REPORT 5 /2015

APPLICATIONS OF THE VOLUNTARY GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF TENURE OF LAND, FISHERIES AND FORESTS IN THE CONTEXT OF NATIONAL FOOD SECURITY (VGGT) IN URBAN AND PERI-URBAN AREAS

Key Concepts, Considerations and Prospects

SECURING LAND AND PROPERTY RIGHTS FOR ALL

UN-HABITAT
FOR A BETTER URBAN FUTURE

GLTN
GLOBAL LAND TOOL NETWORK

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PREFACE

OBJECTIVE AND SCOPE OF THE STUDY

This study aims to assess the applicability of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest in the Context of National Food Security (VGGT) in urban and peri-urban areas. The study also aims to facilitate decision-making on the next steps needed to ensure the application of the VGGT in urban and peri-urban areas, including informing the implementers on how they can anchor the VGGT in their activities, i.e. to apply or use the VGGT in their work in urban and peri-urban areas.

The first drafts of the study were commented and discussed with key representatives of UN-Habitat through the Global Land Tool Network and the Food and Agriculture Organization of the United Nations (FAO). The revised report also benefitted from the inputs and comments from a group of international experts on urban and peri-urban land tenure issues, who met to discuss the study results and findings during the Annual World Bank Conference on Land and Poverty in March 2015 in Washington D.C. The report was also enhanced through various bilateral meetings and discussions with key GLTN partners.

VGGT AND THE GLOBAL LAND TOOL NETWORK

The Global Land Tool Network (GLTN) is a coalition of more than 66 international organizations. It aims to secure land and property rights for all through the recognition of the continuum of land rights approach and the development and implementation of pro-poor and gender appropriate land tools for both urban and rural contexts, frameworks and approaches.1 With some 18 tools and approaches currently at different stages of development and implementation, complemented by ongoing work on nine cross-cutting issues within the global land sector and increasing work at country level, GLTN is well positioned to deliver a range of land governance solutions to developing countries in their efforts to improve their land sectors.

GLTN sees itself as a vehicle for the implementation of global land frameworks/instruments (for example the VGGT) and regional initiatives (for example the African Land Policy Initiative). Its Network is a platform for partnerships and continuous engagement, and its pro-poor, land tool development and implementation work offers practical solutions for implementing the underlying land governance principles in these global/regional frameworks and instruments.

1 More information at www.gltn.net.

EXECUTIVE SUMMARY

THE KEY FINDINGS ARE:

The VGGT do apply to urban and peri-urban areas.

- The VGGT general principles and implementation principles can easily be applied to urban and peri-urban land tenure governance issues.
- The VGGT provide the overarching framework, principles and guidelines under which GLTN and other partners' tools and methodologies can be applied.
- Complementary to the VGGT, additional international instruments can be referred to in relation to land tenure governance issues of particular importance for urban and peri-urban areas, such as adequate housing and the prohibition of forced evictions.
- Regarding aspects on which the VGGT and other instruments could be further strengthened, stronger language could be negotiated in future, for example in the context of Habitat III.

In addition to assessing the applicability of the VGGT in urban and peri-urban areas, this publication highlights the particularities of urban and peri-urban tenure governance. It presents examples of instruments and approaches that can help to ensure responsible governance of tenure in urban and peri-urban contexts, and that will guide urban constituencies' response to the challenges of weak urban tenure governance.

KEY LAND GOVERNANCE ISSUES IN URBAN AND PERI-URBAN AREAS

Although there are more similarities than differences, there are a number of particularities in the governance of land tenure issues in urban and peri-urban areas compared with rural areas. First, the similarities. Poor people in particular lack tenure security in urban, peri-urban and rural areas. It is generally difficult for them to get tenure security because, among other things, their tenure rights are not formally recognized and/or registration is often expensive, cumbersome and not adapted to poor people's needs. Also, fraud, corruption and bribery occur in many urban, peri-urban and rural areas. So, what is unique in the governance of urban land tenure? Firstly, it is a matter of scale. Dynamics in a (mega) city are different from those in a village. There is more competition for land in urban and peri-urban areas than there generally is in rural areas, so land values are higher, which makes it more difficult for

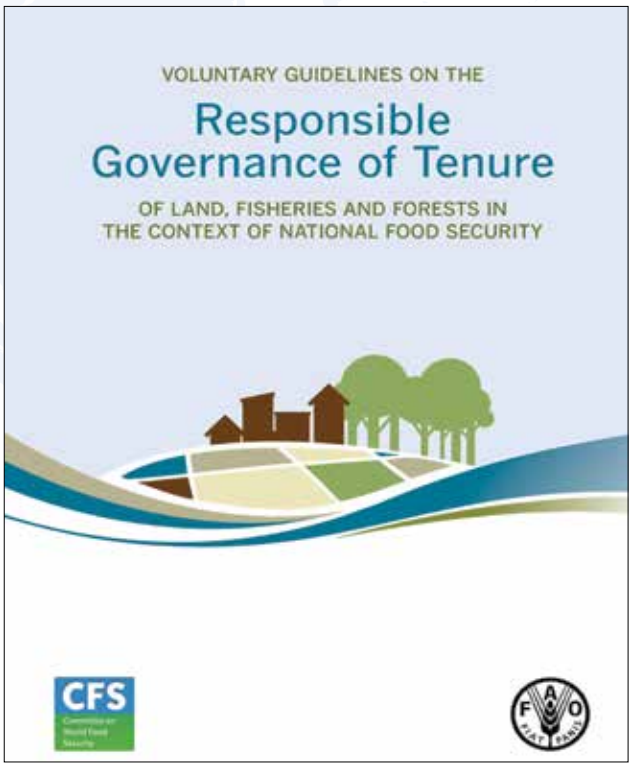
Unplanned urban sprawl is evident in many cities. Manila, Philippines. Photo ©Gerald Nicolas

the (peri-)urban poor to access land legally. Squatter settlements are primarily, but not only, an urban and peri-urban phenomenon. (Forced) evictions continue to occur in spite of all (international) initiatives against them. Squatters' tenure rights often differ from those of the rural poor, who might also be at risk of eviction (e.g. in cases of so-called "land grabbing") but whose rights are often based on customary tenure. Although in some situations, urban, and in particular peri-urban squatters, can refer to customary rights, they are often informal tenants. Many only have a perceived tenure security if any security at all, but they cannot refer to a customary tenure system as most rural poor people can. Where customary tenure exists in peri-urban and urban areas, it often overlaps with formal tenure as it does in rural areas.

There are other crucial issues related to urban spatial planning, the issuing of construction permits and the corresponding land-use inspections. Urban expansion is generally uncontrolled; people construct without permits, others bribe to receive them, and inspections rarely take place. This urban sprawl leads to major problems for the provision of infrastructure and services, it causes or increases environmental risks and leads to declining living conditions in urban and peri-urban areas. Again, this also happens in rural areas but generally on a much lower scale.

THE VGGT IN THE URBAN AND PERI-URBAN CONTEXTS

Endorsed by the Committee on World Food Security (CFS) on 11 May 2012, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security are an unprecedented international soft-law instrument in the area of tenure. They are a human rights-based instrument linked to United Nations principles on business and human rights. All countries have been explicitly encouraged to implement the guidelines by resolutions of the United Nations General Assembly A/RES/67/228, the G20, the G8, and the RIO+20 Declaration. Therefore, the VGGT provide a critically important framework for future work and activities of the global community in relation to the governance of tenure.



The Voluntary Guidelines on the Responsible Governance of Land, Fisheries and Forests in the Context of National Food Security (VGGT). ©CFS/FAO 2012

Although all the regional consultations that contributed tremendously to the drafting of the VGGT dealt with urban tenure governance issues, the final VGGT do not explicitly address particularities of urban and peri-urban land tenure governance compared with a rural context. In addition, the issue of national food security was added during the negotiation phase of the VGGT. It is therefore pertinent to emphasize the prevailing link between the VGGT and urban and peri-urban tenure relations through two themes. Firstly, the VGGT seek to improve poverty eradication, sustainable livelihoods, housing security, sustainable social and economic development, and environmental protection. These can be objectives in both rural and urban areas. Secondly, the VGGT seek to improve governance of tenure for the benefit of all, with goals of food security and the progressive realization of the right to adequate food.

National food security is not only a rural issue but is also an urban and peri-urban one; food needs to be secured for everybody everywhere. Further, food supply chains link rural and urban areas. It is not only that urban populations depend on agricultural production in rural areas, but also that increasing rural populations depend on food processing and other

activities in the food supply chain that take place in urban and peri-urban areas. All these activities that contribute to food security, including the transport involved, have one thing in common: they need access to land, as do all the people working in the food supply chain who need land for housing, infrastructure and services. Accordingly, all investments in urban and peri-urban areas that are needed to ensure food security also require (access to) land and they bear the risk of negatively affecting the poor and the environment, particularly in an environment marked by weak governance and poor land administration and management.

The VGGT general principles, as well as the principles of implementation, provide guidance for urban tenure governance. Even topics/issues of key relevance for urban areas, such as the plurality of tenure systems, forced evictions, human rights frameworks and the right to adequate housing, which are exclusively or primarily discussed by the urban tenure governance community, can be addressed under the given principles.

