

Consolidated Responses for the PAFPNET Discussion for the month of October:

Date: 21/10/14 – 3/11/14

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

The PAFPNET discussion for the month of October on the “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security”, highlighted a number of concerns on this sensitive topic. Looking at both the strengths and weaknesses in land, fisheries and forests tenure, a common thread identified showed that challenges in this area outweighed its strengths.

The majority of land and sea resources in the Pacific are customary-owned because of its ties to the people’s culture, customs and traditions. As a result of this, it is almost impossible to classify any underlying strengths related to the tenure of governance in the three areas listed.

In reference to the governance of the tenure of land, the respondents highlighted the issue of land disputes as a result of land ownership. In this case, the registration of land either ceases to exist or its importance is not strongly emphasized. Additionally, because customary laws preside over freehold laws in most Pacific island countries, the implementation of the guideline lacks motivation because most decisions made involving the land and the sea are by families or villages as a whole.

However, it has also been discussed that customary ownership is not the only problem for disputes. A pending issue in relation to the areas of land, fisheries and forests, is the act of involving customary owners in business for commercial purposes. This has proved to bring about more harm than good, as customary land and communal reef ownership have been handed over to foreigners.

Furthermore, the lack of information dissemination was underlined as a major constraint for improving the tenure governance. According to the discussions, this entailed a lack of knowledge and understanding on the vitality of land and sea resources thus leading to a rise in disputes and lack of transparency.

On another note, many members saw the importance of instituting a department specifically responsible for the registration of land and sea resources in the Pacific as a way to establish

boundaries. In doing so, they also mentioned the importance of implementing guidelines to help strengthen and enable existing policies and principles set in place.

There were also some suggestions made for a more effective and efficient application of the guidelines. A promotion of the guidelines at a national level was highlighted in the forum with the support of key stakeholders and high level consultants to help boost the guidelines implementation and use. Moreover, it was also recommended that a training of trainers be organized on the guidelines so that its existence is recognised and people are made more aware of its purpose and importance.

The assessments of the consolidated responses were gauged from the questions below:

1. What are the strengths and challenges of governance of tenure of land, fisheries and forests in your country?
2. What are opportunities for and constraints to improving tenure governance for land, fisheries and forests?
3. How can the guideline be used in your country?

Responses from:

1. [Mr. Gae Yansom Gowae, Papua New Guinea \(PNG\)](#)
 2. [Mr. William Tabuabi Atu, The Nature Conservancy, Solomon Islands](#)
 3. [Mr. John Ericho, Conservation Forum of Papua New Guinea, Papua New Guinea \(PNG\)](#)
 4. [Mr. Elik Senivasa, Ministry of Fisheries and Forests, Fiji](#)
 5. [Mr. Samuela Lagataki, Ministry of Fisheries and Forests, Fiji](#)
 6. [Mrs. Valentine Mautama, Department of Justice, Lands and Survey, Niue](#)
 7. [Mr. Fetu Setu Sakaria, Ministry of Agriculture, Government Buildings, Samoa](#)
 8. [Ms. Mary Boni, PNG Eco-Forestry Forum, Papua New Guinea \(PNG\)](#)
 9. [Ms. Maria Elder-Ratutokarua, Secretariat of the Pacific Community \(SPC\), Fiji](#)
 10. [Mr. Kelemen Navucu, Ministry of Natural Resources, Tokelau](#)
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1. Mr. Gae Yansom Gowae, Papua New Guinea (PNG)

Land tenure is a major problem and full of challenges in developing countries and more specifically in the Pacific region where majority of land is customary owned.

1. The strengths and challenges of governance of tenure of land, fisheries and forests in PNG are many, particularly where 80% of land is customary owned while resources like forests is 97% customary owned. The development potentials and the commercial values makes land, fisheries and forests of high demand commodities in the country such that governance of tenure are very fluid. Such as been the case of Special Agriculture Business Lease (SABL) in 1979 which has now become very controversy in PNG. The intention was good for customary owners to be involved in agricultural businesses but the application was very poor, to say the least, which led to 5.2 million ha of customary land ended up in the hands of foreigners. PNG Constitution clearly stipulated that customary lands are not to be sold to foreigners.

In my view, food security is a problem created by people themselves and not because of land and resources scarcity, at least for the time being.

2. PNG Government is currently reviewing the Customary Land Act that will free up customary land in the name of development. But I personally cannot see how this will work. Given more than 800 languages and more than 500 tribes, how can customary land be leased out to different individuals of different tribes etc. Furthermore, if the current trend of governance of state land is an issue, how will governance of customary land be handled which is more complicated. This also applies to fisheries and forests.

