortunately, they had never been consulted on development programs that affected them.

Purchase of rice from rice-mill owners

The government has decided to buy rice from rice-mill owners instead of from the farmers, even as the paddies they get are of poor quality. Such decision is an outright violation of the farmers' rights. To address the issue, Farmer Leader Anwarul Islam Babu, secretary of the Jatiyo Krishok Jot (National Farmers' Coalition) suggested that farmers sell their paddies to rice-mill owners for a token, i.e., a certain amount of money from a bank or post office. Such solution can help the government to get high quality paddies as well as help the farmers to get a fair price for their paddies.

C. Analysis

Policy constraints and challenges

Structural cause

Despite the country's remarkable record in reducing poverty, poverty remains with one-third of population still living below the poverty line. Irresponsible institutional governance, lack of state mechanism to regulate, monitor, or make accountable implementation processes, lack of complementary policy structure, articulation of neoliberal economy instead of wellbeing or redistribution, shortfalls in public expenditure, and others continue to heighten inequality and poverty. Complicated government structures make it difficult for the marginalized sectors of society to get out of poverty.

Dispossession of tenure rights

A number of national policies overlap with each other. The CIP and NFPAP, originally intended to integrate all these policies, have failed to formulate and implement a comprehensive strategy or framework in this regard. Also, the documents have failed to ensure tenure rights of smallholder producers and other vulnerable groups on resources.

Before and after the VGGT instrument and national policy documents

The Sixth FYP, NFPAP, CIP, and Vision 2021 were developed before the finalization of the VGGT. Therefore, the documents do not include the VGGT principles. All these instruments stress access and participation of tenure right holders. However, there are implementation gaps specifically in terms of access to resources and incorporating free, prior and informed consent of tenure right holders. Challenges to their implementation are rooted in the country's institutions and power structures. While they highlight participation, the documents, at the same time, overlook partnership.

Fractured governance system at grassroots level

Grassroots people are not aware or properly informed about their rights and entitlements. They are wary of making inquiries or requesting information from concerned government departments or officials on such things. From experience, each time they would approach concerned officials on details of any program, these

officials would tell them, “You don’t need to know all these things.” Jolly Begam, 55, from Puiyagari village said, ‘Union Parishad (bottom level local government structure) is not supportive of us.’

Allocated opportunities and entitlements are out of the farmers’ reach. The governance system is so fractured that government-provided benefits or assistance do not reach the poor, marginalized and vulnerable groups. For examples, *khas* lands and water bodies are owned by powerful sectors of society; subsidies are grabbed by middle and big farmers, and tenure rights are disrespected by grassroots level duty bearers.

D. Policy Recommendations

Given the above, this policy brief has the following recommendations to the government:

- Develop a transparent, accountable and responsible governance system to allow the poor, marginalized and vulnerable groups to obtain all government-provided benefits.
- Have the lone responsibility to allocate subsidies, make provisions or pass laws to advance the human rights and legitimate tenure rights of the poor, marginalized and vulnerable groups.
- Develop a mechanism on the implementation of programs and laws at the grassroots level. Posture a pro-poor and pro-people attitude towards marginalized and vulnerable groups.
- Regulate and approve prices of agricultural products set by agro-companies, monitor quality of seeds sold, and provide compensation when farmers incur losses due to substandard products of agro-companies.
- Monitor and regulate the weekly installment system of NGO-initiated micro credit programs.
- Provide alternative livelihood opportunities to farmers during lean months by providing assistance, such as credit and technical, to establish small-scale agro-business ventures.
- Promote and invest in organic agriculture, even as farmers and grassroots leaders welcome modern agricultural technologies.
- Develop and institute a monitoring system at all levels of administration with grassroots representation and participation.

- Provide opportunities or avenues for small and marginalized farmers and vulnerable groups to organize themselves at the village level through the agriculture and social welfare departments, so that they can collectively address issues affecting them and initiate small-scale enterprises.
- Organize farm-fields and set up irrigation system for *khas* lands for smallholder and marginalized farmers in every Union Parishad through the agriculture department.
- Break the average income system and re-categorize social class structure into extreme poor, chronic poor and poor, small, marginalized, vulnerable and destitute, middle and rich before generalizing economic growth and calculating ratio of growth.
- Set the maximum ownership of resources at 100 million taka.
- Adopt and implement the VGGT and regulate the redistribution of public resources to ensure tenure rights.
- Provide alternative power structures where people and farmers' organizations are able to participate and support.
- Adopt the suggestion Farmer Leader Anwarul Islam Babu proposed and provide opportunities for farmers to be able to sell their paddies to rice mill owners.
- Adopt and pass a bill for the establishment of an agricultural court at the Upazila level that will hear and resolve all types of agriculture-related cases and ensure justice for farmers. The court will serve to enhance the principles of the VGGT.

E. Immediate Action Points

At government level

- Incorporate the potentialities of the service sector in the Seventh Five-Year Plan (2016-2021).
- Incorporate human investment programs in future country development documents (NSPS, 7th FYP) emphasizing legitimate tenure rights of marginalized groups, particularly smallholder farmers, IP communities, and women.
- Institute responsible public and private investments towards improving food security.

- Increase social safety net programs for marginalized and vulnerable groups in the proposed NSPS.
- Ensure redistribution of resources by instituting responsible governance structure of tenure rights on resources.
- Incorporate in the NSPS plans to regulate tenure rights.
- Initiate multi- and cross-sectoral committees that will be tasked to monitor responsible governance structural activities, including the application and practice of the VGGT principles, at all levels.

At civil society and farmers' levels

- Highlight areas of improvement of policy documents and include media in disseminating the VGGT principles.
- Initiate dialogues with policy makers and use exiting national platforms (e.g. Khani-Bangladesh, Krishok Maitree, etc.) to engage all stakeholders at the national and local levels. The platforms can monitor consistency between the VGGT and policy commitments of the government as well as share grassroots experiences to reform policy documents.
- Initiate a multi-stakeholder action plan to advance the initiatives.
- Organize farmers and raise their demands from the grassroots.
- Extend cooperation and assistance to strengthen farmers and other vulnerable groups.

At regional and global levels

- Develop collaborative coalitions between and among countries, international organizations, concerned UN agencies, private sector, civil society, academia and media at the regional and global levels. The coalitions can advocate for and work towards responsible governance of tenure and advance the agenda for redistributive reform of resources from global to local.

F. Conclusion

Given the above, this paper has the following conclusions:

- Small and marginalized farmers and other vulnerable groups have been struggling in the country.