The VGGT and existing international instruments on urban and peri-urban land tenure governance do complement each other perfectly. International instruments relevant for urban land governance,[2] such as resolution A/RES/42/146 by the United Nations General Assembly, Millennium Development Goal 7/11 or Resolution GC23-17 by UN-Habitat, are very specific on urban land governance issues. They usually focus on one or several key aspects, for example tenure security for slum dwellers or women's equal rights to own property and to adequate housing. The VGGT on the other hand have a much broader scope on land tenure governance issues, while not entering into the specifics of urban and peri-urban land issues but nevertheless covering them in generic terms. Actually, many areas of land governance are dealt with by the VGGT as well as by the other instruments, for example recording of tenure rights, housing security, valuation, taxation, spatial planning, readjustment, expropriation and compensation, resolution of disputes, etc.

2 See Table 3 for an overview on international instruments addressing urban tenure governance issues.

The difference between the VGGT and instruments driven by the urban and peri-urban community is the language. Some examples are: whereas the urban and peri-urban community may be used to terms such as "pro-poor development", the VGGT talk about "non-discrimination", "equity and justice", highlighting "equitable tenure rights and access to land for vulnerable and marginalized people". Also, "plurality of tenure", "continuum of land rights" and "intermediate forms of tenure" are typical terms used by the urban and peri-urban community, which are not included in the VGGT but which are well covered by "all legitimate tenure rights".

However, there are a few areas in which VGGT could be discussed and negotiated in more detail in future to respond to new emerging and additional challenges. These aspects are relevant for urban, peri-urban and rural areas. For instance, the VGGT refer to the concept of gender-sensitiveness instead of gender-responsiveness (Wehrmann, 2015). The VGGT use the concept of "active, free, effective, meaningful and informed participation" and limit "free, prior, informed consent (FPIC)" to Indigenous People, whereas some other policies use FPIC more broadly. These, and probably some other areas, would be important to negotiate in the context of another international instrument, for example Habitat III.[3]

PROPOSALS ON HOW TO OPERATIONALIZE THE VGGT IN THE URBAN SETTING

The VGGT provide the overarching framework, principles and guidelines under which GLTN and other partners' tools and methodologies can be applied. Tools[4] and approaches that are extremely useful to achieve responsible governance of land tenure in urban, peri-urban and rural settings are offered by the Global Land Tool Network (GLTN). Examples are the realization

3 Here, the FAO's (2014) *Governance of Tenure Technical Guide on "Respecting Free Prior Informed Consent – Practical guidance for governments, companies, NGOs, Indigenous Peoples and local communities in relation to land acquisition" could serve as example.*

4 In this document, the term "tools" is explicitly used for GLTN tools developed in a participatory, demand-driven manner. A GLTN tool has a clearly defined development process, which includes scoping studies, consultations, product development, piloting/testing, revision/adoption/dissemination, and training. In other contexts, the terms frameworks, instruments and approaches are used to avoid confusion.

of the continuum of rights, the Social Tenure Domain Model, participatory enumeration as a community-driven approach for tenure security improvement, participatory and inclusive land readjustment and land sharing models, effective strategies to prevent and remedy forced evictions, and comprehensive land-use planning for tenure security and citywide strategic planning.

Key actors needed to achieve responsible governance of land tenure in urban and peri-urban areas are national and local governments, city/municipal authorities, private investors, professionals, academics and civil society organizations. National governments have to establish the necessary policies and laws; local governments have to provide the supplementary legal framework and regulations for local implementation and monitoring; municipal administration and key government agencies responsible for cadastre, land registration, urban planning and construction, land valuation etc. have to implement the framework established by local and national governments. Private investors and professionals have a responsibility to respect human rights as well as legitimate tenure rights to ensure that their actions are in line with the VGGT principles and other international covenants. Table 4 lists the general responsibilities of all actors as described by the VGGT, as well as specific responsibilities concerning urban and peri-urban land governance.

For recommendations see Chapter 9.

A

KEY LAND GOVERNANCE ISSUES AND ACTORS IN URBAN AND PERI-URBAN AREAS

1. KEY LAND GOVERNANCE ISSUES IN URBAN AND PERI-URBAN AREAS

Although there are more similarities than differences, there are a number of particularities in the governance of land tenure issues in urban and peri-urban areas compared with rural areas. First, the similarities. Poor people in particular lack tenure security in urban, peri-urban and rural areas. It is generally difficult for them to get tenure security because, among other things, their tenure rights are not formally recognized and/or registration is expensive, cumbersome and not adapted to poor people's needs. Also, fraud, corruption and bribery occur in many urban, peri-urban and rural areas. So, what is unique in the governance of urban land tenure? Firstly, it is a matter of scale. Dynamics in a (mega) city are different from those in a village. There is more competition for land in urban and peri-urban areas than there generally is in rural areas, so land values are higher, which makes it more difficult for the (peri-)urban poor to access land legally. Squatter settlements are primarily, but not only, an urban and peri-urban phenomenon. (Forced) evictions continue to occur in spite of all (international) initiatives against them. Squatters' tenure rights differ from those of the rural poor, who might also be at risk of eviction (e.g. in cases of so-called "land grabbing") but whose rights are often based on customary tenure. Although in some situations, urban, and in particular peri-urban squatters, can refer to customary rights, they are often informal tenants. Many only have a perceived tenure security if any security all, but they cannot refer to a customary tenure system as most rural poor people can. Where customary tenure exists in peri-urban and urban areas, it often overlaps with formal tenure as it does in rural areas. It is argued, therefore, that effective urban land governance requires:

- recognizing and respecting a plurality of tenure systems;
- identifying and adopting intermediate forms of tenure arrangements; and
- adopting alternative and affordable forms of land administration and land records alongside conventional land administration systems and institutional frameworks.

Informal settlements, mostly with insecure tenure rights, are increasing in large numbers in Africa's urban areas. Nairobi, Kenya.Photo ©UN-Habitat/Danilo Antonio.

Another crucial issue relates to urban spatial planning, the issuing of construction permits and the corresponding land-use inspections. Urban expansion is generally uncontrolled; people construct without permits, others bribe to receive them, and inspections rarely take place. This urban sprawl leads to major problems for the provision of infrastructure and services, it causes or increases environmental risks and leads to declining living conditions in urban and peri-urban areas. Again, this also happens in rural areas but generally on a much lower scale.

Hence, although the areas of weak governance are similar, dimensions and dynamics are often greater in urban and peri-urban areas compared with rural areas. Areas of weak land governance in urban and peri-urban areas include the following:

- **Management of public land:** The state, or rather the public institutions such as ministries responsible for administering state land, often does not have the capacity to do so and lacks basic information to be able to do so. These institutions rarely have a public land inventory or any other type of systematic overview of the public land they are responsible for, such as where it is located, what the current use is, who is using it under what conditions, what the current value is, etc. The allocation of public land is often not transparent at all. A typical phenomena in urban, and in particular peri-urban areas, is that someone who is either a public official or has close relations to one is managing the land, i.e. selling or leasing it on their own account and cutting the state/public out of the profit. Political corruption plays a major role in it. Even if there is no corruption and the state legally sells or leases public land to investors, including those wanting to invest in the food sector or to provide housing for people working in the food sector, the allocation of state land by the state can be problematic where the land is already being used informally for housing, agriculture or trading. States are obliged to respect human rights and should not evict people, destroy their properties, render them homeless or destroy their base to generate income. The VGGT state, "where states own or control land […], they should determine the use and control of [it] in light of broader social, economic and environmental objectives".
- **Recording tenure rights:** In urban and peri-urban areas, often land records only exist for high- (and middle-) income areas but not for those neighbourhoods where poor people live, which results in very low tenure security and a high risk of eviction. It is believed that no land records exist for informal settlements in approximately 30 to 60 per cent of cities. As in rural areas, formal land registration is often marked by bureaucratic corruption, resulting in prohibitive prices deterring people from registering their rights and creating a huge informal land market.
- **Land-use planning:** Few cities in developing countries have a comprehensive land-use plan for the entire urban and peri-urban area, including the periphery where most city development takes place. Reasons for this are the great extent of some cities and metropolitan areas, rapid growth, the fact that "the city" often extends over several administrative entities, and weak institutional capacity and collaboration, etc. Even where land-use plans do exist – normally only for parts of the city – they are often not known or are not respected. This can be due to insufficient information or lack of respect for state institutions. As a consequence, there are many semi-legal developments, i.e. people buy or rent land legally but develop it illegally, which results in the development of land that should not be converted into construction land but should remain agricultural land, green areas or open space.
- **Allocation of building permits:** The allocation of building permits is frequently marked by corruption and is a major cause of the unplanned development of urban and peri-urban areas. It also results in a high number of construction projects that do not have building permission because many homeowners cannot afford the high informal cost of a building permit.
- **Lack of land-use inspections:** Even where land-use plans exist and building permits are allocated in a responsible manner, there is often a lot of informal land development, such as illegal subdivisions of land parcels or apartments (inner city slum development) and construction on land that should not be built on. Such informal land developments can be of low but also high quality, and belong to the poor as well as to the rich;

they can also range from isolated constructions to entire settlements.

