

Policy Brief

October, 2015

The AU and FAO Voluntary Guidelines: What lessons do they offer to improve governance of tenure of land and forests in Tanzania?

Summary

Between 2005 and 2009 the emergence of large-scale acquisitions of land or 'land grabbing' for production of food and energy feedstocks, and private forest plantations in developing countries, triggered various responses from global actors. Some key responses were the introduction of the African Union Framework and Guidelines on Land Policy in Africa (AU F&G) in 2009, followed by the United Nations Food and Agriculture Organisation Voluntary Guidelines for the Responsible Governance of Tenure of Land, Forests and Fisheries in the Context of National Food Security (FAO VGs) in 2012. Both the AU F&G and the FAO VGs advocate for well-articulated land reforms in developing countries. The former emphasizes the need to ensure that the ongoing land reforms in Africa, most of which are pro-market solution, do not jeopardise the rights and access of vulnerable groups such as women, indigenous communities and youth, and that these groups are not adversely affected by expensive right transfer systems. From the outset, the aim of the FAO VGs has been to achieve food security for all and support sustainable efforts towards eradication of hunger and poverty. They are intended to secure sustainable wellbeing, environmental protection and socioeconomic development. Currently, the AU F&G and FAO VGs are at different stages of implementation in different countries. The key question now is how can Tanzania adopt these guidelines to ensure equitable participation of the population in land-based investments while addressing land-based conflicts? To realize this, the government must publicise these guidelines, particularly to the users of natural resources (land, fisheries and forests) and incorporate them into national legislation.

Priority actions

- ✓ Conduct awareness-raising campaigns/workshops to promote the implementation of the AU F&G and the FAO VGs in conjunction with other guidelines at the national and local level, especially in areas where land-based investments are promoted.
- ✓ Ensure that both the AU F&G and the FAO VGs are locally translated into binding national regulations and enforceable laws, and that they recognize and strengthen customary tenure rights that are non-discriminatory and observed by local communities.
- ✓ All land-based investments (agriculture, forestry and tourism) must secure free, prior and informed consent (FPIC), with full participation of all land users.
- ✓ Land-based investments must be framed using models that enable rural communities to partner with investors to improve land use, productivity and access to technology and markets, without losing access to, control over and ownership of their land.
- ✓ Improve governance; especially transparency and accountability in land-based investments by facilitating the participation of overseeing institutions such as Parliament and NGOs to audit land-based investments.

1. An overview of the legislative framework for land tenure and forest management in Tanzania

In Tanzania there are three categories of land: general land, reserved land and village land. They are governed by a number of different pieces of legislation. Land Act (LA) No. 4 of 1999 governs general land, and the Village Land Act (VLA) No. 5 of 1999 governs village land. Reserved land is governed by the Wildlife Conservation Act (WCA) of 2009 for wildlife resources and Forest Act No. 14 of 2002 caters for forestry. Both the LA and VLA provide for and recognize the equal rights to land of men and women. However, in practice, many customary laws, particularly concerning inheritance remain problematic with gender discriminatory impacts at the household and community level. Land tenure is embedded in local social practices which in most communities discriminate against women's rights to inherit land. These inconsistencies are the outcomes of unfinished reforms carried out in the 1990s, which resulted in land law reform, but left inheritance law unchanged.¹

VLA empowers the village council and the village assembly to deal with land administration and management issues including its allocation to villagers and entering into joint ventures with investors. The authority of the village assembly to transfer land is however limited to less than 250 ha. All land transfers that exceed this limit require the authorization of the Commissioner for Land. However, since the majority of land in Tanzania is village land, the government has often transferred village land to the general land category by Presidential order on the ground of 'public interest'.

Like the land laws, the current forestry policy and regulatory framework does not provide full autonomy to village authorities. However, they do recognize and give certain powers to rural communities to participate in and benefit from the governance and management of forest resources. The Tanzanian Forest Policy of 1998 and the Forest Act No. 14 of 2002 promote the distribution of resources and accommodate multiple stakeholders, especially local communities, in conserving forests. Section 4 of the Act assigns forests into four categories: national forests, local authority forests, village forests and private forests. Section 34 grants some autonomy to village governments to manage forests on village lands. Some communities have already established community managed forests, such as Village Land Forest Reserves through facilitation from government and national and international organizations under the broad umbrella of Participatory Forest Management (PFM). Main challenges remain however, in that there is lack of proper implementation of land and forest laws, largely due to their complicated administrative structure² and overlapping aspects of legislation.³

