



Responsible Land Governance: Towards an Evidence Based Approach

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Contextualizing International Voluntary Guidelines into Country Specific Land Investment Governance
Systems: Experience from Tanzania

By

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ABSTRACT

This preliminary study involved consultation of responsible district government officials and relevant Civil Society Organizations (CSOs) on various issues related to land and investments. Among other areas, the Southern Agricultural Growth Corridor of Tanzania (SAGCOT) was selected as a study site and study used the Focus Group Discussions (FGDs) to obtain information. Questionnaire designed reflected land investment governance process thematic areas. This ranged from investment pre-planning and organization stage, negotiation and preparation of investments contracts to implementation of investments.

Throughout this paper, different issues are discussed including but not limited to inadequate awareness and understanding of Tanzania Investment Centre (TIC) mandate and the land allocation process among land based investment stakeholders; Practices that do not adhere to Free, Prior and Informed Consent (FPIC) principle; Existing compensation practices that are conducted in an inadequately and vague processes ; Dispute resolution mechanisms that are inadequately culturally sensitive and with a bias against women and evidences of weak land-based investment monitoring and evaluation system. The paper concludes that there is inadequate implementation of land investment governance good practices principles in Tanzania. The study further recommends Civil Society Organizations (CSOs), and government to address highlighted gaps in land investment governance.

Key words: Governance; Model guides; Investment, Land; Tanzania

1. INTRODUCTION

The growing global demand for food and natural resource has forced increased land investment in developing countries (Godfray *et al.*, 2010; Rullia *et al.*, 2012;). Unfortunately most of land investment regimes have not adhered to community needs and therefore pose as one of impoverishment factor (Scherr, 2000; Jayne *et al.*, 2002). To address land based investment governance challenges and improve existing systems, international community developed voluntary guidelines to address land governance.

These are for example, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest (VGGT) adopted by the Committee on World Food Security (CFS) in 2012; In Africa the Framework and Guidelines on Land Policy Africa (the “Framework”) adopted by AU in 2010; Guiding Principles on Large Scale Land Based Investments in Africa developed by AU in 2014, and most recently; Analytical Framework for Land Based Investments in African Agriculture developed by the New Alliance for Food and Nutrition through Grow Africa in 2015.

Although these international guidelines provide the standards that the world needs to archive, they are not one-size-fit-all solution due to different land governance systems in specific countries. Practitioners recognize a need to develop more detailed content that supports the implementation of international guidelines in specific countries. For instance, there have been documented efforts of how VGGTs has been implemented in different parts on the world to improve tenure security. For instance, in 2016 the Institute for Poverty, Land and Agrarian Studies (PLAAS), documented lessons from the implementations of VGGTs in different regions.

Donors, on the other hand, have committed support to promote implementation of VGGT. The donor community has created “a Global Donor Working Group on Land” which has approximately 30 members to among other things, coordinate and support implementation of VGGT. Four years since the guidelines were adopted, not much has been done in Tanzania, a country known to have approved many land deals and still plans to welcome investment in agriculture sector. Therefore Tanzania Natural Resources Forum (TNRF) is working with other stakeholders to address the land investment governance gaps by developing a country specific gender sensitive land based investment model guides. The model guides adopt principles of VGGTs in improving the legislative and policy gaps.

Considering the involvement of different stakeholder in the lifecycle of the investment, this model guide will be for three main groups; the government, investors and community. The guides will provide engagement framework between and among group from pre-investment stages to post investment engagement while providing a focus on the gender consideration. To make the model guides comprehensive, views and concerns from community, government and investors will all be addressed during the model guides development.

This paper highlights evidence of the gaps in policy and practices gathered through one of the consultations with government officials and civil society organizations in 14 districts in Tanzania. It illustrates practices on land investment and interpretation of current land governance legal framework. It further documents best practices that can be scaled up to enhance efficiency in land based investment governance. Recommendation from the study will be used to inform model guides contents development to reflect the current land investment regime challenges.

This paper is divided in for parts; the **first** part is introduction which provides the general overview of the paper, **second** part is methodology which points the tools and approaches used to collect data. The **third** part is on some of the key findings of the research work, discussions and conclusion of the same. Part **four** is on specific recommendations for different audiences. We will delve on the methodology of the study in the subsequent part.

2. METHODOLOGY

To effectively obtain information that informs land investment governance model guides development, the research purposively sampled the Southern Agricultural Growth Corridor of Tanzania (SAGCOT) as a study site. This is the Tanzania's food basket earmarked for commercial agriculture and the government has made initiatives to attract investors to the region. Moreover, few other districts that are outside the SAGCOT regions were also selected to get the comparative aspects of the investment dynamics and practices.