- **Land valuation:** In developing countries, land valuation is often only applied in areas where formal tenure exists. In addition, when there are no national land valuation standards, rural areas, urban and peri-urban areas suffer from the lack of it. The effects, however, might be even more serious as urban land values increase much more rapidly than in rural areas and people who lose access to the land they have been using – be it for agricultural production, informal food processing, trading or housing – need to get adequate compensation for their loss. This may be finance for a new place to live or work, or starting a non-agricultural business/occupation.
- **Land-related data management:** This is a typical area of weak governance due to low financial and technical capacities and a lack of qualified staff that have a tremendous work load due to the high and ever increasing size of the urban and peri-urban population. Data sharing, even within the government agencies, is not common.

Some of the consequences of such weak land governance in urban and peri-urban areas are the same as in rural areas, e.g. resettlement without adequate compensation, loss of green areas and agricultural land, and elimination of agriculture, mainly for subsistence and the informal and local economy – thereby increasing poverty and compromising local food security. Other consequences are more specific to urban and peri-urban areas. Examples are extensive informal urban development with all the problems it causes, such as lack of space for public infrastructure and service; limited local revenues and dysfunctional cities (e.g. traffic, pollution, inadequate roads and public spaces; evictions of informal settlers, farmers, food processors and traders – thereby increasing poverty and compromising local food security; displacement of the urban poor due to market pressure; loss of public space or blocking air circulation corridors leading to extreme heat and very low air quality in parts of the city – having, among other things, a negative effect on urban agriculture.

Urban and peri-urban areas face similar governance challenges to rural areas, but also some specific ones, which include:

- **Legal pluralism in peri-urban tenure:** In particular, peri-urban areas in Africa are marked by legal pluralism, when statutory tenure and customary tenure overlap and supersede each other, resulting in different actors controlling, managing and transferring the same land units. Such often unclear and non-transparent land ownership structures easily lead to multiple sales of land – either by the state and a customary owner or by two or more customary owners. The latter is due to the lack of recognition for customary rights and their absence from formal recording systems. Multiple sales of land can affect all types of land – industrial, commercial and residential in high-, middle- and low-income areas.
- **Lack of respect for state institutions (actors and rules), including formal land administration and management institutions:** When formal institutions have been imported and imposed on traditional societies/systems, that are not respected or incorporated into these institutions, people often ignore them because they do not identify themselves with the state and its institutions. In terms of urban land governance. This implies a refusal to formally register land and pay land tax, or to stick to any land-use plans and regulations, as well as to acquire building permits.

Urban transition/modernization. Beijing, China. Photo ©Babette Wehrmann

- **The huge number of informal tenure rights holders:** Urban land management and administration institutions face the additional challenge of the extremely high number of people who live and work informally in urban and peri-urban areas. This renders any planning of land development or formalization of it extremely difficult because officials do not have all the relevant information/data. The informal settlers / squatters have high tenure insecurity. Informal tenure, generally, is even weaker than customary tenure as it cannot refer to a traditional set of rules, but only relies on social legitimacy.
- **Extremely rapid expansion of build-up areas:** Due to rural-urban migration and the ongoing population growth in most cities in developing countries, changes in land use and land users occur much more often and at a faster rate – sometimes overnight – than in rural areas.
- **Extreme high demand for land leading to shortage of land and rapidly increasing land values:** The demand for land is constantly increasing in many cities in developing countries, not just because of the increasing number of urban inhabitants but also because of the demand from international investors. This leads to a shortage of land and high increases in land value, which both discriminates against the poor for whom access to land – be it for housing, food production and processing or trading (or any other activity) – becomes increasingly difficult. For many of the urban poor, the formal land market – as with the entire formal economy – is not accessible due to high costs - formal as well as informal. These challenges result in gentrification.
- **International financial investors in urban areas influencing the land market:** Rapid increasing land values attract financial investors who, in return, contribute to the above-mentioned shortage of land and increasing land values. A vicious circle.
- **Extreme power imbalance:** Power imbalances in urban and peri-urban areas are extreme. Urban and peri-urban areas host the poorest of the poor who are without any formal education and have no knowledge about their rights; they live alongside the most educated and best-informed individuals, who sometimes misuse their positions for their individual benefit. In such an environment, it is extremely difficult for the vulnerable and marginalized to defend their rights.

In conclusion, the following elements of responsible land governance can be identified as being mainly or primarily relevant in urban and peri-urban areas:

- Realization of the right to adequate housing
- Recognition of informal tenure rights
- Anti-evictions regulatory frameworks
- Free, prior and informed consent for resettlement
- Recognition of customary tenure rights
- Improving women's access to land and natural resources
- Transparent and inclusive urban planning
- Land readjustment and land sharing, and appropriate financial and participatory models
- Inclusion of all legitimate tenure rights holders and active, free, effective, meaningful and informed participation
- Fair, reliable, gender-responsive, accessible ways of resolving disputes over tenure rights etc.
- Functioning environmental protection, such as protection of urban agriculture from natural hazards and sustainable city forest management.

The instruments and approaches needed to implement these elements are discussed in detail in Chapter 7.

2. RELEVANT ACTORS AND INSTITUTIONS – THEIR BEHAVIOURS, INTERESTS AND NEEDS

This section outlines the relevant actors and institutions and their web of interests in the context of often unbalanced power relations. A high diversity of actors is involved in the governance of land tenure in urban and peri-urban areas and includes public and private sector representatives, customary, as well as rich and poor, formal and informal land users. Table 1 highlights typical behaviours, interests and needs of those actors either contributing to weak governance or suffering from it. In such an environment of weak governance, individual interests prevail. The most powerful push for their own interests, often applying illegal or even criminal means to do so. In an environment of responsible governance of tenure, politicians and public institutions should act in the public interest, ensure meaningful participation of all stakeholders and ensure the rule of law (see Chapter 8).

Table 1: Actors and their typical behaviours, interests and needs in the context of weak governance

Actors	Behaviour	Interests	Needs
Head of states, ministers and other high-ranking politicians – including those at city level	• Political corruption, such as illegal allocation of state land • Reckless enforcement of state interests	• Political control • Building alliances with other rich and powerful individuals • Access to land and other resources to transfer them into capital/profit	• Power • Wealth
Officials working in land administration, e.g. land registration, cadastre, urban planning and construction, housing etc.	Bureaucratic corruption leading to changes in land-use plans, irregular allocation of building permits, incorrect valuation of properties etc.	• Higher income – often to be able to feed their families	• Sufficient income • Well-being of their families
Customary authorities	• Adherence to and implementation of customary land tenure and administration/ management systems • Sometimes: misuse of customary system for their individual profit	• Demonstrating power and influence, in particular demonstrating power over the statutory system • Keeping control over land under customary tenure	• Respect for / recognition of their authority • Land for their people to live and work on • Personnel wealth
Private sector professionals, e.g. surveyors, land valuators, architects, planners, etc.	Fraud in favour of those who pay them for their services	• Higher income – often to be able to feed their families	• Well-being of their families • Wealth
Land developers, in particular those acting illegally or informally	Illegal or at least semi-legal development of land	• Generating profit	• Wealth
Food producing, processing, storing, transporting, trading companies	Dealing with public officials to invest in land, often ignoring the interests of the poor; not acting responsibly or simply indifferent	• Generating profit	• Well-being
Employees in the formal food sector such as managers, engineers etc.	Searching for adequate housing – sometimes suffering from weak governance	• Finding middle-income housing	• Very good shelter for their families
Workers in the formal food sector	Searching for adequate housing – sometimes suffering from weak governance	• Finding low-income housing	• Good shelter for their families
Informal food producers, processors and sellers	Requiring access to land for producing, processing and selling food in the informal economy	• Access to land at low cost	• Simple shelter for their families
Informal settlers	Settling illegally or informally on public land	• Not to lose their shelter • Respect for human rights	• Simple shelter for their families • Well-being • Justice
Private landowners	Selling or renting land at highest possible price giving the land to the highest bidder – not caring for what the land will be used for or if this is line with existing regulations. This contributes to squatter farming	• Generating highest possible profit	• Wealth
Bankers	Investing in land to ensure high rates of return or providing loans with high interest rates	• Generating sufficient profit to receive high annual bonus	• Wealth

B

THE VOLUNTARY GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF TENURE (VGGT) IN THE URBAN AND PERI-URBAN CONTEXT

3. THE VGGT – AN UNPRECEDENTED INTERNATIONAL SOFT LAW INSTRUMENT IN THE AREA OF TENURE

Endorsed by the Committee on World Food Security (CFS) on 11 May 2012, the VGGT in the Context of National Food Security are an unprecedented international soft law instrument in the area of tenure. They are a human rights-based instrument linked to the United Nations' principles on business and human rights. All countries have been explicitly encouraged to implement the guidelines by resolutions of the United Nations General Assembly A/RES/67/228, the G20, the G8, and the RIO+20 Declaration. They therefore provide a critically important framework document for future work and activities of the global community in relation to tenure.

The VGGT seek to improve tenure governance for the benefit of all, with an emphasis on vulnerable and marginalized people, and with the goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development. The guidelines respond to generally weak public sector management and critically address all forms of fraud and corruption – bureaucratic as well as political. Accordingly, they seek to enhance transparency, strengthen the capacities of all stakeholders and to contribute to the improvement and development of policies, legal and organizational frameworks by providing guidance and information on internationally accepted good practices.