2. The Foundations of the AU F&G and FAO VGs

The AU F&G were formulated by the African Union Commission in collaboration with the African Development Bank and Economic Commission for Africa.⁴ They were endorsed by the Joint Conference of Ministers of Agriculture, Land and Livestock in April 2009. These guidelines provide guidance on how African states should design legal and institutional frameworks to govern land through new or revised national land policies that guarantee secure land rights for existing customary owners and for future investors. As part of the implementation of the AU F&G, the AU's Land Policy Initiative (LPI) drafted AU Guiding Principles on Large Scale Land Based Investments (LSLBI) in Africa.⁵ LPI conducted e-consultations on these Guiding Principles in early 2014 with stakeholders from governments, academia, farmers' associations, the private sector, and civil society organisations from across the continent. The AU Guiding Principles were finally adopted by the AU Joint Conference of Ministers of Agriculture, Rural Development, Fisheries and Aquaculture in May 2014 and subsequently endorsed by the Heads of State in June 2014. LPI is currently working with specific countries to facilitate land policy and legal reform processes.

Like the AU F&G the FAO VGs were formulated through a broad consultation of stakeholders from United Nations member states, civil society, the private sector and academia between 2009 and 2012. The purpose of the VGs is to serve as a reference guide to improve the governance of tenure of land, fisheries and forests. The VGs are premised on the idea that secure tenure is a precondition for food security and for the progressive realisation of the right to adequate food. They stress the need to have equal access to land, fisheries and forests among men and women, and the upholding of customary land rights, including the rights of minority groups. They seek to improve the weak governance system which marginalizes the poor, who often lose out due to the lack of political support necessary to influence decision-making processes. They build on the consensus on accepted best practice in line with existing binding international laws and covenants. They provide interpretation and guidance on how to implement existing international human rights obligations at national, sub-national and local levels. The Committee on World Food Security officially endorsed the FAO VGs on 11 May 2012, and the United Nations General Assembly has called for their implementation. Already, the FAO has conducted and continues to conduct a series of awareness-raising workshops for government officials and civil society organisations as well as designed online training and technical manuals to assist governments in implementing them.

3. Lessons from AU F&G and FAO VGs for Tanzanian governance of tenure of land and forests

Both the AU F&G and the FAO VGs provide a number of key lessons and entry points for improving the governance of natural resources. The FAO VGs emphasise mainstreaming gender as a critical step in achieving the Millennium Development Goals (MDGs): promotion of gender equality and empowering women, and eradicating poverty and hunger.⁶ Tanzania, as many other African countries, is under pressure to meet many of the MDGs goals and it has embarked on attracting foreign direct investment (FDIs) in agriculture, forestry and the booming oil and gas industries. While these investments are indeed needed, it is crucial that they are implemented in an inclusive and sustainable manner and that they do not lead to the displacement of rural communities and deny their access to, control and ownership of land and other vital resources such as water, fisheries, forests, livestock pasture and migratory corridors. The FAO guidelines explicitly encourage the state to 'promote investment models' that do not lead to the 'large-scale transfer of tenure rights to investors', but rather create partnerships with local resource right-bearers.⁷

For these reasons the government of Tanzania needs to ensure that land-based investments work for Tanzanians. It must ensure investments in agriculture, forestry, fisheries and wildlife sectors are carried out in line with the principles provided in these guidelines and national legislation. This would ensure that initiatives such as Kilimo Kwanza (Agriculture First), Southern Agricultural Growth Corridor of Tanzania (SAGCOT), the New Alliance for Food Security and Nutrition and Big Results Now (BRN) are implemented appropriately. These initiatives call for further legislative reforms on land and other resources. Already, as part of the implementation of Kilimo Kwanza and SAGCOT, land formalization programmes are currently underway in the SAGCOT region where villagers are offered Certificates of Customary Rights of Occupancy (CCROs). However, in practice CCROs provide insufficient tenure security for some farmers. This is because under current legislation, the President retains the power to transfer any land, even land held under CCROs, in exchange for compensation often for undefined projects of 'public interest'. In contrast, the FAO guidelines require countries to clearly define the 'concept of public purpose in law, in order to allow for judicial review'. Implementing this requirement is crucial for Tanzanian land users, in order to avoid misuse of the term 'public interest'.