The study used the Focus Group Discussions (FGDs) to obtain information from respective Civil Society Organization (CSOs) and government official representatives. CSOs interviewed are working in the areas of human rights and natural resource governance whereas government officials interviewed work in legal, social, land, administration and agriculture offices at the district level. A total of 136 individuals participated in the study and among were 52 women (38% of the total sample size). Government officials FGDs had 9-10 individuals whereas CSO recorded 6-10 individuals.

To maintain focus on land investment governance, the study employed questionnaire design that follows investment timeline. The investment timeline details the investment process from the commencement to completion. Questionnaires were therefore designed to follow the process of land allocation to investors; Consultation of relevant stakeholders; Negotiation and contracting process; Compensation; Dispute resolution; Investment monitoring and evaluation, and gender consideration in land investment process. The format enabled researchers to document current land based investment practices and respective implication to investors, government and community.

Open ended questionnaire based on investment timeline were used as guiding questions to probe for in-depth details on investment law and practice. Information was manually collected through notebooks and later edited, and summarized according to Cresswell (2013, Page 238-239). This was done to obtain meaningful paragraph to present findings. Findings were triangulated by different follow up Key Informant Interviews (KII) and secondary information from major land based investment government documents.

Key findings, discussion and conclusion are presented in the following section. In the section, findings have been categorized according to investment thematic areas and timeline. In each thematic area each paragraph represents the finding, discussion and conclusion in a respective sequence of flow. Having discussed the methodology, the next part of this paper will focus on findings, discussions and conclusion.

3. FINDINGS, DISCUSSION AND CONCLUSION

This subsection illustrates in nutshell major field findings and describes the VGGT mirroring the Tanzania legal framework. The subsection further compares the legal framework and practice in land based investment governance in Tanzania. Nevertheless the sub section draws conclusion based on the comparison of the findings against the VGGT and Tanzania legal regime. The findings, discussion and conclusion follow a sequence of paragraphs in each land based investment themes below.

LAND ALLOCATION

- An investor acquires a derivative right or granted right of occupancy over land after being approved by the Tanzania Investment Center (TIC). TIC is the central government coordinating agency for all the investments, including land based investments in Tanzania. For a proper and smooth investment processes in the country, all stakeholders are supposed to be conversant with TIC land investment processes and procedures. The study however documented inadequate awareness of Tanzania Investment Centre (TIC) mandate among land stakeholders in land allocation process. In addition, the study documented inadequate coordination among government ministries, department and agencies in land allocation process.
- Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forest (VGGT) calls states to adopt a smooth process that accounts for informed decision in land allocation. In addition, the Tanzania Investment Act, 1997 (sections 16, 17, and 19(2); Village land act, 1999 (section 7 (7) and 8); Local government (District authorities) Act, 1982 (section 114); Land act, 1999 and Land registration act, Cap.334 support the informed land allocation process.

- Though the Tanzania legal framework support consultative land allocation process, field finding indicate inadequate implementation of the law. There is therefore the gap between legislations and their implementation. This gap results as a function of low awareness on land related laws of stakeholders in district and at villages. This has resulted into many problems with regard to land investment in Tanzania

CONSULTATION, NEGOTIATION AND CONTRACTING

- Good practice in land deals consultation, negotiation and contracting processes requires high level of transparency. The transparency level is reflected with the degree of Free, Prior and Informed Consent (FPIC) principle used in consultation, negotiate and contracting. The study documented inadequate FPIC principal use in negotiation, consultation and contracting processes in Tanzania. This has resulted into low participation of men and women in the process and prone communities, government and investors into conflicts.
- International voluntary guideline (VGGT) has clearly stipulated land based investment FPIC principal use. The Tanzania legal regime, for example, the Land Act, 1999; Village land act, 1999; Law of contract act cap 345 and its part 2; Article 21 (2) and article 146 (1) of the constitution of the United Republic of Tanzania of 1977; And Land acquisition Act, 1967 section 3 and 4 read together with section 3(h) of Land act, 1999 and Village Land act, 1999 indirectly address the FPIC principal..
- There is therefore an imbalance between the international guideline (VGGT) and Tanzania legal regime with regards to the diversity and use of FPIC principle in land based investments. This could be partly contributed by the historic mode of economy. Tanzania adopted a socialistic (Ujamaa) approach in with the state owned major means of production. The model of production did not require much of land transactions to large scale agriculture land investment in the country.

