International and regional guidelines on land governance and land-based investments: An agenda for African states

Key messages

• African policymakers need to take action to improve land governance and administration by implementing land governance frameworks: the FAO Voluntary Guidelines and the African Union Framework and Guidelines among others.

• Each African country is tasked with translating the FAO and African Union guidelines into binding regulations and enforceable laws at national level.

• These national regulations and laws must recognise customary tenure rights as real and defensible property rights.

• Private investments in agriculture, minerals and other sectors that involve large-scale land acquisition – and which displace African farmers and other rural land users – must be avoided or properly done.

• African governments must promote inclusive business models to enable African farmers to partner with private investors so as to improve their land use, productivity and access to markets.

• African governments need to allocate sufficient funding to land and other line ministries to enable them to establish accessible and efficient institutions to administer and defend informal and customary land rights.

• To improve transparency and accountability, African governments must empower oversight institutions such as their parliaments and civil society organisations to monitor, evaluate and improve the implementation of these regulations.

Executive summary

Global and regional guidelines have been developed in the period 2009–2014 to improve land governance in the context of large-scale land acquisitions in developing countries. These provide an opportunity for affected countries to make necessary reforms to mitigate negative
impacts of such acquisitions. They also challenge governments, private companies and rural communities to know their rights and responsibilities and to act on them.

Many African countries are yet to fully implement land and other natural resources policy frameworks developed by the African Union (AU) and the United Nations Food and Agriculture Organization (FAO). These require states to strengthen the rights of rural populations to access, control and own such resources and to decentralise land administration. To date, rural communities in many countries lack proper knowledge about their rights and responsibilities; the roles of public and private sector and civil society – in their national policies; and legal frameworks governing natural resources.

African governments have challenged themselves to develop proper plans, garner political support at all levels of government and implement the intended policy, legal and institutional reforms on the ground. The global and regional guidelines must still be translated into binding regulations and enforceable laws in each country. This is a precondition for the global and regional guidelines to improve land governance and regulate land-based investments, as intended by all member states that acceded to them.

Context of the voluntary guidelines and frameworks

In the past decade, Africa has witnessed a ‘land rush’ as private companies and multinational corporations have acquired large tracts of land for the production of food and biofuel crops, as well as for commercial logging, forest plantations, mining and eco-tourism game reserves. The scale of this phenomenon is comparable only to the ‘Scramble for Africa’ in the colonial era. Concerns that this amounted to a new form of neo-colonialism, robbing Africa’s people of precious natural resources and livelihoods, triggered several responses from governments, civil society organisations, donors, financial institutions and academics.

- In 2009, the African Union Commission in collaboration with the African Development Bank and Economic Commission for Africa produced its Framework and Guidelines on Land Policy in Africa, which was endorsed by the Joint Conference of Ministers of Agriculture, Land and Livestock in April 2009.¹

- In 2010, the World Bank Group in collaboration with United Nations organisations – FAO, International Fund for Agricultural Development (IFAD) and Conference on Trade and Development (UNCTAD) – released seven Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources.²

- States also responded. Some placed limits on the amount of land to be allocated to large-scale investments, while others quickly formulated guidelines and strategies to regulate these investments.

- Amid these struggles, researchers and academics have investigated the risks and opportunities associated with the large-scale investments in land.³ Databases now exist that document the scale and distribution of large land deals globally and in Africa, such as the Land Matrix⁴, and several major studies have been published.⁵

- Farmers’ associations and civil society organisations launched campaigns demanding that governments ‘Stop Land Grabs’. Some participated in shaping the FAO Voluntary Guidelines and the African Union’s
Framework and Guidelines (AU F&G), while others rejected these as means by which to facilitate further land grabs.

There are currently several parallel processes underway to improve governance of land and other natural resources. In the next section, we highlight some of the key regional and international guidelines and frameworks that affect African states.6

**AU Framework and Guidelines on Land Policy in Africa (AU F&G)**

The AU F&G is the product of an AU process founded in 2006. The AU’s aim was to examine land policy issues and challenges in Africa with a view to developing a framework to strengthen land rights, enhance productivity and improve livelihoods. The AU F&G indicate 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. The Joint Conference of Ministers of Agriculture, Land and Livestock endorsed the AU F&G in April 2009, and subsequently the African Heads of State and Government adopted the Declaration of Land Issues and Challenges in Africa at an AU Summit in July 2009. The AU F&G are non-binding, as the Constitutive Act of the AU emphasises respect for member state sovereignty. At the same time, the AU F&G categorically state that African countries must acknowledge and recognise the legitimacy of indigenous land rights systems.7 Accordingly, countries should recognise both customary tenure and private title as equally constituting property in their land rights regimes. While the AU F&G provide details about what African states need to do, while respecting the states’ sovereignty, they provide general guidance which is not straightforward to implement, monitor or evaluate. This necessitated a further, more specific, set of guiding principles for African states.

