



# LAND GOVERNANCE

*A REVIEW AND ANALYSIS OF KEY INTERNATIONAL FRAMEWORKS*

*SECURING LAND AND PROPERTY RIGHTS FOR ALL*

## **Land Governance: A Review and Analysis of Key International Frameworks**

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## ABBREVIATION/ACRONYMS

|                 |  |
|-----------------|--|
| AU              | African Union  |
| AfDB            | African Development Bank   |
| CEDAW           | Convention on the Elimination of All Forms of Discrimination Against Women   |
| CFS-RAI         | Principles for Responsible Investment in Agriculture and Food Systems (endorsed by the Committee on World Food Security)             |
| FAO             | Food and Agriculture Organization of the United Nations  |
| F&G             | Framework and Guidelines on Land Policy in Africa  |
| FPIC            | Free, Prior and Informed Consent   |
| GLTN            | Global Land Tool Network   |
| ICCPR           | International Covenant on Civil and Political Rights   |
| ICESCR          | International Covenant on Economic, Social and Cultural Rights   |
| IFC             | International Finance Corporation  |
| ILO             | International Labour Organization  |
| LSLBI           | Large-Scale Land-Based Investment  |
| LSLBI Principle | Guiding Principles on Large-Scale Land-Based Investment in Africa  |
| M&E             | Monitoring and Evaluation  |
| NUA             | New Urban Agenda   |
| OECD            | Organization for Economic Cooperation and Development  |
| SDG             | Sustainable Development Goal   |
| UDHR            | Universal Declaration of Human Rights  |
| UN              | United Nations   |
| UNCBD           | United Nations Convention on Biodiversity  |
| UNECA           | United Nations Economic Commission for Africa  |
| UN-Habitat      | United Nations Human Settlements Programme   |
| VGGT            | Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security |

## EXECUTIVE SUMMARY

This study presents the key provisions on land governance of all recent international frameworks, analyses which new issues appeared, which old ones have gained additional support and those which have received less attention. The study also discusses the particularities, strengths, weaknesses and challenges of the individual frameworks, as well as similarities, differences and complementarities between the new frameworks and between the new and previous – still applicable – frameworks. Finally, the study shows how land governance contributes to the achievement of key development objectives, stressing the importance of land governance for overall sustainable development.

The establishment of land governance regulating access to, use of and control over land responsibly to the equal benefit of all plays a key role in the realization of human rights as well as in the achievement of key development objectives.

The enjoyment and regulation of land tenure rights and the realization of human rights are closely interwoven. On the one hand, there are human rights that justify striving after land governance, such as the right to own property, the right to adequate food, and the right to adequate housing. On the other hand, land governance includes and requires the realization of certain human rights, such as freedom from discrimination, the right to freedom of opinion, the right to freedom of assembly and expression and the right to effective remedy (for details, see 2.1).

Land governance contributes to the achievement of the following development objectives: poverty reduction, food security, gender equality, economic development, sustainable infrastructure, balanced territorial development, sustainable cities and communities (including adequate housing), responsible consumption and production, climate change mitigation and adaptation, environmental protection, resilience, post-disaster/

post-conflict redevelopment as well as social stability, peace and security (for details, see Chapter 4).

The new development agenda recognizes the crucial role of land (governance) to sustainable development. All five key frameworks listed below explicitly mention it and refer to a broad range of land governance issues tackling all key aspects.

The following frameworks have been identified as the most relevant key international frameworks for land issues:

- ❑ The 2030 Agenda for Sustainable Development (SDG)
- ❑ The New Urban Agenda (NUA)
- ❑ The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)
- ❑ The Framework and Guidelines on Land Policy in Africa (F&G)
- ❑ The Guiding Principles on Large-Scale Land-Based Investment in Africa (LSLBI Principles)

Other recent important frameworks are: Declaration on the Rights of Indigenous Peoples, Pinheiro Principles, Sendai Framework, COP 21 Paris Agreement, and Aichi Biodiversity Framework. (Long) before these frameworks were established, a broad range of international instruments and resolutions – voluntarily as well as binding – had been negotiated focusing on specific aspects of land governance, their provisions being still relevant for today's interventions in the land sector and some of them receiving additional/new support through the new development agenda. (For an overview on all relevant international and regional frameworks see 2.2.).

## EXECUTIVE SUMMARY

One similarity in the five key international frameworks is the attention that they pay to land as a key element for sustainable development. Another commonality is that all five frameworks are based on human rights. The three frameworks exclusively dealing with land governance all refer to the linkage between the enjoyment of land rights and those of human rights.

All five key frameworks are based on the same understanding of land governance aiming at the same key objectives (creation of tenure security for all and realization of sustainable use of land) and referring to the same key concepts/ideas, such as the relevance of plurality of tenure systems and the central role of responsible governance (for details see 3.2).

A similarity of all these frameworks is their voluntary nature. None of the frameworks is legally binding, which may constitute a major constraint on their implementation. In addition, none of the frameworks is linked to a financial mechanism and they are all rather silent on how the goals and principles are supposed to be achieved.

The main differences are that the SDGs and NUA refer to the broader aspects of sustainable development, whereas the VGGT, the F&G and the LSLBI Principles exclusively focus on land governance issues. This, however, represents at the same time a major complementarity. While the first two frameworks place land governance in the overall context of sustainable (urban) development, the other three frameworks elaborate in much more detail on land governance, providing detailed guidance. There also is complementarity between the VGGT and the two African-wide frameworks. They reflect the same ideology and can be seen, in part, as identical and otherwise complementary. The two African-wide frameworks also complement each other perfectly, focusing on two key aspects of land governance in the African context, namely land policy

development and implementation (including the recognition of customary tenure rights) and the creation of safeguards for responsible large-scale land-based investments.

Another difference is that only the SDGs provide indicators that allow for the monitoring of its implementation. Several indicators refer to security of tenure and sustainable land use. Given the complementarity of the frameworks, these indicators can also be used to partly monitor the implementation of the other frameworks.

The current international frameworks on land governance suffer from only a few gaps. The main gaps are that it is rather silent on the over-all lack of transparency in land administration, urban land grabbing and does not give a lot of attention to the state's duty to regulate the use of land.

Concerning the challenges, the study makes the following recommendations:

**The voluntary nature:** All five key frameworks are voluntary. But they are also all explicitly based on human rights, of which most are included in legally-binding documents. It is, therefore, important to stress the linkage between the enjoyment and regulation of tenure rights and the realization of human rights.

**Little guidance on implementation and organizational issues:** The frameworks do not provide significant information on what exactly needs to be done by whom – although the VGGT, the F&G and the LSLBI Principles are more detailed than the SDGs and NUA. On the other hand, there is vast experience as well as information/training materials on most of the issues. Implementing the current land governance framework constituted by the key frameworks dealing with the issue, therefore, requires identifying, reviewing and disseminating good practices and lessons learnt, compiling existing

## EXECUTIVE SUMMARY

information/training materials and identifying those topics that need additional tool development or testing or the preparation of guides.

**Lack of strategy on capacity development:** The frameworks are extremely general on how capacity development should take place. This opens up enormous space for those who provide education and training. For this purpose, needs analyses (at local or country level) could help to define the demand for capacity development, identifying how many actors of which type need capacity development in which area for what purpose. A complementary survey could identify which institutions could provide what type of training(s) for which target group(s).

Funding of the measures as well as of the capacity development is a major challenge. Advocacy on the contribution of land governance to a broad range of

key development objectives might help to mobilize the necessary funding. In addition, land-based finance should be promoted to generate the revenues required for other land governance tasks.

Finally, the current development agenda provides vast opportunities to get involved in improving land governance. However, some topics, such as the state's duty to regulate land use and the need to address transparency in land administration and urban land grabbing, deserve to be adequately included in the international framework. In addition, frameworks on climate-change mitigation and adaptation and those on biodiversity need to explicitly address the role of land-use planning / spatial planning in the achievement of their objectives. Even more important would be to strive for legally binding regulations on land governance. May some of the arguments provided in this study help with lobbying on this issue.



**Addressing land issues significantly contributes to poverty reduction and sustainable development. Liberia.**

Photo @ UN-Habitat/ William Ross



PART I

# INTRODUCTION

**L**and governance concerns the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed

(FAO/UN-Habitat, 2009).

Land and the way it is accessed, used and controlled is a key element of sustainable social and economic development, peace and stability, and the realization of human rights. This makes land governance a cornerstone for the achievement of the Sustainable Development Goals (SDGs) and explains the attention that international instruments pay to it.

Recently, the endorsement of various international frameworks has provided an impetus for the global land sector community as new opportunities emerged through these frameworks.

For example, the adoption of the Sustainable Development Goals, which has specific land indicators and provisions on land ownership and use, provides a momentum to address land governance issues at various levels. Recently, the New Urban Agenda (Habitat III) was endorsed by Member States, well capturing the role of land in sustainable urban development, clearly highlighting the need for tenure security for all recognizing the plurality of tenure types, calling for sustainable use and management of land and natural resources, addressing land value capture, and hence providing critical guidance on land governance interventions for the next 20 years.

Just before these two general development frameworks were agreed on, other more specific global instruments were put in place that guide the sector towards a holistic approach in addressing land and land governance in rural, urban and peri-urban areas. Specifically, there are the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security and, at continental level, the agreed Framework and Guidelines on Land Policy in Africa. (Long) before these frameworks were established, a broad range of international instruments and resolutions – voluntarily as well as binding – had been negotiated focusing on specific aspects of land governance, their provisions being still relevant for today's interventions in the land sector and some of them receiving additional/new support through the other international frameworks.<sup>1</sup>

This study has been prepared for development partners, UN agencies, civil society organizations (CSOs), government authorities at all levels, academic institutions and land practitioners who would like to get an overview on the international framework related to land governance. It specifically addresses organisations and institutions supporting national and/or local governments to improve land governance as well as for those actors who support citizens defending their land rights. The study is based on a literature review and an extensive analysis of all relevant frameworks dealing with land issues.

The document contains three main sections. The first one (chapter 2) presents the relevant frameworks and their key provisions. The second one (chapter 3) analyses and compares these frameworks and the fourth part (chapter 4) looks at the role of land in achieving key development objectives.

<sup>1</sup> Just to name a few: United Nations Convention on the Elimination of All Forms of Discrimination Against Women, United Nations Declaration on the Rights of Indigenous Peoples, several resolutions by different United Nations bodies on the right to adequate housing, prohibition of forced evictions, women's land rights, land rights of refugees and internationally displaced people as well as Habitat Agenda (Habitat II) and Vancouver Declaration and Action Plan (Habitat I). For details see 2.2.



PART II

INTERNATIONAL  
FRAMEWORKS  
DEALING WITH LAND  
(GOVERNANCE)

## 2.1 HUMAN RIGHTS RELEVANT TO LAND GOVERNANCE

To date, international human rights law has not provided for a universal human right to land. However, land governance is based on and closely linked to several human rights. On the one hand, there are human rights that justify the striving after land governance, such as the right to own property, the right to adequate food, and the right to adequate housing. In other words, access to, use of and control over land directly affect the enjoyment of certain economic, social, cultural, political and civil rights.<sup>2</sup> On the other hand, land governance includes and requires the realization of certain human rights, such as freedom from discrimination, the right to freedom of opinion, the right to freedom of assembly and expression and the right to effective remedy.

“Land is not a mere commodity, but an essential element for the realization of many human rights” (UN 2015, p. 1), such as the right to adequate housing and the right to adequate food. At the same time, for many people gaining access to, use of and control over land requires the realization of many human rights – from active, free, effective, meaningful and informed participation to the right to own property.

Human rights can be classified in accordance with

their significance to the three main aspects of land governance:

**Table 1: Human rights relevant to access to land:**

|  | SOURCE  |
|--|---|
| <input type="checkbox"/> Right to own property <ul style="list-style-type: none"> <li>● Everybody has the right to own property alone as well as in association with others</li> <li>● No one shall be arbitrarily deprived of his property               <ul style="list-style-type: none"> <li>▪ Right to be protected against forced evictions</li> </ul> </li> </ul>   | UDHR art. 17<br><br>Can be derived from the right to adequate housing   |
| <input type="checkbox"/> Right to freedom of movement and residence <ul style="list-style-type: none"> <li>● Everyone has the right to freedom of movement and residence within the borders of each state.               <ul style="list-style-type: none"> <li>▪ right to liberty of movement and freedom to choose his residence</li> </ul> </li> <li>● Everyone has the right to leave any country, including his own, and to return to his country.</li> </ul>   | UDHR art. 13<br><br>ICESCR 12.1   |
| <input type="checkbox"/> Right to adequate standard of living, including <ol style="list-style-type: none"> <li>a) the right to adequate food</li> <li>b) the right to adequate housing</li> <li>c) rights to water and sanitation               <ul style="list-style-type: none"> <li>▪ Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including <u>food</u>, clothing, <u>housing</u> and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.</li> </ul> </li> </ol> | For a) and b) UDHR art. 25 and ICESCR art. 11.1<br><br>For c) UDHR art. 25 and ICESCR art. 11.1 read in conjunction with the Human Rights Council resolution 15/9 (Human rights and access to safe drinking water and sanitation), paras. 2 and 3 |

<sup>2</sup> “Some international instruments refer to land; for instance, article 11, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights and article 14, paragraph 2 (g) of the Convention on the Elimination of All Forms of Discrimination Against Women make explicit reference to land in relation to the right to food and the rights of rural women respectively” (United Nations Economic and Social Council 2014, paragraph 12).

|   | SOURCE  |
|---|---|
| <input type="checkbox"/> Right to freedom of religion. <sup>3</sup>   | UDHR art. 18, ICESCR art. 18 and others   |
| <input type="checkbox"/> Right to take part in cultural life. <sup>4</sup>  | UDHR art. 27, ICESCR art. 15 and others   |
| <input type="checkbox"/> Right to self-determination <ul style="list-style-type: none"> <li>● All people have the right to self-determination. By virtue of that right they freely determine their political status and pursue their economic, social and cultural development. <u>All peoples may, for their own ends, freely dispose of their natural wealth and resources and in no case should people be deprived of their own means of subsistence.</u></li> </ul> | ICESCR art. 1, ICCPR art. 1   |
| Rights of Indigenous Peoples to their traditional lands, territories and resources, including water.  | ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), 1989, arts. 14 and 15; United Nations Declaration on the Rights of Indigenous Peoples, art. 26) |

**Table 2: Human rights relevant to The Manner in Which Decisions About Land are Made:**

|   | SOURCE   |
|---|--|
| <input type="checkbox"/> Equality <ul style="list-style-type: none"> <li>● Gender equality</li> </ul>   | UDHR art. 1<br>ICCPR 3 (concerning civil and political rights)   |
| <input type="checkbox"/> Non-discrimination   | UDHR art. 2  |
| <input type="checkbox"/> Rule of law  | ICCPR art. 2, ICESCR art. 2  |
| <input type="checkbox"/> Right to freedom of opinion and expression   | UDHR art. 19, ICESCR art.19  |
| <input type="checkbox"/> Right to freedom of assembly and association   | UDHR art. 20, ICESCR art.21 and 22   |
| <input type="checkbox"/> Right to information   | UDHR art 19, ICCPR art 19 (2)<br>See also: Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, art.1 |
| Participation   |  |
| <input type="checkbox"/> Right to take part in government   | UDHR art. 21   |
| <input type="checkbox"/> Right and opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives, including the formulation of government policies and decisions | ICESCR art.25 (a)  |
| Safeguards against limitation of human rights for public interest   | UDHR art. 29, ICESCR art. 4  |

3 "The exercise of the right to religious worship can be affected if such sites and structures are destroyed, damaged or endangered, or if access to them is undermined as a result of conflict or development-related activities" (United Nations 2015, p. 37).