- The multiple issues of tenure rights cannot be simplified to mere acknowledgment of access to rights.
- The issue of tenure rights to resources is related to strategic adaptation.
- A significant number of government programs aim to uplift the plight of marginalized farmers and vulnerable groups. However, benefits from these programs are out of these groups' reach.
- Government subsidies meant for smallholder farmers merely go to the pockets of middle or big farmers.
- Irresponsible, non-transparent and unaccountable governance system results in the violation of human rights and legitimate tenure rights of poor and marginalized farmers and vulnerable groups.
- Farmers' demands are related to tenure rights. Consulting and allowing them to participate in decision making processes will ensure an accountable and responsible bottom-up monitoring system.
- An accountable and responsible bottom-up monitoring system is crucial in ensuring responsible governance of tenure of land, fisheries and forests.
- Lack of knowledge about their rights, laws and entitlements make marginalized farmers vulnerable to abuse and violation of their human rights and legitimate tenure rights by concerned government officials and powerful sector of society.
- Support at the international or global level is crucial in advancing the cause of smallholder farmers and vulnerable groups.
- Adoption, application and practice of the VGGT principles by the government ensures responsible governance of tenure rights towards national food security.
- It is imperative to review the country's governance structure and assess government's accountability and responsibilities at all levels and take action accordingly.

In sum, it can be said it is crucial to carefully examine gaps in policy implementation and governance system and address such gaps accordingly in order to ensure responsible governance of tenure of land, fisheries and forest towards national food security in Bangladesh.

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Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forestry and Fishery Resources in the Context of National Food Security and Some Aspects of Land Tenure Governance in the Kyrgyz Republic

Bishkek, February-April 2015

A. Executive Summary

This paper was developed within the frames of the project implemented by the Union of the Water Users' Associations of Kyrgyzstan (UWUAK) in partnership with the Asian Farmers' Association for Sustainable Rural Development (AFA), with financial support of International Land Coalition (ILC). The project aims towards the popularization of the 2012 FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fishery Forest Resources in the Context of National Food Security (VGGT) among line ministries, administrative bodies, civil society and farmers in the countries in the region.

This paper presents a short overview of and comparison between the governance of land tenure and legislation of the Kyrgyz Republic and the VGGT. It discusses the main principles and key provisions of the VGGT vis a vis the practice of land tenure governance in Kyrgyzstan.

An analysis of the above matter raises the following issues on the government's land policy and legislation awaiting appropriate solutions:

1. Lack of a comprehensive strategic document on the governance of land tenure for the national food security consolidating long or midterm vision of the government on the sustainable land management. Several concepts drafted by the Ministry of Agriculture and expert community are still waiting for finalization and endorsement.
2. Difficulty in accessing arable land related information and low participation of land users in land tenure planning and decision-making processes. Access to land information is a priority of the Government. Much time, however, is needed to align the communication process with land users' demands and develop appropriate capacities especially at the local level. Also, there is a

need to develop and make accessible to the wider public simple and clear informational products on land ownership and tenure policies and laws. Low awareness of the population on land use modalities and enabling framework frequently result in land laws violation and land use-related conflicts.

3. Gender equality, which the VGGT promotes in all aspects of responsible governance of tenure of land, fishery and forest resources, is not duly reflected in the main legal documents and land use management practice.
4. Land use related conflicts have become a frequent phenomenon. Conflict prevention and management need to be more meaningfully expressed in national land policy and legislation. Relevant land governance documents need to be conflict sensitive.
5. High poverty rate, rising food prices, low agricultural production, low productivity of the agrarian sector, land resource degradation, and numerous land use-related conflicts pose real threats to national food security. Thus, there is a great need for Kyrgyzstan to develop a strategic and effective document on the responsible governance of tenure of land and other resources to ensure food production and security. The VGGT can serve as a good methodological base in drafting such document.

B. Introduction

Rationale

Gradual decrease in land, fishery and forest resources vis a vis rapidly growing population at the global level put on agenda the issue of food security especially in developing countries. Aggravating the issue on resources are growing large-scale agricultural investments and land grabbing cases, climate change impacts, and industrialization.

In the above context, the Committee on World Food Security adopted in 2012 the VGGT marking a historic milestone for all organizations, institutions, and individuals working on land rights. The VGGT proposes principles and internationally recognized standards for the responsible governance of tenure of resources to resolve the issue on food security. It underscores that food security and right to food are among the main goals of responsible governance of tenure of resources.

Using the human rights-based approach, this paper discusses the country's tenure systems on land, including rights to land of women and indigenous communities. It describes how some provisions of the Kyrgyzstan enabling framework comply with the VGGT. Also, it identifies the gaps that can adversely affect productive communities, such as poor and smallholder farmers, who considerably contribute to meet the demands of the population for food. Given thus, this policy brief expects to serve as a tool to raise awareness of farmers and decision makers on the need for a pro-poor system of governance of tenure of land, fishery and forest resources.

Objectives of the Policy Paper

This policy brief aims to do the following:

1. Compare the VGGT with Kyrgyzstan's national policy and legislation on governance of tenure of land and other natural resources;
2. Identify gaps in the national policy and legislation vis a vis the VGGT;
3. Provide recommendations to improve policy and legislation in order to comply with the VGGT;
4. Propose amendments to the national policy and legislation; and
5. Present areas of interest for civil society to make governance of tenure of natural resources more accountable to the people.

Methodology and the process

This paper employed the ILC prescribed methodology and process for piloted countries of Kyrgyzstan, Bangladesh and Cambodia as follows:

1. Literature and references review to include the following:
 - Laws, strategic development documents, by-laws regulating land governance in Kyrgyzstan.
 - Voluntary Guidelines.
 - Research papers on land use governance practice in Kyrgyzstan.
 - Available materials popularizing Voluntary Guidelines in other countries.
2. Discussion and consultations with focus groups, including:
 - Representatives of smallholder farmers and vulnerable groups, such as women and indigenous communities.
 - Representatives of civil society.
 - Line ministries and administrative bodies.

3. Organization of national consultations with government officials, farmers, communities, NGOs, research institutions, and media on recommendations regarding the VGGT.

Limitations

Since the VGGT covers practically a whole range of issues on governance of tenure of land and other natural resources and given national land legislation and policy, this paper analyzes only some aspects of the national enabling frames and practice of governance of tenure of land on their compliance with concerned VGGT provisions.

