



# WHAT IS THE CURRENT LANGUAGE ON LAND IN THE OWG 11?

## Land in the Owg11: Tenure Security or Assets?

The report of the 11th Session of the Open working Group (OWG) for the sustainable Development goals dated 2nd June 2014 reveals a shift in language away from tenure security to assets. This has grave implications to poverty eradication, economic growth, food security and gender equality.

The key GLII messages as agreed at the various expert meetings April 2013 Washington, November 2013 the Hague and March 2014 Washington are that any target on land should respond to:

- Men and women
- The continuum of land rights or intermediary rights
- Recognize perception in the definition of its indicators

The table below presents the language as proposed by the OWG11 and gives the suggested language by GLII that would result in the realization of the SDG goals.

Proposed Goal by OWG11	Proposed Target by OWG11	Suggested language by GLII
<b>Proposed goal 1.</b> End Poverty in all its forms everywhere	<b>Proposed target 1.5:</b> by 2030 ensure development opportunities for all men and women, including secure rights to own land, property and other productive resources, and access to financial services, with particular focus on the poor, the most marginalized and people in vulnerable situations	by 2030 ensure development opportunities for all men and women, including secure <i>[tenure]</i> to land, property and other productive resources, and access to financial services, with particular focus on the poor, the most marginalized and people in vulnerable situations
<b>Proposed goal 2.</b> End hunger, achieve food security and adequate nutrition for all, and promote sustainable agriculture	<b>Proposed target 2.4:</b> by 2030 achieve access to adequate inputs, knowledge and productive resources, financial services and markets, especially for small and family farmers, pastoralists, and fishers, with a particular focus on women	by 2030 achieve <i>[tenure security]</i> and access to adequate inputs, knowledge and productive resources, financial services and markets, especially for small and family farmers, pastoralists, and fishers, with a particular focus on women
<b>Proposed goal 5.</b> Attain gender equality, empower women and girls everywhere	<b>Proposed target 5.7:</b> ensure women's equal access to, control and ownership of assets and natural and other productive resources, as well as non-discriminatory access to essential services and infrastructure, including financial services and ICT	<i>[by 2030 achieve]</i> equal access <i>[for women and men to use]</i> , control and own assets <i>[,]</i> natural and other productive resources, as well as <i>[land tenure security and]</i> access to essential services and infrastructure, including financial services and ICT
<b>Proposed goal 11.</b> Build inclusive, safe and sustainable cities and human settlements	<b>Proposed target 11.4:</b> by 2030, ensure universal access to adequate and affordable housing and basic services for all, and eliminate slum-like conditions everywhere	by 2030, ensure universal access to adequate and affordable <i>[land and]</i> housing, and basic services for all, and eliminate slum-like conditions everywhere

## Land as an asset or commodity

Land as an asset means defining a *land right* to the *property rights* of an individual over an asset, or simply equating a *land right* to a *property right* in land (ARD 2007). **Property rights** refer to a bundle of rights on the use, control, and transfer of assets, including land. The term “property rights” is used to refer to the rights of control over an object, a piece of land, a resource, or an idea within the bounds of the law. In the context of land, property rights largely refer to rights associated with the “immoveable” property on land. This includes the right to occupy, enjoy and use; to restrict others from entry/use; to dispose, buy, or inherit; to develop or improve; to cultivate; to sublet; to realize financial benefits; and to access services in association with land. In a corresponding way, *property rights* in the context of land are also said to consist of powers to obtain income from, and alienate the land asset(s), including the rights to change the form and substance of the asset, and to transfer all rights in the asset, or some rights, as desired (M Mooya and C E Cloete 2005). Because land is a limited resource and property rights include the right to exclude others, land rights are a form of monopoly.

To be able to get the full value from this asset, the land needs to be titled and held as private property. It also needs to be able to move to its highest, best and most valuable land use, with the land market as the driver. This requires the titling of land to one individual that will create certainty in dealing with the land. In this case, the rights bundle vests in a single individual. The bundle of rights can include the right of possession (the property is owned by the title holder), the right of control (the owner controls the property’s use), the right of exclusion (the holder can deny people access to the property), the right of enjoyment (the holder can use the property in any legal manner) and the right of disposition (the holder can buy or sell the property).