3. I am sure the guideline will be helpful to guide policies that will meet the challenges, opportunities, and improving the constraints in the tenure of land and resources. PNG Government through Law Reform and Constitutional Review Commission (LRCRC) is currently undertaking major reviews on land and resources laws that will give ultimate powers to the lower level governments to deal with these issues and I hope this Voluntary Guidelines will be very useful.

2. Mr. William Tabuabi Atu, The Nature Conservancy, Solomon Islands

The Nature Conservancy (TNC) works with 2 indigenous organizations in Isabel and Choiseul Provinces so my answers to your questions will be based on our experiences in working with these organizations and the communities over the years.

A Sense of ownership of their resources gives the opportunity for the resource owners to equate their resources to money values. For example, in 2004 a village in Choiseul requested us to assist them in managing their marine resources just off the coast of their village which used to be a common fishing ground. We did a baseline assessment and 4 years later, they are harvesting the marine resources from their managed area and were able to sell them and get some money to assist them with their other personal and community needs. As they see the importance of their reef and what it brought to them, they take the lead in managing it.

One of the challenges is that many people in the village who use to live on the reef communally have nowhere to fish as the reef is now managed by the reef owners.

One research that we have done as well is on the connectivity of fish species and the ecosystems. In the research that we have conducted in Isabel last year on the bump head parrotfish we have found that areas where logging takes place and sedimentation smothered the corals, we could not find any juveniles, however in areas where there is no logging, there are abundant. It gives us the opportunity to prove that land based activities has a direct impacts on the marine fisheries.

Land demarcation is more readily accepted than marine demarcation. We assisted communities to set up markers to what they claimed was their traditional reef boundary for conservation purposes. This was dismantled within a week by nearby neighbours as they feel that it causes restriction to their fishing activities.

For me another challenge is in relation to forestry and logging concession areas in relation to REDD+. If a logging company gets a concession area from a local land owning group and instead cutting down the forest it decided to secure it with carbon credit. This means that the people that own the land does not own the trees that produces the carbon.

Coming together with regional groupings like FFA and PNA helps the country to monitor, manage and market its off shore resources (tuna) at an international competitive price which brings in money to finance other essential services like schools and hospitals.

Forestry industry in the Solomon Islands initiates corruption at many levels – ranging from communities right up to the political level of the country. For instance it causes land disputes and division among families and communities, logging companies sponsored candidates to contest general elections with anticipation for MPs to protect their interest in the country.

Most of the land in SI is under customary tenure, it is their birth right and only form of social security. However, the down side of it is that as it is not registered under the tribe but under the 'chief' of the tribe, he can easily sell it without the consent of the rest of the tribe. However it also renders hindrances to development when a developer has to seek consent from a whole host of people.

The country does not have a policy for Deep Sea Minerals (DSM). There are more tenement sites in the sea than on land. If deep sea mining takes place it will certainly have some negative impacts on the marine resources.

One of the constraints is that some of the land owners are illiterate and don't understand or later alone aware of guidelines

Governance of land, fisheries and forests should be considered in an integrated manner rather than individually or piecemeal just to satisfy an UN requirement as in many of the Pacific Islands some of lands, seas and forests are sacred and are revered with sanctity.

These voluntary guidelines should be tailored to be administered to the communities by existing local indigenous NGOs. For example in my situation, the Lauru Land Conference of Tribal Community (LLCTC) and the Isabel Council of Chiefs (ICC) they know which tribe owns which land, forests, reefs

and rivers. As far as TNC is concerned, before we engaged in any community projects, we usually get a consent letter from these organizations to avoid disputes later.

As stated above, I think FAO should organize a training of trainers (tot) on the guidelines so that this can be passed on to indigenous organizations which they can then pass on to their network in the communities. In SI more than 80% of the land is customary owned so they need to know this and so the existing indigenous organizations can be a mode of transfer.

3. Mr. John Ericho, Conservation Forum of Papua New Guinea, Papua New Guinea (PNG)

These are some serious questions in relations to land tenure in the PIC countries.

In PNG we pride ourselves that 97% of the land is in Customary tenure ship. But it is not all true and good.

There are several challenges that are emerging and these include:

1. Land Grabbing

The Land law is such that developers(oil palm. loggers) approach customary landowners and go into partnership using an existing law and the land is put under 99 year lease and they use the land to make huge profits while the land owners make almost nothing or a pittance. The Landowners become owners of the collateral social and environmental damage that accrues. This land grabbing venture was called Sustainable Agriculture Business Lease (SABL). While the government under pressure has forfeited the SABLs but how effective is the management and enforcement of that decision is yet to be realized. It is claimed that through this process customary landholding has declined by a huge percentage and is no longer at 97%.