4 "The cultural life of many communities is closely related to land. Ways of life linked to agriculture, fishing or hunting, as well as cultural festivals and rituals, for instance, rely heavily on access to specific lands and spaces. Expropriation, illegal occupation and exploitation, pollution and degradation of ecosystems by the extraction of natural resources, or the construction of roads, canals or ports, may destroy or deny access to places and environments necessary for the exercise of cultural activities of local communities" (United Nations 2015, p.60).

**Table 3: Human rights relevant to The Way that Competing Interests in Land are Dealt with:**

|  | SOURCE                                   |
|--|--|
| <input type="checkbox"/> Right to life   | UDHR art. 3, ICCPR 6.1                   |
| <input type="checkbox"/> Right to recognition as a person before the law   | UDHR art. 6                              |
| <input type="checkbox"/> Equality before the law   | UDHR art. 7, ICCPR art.14.1, art. 26     |
| <input type="checkbox"/> Right to effective judiciary / remedy   | UDHR art. 8, ICCPR 2.3 (a)               |
| <input type="checkbox"/> Ban on arbitrary detention  | UDHR art. 9                              |
| <input type="checkbox"/> Right to public hearing <ul style="list-style-type: none"> <li>● Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.</li> </ul>   | UDHR art. 10, ICCPR art.14.1             |
| <input type="checkbox"/> Right to the presumption of innocence   | UDHR art. 11<br>See also: ICCPR art.14.2 |
| <input type="checkbox"/> Everyone shall be entitled: <ul style="list-style-type: none"> <li>● To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;</li> <li>● To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;</li> <li>● To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;</li> <li>● To have the free assistance of an interpreter if he cannot understand or speak the language used in court</li> </ul> | ICCPR art.14.3                           |

International human rights law acknowledges obligations towards specific groups when it comes to access to, use of and control over land. “The human rights treaty bodies of the United Nations have repeatedly affirmed women’s equal rights in relation to their access to, use of and control over land [...] International human rights law [also] provides for specific rights of Indigenous Peoples and their relationship with their ancestral lands or territories [...] And] standards relevant to refugees and displaced persons recognize the housing, and property rights of refugees and displaced persons, underlining that securing these rights is essential to long-term peace, stability,

economic development and justice” (United Nations Economic and Social Council 2014, p. 9 ff.). A number of international instruments also highlight the vulnerability of other specific groups such as smallholder farmers, pastoralists, squatter settlers, landless people, children and human rights defenders working on land issues.<sup>5</sup> Ignoring their legitimate tenure rights or denying them access to land generally violates a set of human rights. (For human rights of specific groups, such as women, children, Indigenous Peoples, minorities, refugees and internally displaced persons, relevant to land governance see annex 1.)

<sup>5</sup> For details see: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), arts. 1, 5, 6, 7, 8, 9, 11, 12 and 13

“Pursuing a human rights-based approach to land issues enables rights-holders to claim their rights while simultaneously enjoining duty-bearers – mainly states, but also non-state actors, including business enterprises and international organizations – to comply with their obligations and responsibilities” (*United Nations Economic and Social Council 2014, paragraph 63*).

States, as primary duty-bearers, have the obligation to respect, protect and fulfil the human rights of people under their jurisdiction. Treaty bodies increasingly interpret human rights instruments as having implications not only for host but also for home states

of multinational corporations. Business enterprises, which are often influential actors in the governance of land and other natural resources, have human rights-related responsibilities.

“National and transnational companies involved in land deals, investments and extractive and other activities involving the acquisition, use or alteration of lands bear a responsibility not to infringe on the rights of other users and owners through their activities, and to address any adverse impact arising as a result of their actions” (*United Nations Economic and Social Council 2014, paragraph 54*).



**Everyone has the right to adequate housing. Mathare settlement, Nairobi, Kenya.** Photo @ UN-Habitat/ Julius Mwelu

## 2.2 OVERVIEW OF RELEVANT INTERNATIONAL FRAMEWORKS<sup>6</sup>

Some of these frameworks exclusively deal with land (governance). They can be grouped into those that cover major parts of the land sector (if not the entire sector) and those that focus on one specific aspect, such as forced evictions or women's access to land. Other frameworks are broader in scope and only deal with land and/or land governance as one issue among many others.

### 2.2.1 INTERNATIONAL FRAMEWORKS

#### a) Covenants and Conventions

"Covenants and conventions are treaties under another name and they legally bind the countries that have signed and ratified them. Ratification means that after representatives of a country have signed a treaty, the head of state or government of that country has approved this signature." (*UN-Habitat 2007*).

- ❑ International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
  - "The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions" (Art. 11)
- ❑ International Covenant on Civil and Political Rights (ICCPR), 1966
  - "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence" (Art. 2)
- ❑ Convention on the Elimination of All Forms of Racial Discrimination, 1965; including (Art. 5):
  - "The right of everyone to equality before the law, notably in the enjoyment of the following rights: the right to equal treatment before the tribunals and all other organs administering justice, [...] the right to freedom of movement and residence, [...] the right to own property alone as well as in association with others, the right to inherit, [...] right to freedom of opinion and expression, the right to freedom of peaceful assembly, [...] the right to housing [...]"
- ❑ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1981; including in particular:
  - equal rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration (16.1 (h)),
  - equal treatment in land and agrarian reforms as well as in resettlement schemes (14.2 (g)),
  - equal right to conclude contracts and to administer property (15.2),
  - equal rights to bank loans, mortgages and other forms of financial credit (13).
- ❑ Convention Relating to the Status of Refugees, 1951 stating (Art. 1951):
  - "As regards housing, the Contracting States, [...] shall accord refugees lawfully staying in their territory treatment as favourable as possible [...]"
- ❑ United Nations Framework Convention on Climate Change (UNFCCC), COP 21 Paris Agreement, 2015, in particular Art. 5 on mitigation and Art. 6 adaptation (including strengthening resilience and reducing vulnerability) to which land-use planning could contribute – without being explicitly mentioned (see chap. 2.4.3).
- ❑ ILO Indigenous and Tribal Peoples Convention

<sup>6</sup> This sub-chapter builds on previous work by Clarissa Augustinus, Dan Lewis and Scott Leckie (see UN-Habitat 2007).

(C 169), 1989 including part II (Art. 13-19) on land stating:

- “The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized...” (Art. 14),
- “Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent...” (Art. 16),
- “Procedures established by the peoples concerned for the transmission of land rights among members of these people shall be respected...” (Art. 17). (See also 2.4.1.)

### b) Customary international law

*Customary international law* refers to international obligations arising from established state practice, as opposed to obligations arising from formal written international treaties. See also the definition on declarations and recommendations.

- ❑ Universal Declaration of Human Rights (UDHR), 1948 (partly accepted as international customary law)
  - Article 17: 1. Everyone has the right to own property alone as well as in association with others. 2. No one shall be arbitrarily deprived of his property. (See also 2.1.)
- ❑ Customary International Humanitarian Law,
  - Rule 132: displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.
  - Rule 133: the property of displaced persons must be protected.

### c) Resolutions

“Resolutions are documents without legally binding force (except for those of the United Nations Security Council). However, since they typically emanate from United Nations bodies, they can carry considerable weight and often provide a wealth of detail about a particular subject not to be found in other international instruments” (*UN-Habitat 2007*).

United Nations General Assembly

- ❑ Resolutions 41/146 (1986), 42/146 on realization of the right to adequate housing (1987), 43/181 (1988) and 46/163 (1991) on the Global Strategy for Shelter to the Year 2000
- ❑ Resolutions 50/195 (1996), 52/130 (1998), 54/167 (2000) and 56/164 (2002) on the Protection of, and Assistance to, Internally Displaced Persons

United Nations Economic and Social Council (ECOSOC)

- ❑ Resolution 1987/62 on the Realization of the Right to Adequate Housing
- ❑ United Nations Commission on Human Rights
- ❑ Resolutions 2000/13, 2001/34, 2002/49, and 2003/22 and 2005/25 on Women’s Equal Ownership of, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing
- ❑ Resolution 2003/109 on housing and property restitution in the context of the return of refugees and Internally Displaced Persons (tasking Special Rapporteur Paulo Sergio Pinheiro to draft the principles on housing and property restitution for refugees and displaced persons)
- ❑ Resolutions 2000/53, 2001/54, 2002/56 and 2003/51 on Internally Displaced Persons
- ❑ Resolutions 2004/28 and 1993/77 on (the prohibition of) Forced Evictions

- ❑ Resolutions 1986/36, 1987/22 and 1988/24, 2001/28, 2002/21 on the Right to Adequate Housing as a Component of the Right to an Adequate Standard of Living
- ❑ Resolutions 1994/8, 1994/14 on Promoting the Realization of the Right to Adequate Housing

#### United Nations Sub-Commission on the Promotion and Protection of Human Rights

- ❑ Resolution 2002/30 on the Right to Return of Refugees and Internally Displaced Persons
- ❑ Resolutions 1998/26, 2002/7, 2005/21 on Housing and Property Restitution for Refugees and Internally Displaced Persons
- ❑ Resolutions 1991/12, 1993/41, 1994/39, 1996/27 and 1998/9 on Forced Evictions
- ❑ Resolutions 1993/15, 1994/20, 1995/12 on the Right to Adequate Housing
- ❑ Resolutions 1991/26, 1992/26, 1993/36, 1994/38, 1995/27 and 1995/19 on Promoting the Realization of the Right to Adequate Housing
- ❑ Resolutions 1997/19 and 1998/15 on Women and the Right to Land, Property and Adequate Housing
- ❑ United Nations Commission on Human Settlements
- ❑ Resolution 19/3 on global campaigns on secure tenure and urban governance, adopted 9 May 2003
- ❑ Resolution 19/16 on women's role and rights in human settlements' development and slum upgrading, adopted 9 May 2003
- ❑ Resolution 16/7 on the realization of the human right to adequate housing adopted 7 May 1997
- ❑ Resolution 14/6 on the human right to adequate housing, adopted 5 May 1993

#### UN-Habitat Governing Council

- ❑ 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, 2011 (see 2.4.1)

#### d) Others: Declarations, recommendations, frameworks, guidelines etc.

“Declarations and recommendations are generally documents of intent. In most cases, they do not create legally binding obligations on signatory countries. They do not need ratification. However, in some instances, a declaration or recommendation may gain the force of binding law: if its contents are widely accepted by the international community, it achieves the status of customary international law” (*UN-Habitat 2007*).

- ❑ United Nations Sustainable Development Goals (SDGs), 2016 (see 2.3.1)
- ❑ United Nations Conference on Housing and Sustainable Urban Development: New Urban Agenda (NUA), 2016 (see 2.3.1)
- ❑ Committee on World Food Security / FAO: The Voluntary Guidelines on the Responsible Governance of Tenure of Land in the Context of National Food Security (VGGT), 2012 (see 2.3.2)
- ❑ Committee on Economic Social and Cultural Rights, General Comment 7: The Right to Adequate Housing - Forced Evictions (CESCR General Comment 7), 1997
- ❑ Committee on Economic Social and Cultural Rights, General Comment 4: The Right to Adequate Housing (CESCR General Comment 4), 1991
- ❑ United Nations Economic and Social Council: Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles), 2005
- ❑ United Nations Human Rights Council: Large-scale land acquisition and leases: A set of minimum principles and measures to address the human rights challenge, 2009, promoting under principle 2 that any shift in land use can only take place with

the free, prior and informed consent of the local communities concerned

- ❑ UN Human Rights Council: Guiding principles on human rights impact assessments of trade and investment agreements, 2011
- ❑ Committee on World Food Security: Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI Principles), 2014; in particular principle 5 stating that responsible investments in agriculture and food systems respect tenure of land, fisheries and forests, and access to water.
- ❑ United Nations Declaration on the Rights of Indigenous Peoples, 2007 (see 2.4.1 and annex 1)
- ❑ United Nations Conference on Human Settlements: Habitat Agenda, 1996; in particular B 3 (c) ensuring access to land (stressing the importance of legal security of tenure to achieve adequate shelter for all and sustainable human settlements) and C 2 promoting sustainable land use
- ❑ United Nations Conference on Environment and Development: Agenda 21, 1992, in particular Chapter 10 promoting an integrated approach to the planning and management of land resources
- ❑ United Nations Conference on Human Settlements: Vancouver Declaration on Human Settlements and Vancouver Action Plan, 1976; highlighting the need for public control of land use, as it should be determined by the long-term interests of the community and promoting land value capture.

## 2.2.2 REGIONAL FRAMEWORKS

### Frameworks and guidelines on land governance issues:

- ❑ AU-AfDB-UNECA Framework and Guidelines on Land Policy in Africa (F&G Land Policy Africa), 2010 (for details see 2.3.2)
- ❑ AU-AfDB-UNECA Guiding Principles on Large Scale Land Based investments in Africa (LSLB Investment Principles Africa), 2014 (for details see 2.3.2)

### Conventions, charters and protocols on human rights partly referring to land governance issues

- ❑ American Convention on Human Rights, in particular Art. 21 (right to property), 1978
- ❑ African Charter on Human and Peoples' Rights, in particular Art. 14 (right to property), 1986
- ❑ Protocol to the African Charter on Human and Peoples' Rights on the Right of Women in Africa, in particular articles 6, 7 and 19 on women's right to property, 2003
- ❑ Arab Charter on Human Rights, in particular Art. 31 (right to own property), 2008

These regional human rights instruments partly reflect the Universal Declaration of Human Rights and include important provisions on governance issues (see 2.1). However, provisions partly differ from those in the Universal Declaration of Human Rights.