This is an approach focuses on the commodification of land through the creation of titles for individuals, which titles can be used for raising credit and thus propel investment and economic growth. This is where the world has been. This is the approach the OWG11 has taken.



Farmers in Thailand © Flickr/joaquin uy

## Land as a social factor that defines relationships

The second way of understanding land is taking into account the social factors linked to land such as the range of relationships. In this regard, land tenure is a social construct that defines the relationship, whether legally or customarily/ socially defined among people as individuals or groups with respect to land and other natural resources (FAO, 2002). It is an institution i.e. rules invented by societies to regulate behavior. Rules of tenure define how property rights are to be allocated within societies and it defines who has access to land and who can be excluded from it; the terms and conditions of that access; the rights and obligations that such access gives rise to; how land can be used and controlled; and the means and circumstances by which the rights and obligations can be transferred to others. The centrality of land in all dimensions of rural life in the context of Africa means that the analysis of land tenure issues should be broadened from its traditional links with such issues as land use, agricultural production efficiency, access to credit, conflict management mechanism, fragmentation of land holdings and so on to include all aspects of power/ politics and social position (UNECA, 2004).

Land tenure is dynamic, never totally in or entirely out of synchronization with the rest of social life. It is an ongoing process of negotiation between different interests, away of seizing or missing different opportunities and a language for expressing degrees of exclusivity and mutual obligation. Because land is everlasting it can be made the subject of future interests or even a series of future interests; indeed there is remarkable ingenuity in inventing means to ensure that land can be used in various ways and in this, the continuum of rights which takes cognizance of the existence of intermediary rights takes center stage.

Land and property rights should be defined by the community (or the state), accepted and understood by all, and be able to be enforced. When a community, or the state, is able to enforce what it decides, property rights acquire a very desirable characteristic. They become certain—and tenure, the holding of the right, becomes secure (Van ben Brink & ors 2005). It is in this realm that development paradigms can emerge and thrive.



Nairobi, Kenya © Flickr/Brian Snelson

# Implications of the current language on land to the outcome of the SDG process

## What does this mean to ending poverty?

Providing poor people with access to land, security of tenure and improving their ability to make effective use of land has long been recognized as critical to poverty reduction and empowerment of the rural poor (Deininger, 2003). One multi-country assessment has shown that when land rights are more equitably accessed and distributed, a country is likely to have two to three times more growth than their counterparts without such a policy (IFAD, 2008). Thus, as in most Sub-Saharan African countries where agriculture is the engine of economic growth, it is not surprising that land has been placed at center stage of the development agenda (IFAD, 2008). Whether a tenure system is communal or individual, freehold or leasehold, farmers holding secure land rights are more likely to invest in their land and achieve productivity gains (DFID, 2004) and are typically better positioned to deal with the shocks and stresses that can otherwise drive individuals and families deeper into poverty (Deininger, 2003).

**Proposed Goal 1** – End Poverty in all its forms everywhere

**Proposed Target 1.5:** by 2030 ensure development opportunities for all men and women, including secure rights to own land, property and other productive resources, and access to financial services, with particular focus on the poor, the most marginalized and people in vulnerable situations

This target focuses on secure rights to own land. The target seeks to commodify land, an approach that has had little success globally. Governments are unable to achieve this given the cost implications of titling as the highest form of tenure security.

With regard to Women's rights to land, this approach is likely to push women deeper in poverty as they are more likely to be excluded from land tenure arrangements than included. This is because the rights of women are often nested in the rights of families, especially in areas where customary tenure is predominant in both rural and urban areas. This is true for most of the global south. This is also true for the Islamic land tenure systems where inheritance rights are in shares. Where land gets titled in a single individual, the rest of the nested rights disappear as the full rights bundle vests in this one person, increasing vulnerability of those with nested rights in the parcel. Gender inequality will increase and the feminization of poverty will be deepened.