Moreover, the guidelines require states to ensure that all parties involved in land-based investments fulfil their rights and responsibilities. This is one of the most critical issues lacking effective enforcement in Tanzania. There are many examples where investors have failed to fulfil their promises to the communities that have offered their land. Yet despite failing to develop their projects, investors' actions are left unchecked for years.⁸

4. Challenges and opportunities in advancing the implementation of the AU F&G and FAO VGs

Challenges

Implementing international and regional guidelines touches on state sovereignty, cultural practices and many other issues. Voluntary guidelines by their nature are soft laws and they do not override state sovereignty and existing policy, legal and institutional frameworks. Pragmatic and strategic approaches are required to address this challenge. Other specific challenges include:

Political will and buy in from various stakeholders: In practice the implementation of these guidelines requires that various stakeholders such as the government, the private sector and local communities understand them, respect and use them. To-date, some multinational corporations have shown their commitment to implement them in their operations. For instance, following media reports on land grabs and Oxfam's campaign 'Behind the Brands', multinational corporations such as Illovo,⁹ PepsiCo, Coca-Cola and Nestlé have announced that they will comply with the FAO guidelines and those of the World Bank PRAI. However, as research indicates,¹⁰ investors' practices on the ground matter more than agreements on paper. Therefore, participatory monitoring and evaluation are critical.

Limited resources: Implementing these guidelines needs resources: funds and personnel. They are likely to be shelved as many other documents, if there is no champion organization(s) with sufficient resources that push for their publicity, implementation and monitoring.

Effectiveness: It is however important that these guidelines are not left on self-regulation by the private sector, because it is likely to advance the private interest and, in the process 'destroy' the existing global peasantry system in the 'guise of responsible investment'.¹¹ This can be avoided by adopting alternatives that include agricultural investments that use labour-intensive techniques, thus benefiting local communities while ensuring that all investors' responsibilities are clearly defined and enforceable in a court of law.¹²

Opportunities

Some of the challenges highlighted above can be addressed using a number of entry points provided in these guidelines and the existing national frameworks such as:

Existing legislation and guidelines that relate to FAO VGs

Tanzania already has some legislation and guidelines that relate in many ways to the current FAO VGs. For instance, after the widespread criticisms of the government's absence in coordination and regulation of biofuels investments implemented between 2006 and 2010, the government released the Guidelines for Sustainable Liquid Biofuels Development in Tanzania in 2010. Clearly, these guidelines require developers/investors to consult local, regional and national stakeholders during the feasibility study and project planning phases, and require the signing of a memorandum of understanding with the relevant local (village) authorities in all areas that fall within the project boundaries. They further cap the years of leasehold to an initial 5 years and an extension of up to 25 years if the investor shows credibility. The investor is compelled to use the acquired land only for the approved project and the land is capped at 20,000 ha per developer for investments in biofuels projects.¹³ In principle, these guidelines recognize the need to empower villages to be part of the process of implementing land-based investments, as clearly provided in the AU and FAO guidelines. This is also a requirement under the Village Land Act, briefly discussed in section one.

Regional and international voluntary guidelines

Tanzania is an active member of the African Union and it participated fully in the formulation of both the AU F&G and the African Union Guiding Principles on Large Scale Land Based Investments (LSLBI) and FAO VGs. All these guidelines recommend countries to implement legal and policy reforms on land governance and large-scale land based investments and ensure that such investments do not displace the existing land right holders. Instead, investments must focus on inclusive and sustainable development.

5. Key policy messages

Despite some of those highlighted limitations, both AU F&G and FAO VGs are effective tools for policy makers, researchers and advocacy organisations to ensure that tenure and governance of land, fisheries and forests improves in the country for the population as a whole. For this to happen, the following policy actions are needed.

- The FAO in collaboration with the government of Tanzania needs to launch the VGs in Tanzania, in the presence of relevant CSOs, NGOs and FBOs, researchers and all other institutions dealing with land and fisheries rights and forest conservation. A country team comprising a wide range of stakeholders needs to be established to coordinate the implementation, monitoring and auditing of these guidelines.
- A series of awareness-raising campaigns/workshops to promote the AU F&G and the FAO VGs in conjunction with other guidelines need to be conducted at the national and local level. These should target areas in which land-based investments are being promoted to ensure that communities know their rights and the responsibilities of the government and the private sector.
- Stakeholders working on governance of natural resources must use these guidelines in ongoing reforms to shape and harmonize policies and laws on land, forests and extractive industries.
- The government in collaboration with relevant stakeholders needs to start the process for reforming gender discriminatory customary laws, including inheritance laws, and other social practices that undermine women's rights to land.

- Institutions engaged in research and advocacy issues need to produce relevant evidence-based materials such as research papers and policy briefs written in accessible (Swahili) language and share them with the public and - importantly - present them to policy makers. Innovative strategies and ways of communicating policy messages are also critical.