2. Absentee Land Holders are losing their land

The security of the customary land is no longer secure in some other parts of the country like the Highlands region. This is especially true for absentee landowners. When someone has move away to an urban centre and stayed there for like 30-40 years the other clan members take over the land that belongs to the absentee landholder.

3. A landless generation is emerging.

The above situation in (2) means that the children of the absentee landowner now do not have any land. Thus a landless generation is now emerging. This is not a good thing because in the PIC countries a person who owns land has dignity, has identity, belongs to a group, stability and is a person of some worth. When he is landless he loses all of the above. He becomes a vagabond and a nobody.

4. Government is looking at freeing land for development.

The government has been preaching for a long while to free land from customary landholders. This they say will bring development and prosperity. They have now declared several zones for various types of developments using customary land. They have declared the following so far:

1. The Sepik Plans for Oil Palm development.
2. Mt. Hagen Valley for Agricultural Development.
3. Land in Central Province for Rice Industry development.
4. Markham Valley for Oil Palm and Sugar Cane Development.
5. Marine Zone Development in Madang Province for Tuna Development.
6. Coffee Industry Development throughout the country
7. Cocoa and Coconut Industry Development throughout the country.
8. Climate Change/Carbon Trading business throughout the country.

All these in the name of freeing land for prosperity.

5. Deep Sea Mining.

The government has gone ahead to become the guinea pig in mining minerals at the floor of the sea.

All of these in a country that has not got a good land management system. It spells doom for the customary landholders now and in the future. Yes, there may be opportunities but there may be more challenges. The current mining regime has not brought the prosperity that was promised but more problems but social ills and environmental damage. The escalated land use will elevated problems in a country where land laws are confusing mass.

The guidelines while they are voluntary will definitely help a lot in bringing order, process and systems where everyone including developers and customary landholders and government agencies can benefit. I look forward the country workshop that will hopefully help the situation.

That is a mouthful hope that will also help our discussion to move forward and help us to think about the issues more deeply and clearly about what is happening to our land and resources.

4. Mr. Eliko Senivasa, Ministry of Fisheries and Forests, Fiji

Having a well-established framework for governance of tenure that is clear and transparent is key. However, a challenge of tenure governance is that it is rather expensive and it mostly targets commercial farmers, therefore ordinary laymen are relatively marginalized which may lead to the lack of food security

Moreover, new government policy on the better utilization of land is an opportunity that will try to make sure that unutilized land are taken up for better use by other potential users. However, the lack of incentives by government to free up traditional rights to the use of land to allow other marginalized communities of the right to use would be one of major constraints tenure governance.

All in all, the guideline can be used to strengthen the development of enabling and appropriate policy to improve access to the governance of tenure for the marginalized population.

5. Mr. Samuela Lagataki, Ministry of Fisheries and Forests, Fiji

The main strengths are, that the challenges for the management of Fiji's land resources are well documented, and the consultations for the setting up of governance structures to address these challenges will be much easier as it will target the documented challenges.

In Fiji the main challenge is the land tenure system that we have, and the length of time needed to complete and formalise the outcomes of consultations, especially those relating to land and other natural resources.

In addition, this is an excellent opportunity to address the issue of land-use planning in Fiji and for addressing other challenges related to forests and land identified within a number of Government key development strategies. Eg Fiji Green Growth Framework; Fiji Rural Landuse Policy; Fiji Forest Policy; Fiji Climate Change Policy; Fiji REDD Plus Policy , NBSAB, etc.

In order for the guideline to be used in Fiji, we will need to carry out a number of high level consultations with key stakeholders, and see how Fiji can make use of the guideline to address some of its key challenges with respect to sustainable management of its forest resource.

6. Mrs. Valentine Mautama, Department of Justice, Lands and Survey, Niue

The Voluntary Guidelines should be promoted at the national Level in consultation with major stakeholders and donor agencies however no training has been implemented to date due to limit resources and no funds.

SPC & FAO has contributed greatly towards improving the governance of tenure through assisting in conducting a National Workshop on awareness the raising of the Voluntary Guidelines.

Additionally, actions should be taken to analyse and critique the Guidelines to determine whether or not the governance of tenure or access to land for agricultural purposes can be improved with the adoption of such guidelines.