At the heart of the guidelines are the so-called "legitimate"[5] tenure right holders and their rights that should be respected by state and non-state actors, including business enterprises. Accordingly, the guidelines:

- Define responsibilities for state and non-state actors, including business enterprises;
- Delineate procedural approaches on how this should happen; and
- Depict key governance issues to be respected when dealing with tenure.

The development of the guidelines was initiated by FAO in consultation with stakeholders and partners that included representatives of the urban tenure community. UN-Habitat actively participated in the early development of the guidelines, including co-publishing with the working paper Towards Improved Land Governance in English, French and Spanish as part of the background work. UN-Habitat also co-funded two of the 15 regional consultation workshops that were the basis for preparing the zero-draft text. Urban tenure issues were addressed in these regional consultations with generally one out of four working groups focusing explicitly on land tenure governance in urban and peri-urban areas.

The final VGGT, however, do not explicitly address particularities of urban and peri-urban land tenure governance, and urban stakeholders' concerns are not explicitly addressed. It is therefore pertinent to emphasize the prevailing link to urban and peri-urban tenure relations through the following two VGGT objectives. First, the VGGT seek to improve poverty eradication, sustainable livelihoods, housing security, sustainable social and economic development and environmental protection. These relate to rural as well as urban areas. Second, the VGGT seek to improve governance of tenure for the benefit of all, with goals of food security and the progressive realization of the right to adequate food.

5 The term "legitimate" is used to include both legal legitimacy, which denotes rights recognized by law, and social legitimacy, which denotes rights that have broad social acceptance (FAO/UN-Habitat, 2009).

4. HOW THE VGGT RELATE TO URBAN AND PERI-URBAN AREAS

National food security is not only a rural issue but is also an urban and peri-urban one. Food needs to be secured for everybody everywhere. Further, food supply chains link rural and urban areas (see Figure 1). It is not only urban populations that depend on agricultural production in rural areas but also increasing parts of rural, peri-urban and urban populations depend on food processing and other activities of the food supply chain that take place in urban and peri-urban areas. In particular, financial investors and the headquarters of input companies, food processors and wholesalers are generally located in urban areas. Many of the input companies, as well as food processing companies and wholesalers, are located in peri-urban areas. Retailers can be found almost everywhere. In addition to the formal food supply chain, a broad range of informal food processing and selling activities takes place in urban and peri-urban areas of developing countries. All the activities that contribute to food security, including transport, have one thing in common: they need access to land, as do all the people working in the food supply chain who need land for housing, infrastructure and services. In addition to land, access to other natural resources, such as water and energy, is required for many activities of the food supply chain – leading sometimes to conflicts over corresponding tenure rights.

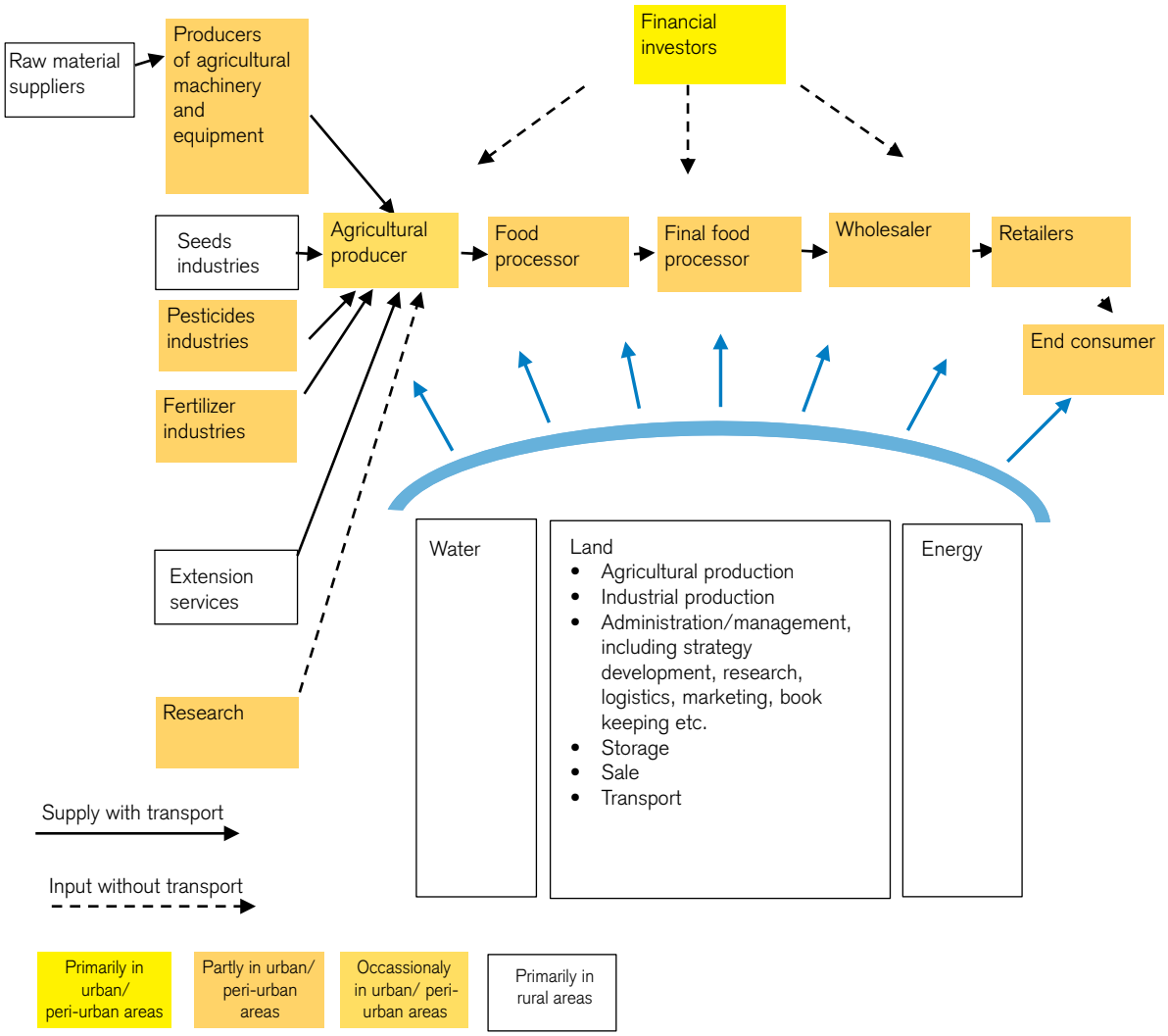


Fig. 1: Food supply chain linking urban, peri-urban and rural areas. Source: Babette Wehrmann, 2014

Any investment in the food supply chain may contribute to competing demands for economic, social and environmental uses of land and lead to land-use changes that can have negative impacts on the environment as well as on the local population, mainly affecting the poorest and weakest segment of society that often lacks tenure security. Negative effects on the environment, such as de-forestation, water depletion, soil erosion and loss and degradation of agricultural land, and valuable ecological sites, may again negatively affect agricultural production. A vicious circle can easily be created. Unplanned urban expansion also has negative impacts on surrounding rural areas and food production.

A new food-processing site, warehouse or supermarket always supersedes a previous land use, which might have played a role in food production as well, for example when agricultural land has been converted into construction land – a common phenomenon in peri-urban areas. The previous use could have also been a typical peri-urban land use, e.g. an informal settlement. Such changes in land use may entail the displacement of the previous user(s) – a farmer or squatter, both generally being poor.

In brief, investments in urban and peri-urban areas that are needed to ensure food security require (access to) land and bear the risk of negatively affecting the poor and the environment, in particular in an environment marked by weak governance and poor land administration and management.
Table 2 summarizes typical changes in land use, land possession and land tenure systems that occur in urban and peri-urban areas due to investments in the food supply chain.

Men straining and selling crops in the city market. Bamako, Mali. Photo ©Babette Wehrmann

Agricultural input supply, food processing and storage does not only take place in urban and peri-urban areas but also in smaller human settlements in rural areas. Food markets are found there as well. Therefore, changes in land use, land possession and land tenure systems that have been described for peri-urban areas, can happen there as well. Hence, the VGGT also applies to human settlements in rural areas, such as small market towns and medium-sized towns. This argument is also supported by the fact that the VGGT refer to homes, shelter, access to housing (VGGT 15.8), housing security (e.g. VGGT 1.1, 4.1) and to the right to adequate housing (VGGT 10.2).

Finally, "in terms of function, the rural-urban relationship is seen as a continuum" (Van der Molen/ Jansen, 2010). Most rural or urban development affects each other – either in a positive or a negative way. Economic and social progress in urban areas can have positive and negative impacts on rural jobs, markets, livelihoods, the climate and the natural environment in rural areas etc. and vice versa. The national law normally applies for urban and rural areas, particularly on land tenure issues. Governance affects both areas as well. Tenure governance, therefore, should also be considered within the rural-urban nexus.

5. THE VGGT PRINCIPLES IN URBAN AND PERI-URBAN SETTINGS

The guidelines offer general principles as well as principles of implementation. In this section, it will be briefly explained how the VGGT's general principles and principles of implementation can be applied in urban and peri-urban settings.

5.1 The general principles and their relevance for urban and peri-urban contexts

The guidelines offer general principles for state and non-state actors, including business enterprises (see Box 1).