Participating organizations:

1. Country office of FAO.
2. Ministry of Agriculture and Melioration of the Kyrgyz Republic.
3. Kyrgyzstan ILC-involved organizations, such as Rural Development Fund, Union of Water Users' Associations, and Kyrgyz Association of Forest and Land Users.

C. Main Findings

Land resources and agrarian sector of Kyrgyzstan

Land is a major natural resource that assures the sustainable development of the country. According to the Land Code of the Kyrgyz Republic (Art. 10), the “land fund” of the country includes agricultural and non-agricultural lands, subdivided into the following categories based on their land use:

1. Agricultural lands;
2. Lands of settlements;
3. Lands of industry, transport, communication, defense and other special purposes;
4. Lands of specially protected nature territories;
5. Lands of forest fund;
6. Lands of water fund;
7. Lands of reserve; and
8. Lands of the state reserve of mineral resources' deposits.

The territory of the Kyrgyz Republic covers a total land area of 19,995.1 thousand ha (Land Registration, 2012). Table 1 below presents land distribution per category.

Table 1: Land categories and % to national territory of the Kyrgyz Republic

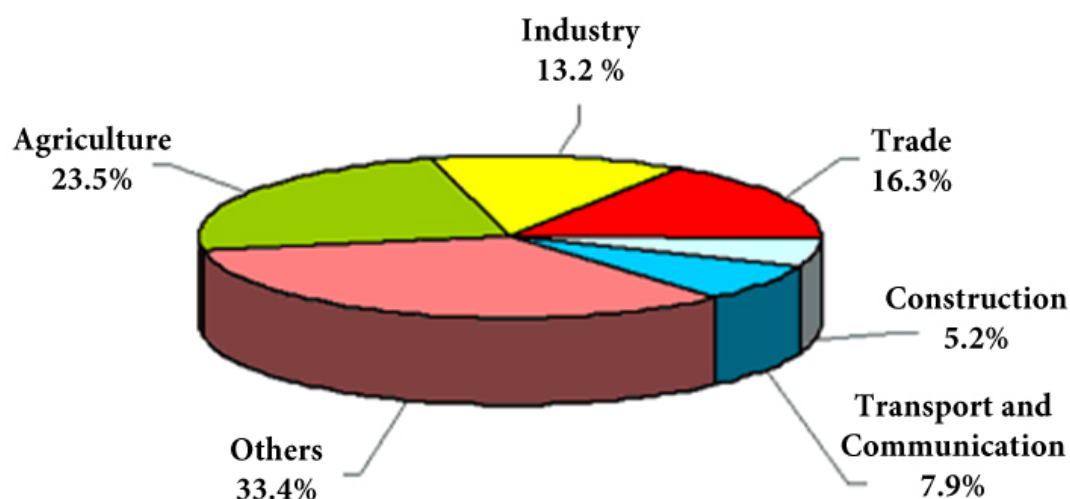
#	Category	Area, 000 ha	% to national territory
	Agricultural lands;	5,679.43	28.5
	Lands of settlements	266.52	1.3
	Lands of industry, transport, communication, defense and other special use purposes	222.71	1.1
	Lands of specially protected nature territories	707.40	3.5
	Lands of forest fund	2,617.23	13.1
	Lands of water fund	767.41	3.8
	Lands of reserve	9,734.40	48.7
	Lands of the state reserve of mineral resources' deposits.*	n/a	n/a
Total:		19,995.1	100

Source: The National Report on the State Of Environment in the Kyrgyz Republic.

* This category was added in September 2012. Thus, no official data was available then.

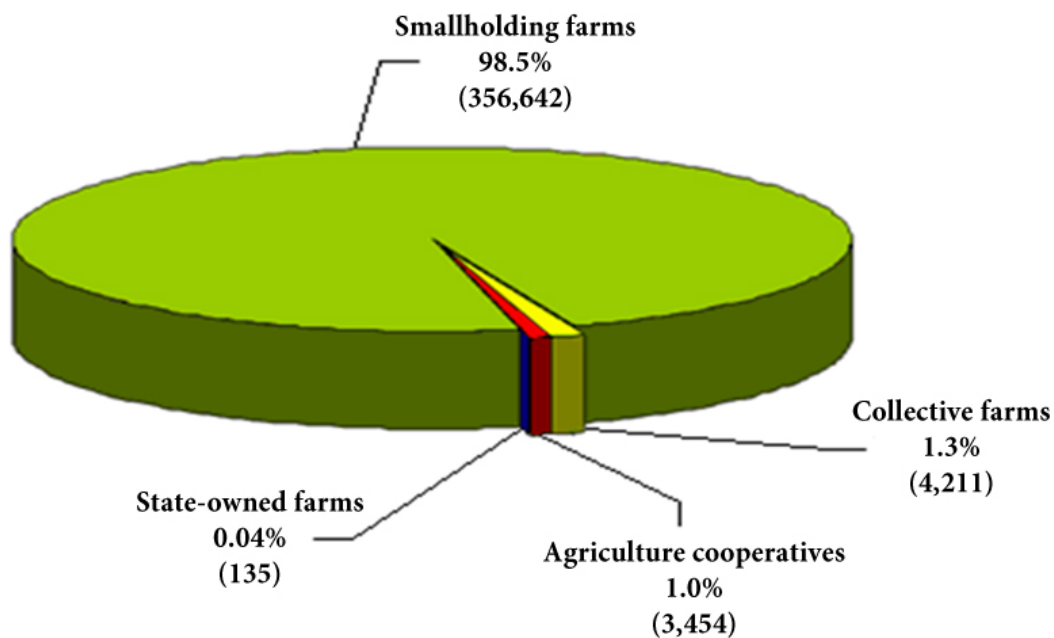
Kyrgyzstan is a mountainous agrarian country located in the arid zone of Central Asia. Agriculture is one of the leading branches of the national economy. It makes up 24 percent of the national GDP (Please see Diagram 1 below). About 65 percent of the national population are rural and about 34 percent of the economically active population are engaged in agriculture making nearly 15 percent of the total population. Given thus, apart from economic, agriculture has significant social and political dimensions.

Diagram 1: Kyrgyzstan GDP Structure (2012 z.).