With regard to implementation, this approach rarely considers the existing technical capacity within countries to deliver. This is a parachute approach where no institutional strengthening takes place, limiting sustainability. Furthermore, this approach disregards the harmonization and alignment approaches of traditional donors, which approaches are necessary to deliver long term and complex institutional strengthening and security of tenure for the majority.

It must be bone in mind that when embracing this approach, at the time implemented it, it was done without rigorous adjudication/assessment of who held the land as it was presumed that there were no underlying land claims. In most parts of the world, there are multiple over-lapping rights and claims which need to be sorted out prior to land titling. This adjudication process costs time and money, a cost many governments are not willing to pay.

Experience has shown that the poor are less able to manipulate the land and housing market and that over time land that is titled becomes gentrified and the poor who own and/or rent land in these areas are pushed out. This increases landlessness and deepens poverty.

### What does this mean for food security?

In most of the world, especially the global south, agriculture is the engine of economic growth and that puts land at the centre stage of the development agenda. However, there is a perceived degree of antagonism between the pursuit of pro-poor strategies for land development, on the one hand, and market-driven options on the other hand. At the core of this is antagonism is the debate whether or not titling is the best mode of tenure security. These arguments are contextualized in the Words of the special Rapportuer to the Right to Food, Olivier de Schutter<sup>1</sup>:

*“The role of those who work on improving secure access to land is important, but also more difficult than ever. In the past, people thought that it was enough to promote land titling programmes to expand the number of people who could use the land and make it more productive. Now, however, it is recognised that titling programmes per se are not enough. The poorest people have often been priced out. Land titling programmes have been captured by elites, women are often sidelined, and those who rely on communal lands and commons have not been sufficiently taken into consideration. In addition, the simple codification of customary forms of tenure may be problematic, especially if they discriminate against women or those who are not part of a community”*

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<sup>1</sup> Paper presented at the International Land Coalition Assembly of Members – Tirana 2011

Land is also a major support not just to agricultural production, but also to the processing and the marketing of these products. Apart from the statutory systems, different parts of the world have traditional systems for land management and administration. These systems and principles are not always homogenous, and they can be either conducive or prejudicial to effective land management. A number of improvements in the land sector will be necessary to ensure that agriculture plays a central role in development.

The variety of agricultural forms and participants in the sector requires that the property systems under which land is held and used are clarified. This is crucial not only for rural farmers, whose access to land is based on a variety of indigenous tenure systems, but also for commercial investors, whether men or women, some of whom seek to engage in large-scale operations (including extensive irrigation networks). The ability to secure access to land resources through a variety of tenure systems that guarantee returns for short- or long-term investments is important if productivity in agriculture is to improve. In addition, securing property rights in agriculture has the potential to add to government revenues through taxation and increased agricultural exports.

An important consequence of clarification of property rights is the creation of an enabling environment for the transfer and exchange of those rights, either formally through documented transactions or informally through intra-family arrangements. Promoting the development of robust land markets offering various types of land rights within the continuum will expand opportunities to acquire land resources for many agricultural users, whether these are engaged in large- or small-scale, formal or informal operations. This kind of flexibility can be of great value to those whose land rights are precarious, especially women and people living in informal settlements in the agricultural or urban sectors.

**Proposed goal 2.** End hunger, achieve food security and adequate nutrition for all, and promote sustainable agriculture

**Proposed Target 2.4:** by 2030 achieve access to adequate inputs, knowledge and productive resources, financial services and markets, especially for small and family farmers, pastoralists, and fishers, with a particular focus on women

Land is captured in this target as a productive resource, a factor of production, a commodity. It is common around the world for farmers to exercise collective or group rights. By reference to land as a commodity alienates group rights to land which emanate in the form of family rights, kinship (clans, tribal lands, e.t.c) group rights or socially constituted groups which exist in both rural and urban areas. When Individualization of these rights takes place, the rights of some in

the group, usually the more vulnerable, the poor men and women are lost, and cohesion of the group is broken down, making it questionable the possibility of achieving this target in its current form.