## 2.2.3 PRINCIPLES AND STANDARDS BY INTERNATIONAL INSTITUTIONS AND/OR PRIVATE SECTOR OF GLOBAL IMPORTANCE

- ❑ IFC Performance Standard 5 Land Acquisition and Involuntary Resettlement (aiming to avoid / minimize displacement, to avoid forced evictions, to anticipate, avoid, minimize adverse social and economic impacts, to improve / restore the livelihoods of displaced persons, to improve living conditions of the displaced persons through the provision of adequate housing with security of tenure at resettlement sites)
- ❑ Organization for Economic Cooperation and Development (2011): OECD Guidelines for Multinational Enterprises

❑ Commodity standards such as the Round Table on Sustainable Biomaterials:

- Existing land rights and land use rights, both formal and informal, shall be assessed, documented, and established. The right to use land for biofuel operations shall be established only when these rights are determined (RSB, criterion 12a).
- Free, Prior, and Informed Consent shall form the basis for all negotiated agreements for any compensation, acquisition, or voluntary relinquishment of rights by land users or owners for biofuel operations (RSB, criterion 12b).



Gender equality starts from inclusive participation and project implementation by women themselves. Ciudadela Sucre settlement, Colombia. Photo @ UN-Habitat/John Gitau

## 2.3 RECENT KEY FRAMEWORKS AND THEIR PROVISIONS ON LAND (GOVERNANCE)

The focus of this study is on the New development agenda. This chapter looks at two sets of recent international frameworks, most of them being concluded within the last five years:

- ❑ General frameworks providing guidance for overall development (SDG, NUA)
- ❑ Specific frameworks dealing exclusively/comprehensively with land governance (VGGT, F&G Land Policy Africa, Large-Scale Land-Based Investment Principles Africa)

In the following, each framework is presented separately, following the same structure, which includes:

- ❑ General description/introduction (objective, intention, background...),
- ❑ Key provisions, distinguishing rights, principles, indicators and other relevant provisions on land (governance), and
- ❑ Remarks concerning particularities, strengths, weaknesses, challenges, relation to other frameworks and relevance for GLTN and UN-Habitat Land and GLTN Unit.

### 2.3.1 GENERAL FRAMEWORKS PROVIDING GUIDANCE FOR OVERALL DEVELOPMENT

**2030 AGENDA FOR SUSTAINABLE DEVELOPMENT – SUSTAINABLE DEVELOPMENT GOALS (SDG), 2016**  
(United Nations General Assembly 2015: A/RES/70/1)

#### DESCRIPTION OF THE FRAMEWORK

The 2030 Agenda for Sustainable Development is a voluntary plan of action agreed upon by the United Nations General Assembly, including 17 Sustainable Development Goals and 169 targets (accompanied by 230 indicators), aiming at eradicating poverty and shifting the world on to a sustainable and resilient path – leaving no one behind. The SDGs entered into force on 1 January 2016 and will provide a guiding framework for the following 15 years.

#### (KEY) PROVISIONS ON LAND (GOVERNANCE)

Universal respect for human rights and human dignity, good governance and the sustainable use of natural resources, including land, are explicitly mentioned in the overall vision of the Agenda (para 8 and 9).

#### Rights

- ❑ The 2030 Agenda is guided by the purposes and principles of the Charter of the United Nations seeking to realize the human rights of all.
- ❑ No specific right regarding access to or use of land is mentioned in the text.
- ❑ Explicit reference is made to the voluntary United Nations Guiding Principles on Business and Human Rights, an internationally acknowledged framework, which can contribute to preventing land grabbing.

## 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT – SUSTAINABLE DEVELOPMENT GOALS (SDG), 2016

(United Nations General Assembly 2015: A/RES/70/1)

## TARGETS AND INDICATORS PROMOTING LAND GOVERNANCE

| TARGET  | INDICATOR(S)   |
|---|--|
| <p>1.4 By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance</p> <p>2.3 By 2030, double the agricultural productivity and incomes of small-scale food producers, in particular women, Indigenous Peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment</p> | 1.4.2 Proportion of total adult population with secure tenure rights to land, with legally recognized documentation and who perceive their rights to land as secure, by sex and by type of tenure  |
| 5a Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws  | <p>5a.1. (a) Proportion of total agriculture population with ownership or secure rights over agricultural land, by sex; and (b) share of women among owners or right-bearers of agricultural land, by type of tenure</p> <p>5a.2. Proportion of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control</p> |
| 11.1. By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums  | 11.1.1. Proportion of urban population living in slums, informal settlements or inadequate housing   |
| 11.3 By 2030, enhance inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human settlement planning and management in all countries   | <p>11.3.1 Ratio of land consumption rate to population growth rate</p> <p>11.3.2 Proportion of cities with a direct participation structure of civil society in urban planning and management that operate regularly and democratically</p>  |
| 11.7 By 2030, provide universal access to safe, inclusive and accessible, green and public spaces, in particular for women and children, older persons and persons with disabilities  | 11.7.1 Average share of the built-up area of cities that is open space for public use for all, by sex, age and persons with disabilities.  |
| <p>11.b By 2020, substantially increase the number of cities and human settlements adopting and implementing integrated policies and plans towards inclusion, resource efficiency, mitigation and adaptation to climate change, resilience to disasters, and develop and implement, in line with the Sendai Framework for Disaster Risk Reduction 2015–2030, holistic disaster risk management at all levels</p>  | <p>11.b.1 Proportion of local governments that adopt and implement local disaster risk reduction strategies in line with the Sendai Framework for Disaster Risk Reduction 2015-2030.</p> <p>11.b.2 Number of countries with national and local disaster risk reduction strategies.</p>   |
| 12.2 By 2030, achieve the sustainable management and efficient use of natural resources   | 12.2.1 Material footprint, material footprint per capita, and material footprint per GDP   |

The following targets and indicators under goals 13 and 15 affect land governance, as they all affect land use planning.

### 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT – SUSTAINABLE DEVELOPMENT GOALS (SDG), 2016

(United Nations General Assembly 2015: A/RES/70/1)

|   |  |
|---|--|
| 13.b Promote mechanisms for raising capacity for effective climate change-related planning and management in least developed countries and small island developing states, including focusing on women, youth and local and marginalized communities. | 13.b.1 Number of least developed countries and small island developing states that are receiving specialized support, and amount of support, including finance, technology and capacity-building, for mechanisms for raising capacities for effective climate change-related planning and management, including focusing on women, youth and local and marginalized communities. |
| 15.3 By 2030, combat desertification, restore degraded land and soil, including land affected by desertification, drought and floods, and strive to achieve a land degradation-neutral world.   | 15.3.1 Proportion of land that is degraded over total land area.   |
| 15.4 By 2030, ensure the conservation of mountain ecosystems, including their biodiversity, in order to enhance their capacity to provide benefits that are essential for sustainable development   | 15.4.1 Coverage by protected areas of important sites for mountain biodiversity.<br>15.4.2 Mountain Green Cover Index.   |
| 15.5 Take urgent and significant action to reduce the degradation of natural habitats, halt the loss of biodiversity and, by 2020, protect and prevent the extinction of threatened species.  | 15.5.1 Red List Index  |
| 15.9 By 2020, integrate ecosystem and biodiversity values into national and local planning, development processes, poverty reduction strategies and accounts.   | 15.9.1 Progress towards national targets established in accordance with Aichi Biodiversity Target 2 of the Strategic Plan for Biodiversity 2011-2020.  |

**Additional targets relevant to (land) governance:** rule of law (16.3), promoting and enforcing non-discriminatory laws and policies for sustainable development (16b), policy and institutional coherence (17.14), multi-stakeholder partnership (17.17), developing effective, accountable and transparent institutions at all levels (16.16), responsive, inclusive, participatory and representative decision-making at all levels (16.7) and equal access to justice for all (16.3).

#### REMARKS

##### PARTICULARITIES:

For the first time, both key objectives of land governance – security of tenure and sustainable use of land – are explicitly included and addressed in detail in a global overall development agenda and that this agenda applies to all countries, including developing countries as well as high-income countries. Land governance, therefore, deserves to receive more attention by all governments – although their focus may be different.

##### STRENGTHS:

Although the SDGs are voluntary, they provide detailed indicators facilitating the monitoring of their implementation.

##### Weaknesses:

The framework may suffer from its voluntary nature, lack of finance (no specific financial mechanism), and the absence of baseline data for many targets / indicators.

##### CHALLENGES:

Agenda 2030 is criticized for including too many issues making it complex, time consuming and costly to implement. The challenge, from a land governance perspective, is to ensure that land-related issues will not be dropped during implementation. This requires continuous awareness raising on the crucial role of land (governance) in achieving many of the SDGs and support from the donor community (see Chapter 4).

##### RELATION TO OTHER FRAMEWORKS:

Agenda 2030 represents a kind of overall development framework. Many goals are dealt with in more detail in specific conventions or other frameworks. Under goal 13 (climate action), for instance, it is clearly stated that the United Nations Framework Convention on Climate Change is the primary international, intergovernmental forum for negotiating the global response to climate change. Goal 11 (sustainable cities and communities) has been specified by the New Urban Agenda, which in turn localized the Agenda 2030.

## United Nations Conference on Housing and Sustainable Urban Development: New Urban Agenda (NUA), 2016

(UN General Assembly 2016: A/CONF.226/4)

### DESCRIPTION OF THE FRAMEWORK

The New Urban Agenda, a comprehensive list of voluntary commitments, was adopted at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in 2016. By readdressing the way cities and human settlements are planned, designed, financed, developed, governed and managed, the New Urban Agenda reaffirms the global commitment to sustainable urban development as a critical step for realizing sustainable development in an integrated and coordinated manner at the global, regional, national, subnational and local levels, with the participation of all relevant actors. The implementation of the NUA contributes to the implementation and localization of the 2030 Agenda for Sustainable Development and to the achievement of the SDGs, including Goal 11 of making cities and human settlements inclusive, safe, resilient and sustainable.

### (KEY) PROVISIONS ON LAND (GOVERNANCE)

#### RIGHTS

- The NUA is grounded in the Universal Declaration of Human Rights.
- The vision includes the aim to achieve cities and human settlements where all people are able to enjoy equal right and opportunities, as well as their fundamental freedoms, guided by the purposes of the Charter of the United Nations, including full respect for international law.
- No specific right regarding access to or use of land is mentioned in the text.

#### Key principles and commitments

- The commitment to promote tenure security for all
- The principle of sustainable management and use of land

#### Additional commitments related to land governance

- Combating and preventing displacement, homelessness and arbitrary forced evictions,
- Recognizing the plurality of tenure types
- Providing equal access to adequate and affordable housing and serviced land
- Integrating informal settlements into the social, economic, cultural and political dimension of cities
- Preventing informal settlements
- Preventing land speculation
- Preserving and promoting the ecological and social function of land
- Prioritizing safe, inclusive, accessible, green and quality public spaces
- Preventing and containing urban sprawl
- Preventing unnecessary land-use change and the loss of productive land and fragile and important ecosystems
- Promoting accountable institutions that deal with land registration and governance, applying a transparent and sustainable management and use of land, property registration, and sound financial system
- Supporting local governments and relevant stakeholders, through a variety of mechanisms, in developing and using basic land inventory information, such as a cadastre, valuation and risk maps, as well as land and housing price records
- Supporting the effective use of public resources for affordable and sustainable housing, including land in central and consolidated areas of cities
- Supporting the use of legal land-based revenue and financing tools
- Promoting the development of adequate and enforceable regulations in the housing sector, including, as applicable, resilient building codes, standards, development permits, land use by-laws and ordinances, and planning regulations
- Promoting best practices to capture and share the increase in land and property value generated as a result of urban development processes, infrastructure projects, and public investments

**United Nations Conference on Housing and Sustainable Urban Development: New Urban Agenda (NUA), 2016**  
(UN General Assembly 2016: A/CONF.226/4)

KEY PARAGRAPHS DEALING WITH ASPECTS OF LAND GOVERNANCE

35. We commit to promote, at the appropriate level of government, including sub-national and local government, **increased security of tenure** for all, recognizing the plurality of tenure types, and to develop fit-for-purpose, and age-, gender- and environment-responsive solutions within the continuum of land and property rights, with particular attention to security of land tenure for women as key to their empowerment, including through effective administrative systems.
51. We commit ourselves to promoting the development of urban spatial frameworks, including urban planning and design instruments that support sustainable management and use of natural resources and land, appropriate compactness and density, polycentrism and mixed uses, through infill or planned urban extension strategies as applicable, to trigger economies of scale and agglomeration, strengthen food system planning, and enhance resource efficiency, urban resilience and environmental sustainability.
53. We commit ourselves to promoting safe, inclusive, accessible, green and quality public spaces as drivers of social and economic development, in order to sustainably leverage their potential to generate increased social and economic value, including property value, and to facilitate business and public and private investments and livelihood opportunities for all.
69. We commit to **preserve and promote the ecological and social function of land**, including coastal areas which support cities and human settlements, and foster ecosystem-based solutions to ensure sustainable consumption and production patterns; so that the ecosystem's regenerative capacity is not exceeded. We also commit to promote **sustainable land use**, combining urban extensions with adequate densities and compactness preventing and containing urban sprawl, as well as **preventing unnecessary land-use change** and the loss of productive land and fragile and important ecosystems.
97. We will promote planned urban extensions and infill, prioritizing renewal, regeneration and retrofitting of urban areas, as appropriate, including upgrading slums and informal settlements; providing high-quality buildings and public spaces; promoting integrated and participatory approaches involving all relevant stakeholders and inhabitants; and avoiding spatial and socioeconomic segregation and gentrification, while preserving cultural heritage and preventing and containing urban sprawl.
104. We will promote **compliance with legal requirements** through strong inclusive management frameworks and **accountable institutions that deal with land registration and governance, applying a transparent and sustainable management and use of land, property registration** and sound financial system. We will support local governments and relevant stakeholders, through a variety of mechanisms, in developing and using basic **land inventory** information, such as a cadastre, valuation and risk maps, as well as land and housing price records to generate the high-quality, timely and reliable disaggregated data by income, sex, age, race, ethnicity, migration status, disability, geographic location and other characteristics relevant in a national context, needed to assess changes in land values, while ensuring that these data will not be used for discriminatory policies on land use.
106. We will promote housing policies based on the principles of social inclusion, economic effectiveness and environmental protection. We will support **the effective use of public resources for affordable and sustainable housing, including land** in central and consolidated areas of cities with adequate infrastructure, and encourage mixed-income development to promote social inclusion and cohesion.
107. We will encourage the development of policies, tools, mechanisms and financing models promoting access to a wide range of affordable, sustainable housing options, including **rental and other tenure options**, as well as **cooperative solutions such as co-housing, community land trusts and other forms of collective tenure** that would address the evolving needs of people and communities, in order to improve the supply of housing (especially for low-income groups), **prevent segregation and arbitrary forced evictions and displacements**, and provide dignified and adequate reallocation. This will include support to incremental housing and self-build schemes, with special attention to programmes for upgrading slums and informal settlements.
111. We will promote the development of **adequate and enforceable regulations** in the housing sector, including, as applicable, resilient building codes, standards, development permits, land-use by-laws and ordinances, and planning regulations, **combating and preventing speculation, displacement, homelessness and arbitrary forced evictions**, ensuring sustainability, quality, affordability, health, safety, accessibility, energy and resource efficiency, and resilience.