Table 2: Overview on changes in land use, land possession and land tenure systems in urban and peri-urban areas

	THE CRITICAL ISSUE	THE LAND TENURE GOVERNANCE ASPECT
Land use changes		
• Conversion of agricultural land into construction land used for input industry, food processing, food storage or housing for those working in the food sector – from workers to managers, from farmers to bankers	Loss of valuable agricultural land – reducing the total amount of agricultural land and jeopardizing food security	• Absence of an integrated urban development strategy • Lack of adequate land-use planning or weak implementation of land-use plans; • Questionable ways of issuing building permits • Transparent process in selection of areas for urban regeneration
• Conversion of green areas, forests, protected areas etc. into construction land (as above)	Loss of ecological areas needed to ensure air quality, air circulation, access to water, protection from natural hazards etc. Loss of biodiversity etc.	
• Conversion of residential land – generally informal settlement – into formally used construction land (as above)	Loss of residential land for the urban poor.	
• Urban land-use changes in existing urban and peri-urban areas	Inappropriate policies and planning.	
• Urban regeneration	Dysfunctional cities	
Changes of land possessors/users		
• Private investors replacing rural and peri-urban farmers who are losing access to their agricultural land	Potential risks: • Land grabbing • Deal between investor and customary authority in charge of administering the land – against the interests of the traditional community	• No recognition of customary rights • No recording of customary rights
• Private investors replacing informal settlers	Risk of eviction without adequate compensation	• No recognition of informal tenure • No recording of informal tenure
Changes in tenure systems		
• Private individual tenure rights based on statutory law replacing collective tenure rights based on customary tenure	Potential risks: • Land grabbing • Deal between investor and customary authority in charge of administering the land – against the interests of the traditional community	• No recognition of customary rights • No recording of customary rights
• State ownership based on statutory law replacing collective tenure rights based on customary tenure	Risk of expropriation with inadequate compensation	• Lack of national land valuation standards • Lack of qualified licenced land valuators • Lack of education/formation for land valuers
• Formal tenure replacing informal tenure	Risk of evicting informal settlers.	• No recognition of informal tenure • No recording of informal tenure

Source: Babette Wehrmann, 2005 (modified)

BOX 1: VGGT'S GENERAL PRINCIPLES

States should:

1. Recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights.

2. Safeguard legitimate tenure rights against threats and infringements. They should protect tenure right holders against the arbitrary loss of their tenure rights, including forced evictions that are inconsistent with their existing obligations under national and international law.

3. Promote and facilitate the enjoyment of legitimate tenure rights. They should take active measures to promote and facilitate the full realization of tenure rights or the making of transactions with the rights, such as ensuring that services are accessible to all.

4. Provide access to justice to deal with infringements of legitimate tenure rights. They should provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes. States should provide prompt, just compensation where tenure rights are taken for public purposes.

5. Prevent tenure disputes, violent conflicts and corruption. They should take active measures to prevent tenure disputes from arising and from escalating into violent conflicts. They should endeavour to prevent corruption in all forms, at all levels, and in all settings.

Non-state actors, including business enterprises, have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights. Business enterprises should provide for and cooperate with non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, where appropriate, where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights. Business enterprises should identify and assess any actual or potential impacts on human rights and legitimate tenure rights in which they may be involved.

States, in accordance with their international obligations, should provide access to effective judicial remedies for negative impacts on human rights and legitimate tenure rights by business enterprises. Where transnational corporations are involved, their home states have roles to play in assisting both those corporations and host states to ensure that businesses are not involved in abuse of human rights and legitimate tenure rights. States should take additional steps to protect against abuses of human rights and legitimate tenure rights by business enterprises that are owned or controlled by the state, or that receive substantial support and service from state agencies.

Source: CFS/FAO, 2012.

States should recognize and respect all legitimate tenure right holders and their rights, safeguard legitimate tenure rights against threats and infringements, promote and facilitate their enjoyment, provide access to justice to deal with infringements of legitimate tenure rights and prevent tenure disputes, violent disputes and corruption. What does this mean in an urban and peri-urban context?

In the urban and peri-urban context, this could mean for states:

- Recognizing, respecting and safeguarding the entire scope of land tenure rights ranging from informal rights with extremely low security to formal rights with high tenure security, with the objective of providing tenure security for all without eliminating the existing advantages of informality, such as low land prices and low building standards;
- Building on informal and customary ways of recording and administering informal and customary tenure rights that exist in many informal settlements;
- Refraining from evicting squatters forcibly and resettling them only where rights to land are required for a public purpose with appropriate compensation. In such a case, states should ensure that the planning and processes for

expropriation are transparent and participatory and that the compensation is fair and prompt (see VGGT section 16).

It needs to be noted that the VGGT only employ the term "informal tenure" and do not use the term "informal (tenure) rights" as it is normally done by the urban tenure community. However, the VGGT also include an entire section on informal tenure (section 10), which provides an adequate base for what is discussed by the urban tenure community. Paragraph 10.1 states: "Where informal tenure to land […] exists, states should acknowledge it in a manner that respects existing formal rights under national law and in ways that recognize the reality of the situation and promote social, economic and environmental well-being. States should promote policies and laws to provide recognition to such informal tenure…." Section 10 also refers to the right to adequate housing, urges the prevention of forced evictions and stresses the importance of including tenants whenever states provide legal recognition to informal tenure. This is extremely relevant as many slum and squatter dwellers are tenants who may easily lose their access to land and housing due to its legalization.

When it comes to providing access to justice, states' duties can be the same in the urban and peri-urban context as in the rural one. The same applies to preventing disputes, violent conflicts and corruption. However, there are a number of typical land conflicts in urban and peri-urban areas (see Box 2), which require specific instruments that are not explicitly mentioned in the VGGT, but which can be addressed under VGGT's principles.

BOX 2: TYPES OF URBAN AND PERI-URBAN LAND CONFLICTS

a) Land Tenure Conflicts

- Peaceful, informal land acquisition without evictions
- Violent land acquisition/eviction by people not owning the land
- Forcible evictions, eviction by land owners
- Informal land acquisition by settlers or pavement dwellers through illegal occupation or violence
- Illegal sale of state land by public officials
- Sale of somebody else's property
- Expropriation by the state without compensation
- Multiple sales/allocations of land
- Ownership conflicts within a group, in particular a tribe/family possessing the land based on customary tenure
- Custom or practice (including discrimination against women, ethnic minorities, internally-displace peoples, etc.)
- Disputes over payment for using or buying land, and / or valuation of land
- Ownership conflicts between different groups, in particular between tribes/stools/families possessing the land based on customary tenure
- Boundary conflicts between individuals and groups

b) Land-Use Conflicts

- Illegal use of state land or private land
- Conflicts between human/cultural and natural use
- Competing uses of common or collective property
- Illegal subdivisions
- Displacement of informal settlers by commercially-motivated developers

c) Conflicts over the control over land

- Leasing/renting of somebody else's property leading to unintended illegal use of private or state land
- Quality of land administration and governance, especially the capacity of institutions responsible for dispute resolution;
- Politicization of land issues, which can accelerate the shift from contentious but pacific disputes to violent conflict
- Dispute over revenues from state land generated through lease, sale or transformation of its use
- Violent attacks on property
- Rules, processes and mechanisms are in place to address grievances, manage disputes and to enforce agreements
- Competing claims to large areas of land by groups, not easily resolved within existing law

Source: Wehrmann (2005) p. 321; and Warren (2014).

Concerning non-state actors, including business enterprises, the general principles state that they have a responsibility to respect human rights and legitimate tenure rights. A key human right for people, in particular the poor, living in urban and peri-urban areas, is the right to adequate housing, which is closely linked to tenure rights. Investors in the food sector – as with all other investors – have a responsibility to respect all people's rights to housing. This means that land already used by people to live on should either be excluded from development or the occupants should receive adequate housing either on site or elsewhere when (parts of the land) are developed by an investor.

5.2 The principles of implementation in the urban and peri-urban context

The guidelines highlight human dignity, non-discrimination, equity and justice, gender equality, holism and sustainability, consultation and participation, the rule of law, transparency, accountability and continuous improvement as principles of implementation being essential to the responsible governance of tenure.

In the urban and peri-urban contexts, this means:

- Recognizing the inherent dignity and the equal and inalienable human rights of informal settlements residents, urban and peri-urban populations, including those men and women of all ages processing and selling food in the (peri-)urban informal economy, workers in food processing and input producing factories and warehouses – many of them being (illegal) migrant workers, drivers (transporting inputs, food, and workers) and consumers;
- Ensuring the equal right of women and men to the enjoyment of all human rights, in particular the right to adequate housing;
- Adopting an integrated and sustainable city development strategy/plan recognizing that natural resources and their uses are interconnected and that their protection is crucial to ensure food security and sustainable livelihoods in urban and peri-urban areas;
- Ensuring the active, free, effective, meaningful and informed participation by all those that may be affected by investments in the food supply chain and access to land, such as informal settlers, (peri-)urban farmers, street traders/vendors and informal entrepreneurs;
- Adopting a rules-based approach through laws applicable to all, ensuring the recognition and respect of the entire continuum of land rights existing in urban and peri-urban areas, and ensuring their equal enforcement and independent adjudication;
- Clearly defining and widely publicizing policies, laws and procedures dealing with all relevant aspects of urban land management and administration;
- Holding all individuals, public agencies and non-state actors listed in Chapters 6 and 8 of the present publication responsible for their actions and decisions according to the principle of the rule of law;
- Monitor urban tenure governance in order to improve it continuously.