With regard to pastoralists and the fisher folk, the concept of common property holds true. Commodification of land will dismantle the social set up and nested rights that have held this productive systems for thousands of years, driving these communities deeper into poverty. Not only does commodification result in altering livelihood patterns of these people, it will have major environmental impact as land use patterns inevitably change.

It is usually argued that land as an asset promotes financing and increases the supply of credit and loans against the title and as such increase investments in agriculture. Research has shown that financial institutions are ultimately interested in recovering the loans and not foreclosure. It is not the land title that they are interested in but the income stream that will pay back the loan. Increasingly around the world, credit and savings schemes that do not require land titles have higher levels of success with an ever increasing clientele, most of who are investing at different levels of both the vertical and horizontal agricultural value chains.

With regard to women, statistics attest to the fact that women form just over half of the world's population, they perform 2/3 (60%) of the world's working hours and 50% of the agricultural production and processing. They earn 1/100 of the world's income and own 1/100 of the world's property (UNDP 1995). Evidence on the gender distribution of land resources show that women are frequently disadvantaged in terms of their access to land but more particularly in their ability to control income from farming activities and to make decisions on land use. Without secure rights to land, women's ability and incentive to participate in income expanding economic activities is reduced. Commodification of land may reinforce women's unequal access to ownership and control of land, entrenching the feminization of poverty globally. The key here therefore is not commodification but guaranteeing tenure security for women.



Rice terrace in China © Flickr/rustler2x4



## What does it mean for attaining gender equality?

Resources for women around the world constitute a complex and broad concept that goes beyond a laundry list of assets that would not go far in empowering them. More important than simply availing them land, for example, are the institutional and ideological factors that inhibit women's access to and control over land.

To increase security of property rights, legal and institutional issues need to be tackled in tandem or evolve jointly, with reference to the broader social and economic environment within which land rights are embedded. On the legal side, the definition of property rights to land and the way in which people can acquire them must be clear and equitable, in line with practice on the ground. Rights must be sufficiently long-term and risks of losing them eliminated. On the institutional side, procedures need to be formulated, institutions need to be accessible, and services should be provided effectively and at low cost. All this implies that beyond the formulated general principles, practical implementation of any measures to increase the security of tenure has to start with in-depth analysis of the current situation. If the administrative infrastructure is thin and resources are scarce, this will imply a significant role for the local communities.

**Proposed goal 5.** Attain gender equality, empower women and girls everywhere

**Proposed Target 5.7:** ensure women's equal access to, control and ownership of assets and natural and other productive resources, as well as non-discriminatory access to essential services and infrastructure, including financial services and ICT

Although this target may seem very gender responsive, reference to land as an asset connotes individualization and commodification of land. The need to recognize women's land and property rights has to do with relations between men and women in a variety of settings at particular historical moments. These are relations that a person is involved in on the basis of their position in a network of kinship and affinity (i.e. relations by birth and through marriage) hence, the imbalance in opportunities for access to and control over productive resources and benefits.

Equal rights and equal opportunities for men and women are among the fundamental human rights (equity) enumerated in any national Constitution. The equality in land tenure relations would ensure that women/ wives are involved in making decisions concerning land management. Without secure rights to land, women's ability and incentives to participate in income-expanding economic

activities are reduced. However, an exclusive focus on women which ignores men's major share and control of resources and decision-making is unlikely to give sustainable results in development, as much as lack of recognition of women's and men's roles.

## What does it mean for building inclusive, safe and sustainable cities and human settlements?

Access to secure land and housing is a precondition for reducing poverty, yet many millions of people live under the daily threat of eviction, or without sufficient security to invest what they have in improving their homes.

As a recent UN-Habitat/UNESCAP report (2008:Vol3:1) noted, - Without land, there can be no housing. And without looking at the issue of land, there can be no meaningful discussion about how to solve the problems of housing for the poor in our cities. The inaccessibility of decent, secure, affordable land is the major reason why there are so many slums in Asian cities and a contributing factor to urban poverty.