## United Nations Conference on Housing and Sustainable Urban Development: New Urban Agenda (NUA), 2016

(UN General Assembly 2016: A/CONF.226/4)

137. We will promote best practices to **capture and share the increase in land and property value** generated as a result of urban development processes, infrastructure projects and public investments. Measures could be put in place, as appropriate, to prevent its solely private capture as well as land and real estate speculations, such as gains-related fiscal policies. We will reinforce the link among fiscal systems, urban planning, as well as urban management tools, including land market regulations. We will work to ensure that efforts to generate land-based finance do not result in unsustainable land use and consumption.

### OTHER RELEVANT PROVISIONS

In addition to directly addressing land issues, the New Urban Agenda highlights the importance of key principles for sustainable development that are also indispensable for land governance, such as:

- respect, protection and promotion of human rights and the enjoyment of fundamental freedoms,
- non-discrimination, equal rights and opportunities for all, gender equality and gender responsiveness,
- public participation, dialogue, inclusiveness, social cohesion, solidarity - especially with those who are the poorest and most vulnerable, social and intergenerational interactions, civic engagement, partnerships between government and civil society,
- transparency and accountability, and
- sustainable, people-centred, age- and gender-responsive and integrated approaches.

### REMARKS

#### PARTICULARITIES:

The New Urban Agenda recognizes the central role of land for the development of cities and human settlements by envisaging in its vision that cities and human settlements fulfil the social and ecological function of land.

#### STRENGTHS:

The New Urban Agenda addresses the four core elements of responsible land governance: secure tenure rights to land, sustainable land use, generation and redistribution of land-based finance and realization of human rights and additional good governance principles in the land sector (cross-cutting issue).

#### WEAKNESSES:

The framework may suffer from its voluntary nature, lack of adequate finance (no specific financial mechanism) and lack of specific (measurable) targets.

#### CHALLENGES:

A challenge will be to derive specific measures, e.g. in regard to land governance, from the New Urban Agenda as it is rather general. On the other hand, this offers a lot of opportunities to include a broad range of activities. Tools and approaches are known, but their dissemination and implementation constitutes a challenge.

#### RELATION TO OTHER FRAMEWORKS:

After the Vancouver Declaration and Action Plan (1976) and the Habitat Agenda (1996), the New Urban Agenda is readdressing the way cities and human settlements are planned, designed, financed, developed, governed and managed.

The New Urban Agenda is grounded in the Universal Declaration of Human Rights and international human rights treaties.

The implementation of the New Urban Agenda contributes to the implementation and localization of the 2030 Agenda for Sustainable Development in an integrated manner, and to the achievement of the Sustainable Development Goals.

The New Urban Agenda takes account of many recent as well as some additional fundamental frameworks: „We take full account of the milestone achievements of the year 2015, in particular the 2030 Agenda for Sustainable Development, including the Sustainable Development Goals, the Addis Ababa Action Agenda of the third International Conference on Financing for Development, the Paris Agreement adopted under the United Nations Framework Convention on Climate Change, the Sendai Framework for Disaster Risk Reduction for the period 2015–2030, the Vienna Programme of Action for Landlocked Developing Countries for the Decade 2014–2024, the Small Island Developing States Accelerated Modalities of Action Pathway and the Istanbul Programme of Action for the Least Developed Countries for the Decade 2011–2020. We also take account of the Rio Declaration on Environment and Development, the World Summit on Sustainable Development, the World Summit for Social Development, the Programme of Action of the International Conference on Population and Development, the Beijing Platform for Action, the United Nations Conference on Sustainable Development and the follow-up to these conferences“ (NUA para 6).



Opening of the Second World Assembly of Local and Regional Governments during the Habitat III Conference in Quito, Ecuador. Photo @ UN-Habitat/ Julius Mwelu

### 2.3.2 Specific frameworks dealing exclusively/comprehensively with land governance

#### Committee on World Food Security / FAO: the Voluntary Guidelines on the Responsible Governance of Tenure of Land in the Context of National Food Security (VGGT), 2012

##### DESCRIPTION OF THE FRAMEWORK

Endorsed by the Committee on World Food Security (CFS) on 11 May 2012, the VGGT are an unprecedented international soft-law instrument in the area of tenure. 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.

The VGGT promote responsible governance of tenure of land, fisheries and forests, with respect to all forms of tenure: public, private, communal, indigenous, customary, and informal. The VGGT are meant to benefit all people in all countries, although there is an emphasis on vulnerable and marginalized people. The VGGT serve as a reference and set out principles and internationally accepted standards for practices for the responsible governance of tenure. They provide a framework that states can use when developing their own strategies, policies, legislation, programmes and activities. They allow governments, civil society, the private sector and citizens to judge whether their proposed actions and the actions of others constitute acceptable practices (FAO, 2012).

##### (KEY) PROVISIONS ON LAND (GOVERNANCE)

###### RIGHTS

- ❑ The document introduces the term/concept of "legitimate tenure rights" that the state should recognize, respect and safeguard and which private sector has a responsibility to respect.
- ❑ The VGGT are a human rights-based instrument linked to United Nations' principles on business and human rights.

###### GENERAL PRINCIPLES

###### 1.1 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.

**Committee on World Food Security / FAO: the Voluntary Guidelines on the Responsible Governance of Tenure of Land in the Context of National Food Security (VGGT), 2012**

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 in 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.

#### IMPLEMENTATION PRINCIPLES

- Human dignity
- Non-discrimination
- Equity and justice
- Gender equality
- Holistic and sustainable approach
- Active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes
- Rule of law
- Transparency
- Accountability
- Continuous improvement

#### DETAILED PROVISIONS ON INDIVIDUAL ASPECTS OF LAND GOVERNANCE

Each chapter of the VGGT provides guidance on a specific aspect of land governance clustered in the following five parts:

1. General matters
  - Rights and responsibilities related to tenure
  - Policy, legal and organizational frameworks
  - Delivery of services
2. Legal recognition and allocation of tenure rights and duties
  - Safeguards
  - Public land, fisheries and forests
  - Indigenous Peoples and other communities with customary tenure systems
  - Informal tenure

**Committee on World Food Security / FAO: the Voluntary Guidelines on the Responsible Governance of Tenure of Land in the Context of National Food Security (VGGT), 2012**

3. Transfers and others changes to tenure rights and duties

- Markets
- Investments
- Land consolidation and other readjustment approaches
- Restitution
- Redistributive reforms
- Expropriation and compensation

4. Administration of tenure

- Records of tenure rights
- Valuation
- Taxation
- Regulated spatial planning
- Resolution of disputes over tenure rights
- Transboundary matters

5. Responses to climate change and emergencies

- Climate change
- Natural disasters
- Conflict in respect to tenure of land, fisheries and forests

A particular strength of the VGGT is their explicit reference to corruption as a cause of land conflict and the demand on governments to “prevent corruption in all forms, at all levels, and in all settings”.

REMARKS

**PARTICULARITIES:**

The VGGT are an unprecedented international soft-law instrument in the area of tenure. There is and never was any other framework dealing in such detail with land governance issues. They receive broad support equally from governments and civil society organizations due to the extensive inclusion of both in their development and negotiations.

**STRENGTHS:**

The strengths of the VGGT are their clear principles and the detailed provisions on all land tenure-related issues. They are also strong in identifying states’ duties and other actors’, including business enterprises’, responsibilities.

**WEAKNESSES:**

The framework may suffer from its voluntary nature.

**CHALLENGES:**

A major challenge is that states have to be self-critical and allow for broad public participation to implement or apply the VGGT in their country as the implementation/application requires the introduction of a national multi-stakeholder platform analysing the status quo and deriving measures for improvement.

**RELATION TO OTHER FRAMEWORKS:**

The VGGT build on and support the FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.

The responsibilities of business enterprises are derived from the United Nations Principles on Business and Human Rights.

During its development, the Framework and Guidelines on Land Policy in Africa (see below) has been taken into consideration to ensure consistency.



Women and girls selling their agricultural produce in Vietnam. Photo @ Muhibuddin Usamaha

#### AU-AfDB-UNECA Framework and Guidelines on Land Policy in Africa, 2010

##### DESCRIPTION OF THE FRAMEWORK

These Framework and Guidelines (F&G), a joint product of African Union Commission, the United Nations Economic Commission for Africa and the African Development Bank based on rigorous consultations and exemplary collaboration across the continent, provide guidance on why and how to develop and implement a land policy and monitor its implementation. It reflects a consensus on land issues; and serves as a basis for commitment of African governments in land policy formulation and implementation and a foundation for popular participation in improved land governance. Its other fundamental purpose is to engage development partners in resource mobilization and capacity building in support of land policy development and implementation in Africa.

##### (KEY) PROVISIONS ON LAND (GOVERNANCE)

The Framework and Guidelines take as a starting point the understanding that land is central to sustainable livelihoods in Africa and that the process of allocation and enjoyment of land rights is closely linked to human rights.

Recommendations (Chapter 3 – land in the national development process):

- Recognizing the centrality of land in development
  - Demonstrating commitment to land policy development

**AU-AfDB-UNECA Framework and Guidelines on Land Policy in Africa, 2010**

- Integrating land issues into decision-making processes
- Acknowledging the legitimacy of indigenous land rights systems
- Strengthening the land rights of women
- ❑ Mainstreaming land in poverty reduction programmes
  - Enhancing access to land through tenure reform
  - Balancing pro-poor priorities with market orientation
- ❑ Making agriculture an engine of growth
  - Creating an enabling environment for agriculture through improvements in the land sector
  - Clarifying property rights in agriculture
  - Promoting the development of land rights transfer systems and markets
- ❑ Managing land for other uses (manufacturing, mining, energy development, infrastructure in rural areas, sustainable urbanization, tourism)
- ❑ Protecting national resources and ecosystems (forests and associated ecosystems, coastal and marine ecosystems, grasslands and pastoral ecosystems, water resources)
- ❑ Developing effective land administration systems
  - Reform of land rights delivery systems
  - Reform of land governance institutions
- ❑ This chapter is followed by detailed guidance on:
  - The process of land policy development (Chapter 4)
  - Land policy implementation (Chapter 5)
  - Tracking progress in land policy development and implementation (Chapter 6)

**REMARKS****PARTICULARITIES:**

Africa is the only region that has developed a specific framework (through the African Union) particularly focusing on the role of land in development and providing guidance on land policy.

**STRENGTHS:**

The F&G highlight the centrality of land for sustainable development in Africa.

The F&G provide detailed guidance on land policy development and implementation.

The F&G provide additional recommendations on how to set up a functioning land sector, respectively effective land governance.

**WEAKNESSES:**

A potential weakness is the voluntary nature of the F&G.

**CHALLENGES:**

The main challenges are the creation of the political will, the mobilization of finance and the development of capacities to apply the F&G in all African countries.

**RELATION TO OTHER FRAMEWORKS:**

The F&G have been taken into consideration when developing the VGGT (see above) to avoid contradiction between the two frameworks.

Based on the F&G, the Guiding Principles on Large-Scale Land-Based Investments (see below) have been developed by the same consortium (AU, AfDB and UNECA).

## AU-AfDB-UNECA Guiding Principles on Large-Scale Land-Based Investments in Africa, 2014

### DESCRIPTION OF THE FRAMEWORK

These Guiding Principles on LSLBI serve to facilitate the implementation of the AU Declaration on Land Issues and Challenges in Africa and the Comprehensive Africa Development Programme (CAADP) and the Nairobi Plan of Action by providing policy direction and guidance to inform LSLBI in African agriculture. As such, the Guiding Principles are a basis for commitment, solidarity and collective responsibility by governments, other stakeholders and investors to improve the governance of large-scale land-based agricultural investments in Africa.

Specifically, the objectives of the Guiding Principles on LSLBI are to: a) guide decision making on LSLBI in recognition of the fact that LSLBI may not always be the most appropriate form of investment; b) provide AU Member States and other stakeholders with direction on how to realize investments in land which are sustainable and beneficial to African economies and people; c) create a basis for effective coordination, cooperation and collective responsibility amongst AU Member States and other stakeholders to ensure improved land governance in the context of LSLBI; d) provide investors with a tool to inform their engagement with African governments, bodies responsible for decentralized decision making on land governance (such as municipalities), traditional authorities and other actors to ensure responsible land investments; e) to provide a basis for developing a monitoring and evaluation framework to track LSLBI in Africa with a view to facilitating learning and review of LSLBI; f) provide a basis for review of existing LSLBI contracts.

#### THE FUNDAMENTAL PRINCIPLES ARE AS FOLLOWS:

1. LSLBI respect human rights of communities, contribute to the responsible governance of land and land-based resources, including respecting customary land rights and are conducted in compliance with the rule of law.
2. Decisions on LSLBI are guided by a national strategy for sustainable agricultural development which recognizes the strategic importance of African agricultural land and the role of smallholder farmers in achieving food security, poverty reduction and economic growth.
3. Decisions on LSLBI and their implementation are based on good governance, including transparency, subsidiarity, inclusiveness, prior informed participation and social acceptance of affected communities.
4. LSLBI respect the land rights of women, recognize their voice, generate meaningful opportunities for women alongside men, and do not exacerbate the marginalization of women.
5. Decisions on the desirability and feasibility of LSLBI are made based on independent, holistic assessment of the economic, financial, social and environmental costs and benefits associated with the proposed investment, throughout the lifetime of the investment.
6. Member States uphold high standards of cooperation, collaboration and mutual accountability to ensure that LSLBI are beneficial to African economies and their people.