7. Mr. Fetu Setu Sakaria, Ministry of Agriculture, Government Buildings, Samoa

By Law, Security, Equal Access to land (men, women, children), efficient administration for lease would be a few I would consider strengths. However, payments through government processes if its freehold would be challenge faced in tenure governance.

There are still issues of land disputes which I know happens in every Pacific Island Countries. This has also led to conflicts, and victimization, discrimination and further on to violence.

Moreover, without any awareness programs of this Policy Guideline through responsible authorities, the implementation of the guidelines will never happened and would not be able to strongly assist in safeguarding of the issues above.

This guideline will be a useful tool for enhancing of Policies to Land Tenure of everybody in our country. A Samoa National Policy can be developed from this.

8. Ms. Mary Boni, PNG Eco-Forestry Forum, Papua New Guinea (PNG)

Application of Voluntary Guidelines on Land Tenure in PNG

PNG has a rapidly expanding extractive industry, which is the major source of income and is the preferred form of economic development the government pursues for the welfare of the country. Like most developed countries, the challenges faced are many and are a result of bad governance and the poor performance in the general upkeep of rule of law. Currently as a country, PNG ranks amongst the lowest in the human development index (HDI, 148/2010-2010) and also in the corruption perception index (CPI, 151/180-2008).

The high population growth (2.5%) rate is a problem giving rise to disputes in the usage of land and contribution to the high rate of deforestation and degradation (1.41% per annum). The largest drivers of deforestation are large scale logging in the lower parts of PNG and subsistence agriculture in the highlands of PNG.

Educating the population of 6 million people continues to be a major challenge for PNG due to poor infrastructure and the lack of political will to ensure basic services to a majority of the population (86%) who are rural dwellers. Only 60% of the population have received some form of education and the Illiteracy rate has remained at 40% for some time now. Dissemination of any information is a major problem considering the more than 80% of the population are in villages and do not have access to basic service, i.e. electricity, postal, transport services etc.

The biggest challenge apparently with regard to governance of land in the governance of tenure, fisheries and forests remains to this day is ensuring the dissemination of necessary information on basic legal rights and government processes in the acquisition of land, property etc, to the majority of the population. The lack of available information has contributed largely to a lack of enforcement of laws and policies and has rendered citizens unable to hold the government and developers accountable for wrong decision making. This has resulted in major lack of compliance with legal requirements despite the existence of comprehensive applicable law that can resolve issues and disputes that may arise in these areas.

The issues have been alluded to above however specifically the key constraints for PNG would include;

-Systematic corruption

- Political instability/Commitment
- Poor Land Administration
- Institutional incapacity /weak tenure framework
- Ineffective adjudication process/dispute resolution mechanisms

Corruption is acknowledged in all levels of the society. The forestry sector alone underwent major law and policy reform in the 1990's after recommendations by the 1989 Barnett Inquiry which revealed gross misconduct, fraud and corruption within the industry at all levels right up to the Members of Parliament. Despite that reviews conducted a decade later reveal there has been no improvement in the level of governance.

The latest public enquiry PNG had was 2011, and was an inquiry into the Lands department investigated the grabbing and fraudulent conversion of more than 5 million hectares of customary land to state leases under special agriculture business leases. It was discovered in the preliminary findings, of the 72 leases more than 90% were fraudulently issued and without the consent and knowledge of the customary landowners. This inquiry revealed the blatant disregard of the legal requirements for social mapping and consultations with local people which is a standard function of the lands department which is responsible for land administration in PNG. The legal and administrative reforms in the land sector has been ongoing resulting in the amendments to the laws to allow tighter controls in the registration and management of customary land and all lands to minimize fraud etc. However implementation is another issue considering the lack in the institutional capacity of the lands department including other relevant government agencies and the ineffective adjudication processes available. The absence of grievance systems and the ineffectiveness of alternate dispute resolution mechanisms is also contributes to the overall lack of performance and faith in the existing systems and processes.

The apparent need here is to ensure enforcement of all breaches under these sectors to ensure accountability by the relevant government agencies. and ensure resourcing of relevant agencies to allow effective monitoring of established processes and ensure legal compliance in their functions. To begin the process to due governance, the relevant departments of lands, fisheries, forests and the environment should commence statutory prosecutions of the offences and penalties prescribed under the laws they are mandated to administer.