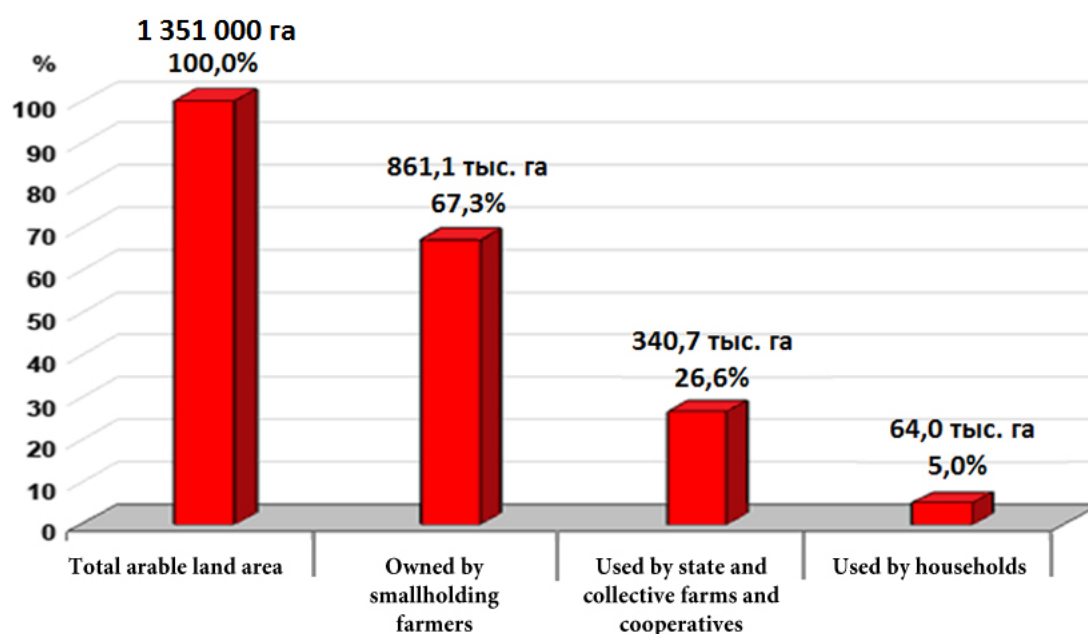


The country launched reforms to dismantle centralized soviet style economy and to transit to market economy in the beginning of 1990's. Instead of 576 kolkhozes and sovkhozes, thousands of individual farms were created to institute private ownership of agricultural lands. However, some state-owned agriculture enterprises, including seed, animal breeding, and research farms, were still operational. In 2008, there were about 326.7 thousand agriculture producers, including 135 state-owned enterprises, 4,211 collective farms, 3,454 agro-cooperatives, 356,642 private small holding farms (see Diagram 2), and about 726.6 thousand private household gardens. These data prove the irreversible nature of land and agrarian transformation in Kyrgyzstan.

Diagram 2: The main agriculture commodity producers in Kyrgyzstan.



The establishment of private land ownership was the key component of the reform formalized in the 1998 Constitution. Today, out of 1,351 thousand ha of arable lands, 861.1 thousand ha or 67.3 percent are owned by smallholding farmers, 340.7 thousand ha or 26.6 percent are used by collective and state-owned enterprises and cooperatives, and 64,000 ha or 5 percent are used by individual households (see Diagram 3).

Diagram 3: Arable land distribution

Actual land use practice of Kyrgyzstan

Kyrgyzstan was the first among the countries of the former Soviet Union to privatize land ownership and remains the only country in Central Asia to abolish majority of the kolkhozes and sovkhoses and distribute land to rural dwellers who worked there.

Progressive implementation of land use reforms led to the need for private land ownership and land purchase and sale principles. Article 3 of the Constitution stipulates that land can be in the state, municipal, private and other ownership. On the other hand, the Law on Agricultural Lands Governance, adopted in 2001 and amended in 2012, provides for the principles of agriculture land purchase and sale, exchange, collateral, inheritance, and alienation for debts. This law regulates relations in the domain of agriculture lands, abolishes the moratorium on the sale of land parcels, and is aimed at efficient land use. As such, it puts in place the legal basis to ensure farmers' rights to own and manage the land parcels they receive through agricultural reforms.

In the past, a farmer who received agricultural land for private ownership had the right to own and to use it. However, such farmer did not have the right to dispose of it according to the farmer's needs, such as to sell, exchange, or use as collateral.

A farmer had no incentives to invest in the land to increase production, thus causing low agricultural production in the country.

The above mentioned provisions in the agricultural lands governance law do not put private land ownership in the absolute and do not facilitate the decrease of agriculture land areas. In rural areas, legal restrictions prevent non-villagers, foreigners, and legal entities (except those engaged in agricultural production or processing) from purchasing land. Ownership of agricultural land may be transferred only to residents of the same rural area and not to legal entities, such as banks or foreigners. Lands in settlements may be owned only by Kyrgyz natural persons or by legal entities with majority Kyrgyz ownership. The minimum size of a holding is the share size established in each village during land privatization. The inability of banks to own agricultural land and the fact that any land held by them must be disposed of within a year to avoid the threat of a government buy-out is, however, a disincentive to using land as collateral.¹

Indeed, this is a solid foundation to develop land market and effective land management. However, legal recognition of private land ownership as it is does not resolve all the issues of its enforcement. This is the first and easiest stage in the process of land tenure governance. Succeeding stages surface more complex issues that need to be addressed to ensure the promotion and protection of the right to private land ownership. Among these issues are: 1. identification of the limits of private land ownership; 2. establishment of common conditions to exercise the right to own land and other natural resources; and 3. development of state regulatory mechanism for the governance of tenure of private lands. Other issues to a full-fledged application for private land ownership are outdated land inventory (old borders of arable land plots, patchwork, and lack of funds for national land inventory); more complicated control over land use and land tax collection due to increased number of land users, and others.

Formal introduction of private land ownership without appropriate organizational and economic actions from the state can result in a situation wherein new land owners continue the practice of exploiting the asset they own in order to get more revenues

¹ Identifying and Monitoring Good Practice in the Land Sector, Klaus Deininger, Harris Selod, and Anthony Burns, WB, 2012.

rather than intensifying its use through land melioration, fertility maintenance, and others.

Financial constraints of agricultural commodity producers result from smallholding production base and disparity of prices on agricultural and industrial products, insufficient governmental support, lack of market infrastructure, and other negative factors that do not allow them to get tangible revenues influencing the operation of land market. The first land auctions displayed weak activity and purchasing power of rural land owners while the other elements of land market, such as leasing, liens and mortgages, are still underused.

However, we think that under such conditions we should not reduce current land reform issues to lack of land market only. First, land market can be operational within certain economic environment. Second, formal introduction of the right to land purchase and sale can pretty well hinder sustainable land use, as land can be purchased for speculative transactions and used for purposes other than agriculture.