#### 19 PRINCIPLES:

1. LSLBI respect the existing, customarily-defined rights of local people and communities to land and land-related resources.
2. People who lose access to or ownership of land and land-related resources and benefits due to LSLBI are awarded compensation, which is fair and timely in compliance with existing national laws and relevant international instruments.
3. Member States establish and maintain a legislative environment and institutional arrangement to govern LSLBI and to protect the rights of relevant stakeholders.
4. Member States have the responsibility to promote transparency of all parties throughout the investment process.
5. Preferred LSLBI are those which lead to shared prosperity at local and national levels, take issues of inter-generational equity into consideration and do not necessarily require transfers of lands from local communities.
6. Effective and decentralized land administration systems are a prerequisite for good governance of LSLBI.
7. LSLBI do not contribute to unplanned and unregulated conversion of agricultural lands to different uses.
8. Effective, transparent and well-resourced mechanisms for prevention and settlement of land disputes and corruption contribute to improved governance of LSLBI.
9. Stakeholders affected by LSLBI, communities in particular are provided sufficient information, consulted on their views prior to finalizing LSLBI agreements and these views are taken into consideration.
10. Developing the capacity of communities, in particular women, to negotiate benefits, compensation and other terms of agreements, with state agencies and investors is a prerequisite for good governance of LSLBI.
11. Promoting gender equality in land governance in national laws is a prerequisite for ensuring that LSLBI promote sustainable development.
12. LSLBI observe and respect women's equal rights to own, access, control and use land as the case may be under different tenure regimes.

**AU-AfDB-UNECA Guiding Principles on Large-Scale Land-Based Investments in Africa, 2014**

13. LSLBI contribute to sustainable development through gender-sensitive employment creation and broad-based wealth creation, which benefits women.
14. LSLBI are commercially viable and profitable businesses, structured to provide maximum benefit to the national economy and improve livelihoods of local communities.
15. Results of rigorous, holistic and independent environmental and social impact assessments of LSLBI are used to confirm the desirability of LSLBI prior to their approval.
16. The amount of land allocated for an LSLBI project is increased gradually based on the demonstrated capacities of the investors to effectively use more land.
17. Stakeholders in LSLBI at country, regional, continental and international levels demonstrate solidarity, cooperation, collective responsibility and mutual accountability towards the successful implementation of these Guiding Principles.
18. The AU develops and implements an M&E framework and associated standardized indicators as a tool for lesson learning and ultimately for the improvement of the effectiveness of LSLBI.
19. Member States improve benefits and minimize impacts of LSLBI through sharing of experiences across countries, regions and continents.

**OTHER RELEVANT PROVISIONS**

The application of above principles requires:

- investments to be informed by and contribute to development strategies and priorities espoused by AU Member States;
- existence of land policies and other legal and institutional arrangements which engender good and accountable governance of land and related resources;
- an unwavering commitment to safeguarding the rights and interests of communities (with an emphasis on women) through equity and transparency in all processes and considerations;
- a commitment to developing the required capacities at all levels for engagement in processes relating to the development, implementation, monitoring and review of investments;
- collective action from states, non-state actors and the private sector;
- coherence at country level in the implementation of the Guiding Principles alongside other frameworks and sources of guidance such as SDGs, VGGT and CFS-RAI.

**REMARKS****PARTICULARITIES:**

The only regional framework fighting agricultural land grabbing. No other region disposes of such a common framework.

**STRENGTHS:**

The principles promote human rights as well as good governance principles.

The principles acknowledge the strategic importance of African agricultural land and the important role of smallholder farmers in achieving food security, poverty reduction and economic growth.

The principles give very clear guidance in form of principles on how to ensure that large-scale investments on agricultural land are responsible.

**WEAKNESSES:**

A potential weakness is the voluntary nature of the Guiding Principles on LSLBI in Africa.

**CHALLENGES:**

The main challenges are the creation of political will, the mobilization of finance and the development of capacities to apply the Guiding Principles on LSLBI in all African countries.

**RELATION TO OTHER FRAMEWORKS:**

The Guiding Principles on LSLBI serve to facilitate the implementation of the AU Declaration on Land Issues and Challenges in Africa and the Comprehensive Africa Development Program (CAADP) and the Nairobi Plan of Action by providing policy direction and guidance to inform LSLBI in African agriculture.

**ADDITIONAL REMARK:**

These guiding principles only apply to African countries. Other regions, however, can refer to VGGT Chapter 12, which provide similar guidance, and the "set of minimum principles and measures to address the human rights challenge" elaborated by the Human Rights Council in 2009, which insist in principle 2 that any shift in land use can only take place with the free, prior and informed consent of the local communities concerned.

## 2.4 OTHER SELECTED FRAMEWORKS

Although all frameworks presented under 2.2 are relevant and are useful to be referred to in a certain situation, there are some that deserve particular attention as they stress particular land governance aspects that are not or only marginally referred to in the recent key frameworks presented and discussed under 2.3. These frameworks can be distinguished in two sets:

a) Frameworks that include important provisions on land governance (Declaration on the Rights of Indigenous Peoples, Pinheiro Principles, Sendai Framework, Resolution GC 23/17 of the UN-Habitat Governing Council)

b) Frameworks that require land governance without mentioning it (COP 21 Paris Agreement, Aichi Biodiversity Framework)

A closer look at the second set of frameworks is necessary to gain a better understanding of the global development agenda and how it deals with land (governance). It is striking to see that frameworks dealing with development objectives that to a significant degree depend on sustainable use and management of land as well as secure tenure rights do not address these issues (sufficiently/explicitly).

The frameworks are presented according to the same structure as those under 2.3.

### 2.4.1 FRAMEWORKS THAT INCLUDE IMPORTANT PROVISIONS ON LAND GOVERNANCE

#### UN Declaration on the Rights of Indigenous Peoples, 2007

##### DESCRIPTION OF THE FRAMEWORK

The Declaration on the Rights of Indigenous Peoples constitutes an important step forward for the recognition, promotion and protection of the rights and freedoms of Indigenous Peoples by proclaiming that "Indigenous Peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law" (art. 1).

##### (KEY) PROVISIONS ON LAND AND APPROACHES HANDLING LAND

Land governance issues are dealt with in detail in a significant amount of articles.

- ❑ Art. 8, para 2: States shall provide effective mechanisms for prevention of, and redress for: (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- ❑ Art. 10: Indigenous Peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the Indigenous Peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.
- ❑ Art. 26: 1. Indigenous Peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous Peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous Peoples concerned.
- ❑ Art. 27: States shall establish and implement, in conjunction with Indigenous Peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to Indigenous Peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of Indigenous Peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous Peoples shall have the right to participate in this process.

## UN Declaration on the Rights of Indigenous Peoples, 2007

- ❑ Art. 28: 1. Indigenous Peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. 2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.
- ❑ Art. 29: 1. Indigenous Peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for Indigenous Peoples for such conservation and protection, without discrimination. 2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of Indigenous Peoples without their free, prior and informed consent.
- ❑ Art. 32: 1. Indigenous Peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. 2. States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

### REMARKS

#### PARTICULARITIES:

This 2007 declaration as well as the ILO Indigenous and Tribal Peoples Convention C169 from 1989 are the most important frameworks dealing with the rights of Indigenous People concerning the ownership of, access to, use, management and control of land.

#### STRENGTHS:

UN Declaration on the Rights of Indigenous Peoples introduces the principle of free, prior and informed consent of Indigenous People in the context of land governance.

#### WEAKNESSES:

The declaration is not legally binding. The ILO Convention C169, including certain elements of the declaration, however is legally binding – for those 22 states that ratified it.

#### CHALLENGES:

A major challenge is to create the political will to apply the declaration at country level and to overcome resistance from powerful sector ministries, such as the one responsible for mining.

#### RELATION TO OTHER FRAMEWORKS:

Declaration on the Rights of Indigenous Peoples builds on ILO Convention C 169 called Indigenous and Tribal Peoples Convention, 1989 (ratified by 22 countries), which revised a previous ILO convention with the same title from 1957. Whereas the 1957 convention favoured the assimilation approach, the 1989 convention stresses the rights of Indigenous People to decide their own priorities for the process of development (different from the declaration, the term “self-determination” is not included). No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned. The convention also states that indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The Convention has a major part specifically on land, which includes many provisions of the 2007 Declaration, but not FPIC (although the concept is there - but not the term!).

The ILO Indigenous and Tribal Peoples Convention of 1989 is the major binding international convention concerning *indigenous peoples*, and a forerunner of the *Declaration on the Rights of Indigenous Peoples*. The ILO 169 convention is the most important operative international law guaranteeing the rights of Indigenous Peoples.

The Declaration on the Rights of Indigenous Peoples, however, goes beyond the convention – in general as well as in regard to land governance.



Andean locals milk a cow in Baja, Altiplano, Bolivia. Photo @ United Nations/ Jeffrey Foxx

**Principles on Housing and Property Restitution for Refugees and Displaced Persons by Special Rapporteur Paulo Sergio Pinheiro (Pinheiro Principles), UN Economic and Social Council, 2005**

#### DESCRIPTION OF THE FRAMEWORK

The Pinheiro Principles, are designed to assist all relevant actors, national and international, in addressing the legal and technical issues surrounding housing, land and property restitution in situations where displacement has led to people being arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence.

The principles apply equally to all refugees, internally displaced persons and to other similarly situated displaced persons who fled across national borders but who may not meet the legal definition of refugee (hereinafter "refugees and displaced persons") who were arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence, regardless of the nature or circumstances by which displacement originally occurred.

#### (KEY) PROVISIONS ON LAND AND APPROACHES HANDLING LAND

##### RIGHTS RELATED TO LAND (GOVERNANCE) MENTIONED IN THE PINHEIRO PRINCIPLES

- The right to housing and property restitution
- The right to non-discrimination
- The right to equality between men and women
- The right to be protected from displacement
- The right to privacy and respect for the home
- The right to peaceful enjoyment of possessions
- The right to adequate housing
- The right to freedom of movement
- The right to voluntary return in safety and dignity
- The right to full and effective compensation

##### PRINCIPLES

- Accessibility of restitution claims procedures
- Adequate consultation and participation in decision-making

**Principles on Housing and Property Restitution for Refugees and Displaced Persons by Special Rapporteur Paulo Sergio Pinheiro (Pinheiro Principles), UN Economic and Social Council, 2005**

- Housing, land and property record and documentation
- Recognizing the rights of tenants, social-occupancy rights holders and other legitimate occupants or users of housing, land and property within restitution programmes
- Protection of secondary occupants against arbitrary or unlawful forced evictions
- Legal recognition of above mentioned rights
- Prohibition of arbitrary and discriminatory laws
- Enforcement of restitution decisions and judgements

#### REMARKS

Although the Pinheiro Principles are not legally binding, they are based on firmly established human rights. They represent the most comprehensive framework on this issue

#### PARTICULARITIES:

It is the only framework dealing with land issues that stresses the interrelation between land governance and human rights in such detail, listing all relevant human rights and elaborating on them. It is also the only framework that deals in such detail and absolute clarity with the rights to housing and land of refugees and displaced persons who were arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence, regardless of the nature or circumstances by which displacement originally occurred.

#### STRENGTHS:

The main strength is the reference to ten human rights on which the framework is based.

#### WEAKNESSES:

A potential weakness is the voluntary nature of the framework. However, different from most other frameworks, the Pinheiro Principles are more explicitly based on firmly established human rights, which might make them slightly more powerful.

#### CHALLENGES:

The main challenges are the creation of the necessary political will to apply the Pinheiro Principles and to implement them in the usual chaos, instability and institutional vacuum of post-conflict situations.

#### RELATION TO OTHER FRAMEWORKS:

There is clear reference to many human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.



**Poor, women and vulnerable groups are disproportionately affected by the continuing conflict in Somalia.**

Photo @ United Nations / Tobin Jones

### Sendai Framework for Disaster Risk Reduction, 2015-2030

#### DESCRIPTION OF THE FRAMEWORK

The Sendai Framework for Disaster Risk Reduction 2015-2030 was adopted at the Third UN World Conference on Disaster Risk Reduction in Sendai in 2015. It is the outcome of stakeholder consultations initiated in 2012 and inter-governmental negotiations in 2014-15 supported by the UN Office of Disaster Risk Reduction at the request of the UN General Assembly.

The Sendai Framework aims to achieve the substantial reduction of disaster risk and losses in lives, livelihoods and health and in the economic, physical, social, cultural and environmental assets of persons, businesses, communities and countries.

#### (KEY) PROVISIONS ON LAND AND APPROACHES HANDLING LAND

The following land issues have been identified as underlying disaster risk drivers:

Unplanned and rapid urbanization, poor land management and unsustainable use of natural resources.

The following land governance issues have been identified to be crucial for disaster risk reduction:

- ❑ It is important to encourage the establishment of necessary mechanisms and incentives to ensure high levels of compliance with the existing safety-enhancing provisions of sectoral laws and regulations, including those addressing land-use and urban planning, building codes, environmental and resource management and health and safety standards, and update them, where needed, to ensure an adequate focus on disaster risk management (27 (d)).
- ❑ It is important to promote the mainstreaming of disaster risk assessments into land-use policy development and implementation, including urban planning, land degradation assessments and informal and non-permanent housing, and the use of guidelines and follow-up tools informed by anticipated demographic and environmental changes (30 (f)).
- ❑ It is important to promote the incorporation of disaster risk management into post-disaster recovery and rehabilitation processes, facilitate the link between relief rehabilitation and development, use opportunities during the recovery phase to develop capacities that reduce disaster risk in the short, medium and long term, including through the development of measures such as land-use planning [...] (33(j))
- ❑ It is important to develop guidance for preparedness for disaster reconstruction, such as on land-use planning and structural standards improvement [...] (33(k)).

#### REMARKS

##### PARTICULARITIES:

Poor land management and unsustainable use of natural resources has clearly been identified as a driver of disaster risk and thereby as major barrier to sustainable development.

##### STRENGTHS:

The Sendai Framework highlights the crucial role of land-use planning in disaster risk assessment, disaster preparedness and post-disaster recovery and rehabilitation.

##### WEAKNESSES:

The provisions remain rather general and do not provide specific guidance on how to realize them.

The Sendai Framework is not legally binding.

##### CHALLENGES:

A challenge is to ensure that land-use planners / urban planners are well familiar with disaster risk reduction issues that they understand and accept that disaster risk reduction has to be part of their tasks and to qualify them accordingly.

##### RELATION TO OTHER FRAMEWORKS:

The New Urban Agenda refers to the Sendai Framework (NUA para 6 and 77). NUA recognizes the linkages between sustainable urbanization and disaster risk reduction (NUA para 77 and 165) and stresses the role of sustainable management of natural resources (of which land is part), urban and territorial planning in disaster risk reduction (NUA para 65 and 101). The Sendai Framework provides more detailed guidance on this issue and thereby constitutes a valuable supplement.