COMPENSATION

- Compensation practices are essential part in land investment process that directly involves the community and has potential to cause conflicts between and among the stakeholders. Study recorded compensation practices that have overlapping mandates, less transparent and inadequately address the needs of the community. This has increased the chances of conflicts among governments, investors and communities.
- VGGT and the guiding principle on large scale land based investment in Africa, chapter 2, principal 2 have emphasized on that transparent compensation that takes into account community needs. In addition Tanzania legal framework has provided for fairness and flexibility around compensation. For example, article 24(2) of the constitution of the United Republic of Tanzania of 1977; Section 3 (1) of the Land act, 1999; Village land act, 1999; And regulation 19 (3) of the Village land regulation 2001 all address for a fair, prompt and transparent compensation procedure.
- Though there is a good legal framework both nationally and internationally that addresses transparent compensation practices, the study however evidenced irresponsible compensation practices in Tanzania. This is due to low understanding of compensation rights among communities. The practice therefore evidences the gap between the legal framework and compensation practice in land based investments in Tanzania.

DISPUTE RESOLUTION MECHANISMS

- Tanzania's dispute resolution mechanisms on land based investments involve use of judicial systems. This ranges from Village Land Councils, Ward Tribunals, District Land and Housing Tribunals, High Court and the Court of Appeal. However, the study has proved that existing dispute resolution mechanism practices do not resolve disputes and grievances in the manner that equally protects and safeguards the rights of community, government, investors and special groups like women to realize improved social, economic and cultural outcomes.
- International voluntary guiding principles (VGGT) and standards on dispute resolution mechanisms address for dispute resolution mechanisms that equally address the rights of the community, government, investors and vulnerable groups like women. The rights of the community and vulnerable groups in dispute resolution mechanisms are however vaguely addressed by the land act, 1999 (Section 167); Tanzania investment act No.7 (Section 23) and land dispute court act, 2002.
- Findings from the field exhibit a different pattern of dispute resolution mechanism that inadequately protects the rights of special community groups like women because of language barrier, distance, costs, and legal technicalities that the system embrace. There is therefore a clarity gap of vulnerable groups' rights in dispute resolution mechanisms between the VGGT and Tanzania laws. The negative impact to vulnerable groups like women is partly due to respective community cultural set- ups and dispute resolution mechanisms associated fees.

MONITORING AND EVALUATION

- Strong monitoring and evaluation system in land based investment is essential in environmental, social and economic performance tracking. Findings from the study have evidenced existing monitoring and evaluation system as not robust enough to cater for performance tracking that equally benefits community, government, investors and community vulnerable groups like women. The system is environmentally centered, and inadequately addresses for land stakeholders social and economic performance monitoring from the investment.
- International guidelines (VGGT) address the welfare land based investment stakeholders through a robust monitoring and evaluation system. However the Tanzania legal regime through Environmental Management Act (EMA), 2004; Environmental Impact Assessment and audit regulations, 2005; the Land Act, 1999; and the Local Government (District Authorities) Act, 1982 have addressed monitoring and evaluation system in stressing on the environmental aspect.
- The country legal regime inadequately addresses social and economic monitoring and evaluation in land based investment in Tanzania. This disadvantages vulnerable groups in land based investment. This further exposes vulnerable groups like women to social and economic disadvantages. The condition is potential to trigger conflicts between community, government and investors.

4. RECOMMENDATION TO GOVERNMENT, AND CSOs

GOVERNMENT

- Tanzania Investment Centre (TIC) should collaborate with CSOs to make outreach programs that will raise land investments based investment stakeholders awareness. The awareness should be about its function, mandate and coordination.
- Entrench direct legal provisions on FPIC principle in land based investment that will be vested with TIC and related ministries. There should however be mechanism to tract the FPIC principle implementation.
- Establish a third part mechanism to ensure considerate, fair, and gender sensitive compensation practices. Alternatively, the government can establish a compensation bureau in land based investment as an independent entity in investment process.
- Capacity build existing dispute resolution mechanisms and bodies to ensure cultural and gender sensitive dispute settlement process.
- Include more social and economic aspects in the current land based investment monitoring and evaluation mechanism
- Adoption and formalization of Alternative Dispute Resolutions mechanisms that accommodates the needs of all stakeholders especially women and vulnerable group.

CIVIL SOCIETY ORGANIZATIONS (CSOs)

- Promote land based investment coordination advocacy among land stakeholders in the country. This should be conducted in collaboration with the government of Tanzania.
- Learn and understand the context and rationale of FPIC principle with relation to land based investment. Then, establish FPIC sensitization platforms for communities, government and investors
- Sensitize and advocate for best compensation practices and gender sensitivity in land based investments. CSOs with pro bono legal aid services should further litigate for the community for fair compensations.
- Train and advocate for equal access to justice which include use of Alternative Dispute Resolution Mechanisms. CSOS can also provide technical assistance to dispute resolution practitioners to adhere to cultural sensitive practice and mirror gender issues.
- Promote for inclusion of substantial social and economic dimensions in the current monitoring and evaluation system in land based investment.

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