Undoubtedly, lack of land market is a strong barrier for the success of land reform. Nevertheless, it seems to be more logical to transit gradually to free land purchase and sale. Now, farmers can sell their land parcels only to the villagers with the privilege to do so. This certainly restricts new investment into agriculture production. It is important that land market improvement parallels with the activities undertaken for land use improvement.

Private land ownership in Kyrgyzstan can facilitate increase in agriculture production once the right to private land ownership is legally recognized and supported by appropriate national laws and regulations towards effective land use. However, economic conditions and appropriate practice towards the realization of this take time.

Meanwhile, large scale conversion of agricultural lands in Kyrgyzstan is gradually worsening. The Department of the Real Estate Rights Registration officials explained that the 2005 “tulip” revolution facilitated such conversion. Migrants from the rural areas rushed to the capital and started to claim land plots for housing. Since no agricultural lands were close to the capital, the government was forced to announce the conversion of agricultural lands to settlement lands for the construction of individual

houses. The situation was repeated after the second revolution in 2010. Per department data, since 2005 about 21,823 ha of arable land, including 10,906 ha of irrigated land, 3,345 ha of rain fed arable land and 7,572 ha of other agriculture lands have been converted to non-agricultural land category.²

We should point out that the above-mentioned phenomenon occurring practically everywhere has been marked by conflicts with local suburban communities. A recent case took place in Zhapalak community, Aravan District, Osh Province. After inter-ethnic clashes in 2010, there were a lot of attempts grab the land for housing. In response, the authorities decided to allocate land plots in the Ken-Sai locality. An independent awarding committee, composed of representatives from all the stakeholders, was established. The committee considered about seventy thousand applications. 1,624 ha of Ken-Sai land belonging to the Zhapalak community and used as pasture were divided into 3,500 land plots for housing. The new suburb in the Osh city entitled “Kurmandzhan Datka 2” was planned, to include water, transport and other social infrastructures. Construction works began. However, the recent conflict between new residents and locals resulted in an open fight with one person getting rushed to the hospital. Construction works stopped. As of this writing, the conflict had yet to be resolved.³

It should be noted most often, land use conflicts occur in the mining sector--between local communes and extractive industry companies. Such conflicts are largely connected to the non-transparent licensing process of mining companies, that is, without involvement of local communities. Decisions to issue licenses do not consider the interests of the local dwellers and their land use patterns. Getting the consent of concerned local communities is not a regular practice.

Summing up, the following are the main reasons why people are against conversion of agricultural lands to non agricultural categories:

1. Increase in the number of residential areas;
2. Legitimization of actual land use other than for agriculture;
3. Extraction of minerals;
4. Construction of industrial enterprises and infrastructure;

² <http://nd.kg/nedvnews/336-rynok-zemli.html>

³ http://rus.azattyk.org/content/kyrgyzstan_reconstruction/24588907.html

5. Construction of recreation facilities; and
6. Land quality deterioration.

In most cases, land conversions occur in areas close to big cities, such as Bishkek and Osh, and in the Issyk-Kul region.

Principles of the Kyrgyz land legislation

In our society, the concept of land policy presupposes the whole complex of socio-economic and legal regulations that determine how land should be used to ensure the preservation of the common environmental system vital to the life and functions of the people of Kyrgyzstan.⁴ Also, land policy is the responsibility of the authorities in order to regulate land disposal and management within their competences towards optimal land use. Such land use needs to be aligned with economic, town-planning, agricultural and other values to achieve appropriate conditions for a more comfortable life, productive activities, and socio-cultural development of people and society⁵.

To ensure rational use and conservation of land in Kyrgyzstan, the state, as sovereign, implements policies based on the following principles⁶:

1. Land conservation as a natural object, the basis of life, development and activities of the people of the Kyrgyz Republic;
2. National and environmental security;
3. Formation of land market and its effective functioning;
4. Respect and protection of rights and legal interests of landowners and users;
5. Effective land use;
6. Purpose oriented land use;
7. Priority to agriculture lands;
8. Accessibility of information on land rights;
9. State support to actions on land use and protection;
10. Prevention of damages to land and elimination of consequences;
11. Payment for land; and
12. Equality of all forms of land ownership.

⁴ Constitution of the Kyrgyz Republic, 27.07.2010, Article 12.

⁵ Land Code of the Kyrgyz republic, 02.06.1999, Chapter 2.

⁶ Land Code of the Kyrgyz republic, 02.06.1999, Article 3.

In comparing the above-mentioned principles with the VGGT, we can say that the former is more technical, i.e., more specifically directed to land use frames aimed at the conservation and sustainability of land resources and land property rights. The VGGT is more humanitarian in character, as it provides for the promotion and protection of human rights.

D. Analysis

In examining national land policy and legislation in terms of their compliance to the VGGT, we point out the following areas:

Humanitarian-oriented VGGT vs. technically oriented Kyrgyzstan national legislations on land

As said above, the VGGT is more humanitarian-oriented; it aims towards the promotion and protection of human rights and upholding of the principles of good governance in the tenure of land and other natural resources. Relevant Kyrgyzstan land legislations, on the other hand, are more technically oriented. They do not provide for gender equality and inclusion of vulnerable groups in policy development and decision making. This may be because Kyrgyzstan is a country in transition, especially in terms of land tenure governance, even as it has achieved considerable success in its democratic processes.

VGGT good governance principles, such as openness, transparency, accountability, participation and inclusion of smallholder farmers and other vulnerable groups in decision making processes, are not yet a regular practice in the governance of tenure of land in the country. At the moment, Kyrgyzstan society is more into addressing ethical and corruption issues among its public servants.

Nevertheless, the introduction of the institute of private land property is a significant indicator that the government recognizes and respects the right to land of people working on the land. Also, occasional involvement of civil society and farmers' organizations in the development of various legal and policy documents is a step towards ensuring the participation and inclusion of all stakeholders in the governance of tenure of land.

A main barrier to agricultural development and responsible governance of land tenure in Kyrgyzstan is the lack of essential policy documents on the strategic directions of the agrarian sector that incorporate the interests of all stakeholders towards national food security.

Access to information on tenure of land in the Land Code of Kyrgyz Republic of 1999

The Land Code of the Kyrgyz Republic assures access to information on land tenure (Art. 3). Thus, it can be said accessibility to information on land rights is among the main principles of the said law. It, however, also stipulates that the Government can impose certain limitations or prohibitions on access to land cadastral information (Art. 116).