The **AU Guiding Principles on Large Scale Land Based Investments in Africa** now constitute the definitive framework for African States, as they draw on the AU F&G and the FAO Voluntary Guidelines (see below). The AU’s Land Policy Initiative conducted e-consultations on the Guiding Principles in early 2014 with stakeholders from governments, farmers’ associations, the private sector, academia and civil society organisations, while also working at country level with specific governments to speed up their policy formulation processes. Following their contributions, the AU Guiding Principles were 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.

The purpose of the AU Guiding Principles is to guide AU member states to implement legal and policy reforms on land governance and large-scale land-based investments (LSLBI). They require African states to ensure that investments in agricultural land do not dispossess existing land rights holders and instead promote inclusive and sustainable development. The AU Guiding Principles set out six fundamental principles which constitute a comprehensive and mutually reinforcing framework for legal and policy reform.

The AU Guiding Principles are:

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 recognises 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 by affected communities.

4) LSLBI respect the land rights of women, recognise their voice, generate meaningful opportunities for women alongside men, and do not exacerbate the marginalisation 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.

These AU Guiding Principles also, however, suggest some of the problematic approaches such as fair and timely compensation to communities displaced by LSLBI. There remains controversy over whether or not the existing national and international compensation frameworks are adequate to account for the impacts of displacement, not only for current but also future generations.⁸

**World Bank Principles for Responsible Agricultural Investment (PRAI)**

The PRAI are the result of collaborative efforts of the World Bank Group and United Nations agencies (FAO, IFAD and UNCTAD) in response to the escalating impacts of large-scale acquisition of land and other natural resources. The formulation of these principles was informed by the accumulated experience of partner organisations and in particular the preliminary evidence from the World Bank in-depth study ‘Large-Scale Acquisition of Land Rights for Agricultural or Natural Resource-Based Use’ initiated in 2009. The PRAI were released in 2010 and set out seven *Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources*.

The PRAI emphasise the need for investors to respect human rights and existing rights-based regulations such as the United Nations’ Global Compact, to which more than 5,000 major corporations have subscribed. The PRAI insist on increased scrutiny of land-based investments larger than 1,000ha. They argue that preference should be given to family-based and owner-operated smallholder agriculture in government poverty reduction and economic growth strategies. The G8 and G20 have committed to implementing these guidelines. However, civil society organisations and farmers’ associations have rejected the PRAI on the grounds that the principles are likely to sanction large-scale land acquisitions and facilitate drivers of land grabbing. They are also more focused on narrow implementation of corporate social responsibility rather than enforcement
and realisation of human rights, which remains a state responsibility.  

**Critiques of the PRAI**

The UN Rapporteur on the Right to Food has argued that codes of conduct like the PRAI, which are based on self-regulation by the private sector, are likely to destroy the global peasantry system in the guise of responsible investment. He proposed alternative options which include ensuring investment agreement revenues benefit local populations; promoting labour-intensive farming systems; and requiring that investor obligations are clearly defined and enforceable. Borras and Franco (2010) also describe the PRAI initiative as a code of conduct that is grossly inadequate in ‘assessing the prospects of a more democratic and accountable system’, especially as it is not based on human rights law and instruments.

**FAO Voluntary Guidelines on Land, Fisheries and Forests (FAO VGs)**

The FAO *Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* were formulated through broad consultation of stakeholders from UN member states, civil society, the private sector and academia between 2009 and 2012. The purpose of the FAO VGs is to serve as a reference guide for improving the governance of tenure of land, fisheries and forests. The FAO 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.

The FAO VGs are the first global instrument on the tenure of land, fisheries and forests, and build on 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 FAO 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. The FAO has conducted 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.

The challenge, though, remains for states to implement the guidelines; to translate them into binding and enforceable national laws; to popularise them; and to shape the behaviours of investors in relation to rural communities.

**Principles for Responsible Investment in Agriculture and Food Systems (CFS - RAI)**

The Committee on World Food Security (CFS) concluded global negotiations on Principles for Responsible Investment in Agriculture and Food Systems (RAI) in August 2014.