Legal access to land is a strategic prerequisite for the provision of adequate shelter for all and for the development of sustainable human settlement affecting both urban and rural areas. The failure to adopt, at all levels, appropriate rural and urban land policies and land management practices remains a primary cause of inequity and poverty. It is also the cause of increased living costs, the occupation of hazard-prone land, environmental degradation and the increased vulnerability of urban and rural habitats, affecting all people, especially disadvantaged and vulnerable groups, people living in poverty and low income people (OHCHR 2012).

**Proposed goal 11.** Build inclusive, safe and sustainable cities and human settlements

**Proposed Target 11.1:** by 2030, ensure universal access to adequate and affordable housing and basic services for all, and eliminate slum-like conditions everywhere

**Proposed Target 11.4:** strengthen positive economic and social links between cities and peri-urban and rural areas

Excluding tenure security in target 11.1 falls short of delivering housing for the urban poor. The current challenge to manage urbanization and urban growth in ways that enable the majority of people on low incomes to meet their basic needs including tenure security is becoming more apparent. These predominantly low income groups are increasingly unable to afford access to formal housing and now represent a large and increasing proportion of total urban populations. Evidence worldwide suggests that there is a close relationship and interaction between slums and tenure insecurity (UN-Habitat 2010).

Land is an Engine for growth and prosperity, enabling the sustainable symbiotic coexistence of the urban and rural inhabitants. For resource dependent communities, land is a factor of production and sustains their livelihoods creating markets through growing urbanization. For the urban dwellers, land provides the basis for human settlements and the growing urban farming as a livelihood option, promoting agricultural value chains, and thus strengthening the interdependence of the urban and rural inhabitants. Planning for urban growth and working to provide land, infrastructure, and services for the poor is the basis for economic transformation and growth.

## **Why should we refocus our attention on tenure security and not assets?**

Researchers and development practitioners have long recognized that providing poor people with access to land and improving their ability to make effective use of land they occupy is central to reducing poverty and empowering poor people and communities Deininger (2003). It is further argued that security of tenure will increase the incentives of households and individuals to invest, and sometimes this will not only help them make such investment, but will also provide an insurance substitute in the event of shocks. There is wide spread evidence that, whether a tenure system is communal or individual, free hold or leasehold, farmers are more likely to invest in their land and achieve productivity gains when they have secure land rights (DFID, 2004).

Land issues impinge upon the everyday choices and prospects of rural people. For example, land access and security of tenure strongly influence decisions on the nature of crops grown for subsistence or commercial purposes. They also influence the extent to which farmers are prepared to invest (both financially and in terms of labour) in improvements in production and natural resources management and the adoption of new technologies and have impact on people's access to credit (IFAD, 2006). Access to and long term security of land tenure provides an incentive to invest in production and conservation technologies that can improve crop yields and facilitate more sustainable use of land and other

natural resources, which in turn can help to sustain the benefit from natural resources (Meinzen-Dick et al., 2007).

Access to land and security of tenure are necessary for people to raise and stabilize their incomes and to participate in economic growth. They are also essential prerequisites for diverse land based livelihoods, sustainable agriculture, sustainable cities, economic growth, poverty elimination, for achieving power in markets, managing natural resources sustainably and preserving a peoples' culture. Security of tenure encourages investment and the development of sustainable means of using land and natural resources. Flexibility in land tenure allows households to adjust their holdings and production to meet changing circumstances (FAO, 2007).

The International Land Coalition ILC (2007) postulates that secure access to land and productive resources is a vital link between food security, sustainable resource management, peace and security, consequently leading to asset accumulation and the reduction of poverty. Similarly, FAO (2007) stresses that access to land is a crucial factor in eradication of food insecurity and rural poverty through investment on land as a source of livelihood and asset accumulation. Inadequate rights of access to land and insecure tenure of those rights are significant impediments to rural development and alleviation of food insecurity: even if sufficient food is available overall, if people do not have access to the source of food, they will be food insecure, for those with access to land, the strength of rights over the land shapes their incentives for continued production. Stronger land rights will ensure both their food security and a steady supply of products to the local market.

Security of tenure is one of the cornerstones of the rights to adequate housing. Secure tenure protects people against arbitrary forced eviction, harassment and other threats. Most informal settlements and communities lack legal security of tenure. Security of tenure is a key issue for all dwellers; particularly women vis a viz their potential to make meaningful investments at household, community and national level (COHRE, 2007).