In conclusion, the VGGT's general principles, as well as the principles of implementation, provide guidance for urban tenure governance. Even topics/issues of key relevance for urban areas that are exclusively or primarily discussed by the urban tenure governance community, such as the plurality of tenure systems, forced evictions, human rights framework and the right to adequate housing, can be addressed under the given principles.

Tensions continue between urban expansion and agriculture particularly in peri-urban areas. Bangladesh. Photo ©UN-Habitat/Danilo Antonio

Table 3: Urban tenure governance issues addressed by selected international instruments

URBAN TENURE GOVERNANCE ISSUE	KEY INTERNATIONAL INSTRUMENT DEALING WITH THE ISSUE
The right to adequate housing	• United Nations General Assembly (1987): Resolution 42/146 on realization of the right to adequate housing
(Prohibition) of forced evictions	• Commission on Human Rights: Resolution 2004/28 on the prohibition of forced evictions
Security of tenure	• United Nations: MDG 7/11 on achieving significant improvement in lives of at least 100 million slum dwellers by 2020, including secure tenure as one key dimension/ indicator • 1996 Istanbul declaration and the Habitat Agenda • UN-Habitat: global campaign on secure tenure • UN-Habitat resolution 23/17 (see below)
Women's access to and control over land	• Sub-Commission on the Promotion and Protection of Human Rights: Resolutions 1997/19 on women and the right to adequate housing and to land and property and 1998/15 on women and the right to land, property and adequate housing • Commission on Human Rights: Resolutions 2000/13, 2001/34, 2002/49, 2003/22, 2005/25: Women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing
Urban governance	• UN-Habitat: Global campaign on urban governance
Equitable access to land / Land governance	• Governing Council of the United Nations Human Settlements Programme (2011): Resolution GC23-17 on Sustainable Urban Development through Expanding Equitable Access to Land, Housing, Basic Services and Infrastructure

6. VGGT AND OTHER EXISTING OBLIGATIONS AND VOLUNTARY COMMITMENTS CONCERNING URBAN TENURE

The above-mentioned principles should be interpreted and applied consistently with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. What are those instruments in the context of urban and peri-urban tenure governance? To what degree do they coincide with the VGGT? On which aspects do they differ or what additional issues do they tackle? In this section, some key instruments dealing with urban tenure issues are presented. The main purpose of this section is to highlight core aspects of the philosophy of the urban tenure community and to demonstrate if and how they are reflected by the VGGT.

Relevant international instruments deal with security of tenure, equitable access to land, forced evictions, the right to adequate housing and urban governance. Table 3 provides an overview of the main urban tenure governance-related topics addressed by international instruments and highlights the most significant instruments. Most of the existing instruments deal with the right to adequate housing, either in general or by looking at the housing rights of particular groups such as women, children and youth, indigenous people, refugees and internally displaced people. The most important instrument in this regard is the resolution A/RES/42/146 on the realization of the right to adequate housing adopted by the United Nations General Assembly in 1987. The right to adequate housing can be seen as a starting point of the discussion on access to land and security of tenure in the urban context. Urban tenure issues are generally closely related to

Who has the right to the city? Barriada, Lima. Photo ©UN-Habitat/Claudio Acioly

BOX 3: EXTRACT FROM RESOLUTION GC23-17 ON SUSTAINABLE URBAN DEVELOPMENT THROUGH EXPANDING EQUITABLE ACCESS TO LAND, HOUSING, BASIC SERVICES AND INFRASTRUCTURE

"7. Encourages governments and Habitat Agenda partners, with regard to land issues:

(a) To implement land policy development and regulatory and procedural reform programmes, if necessary, so as to achieve sustainable urban development and to better manage climate change, ensuring that land interventions are anchored within effective land governance frameworks;

(b) To promote security of tenure for all segments of society by recognizing and respecting a plurality of tenure systems, identifying and adopting, as appropriate to particular situations, intermediate forms of tenure arrangements, adopting alternative forms of land administration and land records alongside conventional land administration systems, and intensifying efforts to achieve secure tenure in post-conflict and post-disaster situations;

(c) To review and improve urban land governance mechanisms, including land/spatial planning administration and management, land information systems and land-based tax systems, so as to strengthen tenure rights and expand secure and sustainable access to land, housing, basic services and infrastructure, particularly for the poor and women;

(d) To create mechanisms for broadening land-based revenue streams, including by improving the competencies and capacities of local and regional authorities in the field of land and property valuation and taxation, so as to generate additional local revenue for pro-poor policies and to finance infrastructure development."

Source: UN-Habitat Governing Council, 23rd Session, April 2011 (United Nations, 2011)

shelter and housing and over the years and decades, the focus has become broader.

Resolution GC 23/17 of the UN-Habitat Governing Council on Sustainable Urban Development through Expanding Equitable Access to Land, Housing, Basic Services and Infrastructure adopted in 2011 includes a section on land issues and addresses effective land governance frameworks (see Box 3). The resolution encourages governments and Habitat Agenda partners to promote security of tenure for all segments of society by recognizing and respecting a plurality of tenure systems; identifying and adopting, as appropriate to particular situations, intermediate forms of tenure arrangements; adopting alternative forms of land administration and land records alongside conventional land administration systems; and intensifying efforts to achieve secure tenure in post-conflict and post-disaster situations. Urban land governance mechanisms should be reviewed and improved so as to strengthen tenure rights and expand secure and sustainable access to land, housing, basic services and infrastructure, particularly for the poor, women and vulnerable groups. UN-Habitat/GLTN also worked on addressing land governance issues. As part of the VGGT background materials, UN-Habitat/GLTN and FAO produced a publication entitled *Towards Improved Land Governance.* UN-Habitat/GLTN also supported the

BOX 4 FROM GOOD GOVERNANCE TO RESPONSIBLE LAND GOVERNANCE

Governance is the exercise of political, economic and administrative authority in the management of a country's affairs at all levels. Governance is a neutral concept comprising the complex mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights and obligations, and mediate their differences.

Land governance, by extension, concerns the rules, processes and structures through which decisions are made about the use of and control over land, the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed. It encompasses statutory, customary and religious institutions. It includes state structures such as land agencies, courts and ministries responsible for land, as well as non-statutory actors such as traditional bodies and informal agents. It covers both the legal and policy framework for land as well as traditional and informal practices that enjoy social legitimacy.

Source: FAO/UN-Habitat (2009)

development of the World Bank-led Land Governance Assessment Framework (LGAF) and the development and implementation of the United Nations Economic Commission for Africa-African Development Bank-African Union's African Land Policy Initiative. Moreover, UN-Habitat/GLTN has produced training packages on "Transparency in Land Administration System" and implemented various related learning programmes.

How do the VGGT relate to these instruments? What do they have in common? (How) can they complement each other? These instruments, such as the resolution A/RES/42/146 by the United Nations General Assembly, Millennium Development Goal 7/11 or resolution GC23-17 by UN-Habitat are very specific on urban land governance issues. They generally focus on one or several key aspects, e.g. the tenure security for slum dwellers or women's equal rights to own property and to adequate housing. The VGGT, on the other hand, cover a much broader scope of land tenure governance issues; while not entering into the specifics of urban and peri-urban land issues they nevertheless cover them through generic terms. In addition, many of the areas of land governance are dealt with by the VGGT as well as by the other instruments, e.g. recording of tenure rights, housing security, valuation, taxation, spatial planning, readjustment, expropriation and compensation, resolution of disputes, etc. Hence, the VGGT and existing international instruments on urban and peri-urban land tenure governance do complement each other perfectly.

What differs between the VGGT and instruments driven by the urban and peri-urban community is the language. Some examples are: whereas the urban and peri-urban community may be used to terms such as "pro-poor development", the VGGT refer to "non-discrimination", "equity and justice" highlighting "equitable tenure rights and access to land for vulnerable and marginalized people". Also, "plurality of tenure", "continuum of land rights" and "intermediate forms of tenure" are typical terms used by the urban and peri-urban community which are not included in the VGGT, but which are well covered by "all legitimate tenure rights".

Urban tenure governance also contributes in addressing the issues related to access to education, water and sanitation, basic infrastructure and inclusive planning, amongst others. Kampala, Uganda. Photo ©UN-Habitat/ Danilo Antonio

However, there are few areas in which VGGT could be discussed and negotiated in more details in future to respond to emerging or additional challenges.These aspects are relevant for urban, peri-urban and rural areas. For instance, the VGGT refer to the concept of gender-sensitiveness instead of gender-responsiveness (Wehrmann 2015). The VGGT use the concept of "active, free, effective, meaningful and informed participation" and limit "free, prior, informed consent (FPIC) to Indigenous People, whereas some other policies use FPIC more broadly. Here, the FAO's (2014) *Governance of Tenure Technical Guide* on "Respecting free prior informed consent – Practical guidance for governments, companies, NGOs, Indigenous Peoples and local communities in relation to land acquisition" could serve as an example. These, and probably some other areas, would be worth negotiating in the context of another international instrument, e.g. Habitat III.