Main issue on access to land information is related to the recognition of the right to access information on land use. This issue is caused largely by the government's weak governance bodies and underdeveloped information and communication technologies in land tenure governance, especially at the local level.

Law on Pastures of 2009

The 2009 Law on Pastures stipulates state ownership of pasturelands and community based governance of resources. The transfer of governance of resources of pasturelands from the state to the associations of pasture users in the local communities was a great step in the state's land reform program. Five years since the said law was passed, however, it was observed the communities lacked knowledge, skills and experience in sustainable land management. Such lack resulted in the degradation of pasturelands, specifically those close to the villages.

Gender issue in 1999 Land Code

Gender equality remains to be integrated and practiced in the governance of tenure of land, even as it has been considered duly mainstreamed in some legal documents of the country. For instance, certain provisions in the Land Code are generally declarative with respect to gender. Lack of legally prescribed procedures has resulted in poor operation such mechanisms without adequate consideration of land users' interests. The Land Code has undergone 22 amendments since its passage more than a decade ago. Despite these, however, there are still gaps that need to be addressed.

The Land Code regulates the divisibility and indivisibility of land parcels (Arts. 41, 42 and 43). It allows dividing a land parcel into parts but they are to be reregistered as independent parcels. This division should be agreed upon by the architecture, sanitary, fire and other state departments. Debates and controversies arise in this regard, as the norms justifying land parcel division, including procedures and identifying minimum size of divided land parcels, are not legally prescribed and the mechanism for such is not operational. The process becomes more complicated, as the body, in charge of granting a land parcel to a user, does not have clearly defined criteria for the land parcel division. Officials from the department of land cadastre and real estate registration, local self-governments, and courts can make rather subjective decisions about the divisibility and the minimal size of a land parcel in cases such as divorce, inheritance, or separation within households.

Thus, the law does not duly protect the rights of women with no economic status in the family; it does not guarantee that decisions on division of land parcels will be free of gender stereotypes and discrimination. Most often, obligatory approval of complex procedures result in unfair division of property. At present, procedures in the division of land parcels into land shares seldom engender consensual decisions among interested parties. An owner with a land share can always file a case in court for having been deprived of land property right. Given thus, it is necessary to develop and implement clear common land parcel division procedures and divisibility/indivisibility criteria and set the minimum allowable size of land parcel/share.

It is important to note that the provision in Art. 41, paragraph 2 of the Land Code stipulating that the “indivisibility of a land parcel should be mentioned in the document, authorizing the right on this parcel” is not followed under the current land tenure practice.

Civil Code of Kyrgyzstan of 1997

The 1997 Civil Code of Kyrgyzstan was formulated without gender disaggregation on the subjects of civil relations, thus it could be characterized as gender neutral. Chapter 10-1 of the Civil Code defines the general provisions on land property right. Article 233-1 of the Code states individuals, judicial entities, and the state can own land parcel. A person, who owns a land parcel, has the right to sell, present, put as collateral or lease and dispose otherwise, if there are no legal claims on that land.

Transfer of the land property right within the universal succession is implemented with the limitations fixed by the Land Code. The land parcel territory borders are identified based on the documents issued to the owner by the relevant authorized state bodies (Article 233-2).

Given the above, we can say that the land reform that has been implemented since 1991 is gender blind and conducted without consideration of gender aspects. In major cases, land title documents and documents certifying rights to family land are assigned to the men who are traditionally considered as “heads” of the households. Such practice complicates the execution of transactions on land parcel for women and creates problems during the division of their land shares, especially when husbands go to work abroad.

Given the provision in Art. 223 of the Civil Code recognizing land ownership by individuals, legal entities, and the state and the provision in Art. 12 of the Constitution recognizing private, municipal and state ownership, we can point out the lack of consistency between the two provisions. Nevertheless, it is important to note that the Constitution recognizes the diverse forms of ownership and guarantees equal legal protection of private, state, municipal, and other forms of ownership.

Law on Agricultural Land Management of 2001 and Women’s Right to Land

The 2001 Law on Agricultural Land Management regulates legal relationships in agricultural lands governance and aims to ensure the efficient and safe use of the land for the people of the Kyrgyz Republic. The law contains provisions on ownership (Arts. 6 and 7), inheritance (Art. 28), and transactions on agricultural lands (Chapters V, VI, VII, VIII, IX and X) but does not contain provisions that are gender specific.

By virtue of the principle of priority of agricultural land and limited area of arable land in general, the law imposes strict restrictions on foreigners or spouses, if one is a citizen of Kyrgyzstan, and urban residents from buying and owning agricultural lands. Due to the efforts of women NGOs and the public in 2006 and 2009 certain significant changes were made harmonizing its restrictive provisions with the Civil Code, thus contributing to the development of agriculture land market and expansion of possibilities for agriculture land transactions. Rural women are given the opportunity to choose their client and to sell their land share under their sole discretion. Before

these changes, women, when leaving the family (marriage, divorce, etc.), were certainly vulnerable, because they could sell their shares only to co-owners (parents, husband or his relatives).

Prior to its amendment, Art. 15 of the law on the management of agricultural lands states: “The owner of the land share of the agriculture land parcel may sell it only to other owners of land shares of the same land parcel, without paying the state duty.” It means that any woman can sell her land share to other owners of shares of this definite land parcel to her brother or father, and, in case of divorce, to ex-husband, or loss of her husband, to his relatives, which, in reality, is impossible to do. As a rule, no one buys such a controversial land share. Why pay for something that actually belongs to them? In such a case, the rights of women to own and sell their land get violated.

Therefore, at the suggestion of women NGOs working in the UNIFEM project entitled, “Women’s Land Rights,” Art. 15 was amended and now reads: “Land share can be sold in whole or in part with the registration as an independent land parcel”. This means a woman can now allocate her land shares to a separate parcel through registering her right to own land in the authorized state registration bodies, and independently undertake various deals to lease, exchange, or finally sell it.

In sum, it can be said the divisibility/indivisibility of a land/share and extraction of the land shares from a joint land parcel are not duly regulated by the state. Arts. 15 and 16 of the above mentioned Law have not yet received enough practical evidence of application due to lack of clearly defined criteria on divisibility of land/share and lack of approved procedures or mechanisms on land shares allotment. Also, application process for titling is not elaborated. In case of divorce or inheritance, the law allows authorized persons in a subjective manner to solve the question of divisibility of land with common ownership. It is especially difficult to account for women whose documents are registered to the men (father, husband, brother, and others).