The ‘overarching values’ for these principles are ‘human dignity, non-discrimination, equity and justice, gender equality, holistic and sustainable approach, consultation and participation, the rule of law, transparency, accountability, and continuous improvement.’ The ten principles require that responsible investment in agriculture and food systems should:
1. Contribute to food security and nutrition
2. Contribute to sustainable and inclusive economic development and the eradication of poverty
3. Foster gender equality and women’s empowerment
4. Engage and empower youth
5. Respect tenure of land, fisheries, forests and access to water
6. Conserve and sustainably manage natural resources, increase resilience, and reduce disaster risks
7. Respect cultural heritage and traditional knowledge, and support diversity and innovation
8. Promote safe and healthy agriculture and food systems
9. Incorporate inclusive and transparent governance structures, processes, and grievance mechanisms
10. Assess and address impacts and promote accountability

Like the previous guidelines, the CFS-RAI are voluntary and non-binding, but should be interpreted and applied consistently with existing obligations under national and international law.

Experiences from rural Africa

While governments and private sector companies are increasingly aware of and starting to implement land governance guidelines, our field research findings are that there is little to no knowledge about the FAO VGs, AU F&G and World Bank PRAI on the ground. Local communities, including those who are affected by existing or planned large-scale land-based investments, are unaware of these guidelines. They still need information regarding these legal and institutional frameworks that can safeguard their rights to resources like land, fisheries, forests, wildlife and water. The need is especially urgent in countries where there is high encroachment by private and corporate investors on communal or village lands. Below are examples from three countries where we have conducted research on these issues in partnership with local organisations.

Tanzania

‘We have not heard those guidelines, what are they all about?’ This was a response from a group of rural Tanzanian women in Msolwa village in Kilombero District when asked about the FAO VGs, the AU F&G and the World Bank PRAI Guiding Principles.

Tanzania is among the countries with the highest rate of foreign land acquisitions in Africa. In 2008, the Government of Tanzania set in place a moratorium on large-scale land allocation to biofuels investors following criticism from farmers’ associations, civil society organisations and academics of the government’s practice of allocating big chunks of land to (mostly biofuels) investors, without adequate compensation to villagers and with no biofuels policy in place.
The New Alliance on Food Security and Nutrition, launched on 18 May 2012 by the G8, aims to accelerate private investment in African agriculture. Through the New Alliance, the world’s most wealthy nations have negotiated with African states to make concessions for 45 multinational corporations in return for a projected US$3bn in corporate foreign direct investment. Ten African countries – Benin, Burkina Faso, Ethiopia, Ghana, Ivory Coast, Malawi, Mozambique, Nigeria, Senegal and Tanzania – agreed to implement concessionary reforms to encourage multinational corporations to invest in their farming sectors. The New Alliance agenda consists of a wide range of policy reforms to address corporate investor interests, particularly in the area of seed control and seed markets. This would include governments stopping distribution of seeds to farmers, except in emergencies, so as to secure markets for seed companies. Other reforms included ending export bans, for example when Malawi conceded to abandoning all export restrictions except for maize, so as to allow companies to export food crops even in times of food shortages within the country. One year after launching the New Alliance, the next G8 Summit in June 2013 launched a Land Transparency Initiative to accelerate land governance reforms, including partnerships for Burkina Faso (with the US), South Sudan (EU), Namibia (Germany), Nigeria (UK), Niger (EU), Senegal (France) and Tanzania (UK). Both processes recognise the existing land governance frameworks but give priority to the FAO VGs and the PRAI. For example, the New Alliance cooperation framework for Tanzania commits all parties to ‘take account of the FAO VGs and PRAI.’ However, even though Tanzania is a member of the AU, its New Alliance cooperation framework is silent about the AU F&G.

Box 1: The G8’s New Alliance on Food Security and Nutrition and Land Transparency Initiative

Box 2: Private sector responses to land and investment guidelines

Private sector companies are increasingly aware of the need to comply with land governance frameworks and guidelines, though it is mostly the larger investors that have been put under pressure to comply with these – especially through media attention and civil society campaigns like Oxfam’s ‘Behind the Brands’. Multinational corporations such as PepsiCo, Coca-Cola and Nestlé have announced that they will comply with the FAO guidelines and PRAI, while the AU F&G and AU Guiding Principles are less well known and self-regulation by the private sector remains more widely used. For instance, PepsiCo’s Land Policy states the company’s commitment to the International Finance Corporation (IFC) Performance Standards to implement Free, Prior and Informed Consent (FPIC) principles for agricultural development in developing countries. In countries where it believes that these principles are not in place, it will advocate for those countries to follow the IFC Performance Standards and the FAO VGs.
November 2010, the government released its Guidelines for Sustainable Liquid Biofuels Development in Tanzania which require investors to consult local, regional and national stakeholders during the feasibility study and project planning phase. They also require the signing of a memorandum of understanding with the relevant local village authorities in all areas that fall within the project boundaries. Initially, all approved projects receive five-year leases for biofuels development as an interim period to demonstrate the legitimacy and viability of their proposed enterprises. Only if proven successful may the investors’ leases then be extended to 25 years. Approved land must be used only for the purpose stated in the investor’s application and the maximum land acquisition is 20,000ha per investor.