The Sendai Framework does not refer to the VGGT. Nevertheless, those provide the following statement on the issue that could be read in conjunction with the Sendai Framework: "All parties should ensure that tenure aspects of land, fisheries and forests are addressed when prevention and preparing for natural disasters and in their responses to them. Regulatory frameworks for tenure, including spatial planning, should be designed to avoid or minimize the potential impacts of natural disasters" (VGGT 24.1).

**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, 2011**

## DESCRIPTION OF THE FRAMEWORK

Resolution GC 23/17 was adopted in 2011 and includes an entire section on land issues addressing effective land governance frameworks. Most issues have been incorporated into the New Urban Agenda. However, the language of Resolution GC 23/17 is sometimes easier to understand.

## (KEY) PROVISIONS ON LAND (GOVERNANCE)

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.

**Extract from Resolution GC 23/17 of the UN-Habitat Governing Council**

"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."

## REMARKS

**PARTICULARITIES:**

Resolution GC 23/17 documents UN-Habitat's commitment to urban land governance, including all four relevant aspects: ensuring tenure security, achieving sustainable land use, generating land-based finance for pro-poor development and promoting responsible governance.

**STRENGTHS:**

Resolution GC 23/17 reflects most of the key GLTN land concepts.

**WEAKNESSES:**

The resolution is not legally binding. It has the character of recommendations.

**CHALLENGES:**

A challenge is to translate these general recommendations into specific actions.

**RELATION TO OTHER FRAMEWORKS:**

All issues have been addressed by the New Urban Agenda. Some issues have been shortened and/or modified in the NUA; some are difficult to understand. Here, the Resolution GC 23/17 helps understanding the issue. Take for example NUA para 35 (see 2.3.1) and GC 23/17 para 7(b).

## 2.4.2 FRAMEWORKS THAT REQUIRE LAND GOVERNANCE WITHOUT MENTIONING IT

### United Nations Framework Convention on Climate Change (UNFCCC), COP 21 Paris Agreement, 2015

#### DESCRIPTION OF THE FRAMEWORK

The Paris Agreement under the UN Framework Convention on Climate Change is the latest document / protocol of the UNFCCC, which is the primary international, intergovernmental forum for negotiating the global response to climate change.

The Paris Agreement does not address land or land governance directly, but it includes actions that require land governance activities.

#### (KEY) PROVISIONS ON LAND (GOVERNANCE)

None. [Neither the term "land" nor "tenure" appears in the document.]

#### OTHER RELEVANT PROVISIONS

Article 5 addresses mitigation measures such as actions to conserve and enhance sinks and reservoirs of greenhouse gases and reducing emissions from deforestation and forest degradation. Such measures would greatly benefit from participatory land use planning to identify the most suited locations for it and to ensure that they do no harm to local communities but on the contrary contribute to the improvement of their livelihoods.

Article 7 addresses adaptation measures such as enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change. Sustainable management of natural resources is explicitly mentioned under building resilience. Therefore, planning for the sustainable use of land has to be part of any adaptation measures. Article 7 provides some more guidance on how adaptation actions should be done, e.g. country-driven, gender-responsive, participatory and fully transparent.

#### REMARKS

#### PARTICULARITIES:

Without referring to land-use planning, the Paris Agreement imposes conditions on land-use planning, namely to ensure that planned uses contribute to climate change mitigation and adaptation as much as possible.

#### STRENGTHS:

The Paris Agreement is legally binding for all Parties of the Convention on Climate Change who signed/ratified it.

#### WEAKNESSES:

Although land governance, in particular land-use planning, plays a central role in climate change mitigation and adaptation, the Paris Agreement does not mention it.

#### CHALLENGES:

A challenge is to create awareness on the role of land governance in climate change mitigation and adaptation among experts and politicians dealing with climate change policies.

#### RELATION TO OTHER FRAMEWORKS:

The New Urban Agenda take account of the Paris Agreement under the United Nations Framework Convention on Climate Change (NUA para 6 and 79).

**United Nations Convention on Biodiversity, Aichi Biodiversity Targets, 2011-2020****DESCRIPTION OF THE FRAMEWORK**

The Convention on Biological Diversity (CBD) entered into force on 29 December 1993. It has three objectives: 1. The conservation of biological diversity, 2. The sustainable use of the components of biological diversity, and 3. The fair and equitable sharing of the benefits arising out of the utilization of genetic resources. It is objective 1 and 2 that would benefit from effective land-use planning.

The Strategic Plan for Biodiversity 2011-2020 is a ten-year framework for action by all countries and stakeholders – not only the parties of the UN CBD – to save biodiversity and enhance its benefits for people. The Strategic Plan is comprised of a shared vision, a mission, strategic goals and 20 ambitious yet achievable targets, collectively known as the Aichi Targets. The Strategic Plan serves as a flexible framework for the establishment of national and regional targets and it promotes the coherent and effective implementation of the three objectives of the Convention on Biological Diversity.

The Aichi targets provide guidance on the content of land-use planning and the way it should be conducted.

**(KEY) PROVISIONS ON LAND AND APPROACHES HANDLING LAND**

Aichi targets indirectly addressing land governance issues:

- Target 2: By 2020, at the latest, biodiversity values have been integrated into national and local development and poverty reduction strategies and planning processes and are being incorporated into national accounting, as appropriate, and reporting systems.

Aichi targets requiring land governance, in particular land-use planning, or having an impact on it:

- Target 5: By 2020, the rate of loss of all natural habitats, including forests, is at least halved and where feasible brought close to zero, and degradation and fragmentation is significantly reduced.
- Target 12: By 2020 the extinction of known threatened species has been prevented and their conservation status, particularly of those most in decline, has been improved and sustained.
- Target 15: By 2020, ecosystems resilience and the contribution of biodiversity to carbon stocks has been enhanced, through conservation and restoration, including restoration of at least 15 per cent of degraded ecosystems, thereby contributing to climate change mitigation and adaptation and to combating desertification.
- Target 18: By 2020, the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the convention with the full and effective participation of indigenous and local communities, at all relevant levels.

**REMARKS****PARTICULARITIES:**

The Aichi targets are the most recent agreement regarding biodiversity and therefore provide good guidance on how biodiversity experts see the role of land governance. It is striking that although land-use planning seems to play an important role in the protection of biodiversity, it is only indirectly addressed. Land tenure issues are not tackled at all.

**STRENGTHS:**

The framework provides very clear and ambitious targets.

**WEAKNESSES:**

It remains open how the targets are supposed to be achieved.

**CHALLENGES:**

Challenges are the creation of the necessary political will, the translation of the targets into feasible measures and the financing of its implementation.

**RELATION TO OTHER FRAMEWORKS:**

Reverence is made to the achievement of the Millennium Development Goals.



**Coastal areas are highly vulnerable to climate change. Port Moresby, Papua New Guinea.**

Photo © UN-Habitat / Bernhard Barth

COMPARATIVE  
ANALYSIS OF HOW  
LAND (GOVERNANCE)  
IS TREATED IN THE NEW  
DEVELOPMENT AGENDA

### 3.1 SIMILARITIES, DIFFERENCES AND COMPLEMENTARITIES OF THE KEY FRAMEWORKS

The following frameworks have been identified as key frameworks for land issues under the new development agenda:

- ❑ The 2030 Agenda for Sustainable Development (SDG)
- ❑ The New Urban Agenda (NUA)
- ❑ The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)
- ❑ The Framework and Guidelines on Land Policy in Africa (F&G)
- ❑ The Guiding Principles on Large-Scale Land-Based Investment in Africa (LSLBI Principles)

One similarity of the five frameworks is the attention that they pay to land as a key element for sustainable development. Another commonality is that all five frameworks are based on human rights. The three frameworks exclusively dealing with land governance all refer to the linkage between the enjoyment of land rights and those of human rights.

All five key frameworks are based on the same understanding of land governance aiming at the same key objectives (creation of tenure security for all and realization of sustainable use of land) and referring to the same key concepts/ideas, such as the relevance of plurality of tenure systems and the central role of responsible governance (for details see 3.2).

A similarity and at the same time the major weakness of all these frameworks is their voluntary nature. None of the frameworks is legally binding, which constitutes a major constraint on their implementation. In addition, none of the frameworks is linked to a financial mechanism and they are all rather silent on how the

goals and principles are supposed to be achieved (for details see 3.5).

The main differences are that the SDG and NUA refer to land governance issues as one aspect of sustainable development, whereas the VGGT, the F&G and the LSLBI Principles exclusively focus on land governance issues. This, however, represents at the same time a major complementarity. While the first two frameworks place land governance in the overall context of sustainable (urban) development, the other three frameworks elaborate in much more detail on land governance providing detailed guidance at global and regional (African) level. There also is complementarity between the VGGT and the two African frameworks. They reflect the same ideology and can be seen in part as identical and otherwise complementary. The two African frameworks also complement each other perfectly, focusing on two key aspects of land governance in the African context, namely land policy development and implementation (including the recognition of customary tenure rights) and the creation of safeguards for responsible large-scale land-based investments.

Finally, a major difference is that at global level only the SDG provide indicators that allow for the monitoring of its implementation. Several indicators refer to security of tenure and sustainable land use. Given the complementarity of the frameworks, these indicators can also be used to partly monitor the implementation of the other frameworks, such as the NUA and VGGT. In regard to the African context, the F&G do also have their own M&E framework which is much more detailed than the SDG indicators. For the African region, this monitoring and evaluation framework could be used to monitor any land tenure related framework.

## 3.2 KEY PROVISIONS ON LAND (GOVERNANCE) IN RECENT FRAMEWORKS

The five key frameworks address all relevant aspects of land governance. In the following, the key objectives, means (measures) to achieve them, indicators and relevant human rights and human rights based principles mentioned in at least one of these international frameworks and/or those additional relevant frameworks described and analysed under 2.4 are listed.

### A) OBJECTIVES

- Ensuring access to or use of land for all
- Creating security of tenure for all segments of society (including in post-conflict and post-disaster situations)
  - Combating and preventing displacement, homelessness, and arbitrary forced evictions
- Achieving sustainable and efficient use of land
  - Combating desertification, reducing degradation of natural habitats
  - Ensuring the conservation of ecosystems / biodiversity
  - Preventing and containing urban sprawl
  - Preventing unnecessary land-use change and the loss of productive land and fragile and important ecosystems
  - Reducing disaster risk and ensuring disaster preparedness
- Capturing and sharing the increase in land and property value
- Promoting good governance in the land sector (an objective by itself, but mainly a means to achieve the other four objectives)

### B) MEANS/MEASURES TO ACHIEVE ABOVE MENTIONED OBJECTIVES

#### B.1 Measures/Tasks to be done by the state and public institutions:

##### Ensuring access to land and creating tenure security

- Recognizing the plurality of tenure types
- Recognizing, identifying, recording, respecting and protecting all legitimate tenure right holders and their rights (including customary land rights, rights based on custom or religion, rights of tenants, occupancy rights, temporary and secondary tenure rights etc.) and promoting and facilitating the enjoyment of these rights
- Preventing tenure disputes
- Providing access to justice to deal with infringements of legitimate tenure rights
- Ensuring that expropriation is only done for public purpose and against fair and prompt compensation enabling affected persons to restore or improve their livelihoods
- Ensuring that (large-scale) land-based investments are responsible, do no harm and safeguard against dispossession of legitimate tenure right holders. This includes making provisions for different parties to conduct prior independent assessments on the potential impacts on tenure rights, livelihoods, food security and the environment, ensuring transparency, inclusiveness and active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes and contributing to effective monitoring of the investment project
- Enhancing access to land through tenure reform (recommended for African region)
- Adopting alternative (fit-for-purpose) forms of land administration and land record alongside conventional land administration systems / reforming land rights delivery systems

- ❑ Supporting local governments and relevant stakeholders, through a variety of mechanisms, in developing and using basic land inventory information, such as a cadastre, valuation and risk maps, as well as land and housing price records
- ❑ Providing equal access to adequate and affordable housing and serviced land
- ❑ Preventing informal settlements
- ❑ Preventing land speculation
- ❑ Land market regulations

#### **Achieving sustainable and efficient use of land**

- ❑ Preserving and promoting the ecological and social function of land
- ❑ Participatory and sustainable human settlement planning
- ❑ Integration of ecosystem and biodiversity values into national and local planning
- ❑ Promoting the development of adequate and enforceable regulations in the housing sector, including, as applicable, resilient building codes, standards, development permits, land-use by-laws and ordinances, and planning regulations
- ❑ Prioritizing safe, inclusive, accessible, green and quality public spaces
- ❑ Ensuring that (large-scale) land-based investments are responsible, do no harm and safeguard against environmental damage
- ❑ Including regulations on disaster risk assessments, disaster risk reduction, disaster preparedness and post-disaster reconstruction into land-use planning policies, laws and regulations and ensuring their implementation
- ❑ Including biodiversity values into planning processes

#### **Capturing and sharing the increase in land and property value**

- ❑ Promoting best practices to capture and share the increase in land and property value generated

as a result of urban development processes, infrastructure projects and public investments

- ❑ Creating mechanisms for broadening land-based revenue streams
- ❑ 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

#### **Promoting good governance (in the land sector)**

- ❑ Preventing corruption in all forms, at all levels, and in all settings
- ❑ Promoting and enforcing non-discriminatory laws and policies
- ❑ Ensuring policy and institutional coherence
- ❑ Establishing the rule of law
- ❑ Developing effective, accountable and transparent institutions at all levels. Promoting accountable institutions that deal with land registration and governance, applying a transparent and sustainable management and use of land, property registration, and sound financial system
- ❑ Supporting the effective use of public resources for affordable and sustainable housing, including land in central and consolidated areas of cities
- ❑ Establishing responsive, inclusive, participatory and representative decision-making at all levels / ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes
- ❑ Establishing sustainable, people-centred, age- and gender-responsive and integrated approaches
- ❑ Ensuring equal access to justice

Additional guidance exists for states on specific land administration and management tasks such as recording tenure rights, land valuation, land taxation, land consolidation, land readjustment, restitution, redistributive reform and spatial / land-use planning.

There is also more detailed guidance available on large-scale land-based investments, in particular in the African context.

### B.2 Measures/Tasks to be done by the private sector:

- ❑ Respecting human rights and legitimate tenure rights.
- ❑ Acting with due diligence to avoid infringing on the human rights and legitimate tenure rights of others.
- ❑ Applying appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights.
- ❑ Providing for and cooperating in 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.
- ❑ Identifying and assessing any actual or potential impacts on human rights and legitimate tenure rights in which they may be involved.