Land-related conflicts and the Land Code

Another major issue in the practice of governance of tenure of land in Kyrgyzstan is the prevention of land-related conflicts. On land-related conflicts, the VGGT encourages all stakeholders to take action to resolve questions of ownership and use of land resources that can cause conflicts and to ensure that issues on land ownership are settled

before, during, and after the conflicts through peaceful means. The states are required to review relevant rules and laws to eliminate discrimination and other factors that may cause conflicts. Where appropriate, the states may consider traditional and other local mechanisms that provide fair, reliable, gender-sensitive and non-discriminatory opportunities for immediate resolution of disputes on the rights of ownership and use of land resources. When conflicts arise, the states and other parties should seek to uphold and protect the legal rights to ownership and use, and to ensure that they are undestroyed by other parties.⁷

In general, these provisions correspond to relevant provisions on land in the country's laws although they are not directly expressed in the said laws such as on gender issues.

Art. 119 of the Land Code states that disputes arising from land relations are settled by the authorized state body that provide land. In case of disagreement with the decision of the authorized state body, land disputes are considered in court, and the resolution of land disputes related to the provision, withdrawal and termination of rights to land is decided only by the courts. Also, the Code foresees the responsibility of the officials for the decisions and refers to Art. 120 stipulating that officials, land owners, and land users bear civil, administrative, and criminal liability for violation of land legislation.

Most frequent land-related conflicts are the following:

- Conflicts between villagers and local self-governments, managing state owned agriculture land (This is about 25% of the whole arable land and is called Land Redistribution Fund (LRF). This land is leased in land parcels to local farmers for an average of five years, following corresponding modalities. Often, there are a lot of complaints about corruption and non transparency on the awarding of these land parcels. This is an issue that causes internal community conflicts needing systemic solution.
- Conflicts between the communities and extractive industries companies conducting exploration or development of mineral deposits. These conflicts occur mainly under the pretext of environmental pollution and reduction of the pastureland area for local use. The root of the conflicts is more socioeconomic -- high level of rural poverty and unemployment and seasonal character of agrarian activities.

⁷ Paragraphs 25.1, 25.3 of the Voluntary Guidelines

- Conflicts between suburban communities and new residents who received the land parcel for housing. Agriculture lands allocated for housing by the municipalities are not subject to compensation, as they are owned by the state. Therefore, communities are not paid for this loss.
- Conflicts of the communes on the border limits of their territories which occur due to poorly developed and outdated land inventory documentation. Budget constraints and underdeveloped information technology and skills seem to put aside the issue on land inventory data renovation with modern GIS technologies.
- Conflicts between the communes and state protected areas assigned to safeguard unique biodiversity. Organization of new protected areas has become more and more complicated since the reluctance of the communes to reduce their current practice of land use on such territories. Even when organized on state land reserves, communities speak about their customary land use rights to many such territories.
- Conflict between the communities living on public lands and public land managers. For instance, there are dozens of communes living on state-owned forest lands, which do not have any agriculture land even for subsistence farming. The population and settlement are growing and the pressure on the forest is gradually increasing, thus causing numerous conflicts between the villagers and state forest management units. This issue is also waiting for its systemic solution.

E. Policy Recommendations

Barriers to good governance of tenure of land

The following are identified barriers to good governance of tenure of land in Kyrgyzstan:

1. Lack of programmatic and strategic document on the national agrarian policy elaborating the principles of good governance and rule of law, reflecting all the aspects of the responsible governance of land tenure to ensure national food security.
2. Lack of information on land tenure practice and opportunities, including land use rights and obligations.

3. Lack of clear provisions of gender mainstreaming and promotion in the main land legislation documents.
4. Lack of provisions on conflict prevention specifically tailored to land tenure governance at the local level.

Recommendations

To remove the above-mentioned barriers, the following recommendations are proposed:

1. Develop the Concept of responsible governance of the agriculture lands tenure in the Kyrgyz Republic and integrate the rights and interests of all stakeholders as main strategies of the national land policy to ensure food security. To do such, ensure the wide participation of all interest groups, including authorized governmental bodies governing the tenure of all land categories, farmers' organizations, local self-governments, agribusiness and extension service providers, and representatives from relevant sectors, such as environment, town-planning, transport, communication, defense and extractive industries. The VGGT can serve as a basis for the integration of human rights, conflict reduction, and gender equality aspects and adoption of good governance principles and rule of law in national land policy.

Provide and strengthen access to information on land tenure as an integral component of sustainable land management approach.

It should be noted that Article 33, Paragraph 3, of the Constitution of the Kyrgyz Republic explicitly states that everyone has the right to obtain information about the activities of public authorities, local governments and their officials, legal entities with public authorities and local governments, as well as organizations financed from the republican and local budgets. Paragraph 4, on the other hand, states that everyone is guaranteed access to information held by public bodies, local authorities and their officials. Provision on the order of information is specified in the Law of the Kyrgyz Republic "On access to information held by public bodies and local government of the Kyrgyz Republic" (2006).

2. Exercising the right to access land tenure information is often quite difficult due to bureaucratic red tape at the national, sub-national, and local levels. At the local level, this is largely due to lack of communication facilities and IT in order to disseminate land tenure information, low work culture of responsible authorities, and acute shortage of simple and clear informational materials, such as manuals and guidebooks on good land tenure governance.
3. Therefore, it is necessary to expand the application of modern information and communication technologies to the practice of relevant land tenure information management at the national and local levels. It is particularly relevant today to make public information about master plans of settlements development, which some time ago, in some municipalities was classified as closed information. In most cases, lack of information on territorial development and related land use plans is due to the absence of such plans.
4. Gender mainstreaming, despite positive developments in Kyrgyzstan, still leaves much to be desired in terms of land tenure governance practices. This is due to widespread societal stereotypes and lack of awareness of women on available opportunities. In many ways, it is closely linked to lack of necessary information and low potential to promote gender equality in natural resource management in general.

Given the above, this paper recommends the following which are also applicable to other aspects of land management practices:

Government Level

- Improve the regulatory framework of land policy and legislation for the integration of the gender dimension. This is in regard to violations of women's rights to immovable property, equal protection of the rights of all family members, including inheritance rights, and to clarify issues on the allotment of separate land shares within the joint household land parcel.
- Implement legal activity for women towards women economic empowerment through equal employment opportunity and entrepreneurship, especially in rural areas and provide avenues for people participation in drafting laws that will promote women's interests in the context of land market formation, as

lawmakers and human rights cannot cover the whole wide range of issues related to women's land rights.