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## What can we do?

The High-Level Panel of Eminent Persons on the Post-2015 Development Agenda agreed in 2013 that the world's foremost goal post-2015 should be the eradication of extreme poverty. People who live in poverty are always on the edge, vulnerable to shocks and losing their assets. The HLP report proposes a target on "secure rights to land, property, and other assets" as a building block for people to lift themselves out of poverty. It emphasizes land and property rights for women, with a second land target under a gender equality goal.

The Committee on World Food Security (CFS) developed the Voluntary Guidelines on the Governance of Tenure of Land Forests and Fisheries to serve as a reference and to provide guidance to improve the governance of tenure of land, fisheries and forests with the overarching goal of achieving food security for all and to support the progressive realization of the right to adequate food in the context of national food security. These Guidelines are intended to contribute to the global and national efforts towards the eradication of hunger and poverty, based on the principles of sustainable development and with the recognition of the centrality of land to development by promoting secure tenure rights and equitable access to land, fisheries and forests (UNFAO 2012).

The Africa Union/ UNECA/AfDB developed the Framework and guidelines on Land Policy in Africa as a framework to strengthen land rights, enable productivity and secure livelihoods.

It is critical that we all work together to raise key messages at various levels and spaces within which we have influence. There is a ten (10) day window within which the Open working Group can receive comments. The proposition of the co-chairs to have clearly crafted language for the changes required.

Dates for informal consultations with the OWG have been set for 9 – 11<sup>th</sup> June 2014. To support this process, we reiterate the agreed to GLII target as of 28<sup>th</sup> March 2014:

**Increase by XX% the number of women and the number of men who have secure tenure of land, property and natural resources that support their well-being and livelihoods**

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<http://www.glt.net/index.php/projects/global-land-indicator-initiative>



Rice field workers in Vietnam  
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## Institutions that have participated and contributed to the GLII:

Multilateral/Bilateral Organisations		Non State Actors	
Africa Union Commission (AUC)	UNECA/LPI	ActionAid - Rome	Uganda Land Alliance
DFID	UN-Habitat	CNRS Technical Committee Land and Development	UK Rainforest Foundation
European Commission	USAID	Earth Security Institute	World Vision
FAO	World Bank	FIAN	<b>Farmers Organisations</b>
German Federal Ministry for Economic Cooperation and Development (BMZ)	<b>Academia / Professional Bodies</b>	GROOTS - Kenya / Huairou Commission	AIAB
GLTN/UN-Habitat	American University	Habitat for Humanity International	Asia Farmer Association (AFA)
GIZ	Federation of Surveyors International (FIG)	Huairou Commission	CNOP-CAM / PROPAC
IFAD	Institute for Advanced Sustainability, Germany	IFRIS postdoctoral researcher INRA-Sens / Université Paris-Est Marne-la-Vallée	COPROFAM
Millennium Challenge Cooperation (MCC)	Kadaster NL	International Indian Treaty Council, Panama	CROCEMA/ IPC
Ministry of Foreign Affairs, France / World Bank - French	Lantmaeteriet Sweden	International Land Coalition (ILC) Secretariat	Eastern Africa Farmers Federation (EAFF)
Netherlands Ministry of Foreign Affairs	University of Calgary	International Union for Land Value Taxation	IPC / CROCIM
Overseas Development Institute, UK	University of Greenwich	Landesa	La Via Campesina
Permanent Representative of Brazil to FAO, WFP & IFAD in Rome, Italy Alternate Permanent	University of Twente	Land Research Center - Palestine	PAKISAMA, Asia Farmer Association (AFA)
Permanent Representative of The Republic of Colombia to FAO, WFP & IFAD in Rome, Italy	Xavier Science Foundation	Omidyar	
Representative of The Republic of Uganda to FAO, WFP & IFAD in Rome, Italy		OXFAM	
Swiss Development Cooperation - SDC		Rights and Resource Initiative	
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June 2014

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