### B.3 Measures/Tasks to be done by all actors:

- ❑ Recognizing the centrality of land in development (recommended for African region)
- ❑ Capacity development in various areas
- ❑ Knowledge sharing
- ❑ North-South, South-South and triangular regional and international cooperation
- ❑ Facilitating access to science, technology and innovation

## C) INDICATORS

- a) Indicators on access to land and tenure security
- Proportion of total adult population with secure tenure rights to land, with legally recognized

documentation and who perceive their rights to land as secure, by sex and by type of tenure

- Proportion of total agriculture population with ownership or secure rights over agricultural land, by sex; and (b) share of women among owners or right-bearers of agricultural land, by type of tenure
  - Proportion of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control
  - Proportion of urban population living in slums, informal settlements or inadequate housing
- b) Indicators on sustainable land use
- Ratio of land consumption rate to population growth rate.
  - Proportion of cities with a direct participation structure of civil society in urban planning and management that operate regularly and democratically.
  - Average share of the built-up area of cities that is open space for public use for all, by sex, age and persons with disabilities.
  - Proportion of local governments that adopt and implement local disaster risk reduction strategies in line with the Sendai Framework for Disaster Risk Reduction 2015-2030.
  - Number of countries with national and local disaster risk reduction strategies.
  - Material footprint, material footprint per capita, and material footprint per GDP.
  - Number of least developed countries and small island developing states that are receiving specialized support, and amount of support, including finance, technology and capacity-building, for mechanisms for raising capacities for effective climate change-related planning and management, including focusing on women, youth and local and marginalized communities.

Responsible governance in the land sector is not directly measured but can only be measured indirectly by these indicators. There is no indicator on land-based finance.

There are, however, specific initiatives and programmes that deal with land indicators and monitoring of land issues. The Global Land Indicators Initiative, for instance, is a collaborative and inclusive process for the development of the Global Land Indicators started by the Millennium Challenge Corporation (MCC), UN-Habitat and the World Bank (WB), facilitated by GLTN.<sup>7</sup> The Land Matrix supports the monitoring of large-scale land-based investments by providing information on such investments.

- Proportion of land that is degraded over total land area.
- Coverage by protected areas of important sites for mountain biodiversity.
- Mountain Green Cover Index.
- Red List Index.
- Progress towards national targets established in accordance with Aichi Biodiversity Target 2 of the Strategic Plan for Biodiversity 2011-2020.

#### Remark/Conclusion on indicators

Only the SDG provide indicators. Indicators exist on the two main objectives: tenure security and sustainable land use.



**High Level Panel on 'Land Tenure Security Monitoring in the SDGs, Leaving No One Behind' in New York.**

Photo © UN Habitat / Everlyne Nairesiae

<sup>7</sup> "This initiative has now grown to include over 30 institutions around the world ranging from United Nations agencies, inter-governmental organizations, international nongovernmental organizations, farmer organizations and the academia. The Global Land Indicators Initiative (GLII) was established in 2012 with the aim of harmonizing monitoring efforts around land tenure and governance. GLII seeks to derive a list of comparable and harmonized land indicators. To achieve this, GLII is exploring the range of monitoring mechanisms and data collection methods. The initiative is supporting global and regional frameworks such as the VGGT, the F&G on land policy in Africa. GLII intends to foster partnership, inclusiveness, consultation, evidence-based indicators, people-centred approach and sustainability" (GLTN website).

#### D) RELEVANT HUMAN RIGHTS AND HUMAN RIGHTS BASED PRINCIPLES MENTIONED IN REGARD TO LAND GOVERNANCE

- The right to own property
- The right to peaceful enjoyment of possessions
- The right to be protected from displacement
- The right to property restitution
- The right to full and effective compensation
- The right to freedom of movement
- The right to adequate housing
- The right to voluntary return in safety and dignity
- The right to non-discrimination
- The right to equality between men and women
- The right to privacy and respect for the home
- The right to freedom of opinion and expression
- The right to freedom of assembly and association
- The right to take part in government
- The right to take care in the conduct of public affairs, directly or through freely chosen representatives
- The right to effective judiciary/remedy, equality (before the law), equity and justice
- Ban on arbitrary detention
- The right to public hearing
- The right to the resumption of innocence
- Rule of law
- Transparency
- Accountability
- Active, free, effective, meaningful and informed participation of individual and groups in associated decision-making processes
- Free, prior, informed consent (FPIC) for Indigenous Peoples (sometimes also applied to all local communities)

#### Remark/Conclusion on human rights

The relation between land governance and human rights is twofold. Land governance to be responsible has to respect the human rights listed above and mentioned in international frameworks when referring to land governance. On the other hand, land governance contributes to the realization of these human rights – at least concerning access to, use of and control over land. Regarding certain human rights, such as gender equity and non-discrimination, the realization of human rights in the context of land tenure can have an impact much beyond the land question and contribute to a much better general acceptance and application of these specific human rights (for details see 2.1).

#### Key provisions on compensation from the VGGT

Concerning expropriation and compensation, states should:

- "prior to eviction or shift in land use which could result in depriving individuals and communities from access to their productive resources, explore feasible alternatives in consultation with the affected parties, consistent with the principles of these guidelines, with a view to avoiding, or at least minimizing, the need to resort to evictions" (VGGT 16.8),
- "expropriate only where rights to land are required for a public purpose" (VGGT 16.1),
- "ensure that the planning and process for expropriation are transparent and participatory" (VGGT 16.2),
- "ensure a fair valuation" (VGGT 16.3) and
- "provide prompt, just compensation" (VGGT). "The compensation may be, for example, in cash, rights to alternative areas, or a combination" (VGGT 16.3).

"All parties should endeavour to prevent corruption, particularly through use of objectively assessed values, transparent and decentralized processes and services, and a right to appeal" (VGGT 16.6).

"Evictions and relocations should not result in individuals being rendered homeless or vulnerable to the violation of human rights. Where those affected or unable to provide for themselves, states should, to the extent that resources permit, take appropriate measures to provide adequate alternative housing, resettlement or access to productive land, fisheries or forests, as the case may be" (VGGT 16.9).

Source: FAO/ICFS 2012

### 3.3 NEW AND REDISCOVERED PROVISIONS AND ISSUES RECEIVING INCREASED ATTENTION

The international frameworks on land (governance) that have been negotiated and agreed on within the last five to ten years repeat for the most part what has been stated before. Only few new aspects have been included and even less topics dropped. What is different, however, is the focus on land issues and the number of frameworks exclusively addressing land issues.

The predominant new topic is responsible governance and the fight against corruption in the land sector. This includes provisions on transparency and accountability, meaningful participation in decision-making processes, access to justice, responsible large-scale land-based investments etc. Closely linked to this, there also is an increased recognition of the linkage between respecting, protecting and fulfilling the enjoyment of tenure rights and human rights. All recent frameworks are human rights based and human rights are explicitly addressed in the context of land governance. It is important to be aware that land governance goes much beyond fighting (agricultural) land grabbing. It includes grand/political as well as petit/administrative

corruption. Corruption, fraud and bribery in land administration (e.g. the issuance of title) and land management (e.g. decisions on land use changes) are probably much more common than the big land grabbing cases and effect many more people – often resulting in insecure tenure as well as unsustainable land use.

A topic that had already been strongly included in Habitat I and then almost got forgotten in recent decades and which now, with the New Urban Agenda, received renewed interest is land value capture and the redistribution of the benefit to the public. The New Urban Agenda did not treat the issue in such complexity as the Vancouver Plan of Action, but reopens the door to include the recapturing of plus value into development praxis.

Another topic that currently receives a lot of attention is fair and timely compensation allowing the restoration or improvement of livelihoods and including genuine public purpose and due process (IFC 2012, True Price/University of Groningen 2016).

#### IFC Performance Standard 5 Land Acquisition and Involuntary Resettlement

“Performance Standard 5 recognizes that project-related land acquisition and restrictions on land use can have adverse impacts on communities and persons that use this land. Involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood) as a result of project-related land acquisition and/or restrictions on land use. Resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in physical or economic displacement. This occurs in cases of (i) lawful expropriation or temporary or permanent restrictions on land use and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.”

#### “OBJECTIVES:

- To avoid, and when avoidance is not possible, minimize displacement by exploring alternative project designs.
- To avoid forced eviction.
- To anticipate and avoid, or where avoidance is not possible, minimize adverse social and economic impacts from land acquisition or restrictions on land use by (i) providing compensation for loss of assets at replacement cost and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation and the informed participation of those affected.
- To improve, or restore, the livelihoods and standards of living of displaced persons.
- To improve living conditions among physically displaced persons through the provision of adequate housing with security of tenure at resettlement sites.”

Source: IFC 2012

### 3.4 TOPICS THAT LOST ATTENTION

In the 1970s, there was much awareness and insistence on the crucial role of land as a scarce resource and the importance for public control of its management in the interest of the public / the nation. The neo-liberal tendencies in global policies in the 1990s resulted in a shift towards increasing influence of the private sector and the paradigm of facilitating private investment (sometimes forgetting the state's role to regulate it). Accordingly, land-use planning has not been popular for some time. It is slowly reappearing on the international agenda – but is still not very visible. The current tendency is more on voluntary commitments by private actors than strong land-use

regulations by the state or municipality. This is slightly counter-balanced by the call for increased community participation. Sometimes the speed of urban growth and the numbers of people and the size of land affected are used as argument against land-use planning. However, modern technologies providing up-to date geo-data within almost no time could easily deal with these developments. Regulating land uses does not mean to re-introduce old-fashioned master planning. But regulating land use is crucial to achieve sustainable land use, which in turn is a prerequisite for sustainable and resilient development.



An aerial view over Nyala, the capital of South Darfur, Sudan. Photo © United Nations / Fred Noy

## 3.5 GAPS AND CHALLENGES OF THE CURRENT DEVELOPMENT AGENDA

There is a gap with regard to urban land grabbing. Whereas large-scale land-based investments in rural areas received tremendous attention in recent years, there is silence on deals between private investors and municipal decision-makers on the use of urban land. The sizes of the individual plots are evidently smaller, but the value may often be the same; so are the consequences for municipal budget, the environment and local people previously living on the newly developed land.

Further, provisions on how to achieve sustainable land use are vague. Different from the widespread provisions on how to achieve tenure security, sustainable land use is merely mentioned as an objective without much detail on how to achieve it (see above).

The main challenges are:

### **The voluntary nature of all relevant international instruments.**

The guidance provided on land governance by the international framework is exclusively voluntary. This makes it difficult to insist on its implementation.

### **Means of implementation are not always clear.**

Whereas some frameworks provide detailed guidance, others primarily focus on desired results and principles, but do not provide any indication on how the result may be achieved or how the principle could be applied. This is particularly true for the overall frameworks such as SDG and NUA. On the one hand, this makes implementation difficult. On the other hand, it leaves enormous scope for action.

### **Capacity development is not properly addressed.**

Some documents include some general provisions on capacity development referring to South-South,

North-South and triangular cooperation, technology transfer etc. but there is no strategy or concept how to train all current and future land governance experts in the diverse fields of the land sector.

### **Organizational issues.**

In a way, the different frameworks describe how an ideal situation should look like and some provide some information on the roles and/or tasks of different actors. But there is little guidance on how to identify the need for action and how to organize all the improvements and trainings needed – apart from the recommendations by the VGGT to start with the establishment of multi-stakeholder platforms at local, national and regional level and a common practice to first do a land governance assessment using the LGAF framework (Deininger et al. 2012).

### **Funding is not provided.**

None of the instruments foresees funding.

### **Monitoring (only clear for SDG and F&G).**

Apart from the SDG and F&G, no other instrument provides indicators or any guidance on how the application of the framework could be monitored.

All in all, the current development agenda recognizes the important role of land with its social, environmental and economic function. It provides general objectives, such as security of tenure for all segments of society and sustainable use of land, presents some guiding principles and outlines roughly for selected topics how implementation could look like without providing any guidance on the details of implementation, organizational issues, capacity development, funding and monitoring. Everything remains voluntary and depends on the efforts of individual institutions and key actors.

THE ROLE OF LAND  
(GOVERNANCE) IN  
ACHIEVING KEY  
DEVELOPMENT  
OBJECTIVES

Land governance and the way land can be accessed, used and controlled plays a central role in the realization of key development objectives (as it does for the realization of many human rights – see 2.1). Each of these development objectives requires a specific set of land governance activities.

### Poverty reduction

The role of land (governance): Access to and control over land is crucial for the elimination of poverty in many places of this world. Secure tenure allows people to care for themselves, to construct shelter for themselves as well as to rent out/sub-rent, and to grow food for subsistence as well as for the market. Hence, secure access to land helps satisfy basic needs and may even contribute to income generation.

#### Relevant areas of land governance:

- Recognition of all legitimate tenure rights/the continuum of land rights framework
- Land tenure regularization
- Introduction of fit-for-purpose land administration
- Land sharing and land readjustment in informal settlements
- Land-use planning with zoning of special areas for low-cost housing
- Land value capture and investment of the benefits in public infrastructure and services accessible for poor men, women and children helps to reduce poverty.

#### Corresponding SDG:

- SDG 1 – No poverty. End poverty in all its forms everywhere.

#### Frameworks highlighting the contribution of land governance to poverty reduction:

- SDG (Target 1.4), VGGT (Preface, 1.1), F&G (Foreword, 1.1.2 (a), 3.1 etc.), LSLBI Principles (Fundamental Principle 2, Principle 5)

### Food security and adequate nutrition (realizing the right to food)

The role of land (governance): Access to land for the rural poor is key to ensure their food security. Protecting agricultural land from being converted into construction land is a global challenge to ensure food security. Relevant areas of land governance:

- Recognition of all legitimate tenure rights/the continuum of land rights framework
- Introduction of fit-for-purpose land administration
- Land-use planning
- Land consolidation
- Improving governance in the land sector
- Preventing land grabbing

#### Corresponding SDG:

- SDG 2 – Zero hunger: End hunger, achieve food security and improved nutrition and promote sustainable agriculture

#### Frameworks highlighting the contribution of land governance to food security:

- SDG (Target 2.3), VGGT (Preface, 1.1), F&G (3.3.2), LSLBI Principles (Fundamental Principle 2)

### Gender equality

The role of land (governance): Women's equal access to use, ownership and control over land compared to that of men contributes significantly to overall gender equality as access to land means access to housing, food and income generation, and enables women to care for themselves and be independent of male support (Wehrmann 2015).