- Intensify communication campaigns using multi-media, including talks shows on TV and radio on compulsory documentation and registration of land rights with authorized bodies. Documentation and the registration of rights to land provide land owner, user or tenant the legal proof of the existence of their right to land.
- Allow adequate resources for the creation of an independent judiciary tasked to protect the rights of landowners.
- Make public violations or abuses committed by concerned government officials at all levels, so that the public will know and act accordingly in order to pressure erring officials to cooperate and properly do their jobs, thus prevent future violations and abuse.
- Strengthen the work with local self-governments to improve transparency in the distribution of land parcels from the public Land Redistribution Fund using the principles of good governance.
- Revise certain categories of land in order to return unused lands for agricultural production.
- Capacitate local governments on conflict prevention and management. Corollarily, address the issues of institutional development and financial sustainability of these local governments in the management of land resources.
- Organize and implement public awareness campaigns on conflict prevention and management using traditional Kyrgyz local institutions, such as the Councils/Courts of Aksakals (Elders), mosques, women's councils, "kuduk" (water) committees, and others.
- Promote the development of local knowledge and skills on peace-building, conflict prevention and "conflict-sensitive" development at the policy development and community levels.
- Disseminate best practices of communities in addressing land conflicts at the local and national levels.
- Continue the work of removing restrictions of the secondary land market to facilitate the possibility of enlarging productive land through the principles of good governance.

- Continue further improvement of the process of registration of land and property rights based on the principle of “a single window”.
- Develop appropriate informational products on land and land rights at the local level.

Civil Society/Nongovernment level

- Prepare and train local consultants from local human rights NGOs, political parties’ territorial branches, and lawyers to organize and conduct awareness rising campaigns on land rights with communes. These consultants may later become key figures whom local residents can approach and consult on land rights registration.
- Lobby in Parliament the issue of lack of land property among residents of settlements located on public lands (e.g., State Forest Fund and others)⁸.

Education Sector Level

- Include land rights education in the curricula of vocational schools training farmers and agricultural mechanics.
- Conduct seminar-workshops on land rights education to teachers in rural schools.

F. Immediate Action Points

This paper proposes the following immediate action points in order to promote the responsible governance of tenure of land resources towards sustainable development:

Government level

- Initiate the development under the Ministry of Agriculture and Land Reclamation of Kyrgyzstan (MSKHM). The establishment of an expert working group, including the representatives of MSKHM, farmers’ organizations, local authorities and other stakeholders could be the first step.
- Prepare a formal appeal or project proposal from MSKHM to the donor community and relevant development agencies operating in the Kyrgyz

⁸ The issue of the forest lands settlement is too complicated and needs special research which is not covered by this policy brief.

Republic on the broad participation of all stakeholders in the Concept development process and other proposed measures.

- Address the issue of the access to the “land” information and existing opportunities for land use within the ongoing work of the Government to improve the transparency of governmental institutions. The process and work on the land parcels registration should become further more open and the corresponding databases should be available and accessible to individuals and communities. The Public Receptions, which are widely established today in local communes, may increasingly be used to raise public awareness on land tenure at the community level.
- Ensure proper use of Internet resources to encourage people to widely use on-line services. This work can be actively integrated into the process of ongoing work on e-government implementation.
- Conduct studies on human capacities, current business processes related to land use, and conflict resolution at the local level, and on this basis develop an appropriate capacity building program.
- Develop and distribute various popularized manuals and handbooks on the principles of sustainable land management for local self-governments in selected pilot communities.
- Conduct consultations with civil society experts on conflict prevention and management, specifically on preventive diplomacy to improve capacity on conflict prevention in land tenure governance. Corollarily, conduct consultations in drafting joint action plan/roadmap on the prevention, reduction, or mitigation of land-related conflicts by the working group and officials of the State Agency for Local Self- Governance and Inter-ethnic Relations (GAMSUMO).

NGOs/Civil Society (Congress of Women of Kyrgyzstan, Coalition for Democracy and Civil Society, Legal Clinic “Adliet”, etc.)

- Promote mainstreaming and integration of gender equality in the governance of tenure of land tenure in land policies and legislation.
- Conduct awareness raising campaigns on responsible governance of tenure of land resources at the local and national levels.

G. Conclusion

To conclude, we can say the VGGT and legal framework on land governance of the Kyrgyz Republic generally coincide with regard to legitimating different types of land ownership, citizen participation in governance of tenure of land, settlement of disputes, and access to information.

However, we note here, the VGGT presents a comprehensive and systematic approach to land use governance beyond the scope of purely land tenure issues, as it deals with issues of civil rights, gender and conflict management as well as the political aspects and process of enforcement of national and sectoral land laws and policies. Such document is particularly relevant to Kyrgyzstan today.

High levels of poverty, rising food prices, low agricultural production, continued land degradation processes, and numerous conflicts over the use of natural resources pose a real threat to the food security of the country. Therefore, it is necessary to develop a strategic document on the responsible governance of the agriculture land tenure in Kyrgyzstan to ensure national food security. The VGGT can serve as a methodological basis for the development of the national policy on sustainable and responsible governance of land resources tenure in Kyrgyzstan.



Established in 2002, **Asian Farmers' Association for Sustainable Rural Development (AFA)** is a regional alliance of national farmers' organizations, with 17 member organizations in 13 countries, with a combined membership of around 12 million women and men small-scale farmers, fishers and indigenous peoples. It works at local and regional levels, facilitating knowledge sharing and learning; conducting policy consultations and building consensus on various policy issues; representing small-scale farmers in Asia in regional and international gatherings and building member organizations' capacities on organizational development, sustainable agriculture and farmer-led agro enterprises.



INTERNATIONAL
LAND
COALITION

The **International Land Coalition (ILC)**, established in 1995, is a diverse and growing network of 207 member organizations in over 50 countries providing a unique space where civil society and intergovernmental organisations come together on equal terms with a transformative vision for people centered and inclusive land governance. The shared goal of the Coalition members is to realise land governance for and with people at the country level, responding to the needs and protecting the rights of the women, men and communities who live on and from the land. To achieve the goals, ILC will connect and mobilize its members so that together they can influence key decision makers including governments, their partners, and corporate actors and investors to engage with civil society actors as legitimate and necessary interlocutors and partners in achieving land governance for and with people

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