References

(Endnotes)

1. Dancer, H. (2015) *Women, Land and Justice in Tanzania*, Woodbridge, UK: James Currey; Dancer, H. and E. Sulle (2015) *Gender implications of agricultural commercialisation: the case of sugarcane production in Kilombero District, Tanzania*. Future Agricultures working paper, Brighton: Future Agricultures
2. Sundet, G. (2005) *The 1999 Land Act and Village Land Act: A technical analysis of the practical implications of the Acts*
3. For more details see TNRF 2012: *Making land investment work for Tanzania: scoping assessment for Multi-stakeholder Dialogue Initiative*. Arusha: Tanzania Natural Resources Forum. <http://www.tnrf.org/LBI-report.pdf>. Accessed 12 May 2015
4. AU (2009) *Framework and Guidelines on Land Policy in South Africa*, Addis Ababa, Ethiopia: African Union, African Development Bank and Economic Commission for Africa: <http://rea.au.int/en/content/framework-and-guidelines-land-policy-africa>
5. See <http://www.uneca.org/publications/guiding-principles-large-scale-land-based-investments-africa>
6. FAO. (2011) *The State of Food and Agriculture 2010-11. Women in Agriculture: Closing the Gender Gap for Development*, Rome: Food and Agriculture Organization
7. FAO. (2012) *Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, Rome, Italy: FAO, pp. 21
8. See Sulle, E. (2015) *The Biofuels Boom and Bust in Africa: A Timely Lesson for the New Alliance Initiative*. Policy Brief, Brighton, UK and Cape Town, South Africa: Future Agricultures Consortium and Institute for Poverty, Land and Agrarian Studies for examples of failed biofuels investments but hold village land; also Locher, M. and E. Sulle (2013) *Foreign Land Deals in Tanzania: An update and a critical view on the challenges of data (re)production*. LDPI Working Paper 3, Bellville: LDPI for the status of land deals in Tanzania
9. This commitment is expressed in Illovo's Group Guidelines on Land and Land Rights, available at: <http://www.illovosugar.co.za/Group-Governance/Group-Guidelines-on-Land-and-Land-Rights>
10. Locher M., Müller-Böker U. (2014) "Investors are good, if they follow the rules" – Power relations and local perceptions in the case of two European forestry companies in Tanzania. *Geographica Helvetica*, 69(4): 249-258
11. De Schutter, O. (2010) 'Responsibly Destroying the World's Peasantry', *Journal of Peasant Studies*, 37(4): 631-660
12. bid; Sulle E. and Hall, R. (2014) *International and Regional Guidelines on Land Governance and Land-Based Investments: An Agenda for African States*. Policy Brief, Brighton, UK and Cape Town, South Africa: Future Agricultures Consortium and Institute for Poverty, Land and Agrarian Studies
13. URT (2010) *Guidelines for Sustainable Development of Liquid Biofuels in Tanzania*. Ministry of Energy and Minerals. Dar Es Salaam: United Republic of Tanzania

Jumuiko
la
Maliasili
Tanzania



Tanzania
Natural
Resource
Forum



MINISTRY FOR FOREIGN
AFFAIRS OF FINLAND

Tanzania Natural Resource Forum
P.O. BOX 15605, Plot No.10,
Corridor, Arusha, Tanzania
www.tnrf.org

About **TNRF**

Since its official REGISTRATION in 2006, the Tanzania Natural Resource Forum (TNRF) has continued to be a membership-based non-governmental organization, bringing together members to change policy and practice in the natural resource sector for the better by: building and sharing a knowledge base of practice, strengthening citizen voice and skills for improved natural resource governance, and by continuously improving its networks and organizational development.

TNRF MEMBERS have continuously been drawn from representatives of civil society organizations, academia, private sector and individuals with an interest in improving natural resources governance in Tanzania. TNRF also networks with a broad range of regional and international stakeholders. To increase its reach across Tanzania, TNRF developed a STRATEGY for 2012-2016 to widen its working through diverse membership and through engagement with members and partners in projects and programs, and by targeting specific communities at district level.

Acknowledgement

TNRF acknowledges the consultancy work done by Emmanuel Sulle in producing this brief and further to Helen Dancer, Martina Locher, Faustine D. Ninga and Godfrey Massay for their constructive comments on the earlier draft of this brief. The brief is part of communication and advocacy material produced by the Tanzania Natural Resource Forum (TNRF) under the long-term partnership programme on forest and land-based investment in Tanzania (2014-2017) currently funded by the Ministry for Foreign Affairs of Finland and WWF Finland through WWF Tanzania.