C

PROPOSALS ON HOW TO OPERATIONALIZE THE VGGT IN URBAN AND PERI-URBAN SETTINGS

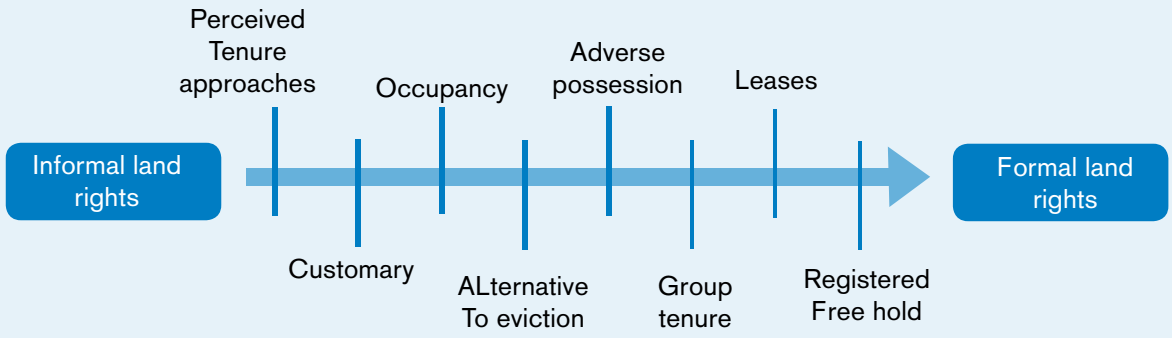
7. INSTRUMENTS AND APPROACHES TO ENSURE RESPONSIBLE GOVERNANCE OF TENURE IN URBAN AND PERI-URBAN AREAS

The VGGT provide an overall framework, principles and guidelines for governance of (land) tenure for rural, peri-urban and urban areas. They do not address methodologies or tools in detail. The Global Land Tool Network (GLTN) and other partners offer tools that are useful for achieving the responsible governance of land tenure in rural, peri-urban and urban contexts, which fit well under the overall umbrella of the VGGT. Examples of these are the realization of the continuum of rights, the Social Tenure Domain Model, participatory enumeration as a community-driven approach for tenure security improvements, amongst other objectives, participatory and inclusive land readjustment and land-sharing models, slum upgrading, effective strategies to prevent and remedy forced evictions, as well as comprehensive land-use planning for tenure security and citywide strategic planning. Key GLTN tools and approaches for responsible governance of tenure in urban and peri-urban areas are listed and briefly explained here:

- **Realization of the continuum of rights:** A major challenge for achieving responsible governance of tenure in urban and peri-urban areas (also in rural areas) of developing countries and countries in transition is how to deal with the existing diversity of tenure arrangements (range of land rights), of which many are not integrated into the legal system or conventional land administration systems. The VGGT seems to provide guidance on this by referring to all legitimate tenure rights, including informal tenure, which states should acknowledge in ways that recognize the reality of the situation and promote social, economic and environmental well-being, but do not necessarily address the issue in detail.

  Given the vast number and diversity of urban land rights, special tools and approaches are needed that are not specifically addressed in detail by the VGGT. The Global Land Tool Network has, for many years, promoted a continuum of land rights as an answer to the wide range of land rights. Such a continuum exists when a land information management system includes information that caters for the whole spectrum of formal, informal and customary tenure and/or when a range of rights in a country constitutes legally enforceable claims, which can be asserted and defended in a forum such as a court (GLTN, 2014).
  Realizing the continuum of rights also implies a broad range of tenure options so that urban and peri-urban citizens and government authorities can choose the most appropriate form for their situation. Examples are that secure tenancy for workers may be more adequate than freehold tenure; for small-scale food processors and vendors, temporary occupation licences (TOL), such as those offered in Kenya to allocate public land for a productive use, can be useful. Through such TOLs, vendors have access to strategic locations and are allowed to build semi-permanent structures.
- **Social Tenure Domain Model:** Because formal land administration systems can be cumbersome and expensive, they are not able to accommodate the continuum of rights approach and cheaper and simpler alternatives are required. One such land tool is the Social Tenure Domain Model – a pro-poor system that manages land information. The model makes the basic notions of land administration flexible enough to serve non-conventional situations. Instead of using parcels, it uses spatial units that can be approximately identified by one point in the middle of the land in question, or by an address of the dwelling on it. Instead of owners, it features parties that

According to the Global Land Tool Network (GLTN), one can view rights to land as lying along a continuum from formal to informal. In between these two extremes is a wide range of rights. The figure below illustrates this in a highly simplified way. In reality, however, the rights do not lie along a single line, and they may overlap one another.



Tenure can take a variety of forms, and "registered freehold" (at the formal end of the continuum) should not be seen as the preferred or ultimate form of land rights, but as one of a number of appropriate and legitimate forms. The most appropriate form depends on the particular situation: customary rights, for example, may be superior to registered freehold in certain situations. Land tools and tenure security programmes have to take the continuum into account

Fig. 2: The Continuum of Land Rights. Source: UN-Habitat/GLTN (2012)

can take many forms. Instead of ownership, the model uses social tenure. This may be any form of relationship between a person (or people) and the land: formal, informal or customary. It does not need to be exclusive to one piece of land, but may include "secondary" rights (UN-Habitat/GLTN, 2012). UN-Habitat/GLTN in partnership with Slum Dwellers International, Cities Alliance and Ugandan authorities and communities was able to successfully apply the STDM tool in Mbale Municipality (Antonio D. et al 2014). With the pilot experience, the STDM work has expanded to many countries with GLTN partners taking the lead in application and implementation of STDM and enumeration work within the continuum of land rights approach.

- **Participatory enumeration as a community led approach for tenure security:** Participatory enumeration is a data-gathering process, which is, to a significant extent, jointly designated and conducted by the people who are being surveyed. It is usually carried out in informal settlements for which local governments, including local land administration and management departments, generally have little or no data at all. Participatory enumeration includes marginalized groups and provides transparency, so it can improve collaboration between different stakeholders and build trust that leads to improved data gathering, better data and enhanced data legitimacy.
Data on informal settlements collected through participatory enumerations can be used for a wide range of land governance purposes: to enable residents to demand their (human and tenure) rights, to improve or secure land tenure, as a basis for land readjustment or land sharing, as a basis for land-use planning, to plan to resettle people in new areas etc. (UN-Habitat/GLTN, 2010a).

Learning events in the use and application of the Social Tenure Domain Model (STDM) tool include actual participatory enumerations exercises in poor communities. Photo ©UN-Habitat/Danilo Antonio

- **Participatory and inclusive land readjustment (PILaR) approaches and land sharing models:** The VGGT provide guidance on land readjustment approaches, which should be socially, economically and environmentally sustainable, gender sensitive, participatory and fit particular local requirements. The VGGT, however, do not enter into the details of how to apply land readjustment in urban and peri-urban areas. UN-Habitat/GLTN has done a lot of work in this area, particularly on its PILaR tool, which could potentially inform and support VGGT implementation. Participatory Inclusive Land Readjustment (PILaR) is a mechanism in which land plots or parcels with different owners and claimants are combined into a single area for more efficient use, subdivision, development and infrastructure provision. This involves processes, mechanisms and institutions through which local authorities, citizens and groups articulate their interests, exercise their legitimate legal and social rights, meet their obligations, and mediate their differences using participatory approaches and achieving inclusive outcomes. The outcomes may relate to broader economic, social and environmental objectives of city and country, or to poverty reduction and equity goals depending on the context in which PILaR is designed and implemented.
- **Effective strategies to prevent and remedy forced evictions, including fair compensation:** Trying to prevent or halt forced evictions requires a variety of strategies such legal actions, community organizing and mobilization, international solidarity and support, the use of international law, media work, and the development and implementation of alternative plans. Regardless of the strategies employed, mobilization by affected communities is the linchpin to any effective strategy to prevent or remedy forced eviction (UN-Habitat, 2011).
- **Urban land-use planning and citywide strategic planning:** Spatial planning instruments for urban areas need to ensure an orderly expansion to provide cities with a spatial structure that is socio-economically and environmentally sustainable. Such approaches should enable rational urban structures that would carefully balance economic, social and environmental land uses, carefully guide land-use conversions, protect natural resources and minimize transport. Also, a spatial planning instrument has the potential to improve the tenure security – work that has been initiated by Gesellschaft für Internationale Zusammenarbeit, Technische Universität München and GLTN. Planning for growing cities should be strategic and comprehensive and should be done at city-region level, or at least citywide in order to ensure the necessary coordination and to allow for sustainable urbanization. Citywide strategic planning, as promoted by GLTN, offers a simple approach to initiate and sustain a comprehensive planning process, resulting in a citywide strategic plan that builds on, among other things, an analysis of existing land uses, land accessibility and land rights (UN-Habitat/GLTN, 2010b).

Participatory approaches are critical to ensure success in land re-adjustment, tenure security improvement and strategic planning. Photo ©UN-Habitat/Danilo Antonio

8. ROLES AND RESPONSIBILITIES OF KEY (URBAN AND PERI-URBAN) ACTORS

In the VGGT, it says that the guidelines can be used by states; implementing agencies; judicial authorities; local governments; organizations of farmers and small-scale producers, of fishers, and of forest users; pastoralists; indigenous peoples and other communities; civil society; the private sector; academia; and all people concerned with assessing tenure governance, identifying improvements and applying them. What does this mean for urban and peri-urban areas? Which of these stakeholder groups are relevant and which are not? Which additional stakeholder (groups) need to be included? What are the specific roles and responsibilities of each stakeholder group when it comes to improving governance of urban and peri-urban tenure?