The applicable principles under the Voluntary Guidelines to PNG case would include the following general principles and principles of implementation;

- i) Recognition, respect and safeguarding/protecting tenure rights and tenure holders (GP).
- ii) Holistic and sustainable approach. (IP)
- iii) Consultation and participation. (IP)
- iv) Rule of law. (IP)
- v) Accountability. (IP)

vi) Transparency. (IP)

The Voluntary Guidelines would be useful to assist in the formulation/review of current policy and legislative frameworks relating to resource development and assist in the strengthening of the existing regulative/administrative institutions and mechanisms of land tenure. It must be promoted so that relevant agencies of government and other stakeholders are aware of such best practices and are guided in their decision making whether in the formulation of laws and policies but also in the carrying out of their functions as required by law.

In PNG, this can be done through the following initiatives;

i) Public/Private partnership initiative

This is Gopng's initiative encourage the participation of the private sector and the industries in the responsible development of the country.

In the promotion of the voluntary guidelines in the efforts towards this initiative the guidelines hopefully can guide decision making.

ii) Land Reform Initiative.

This is the initiative by government to improve the administration of land which has always been an issue, provide tighter controls and minimize fraud. Ultimately it is intended to free up customary land (97% of total land mass) for economic development.

The voluntary guidelines can be used as guiding principles to be used in the improvement of the land administrative systems.

iii) Sustainable Land Use policy initiative

This has not gotten off the ground yet on a national scale even though there has been suggestion for some time now for a national land use plan. NGOs have only been able to have it work at community level in different areas of the country and promoting the concept to have it up-scaled at a national level to deal with the issues of conflicting stakeholder interests in the use of land.

The guidelines can guide the development of land use plans from the community level right through the local level government system right up to the national level. The national land use plan should be informed by the community and the local level government plans

iv) Civil Society Organization/Gopng initiative.

This is also an initiative by the government to assist civil society who is being considered significant stakeholders in the development of the country. This venue could be used by the civil society to promote the use of the Guidelines through funding received from the government.

- v) Relevant technical working groups /peer review groups.

This avenue can be used by civil society who are members of government established working groups/technical committees also to create awareness on the national guidelines and promote the use of it as guiding principles in the development of national policies and strategies.

- vi) Participation on relevant Boards i.e. Forestry Board, REDD Policy Board

This is also an avenue for civil society to promote the use of the guidelines where there is representation from civil society

9. Ms. Maria Elder-Ratutokarua, Secretariat of the Pacific Community (SPC), Fiji

Pacific Island Countries are facing challenges of developing land to sustain and promote food and nutritional security, to increase the socio-economic development of their community, and to ensure effective environmental management. The eradication of hunger and poverty depends on how people and communities gain access to land. The livelihoods of many are based on secure and equitable access and control over land. Inadequate and insecure tenure rights increase vulnerability, hunger and poverty and can lead to conflict when competing users fight for control of these land resources.

Customary land is a source of life for many people. A high proportion of land in the Pacific is held under customary tenure and land tenure issues play an important role in resource allocation for eg food, shelter and income generation. With increasing pressures on land resources, high demand for housing and the need to feed the growing Pacific population, will require people to think about tenure and also to sustainably manage their natural resources. Land tenure is always seen as a very sensitive issue and improving tenure governances should reflect the opinions of all people.

The principles of the voluntary guideline should be linked to the principles of land ownership and existing initiatives in the Pacific and important is to raise awareness on this guideline at national level for a better understanding on the concept of governance of tenure and its relevance in the sustainable development of natural resources.

10. Mr Kelemen Navucu, Ministry of Natural Resources, Tokelau

Land in Tokelau is owned and shaped by culture and tradition. There are obvious strengths and weaknesses of the governance of tenure in the three areas listed. However, I would like to highlight

the land registration issue as proper records cease to exist. Approximately 98% of land in Tokelau is customary land while the other 2% is freehold. Although matais and chiefs exist in each village on the island, the issue of land distribution still remains as majority of the land held are owned by families and extended families. Additionally, even though village counsels do exist, their role serves almost as a figurehead. They have almost no say in the village affairs of land; rather step in only during disputes.

The land registration issue has caused quite a few issues here in Tokelau. As a result of customary land ownership, landmarks are seen as the only reliable means for distinguishing land ownership. Landmarks are easily washed away as a result of unruly weather conditions and this causes quite a bit of tension among land owners. In addition, it has been identified a number of people are moving back to Tokelau to reclaim land, but because of customary laws, the availability of land is insufficient.

However, with the guidelines attached I believe this would definitely improve tenure governance in Tokelau. It would increase transparency of land related issues, reduce tension and administer more equal rights to owning land. Also, I believe that once there is more of an effort to make land registration a priority, the opportunities of land ownership will become available to most of the population in Tokelau. Moreover, instituting a department responsible for land registration here would create more sharing of land to where it is sub-divided equally among the population.