#### Relevant areas of land governance:

- Creation of equality in rights (ensuring equal tenure rights under the law), equality in resources (facilitating access to the same amounts and same

quality of land) and equality in voice (guaranteeing women's inclusion in decision-making over land issues)

- ❑ Recognition of all legitimate tenure rights/ the continuum of land rights framework
- ❑ Introduction of fit-for-purpose land administration
- ❑ Reforming customary tenure and land administration ensuring its coherence with the constitution and national laws on gender equity
- ❑ Informing women on their rights to own and control land
- ❑ Improving women's access to justice to enable them to claim their tenure rights
- ❑ Land policy development / adjustment

### Corresponding SDG:

- ❑ SDG 5 – Gender equality: Achieve gender equality and empower all women and girls

### Frameworks highlighting the contribution of land governance to gender equality:

- ❑ SDG (Target 5.a), F&G (2.5.2, 3.1.1), LSLBI Principles (Principle 11), VGGT (25.5), Convention on the Elimination of Discrimination Against Women (art. 2, 14.2 (g), 16.1 (h)).

### Economic development

The role of land (governance): Land is a production factor. It is needed for a wide range of economic activities. It allows for income generation. Land can



Technical team composed of women inspecting a shelter community project in Pakistan. Photo © UN-Habitat.

also be bequeathed and facilitates access to capital, another production factor.

#### Relevant areas of land governance:

- ❑ Recognition of all legitimate tenure rights/ the continuum of land rights framework
- ❑ Introduction of fit-for-purpose land administration
- ❑ Land registration issuing titles/deeds providing access to credit
- ❑ Land-use planning identifying adequate commercial and industrial areas

#### Corresponding SDG:

- ❑ SDG 8 – Decent work and economic growth: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

#### Frameworks highlighting the contribution of land governance to economic development:

- ❑ VGGT (1.1), F&G (Foreword, 1.1.2 (a))

#### Sustainable infrastructure, including transport

The role of land (governance): Infrastructure requires land on which it can be build – mainly public land. Public land needs to be acquired (in time) and to be managed in a transparent manner.

#### Relevant areas of land governance:

- ❑ Recognition of all legitimate tenure rights/the continuum of land rights framework
- ❑ Introduction of fit-for-purpose land administration
- ❑ Public land management
- ❑ Expropriation for genuine public purposes and compensation
- ❑ Land banking
- ❑ Facility cadastre
- ❑ Land-use planning

- ❑ Improving governance in the land sector

#### Corresponding SDG:

- ❑ SDG 9 – Industry, innovation and infrastructure: Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation

#### Frameworks highlighting the contribution of land governance to the creation of sustainable infrastructure:

- ❑ NUA (13 (a)), F&G (3.4.1, 3.4.5)

#### Balanced territorial development

The role of land (governance): Land is where development takes place. If development is to be balanced, all over the country people should be able to enjoy living conditions of equal value. This can only be achieved by comprehensive spatial planning. (It is one of the central tasks of European Union and German spatial planning.)

#### Relevant areas of land governance:

- ❑ Comprehensive spatial planning covering all areas of the country and combining top-down with bottom-up planning approaches, starting with general principles at national level and going down to legally binding land-use planning at neighbourhood level.

#### Corresponding SDG:

- ❑ SDG 10 – Reduced inequalities: Reduce inequality within and among countries

#### Frameworks highlighting the contribution of land governance to balanced territorial development:

- ❑ VGGT (20.1)

### Sustainable cities and communities (among others realizing the right to adequate shelter)

The role of land (governance): Sustainable cities and communities require a mixture of built up space and open space, a combination of private and public space, green areas, areas for transport, land for residential, commercial and industrial use.

Sustainable cities should not heat up too much, they should allow rainwater to enter into the ground water, ensure sufficient but not too much air circulation etc. All these land uses need to be defined and realized.

Sustainable cities are inclusive; this means that all segments of society should have access to adequate housing, infrastructure and services.

Sustainable cities and communities grow based on planned city extension keeping the ratio of land consumption rate to population growth low.

#### Relevant areas of land governance:

- Participatory land-use planning
- Recognition of all legitimate tenure rights/ the continuum of land rights framework
- Recognition of the continuum of land rights framework
- Land tenure regularization
- Introduction of fit-for-purpose land administration
- Voluntary resettlement, participatory enumeration and people managed resettlement
- Land sharing and land readjustment in informal settlements
- Land-use planning with zoning of special areas for low-cost housing
- Land value capture and investment of the benefits in public infrastructure and services accessible for poor men, women and children helps to reduce poverty

- Improving governance in the land sector

#### Corresponding SDG:

- SDG 11 – Sustainable cities and communities: Make cities and human settlements inclusive, safe, resilient and sustainable

#### Frameworks highlighting the contribution of land governance to sustainable cities, including to the realization of the right to adequate housing:

- NUA (13 (a)), VGGT (1.1 referring to housing security, sustainable livelihoods and sustainable social and economic development)

### Responsible consumption and production

The role of land (governance): Economic production requires land, e.g. for mining, agriculture, industrial production, storage etc. Someone, however, already uses most land for something. Responsible production requires that land is neither grabbed nor degraded.

#### Relevant areas of land governance:

- Recognition of all legitimate tenure rights/the continuum of land rights framework
- Introduction of fit-for-purpose land administration
- Land-use planning, environmental zoning
- Improving governance in the land sector

#### Corresponding SDG:

- SDG 12 - Responsible consumption and production: Ensure sustainable consumption and production patterns (including efficient use of natural resources)

#### Frameworks highlighting the contribution of land governance to responsible consumption and production:

- VGGT (12), LSLBI Principles

## Climate change mitigation and adaptation

The role of land(governance): Land cover and land use have a major impact on the climate. Forests, for instance, absorb CO<sub>2</sub> and thereby mitigate climate change, while many other uses produce CO<sub>2</sub> and methane gas and therefore contribute to the greenhouse effect.

### Relevant areas of land governance:

- Land-use planning with a special focus climate change mitigation, e.g. on the delimitation and protection of forest areas.
- Land-use planning with a focus on climate change adaptation, e.g. planning for higher disaster risk, preventing floods, preventing soil degradation etc.

### Corresponding SDG:

- SDG 13 – Climate action: Take urgent action to combat climate change and its impacts

### Frameworks highlighting the contribution of land governance to climate change mitigation and adaptation:

- VGGT (23.1)

## Social stability, peace and security

The role of land (governance): Equal access to ownership and control over land is not only a key cornerstone to gender equality but to any inclusive societies and it therefore represents an important factor for social stability and peace. Many violent conflicts are about land – or resources attached to this land. Peace, therefore, requires agreements acceptable for all conflict parties on future access to and use of this land.

### Relevant areas of land governance:

- Recognition of all legitimate tenure rights/the continuum of land rights framework

- Introduction of fit-for-purpose land administration
- Participatory land policy development
- Land reform
- Participatory land-use planning

### Corresponding SDG:

- SDG 16 – Peace and justice: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

### Frameworks highlighting the contribution of land governance to social stability:

- VGGT (1.1), F&G (1.1.2 (a))

## Protection of biodiversity, the natural environment and natural heritage

The role of land (governance): Nature can only be protected if access to the land and its use are regulated.

### Relevant areas of land governance:

- Recognition of all legitimate tenure rights/the continuum of land rights framework
- Recognition of the continuum of land rights framework
- Introduction of fit-for-purpose land administration
- Participatory mapping
- Participatory land-use planning
- Buffer zone management
- Local agreements on access to, control over and use of land (e.g. for communal forests)
- Inventorying public land
- Responsible public land management
- Public land recovery

### Corresponding SDG:

- SDG 15 – Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss

### Frameworks highlighting the contribution of land governance to the protection of natural resources/ environmental protection:

- ❑ VGGT (1.1), F&G (1.1.2(a), 3.5.1)

### Preventing disaster, disaster preparedness, resilience

The role of land (governance): It is of crucial importance for disaster preparedness to have a clear understanding of which areas are under risk. Part of disaster risk management, therefore, is to identify which areas are safe and which are at risk in case of a natural disaster. Risky areas are zoned. Either they should remain without constructions or stricter construction norms apply. If they are already built on, emergency plans for evacuation need to be prepared.

#### Relevant areas of land governance:

- ❑ Recognition of all legitimate tenure rights/the continuum of land rights framework
- ❑ Introduction of fit-for-purpose land administration
- ❑ Participatory disaster risk mapping
- ❑ Spatial/Urban/Land-use planning

#### Corresponding SDG:

- ❑ SDG 1, target 1.5; SDG 11, target 11.5

### Frameworks highlighting the contribution of land governance to disaster preparedness and resilience:

NUA (77, 110); VGGT (24.1), Sendai Framework (6, 27d, 30f, 33k)

### Post-disaster/Post-conflict redevelopment and reconstruction

The role of land (governance): The way land is accessed, used and controlled is a key element of sustainable social and economic development and therefore plays a key role in post-disaster/conflict redevelopment and reconstruction.

#### Relevant areas of land governance:

- ❑ Recognition of all legitimate tenure rights/the continuum of land rights framework
- ❑ Introduction of fit-for-purpose land administration
- ❑ Participatory land policy development
- ❑ Restitution and compensation (for refugees and IDPs)
- ❑ Community land inventory and boundary mapping (e.g. after floods, tsunami, earthquakes, volcano eruptions and other disasters that have destroyed houses and boundaries)
- ❑ Participatory land-use planning for redevelopment
- ❑ Land governance assessment
- ❑ Re-development of land administration and land management

#### Corresponding SDG:

None

### Frameworks highlighting the contribution of land governance to post-disaster/post-conflict redevelopment and reconstruction:

- ❑ VGGT (24.1, 25.1), Sendai Framework (33j), Pinheiro Principles



**Hurricane Sandy causes heavy rains and floods in Haiti.** Photo @ United Nations / Ogan Abassi.

# CONCLUSION AND RECOMMENDATIONS

The establishment of land governance regulating access to, use of and control over land responsibly to the equal benefit of all plays a key role in the realization of human rights as well as in the achievement of key development objectives. The new development agenda recognizes this crucial role/function of land (governance) to sustainable development. All five key frameworks explicitly mention it and refer to a broad range of land governance issues tackling all key aspects.

### Implementing the international frameworks in terms of land governance

The main issues that could/should be addressed and included in the work programme of GLTN and UN-Habitat Land and GLTN Unit in addition to the current portfolio are:

- ❑ Stronger focus on governance issues, in particular transparency, accountability and other approaches to fight corruption, fraud and clientelism in the diverse areas of the land sector, e.g. specific anti-corruption campaigns and measures
- ❑ Fighting land grabbing with a focus on urban land grabbing as this is currently much less a priority than rural land grabbing (e.g. characteristics of and tools for responsible urban land-based investments)
- ❑ Land-based finance, i.e. capturing and sharing the increase in land and property value
- ❑ The crucial role of human rights in achieving land governance
- ❑ Responsible public land management (among others for the provision of inclusive, accessible, green and quality open space)
- ❑ Raising awareness on the social and ecological function of land
- ❑ Reducing land speculation
- ❑ Promoting fair and timely compensation, e.g. training on respective tools

- ❑ The role of land (governance) in peace-building, recovery and re-development
- ❑ Property restitution for refugees and IDPs
- ❑ The role of land (governance) in post-disaster situations
- ❑ Reducing land consumption

The current work on creating tenure security, promoting the continuum of land rights and pushing for fit-for-purpose land administration should be continued as it received new support from international policies.

More attention could be given to regulating land uses in particular in support of key development objectives, such as climate change mitigation and adaptation, protection of biodiversity, disaster prevention and preparedness, sustainable infrastructure development, balanced territorial development and responsible production.

### Overcoming the challenges

**The voluntary nature:** All five key frameworks are voluntary, but they are explicitly based on human rights of which most are included in legally-binding documents. To increase the relevance of the voluntary instruments, it is important to stress the linkage between the enjoyment and regulation of tenure rights and the realization of human rights.

**Little guidance on implementation and organizational issues:** The frameworks do not provide significant information on what exactly needs to be done by whom and by when – although the VGGT, the F&G and the LSLBI Principles are more detailed than the SDG and NUA are. However, there is vast experience as well as information/training materials on most of the issues. Implementing the current land governance framework constituted by the key frameworks dealing with the issue, therefore, requires identifying,

reviewing and disseminating good practices and lessons learnt, compiling existing information/training materials and identifying those topics that need additional tool development or testing or preparation of guides.

**Lack of strategy on capacity development:** The frameworks are extremely general on how capacity development should take place. This opens enormous space for those who provide education and training. For this purpose, needs analyses (at local or country level) could help to define the demand for capacity development identifying how many actors of which type need capacity development in which area for what purpose. A complementary survey could identify which institutions could provide what type of training(s) for which target group(s).

**Funding of the measures and the capacity development is a major challenge.** Advocacy on the contribution of land governance to a broad range of key development objectives might help to mobilize the necessary

funding. In addition, land-based finance should be promoted to generate the revenues required for other land governance tasks.

### Advocacy for an even better international framework

The recent international frameworks provide vast opportunities to get involved in improving land governance. However, some topics such as the state's duty to regulate land use, the need to address lack of transparency in land administration and urban land grabbing, deserve to be adequately included in the international framework. In addition, frameworks on climate change mitigation and adaptation and those on biodiversity need to explicitly address the need to provide tenure security for the poor, women and vulnerable groups and the role of land-use planning / spatial planning in the achievement of their objectives. Even more important would be to strive for legally binding regulations on land governance.



**Kids going to school in an informal settlement in Kampala, Uganda.**

Photo © UN-Habitat / Danilo Antonio

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See 2.2.1 c) for a list of resolutions by different United Nations agencies that are relevant to this study.



## 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, visit the UN-Habitat website at [www.unhabitat.org](http://www.unhabitat.org)

## THE GLOBAL LAND TOOL NETWORK (GLTN)

GLTN aims to contribute to poverty alleviation and the Sustainable 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 research and training institutions, development partners and training institutions, development partners 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, visit the GLTN website at [www.glt.net](http://www.glt.net)

## ABOUT THIS PUBLICATION

This publication features the key provisions on land (governance) in recent relevant international frameworks including the 2030 Agenda for Sustainable Development (SDGs), the New Urban Agenda (Habitat III), the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), the Framework and Guidelines on Land Policy in Africa (F&G) and the Guiding Principles on Large-Scale Land-Based Investment in Africa (LSLBI Principles).

It presents where new issues or themes appeared, issues that have gained additional support and those that have received less attention in all these international frameworks. It also highlights the particularities, strengths and potential gaps of the individual frameworks, as well as their similarities, complementarities and differences. It further emphasizes the critical role of land governance in the realization of human rights, enjoyment of secure land rights and in the overall achievement of sustainable development objectives.

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