Key actors needed to achieve responsible governance of land tenure in urban and peri-urban areas are national and local governments, city/municipal authorities, private investors, professionals, academics and civil society organizations. National governments establish the necessary policies and laws; local governments provide the supplementary legal framework and regulations for local implementation and monitoring.

Municipal administrations and key government agencies responsible for cadastre, land registration, urban planning and construction, land valuation, mapping, etc. have to implement the framework established by local and national government. Private investors and professionals that are responsible for human rights and legitimate tenure rights being respected, need to ensure that their actions are in line with the VGGT principles and other international covenants.

Table 4 lists the general responsibilities of all actors as described by the VGGT as well as specific responsibilities concerning urban and peri-urban land governance. The table also includes additional stakeholder groups not referred to in the VGGT, such as international and inter-governmental organizations.

Low-income neighbourhoods include many people working in the formal sector. Yaoundé, Cameroon.
Photo © Babette Wehrmann

Table 4: Relevant actors and their responsibilities

ACTORS ACCORDING TO VGGT	ACTORS IN URBAN AND PERI-URBAN SETTING	GENERAL RESPONSIBILITIES ACCORDING TO VGGT	SPECIFIC RESPONSIBILITIES IN REGARD TO URBAN LAND GOVERNANCE
State	• Government • Ministries responsible for land administration, including cadastre and land registration • Ministries responsible for urban development, housing, urban planning, infrastructure, transport, economy, trade, etc.	• Implementing the VGGT • Setting up multi-stakeholder platforms • Monitoring and evaluation of the implementation of the VGGT and their impact on land governance	• Ensuring that the national land policy adequately covers urban and peri-urban tenure issues • Establishing or improving relevant laws, such as urban planning and construction law
Local governments	• Mayor • Municipal Council • City/municipal administration	• Promoting and implementing the VGGT	• Developing sufficient human, financial and technical capacity for effective and responsible land management and land administration of urban and peri-urban areas • Conducting major campaigns against corruption • Abstaining from forced evictions • Providing for a wide diversity of forms of land tenure • Providing for sufficient housing for all income groups, which can be developed by either the public or the private sector • Conducting city-wide strategic planning • Introducing simple and effective pro-poor land management tools, such as participatory enumerations, land sharing, the Social Tenure Domain Model
Organizations of farmers and small-scale producers, of fishers, and of forest users	• Organizations/coalitions of urban farmers; • Coalitions of small-scale (informal) food processors • Coalitions of street traders/ vendors selling food	• Promoting and implementing the VGGT	• Communicating their interests and needs to be able to contribute to national food security • Participating in drafting a city-wide strategic plan • Encouraging people to pay low taxes or fees in exchange for tenure security and work permission, and to respect land-use regulations that have been developed together with them (to be discussed)

Pastoralists	• Urban livestock keepers	• Promoting and implementing the VGGT	• Communicating their interests and needs • Participating in drafting a city-wide strategic plan
Indigenous peoples and other communities	• Squatters and slum dwellers • Ethnic minorities	• Promoting and implementing the VGGT	• Communicating their interests and needs • Participating in drafting a city-wide strategic plan
Civil society	• Civil society organizations lobbying for slum dwellers, human rights (in particular housing) etc. • Non-governmental organizations promoting environmental protection	• Promoting and implementing the VGGT	• Communicating their interests and needs to be able to contribute to national food security • Participating in drafting a city-wide strategic plan
Private sector	• Food processing and trading companies • Financial institutions • Land developers • Professionals in the field of land management, such as surveyors, land valuers, spatial planners etc.	• Promoting and implementing the VGGT • Respecting human rights • Undertaking due diligence to the best of their ability • Providing comprehensive information • Basing projects on effective and meaningful participation and consultation • Conducting independent assessment prior to investment • Monitoring impacts	• Respecting everybody's right to adequate housing • Abstaining from forced evictions • Entering into land-sharing models • Abstaining from converting agricultural or forest land into construction land • Abstaining from green field development and instead prioritize brown field redevelopment • Ensuring adequate housing for all employees – either through the provision of adequate housing or an adequate salary that is sufficient to cover average living costs in the city • Sustainable waste management
Academia	• Universities and research institutions dealing with land issues and urbanization	• Promoting and implementing the VGGT	• Focusing on urban and peri-urban land governance issues
Judicial authorities	• Courts and other dispute resolution mechanisms	• Promoting and implementing the VGGT	

Implementing agencies	• Those with a focus on urban development	• Technical cooperation, financial assistance, institutional capacity development, knowledge sharing, exchange of experiences, technology transfer, assistance in developing national tenure policies
Committee on World Food Security	• Committee on World Food Security in cooperation with UN-Habitat/GLTN (to be discussed)	• Acting as a global forum where all relevant actors learn from each other's experiences, and assess progress toward the implementation of the VGGT and their relevance, effectiveness and impact
	• International and intergovernmental organizations like United Nations	• Mainstreaming of VGGT principles in other global initiatives, e.g. Habitat III • Joint advocacy towards tighter binding of the VGGT principles • Joint programming efforts • Developing technical guides and tools • Technical cooperation, financial assistance, institutional capacity development, knowledge sharing, exchange of experiences, technology transfer, assistance in developing national tenure policies

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PROSPECTS FOR THE WAY FORWARD

UN-Habitat, through GLTN and its partners, is committed to create opportunities and synergies around the application and implementation of the VGGT in urban and peri-urban areas. It will work with key partners to inform the Habitat III process and the related substantive discussions and debates. It will also strengthen the knowledge and awareness building initiatives around similar global and regional platforms and discussions (e.g. SDGs).

GLTN, with the Network's pro-poor land tools and approaches and increasing influence in the land sector at various levels, is well situated to facilitate the application and implementation of the VGGT. At present, the GLTN work and various initiatives, focusing on the recognition of the continuum of land rights approach and development and implementation of pro-poor and gender responsive land tools and approaches for securing land and property rights for all, are contributing to the successful implementation of VGGT principles.

GLTN, as facilitated by UN-Habitat, may also serve as a platform for implementing the VGGT in relation to its application to urban and peri-urban areas to reach more countries, organizations, stakeholders and change agents.

GLTN will work with key partners, including with the FAO, to potentially initiate and undertake the following key activities:

a) Knowledge management

- Publish and disseminate this scoping report that describes how VGGT can be used for urban and peri-urban areas particularly to the urban GLTN partners and Habitat III stakeholders.
- Compile and document good practices with linkages to the VGGT.
- Develop a Governance of Tenure Technical Guide on the application of the VGGT in urban and peri-urban areas in collaboration with FAO and other key partners building from the this scoping report.
- Develop a guide or a discussion paper on urban and rural linkages.
- Develop other related position papers, tools and guidelines.

b) Awareness-raising

- Awareness raising within UN-Habitat, GLTN partners and other global/regional platforms.
- Develop and implement a joint partnership and awareness building strategy.
- Develop related papers and make presentations to international conferences (e.g. Annual World Bank Land and Poverty Conference).
- Conduct meetings and workshops with GLTN partners and key actors of the urban constituencies.

c) Capacity development

- Inclusion of the VGGT and their relevance for urban and peri-urban areas in any training or capacity development initiatives on urban tenure issues.
- Develop capacity development materials, including for e-learning platforms, from technical guide on the application of the VGGT in urban and peri-urban areas.
- Inform target groups and change agents about the existence of the learning tool.

d) Country-level support

- Tailor-made technical assistance on demand.
- Support to regional and country level initiatives for improving land governance.
- Joint work with key partners at country level.

e) Resource mobilization efforts

- Where appropriate, plan and implement resource mobilization efforts and activities.

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UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME (UN-Habitat)

UN-Habitat helps the urban poor by transforming cities into safer, healthier, greener places with better opportunities where everyone can live in dignity. UN-Habitat works with organizations at every level, including all spheres of government, civil society and the private sector to help build, manage, plan and finance sustainable urban development. Our vision is cities without slums that are livable places for all, which do not pollute the environment or deplete natural resources. For further information, please visit the website at www.unhabitat.org.

THE GLOBAL LAND TOOL NETWORK (GLTN)

GLTN aims to contribute to poverty alleviation and the Millennium Development Goals through land reform, improved land management and security of tenure. The Network has developed a global land partnership. Its members include international civil society organizations, international finance institutions, international research and training institutions, donors and professional bodies. It aims to take a more holistic approach to land issues and improve global land coordination in various ways. For further information and registration, visit the GLTN website at www.gltn.net.

ABOUT THIS PUBLICATION

This publication provides an overview of the key concepts, considerations and prospects for way forward in the application of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) in urban and peri-urban areas.

The study aims to assess the applicability of the VGGT in urban and peri urban areas with a view to facilitate planning and decision making. It informs the VGGT implementers, partners and stakeholders on how they can use, apply and anchor the VGGT in their work, projects and activities in urban and peri-urban settings.

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