These Tanzanian guidelines are an example of how one African state has operationalised some of the requirements of international and regional guidelines. However, they do not fully operationalise the guidelines and there is a degree of inconsistency in their implementation. Currently, the Tanzanian government in partnership with G8 member states and several multinational corporations is implementing the New Alliance on Food Security and Nutrition initiative aimed at agricultural commercialisation in the country. In the initial implementation phase, the government has earmarked large investment areas of up to 60,000ha each – far exceeding the government’s own ceiling of 20,000ha of land for a single investment.

Malawi

In Malawi, traditional leaders and chiefs have roles as custodians, rather than owners, of community land under customary tenure practices. These leaders play a vital role in mobilising communities for both social and economic activities in their areas. Yet, due to growing commercial interests in sugarcane production in the country, some local chiefs have recently sided with national elites and multinational corporations to mobilise people under their authority to grow sugarcane or to re-allocate their land to sugarcane growers. This has compromised the role of chiefs in relation to governance of tenure, and badly damaged their relationships with their communities who remain unaware of the international and regional guidelines that define their rights and responsibilities.

In Nkhotakota District, for instance, a traditional leader introduced and promoted sugarcane farming in his community. As a result, some farmers in the community switched to sugarcane while others have maintained their traditional food and cash crops. But as the demand for sugarcane increased from a South African sugar milling company, the chief started to order all community members to convert their farms into sugarcane fields. This created
tension between the chief and the members of the community, according to villagers we interviewed. One villager said:

We really wonder why the chief is forcing us to grow sugarcane. We were always satisfied with what we were growing. While they call us anti-development, they forget that our houses are the result of growing other crops in our area. We are able to take our kids to school and some are already professors using only cash from our own maize, bananas, tomato, cassava and not sugarcane.16

**Namibia**

Namibia is one of the few African countries with a progressive legal and institutional framework governing tenure of natural resources. Its Communal Land Reform Act 5 of 2002 defines the roles and responsibilities of the actors involved, from the national to the local level. The functions and powers of the Communal Land Boards and the Traditional Authorities follow a system of checks and balances. Nonetheless, communities in rural Okavango and Zambezi regions have not received adequate knowledge about this national legislation, let alone the regional and international voluntary guidelines and frameworks. As they face growing demands from investors for land in their localities, communities are eager to know their land and natural resources rights.

Members of two communities in Okavango and Zambezi asked for information about the procedures they could follow if they were not happy with an investor who has been given a portion of their land for investment without their consent. Some did not even know that they had the right to appeal decisions made by the traditional authority or Communal Land Board with regards to investors’ applications for land allocations and where no consultation was done or this was inadequate. These are precisely the issues that the global and regional guidelines were formulated to address. Namibia is an example of a country that has implemented the proposals in the AU F&G to recognise customary tenure rights and to create democratic institutions to administer these within national land regimes, yet citizens are unable to use these as they are not aware of their rights in relation to governance of their tenure.

These three cases provide us with insights as to what is happening on the ground and the very limited degree to which these guidelines and frameworks have been implemented so far. While these processes are yet to reach ordinary citizens, government officials too, at national and local levels, are also not yet adequately acquainted with them. A priority now is for African states to increase the pace of their implementation to match the speed of the agricultural and other land-based investments which they are intended to guide. What is the point of having these guidelines if they cannot meet their own objectives in time?

**Implementation challenges**

For states to comply with international and regional guidelines on land tenure requires improved governance in the form of laws, policies, institutional reforms and awareness raising for all parties especially state officials and private sector companies.

Specific challenges include:

**State Sovereignty:** All the current international and regional guidelines are ‘soft laws’ and as such they do not override state
sovereignty and the existing policy, legal and institutional frameworks. Hence, it is difficult to impose them on any country that may not be willing to implement them.

**Weak state institutions:** Many state institutions that deal with tenure laws and policies are weak in terms of staff complements and resources available for implementation. This is aggravated in some cases by prevailing levels of corruption, making it hard for them to implement policies and enforce national legislation, and thereby impeding compliance with international and regional frameworks and guidelines.

**Protection of the rights of marginalised groups:** Most of the available guidelines emphasise the recognition of existing rights and the protection of the rights of marginalised groups – women and indigenous communities – but they vary in their prescriptions for how this can be achieved. For states to realise these rights of marginalised groups, technical guides and manuals are needed to present in a clear manner the practical steps needed to disseminate, implement, monitor and evaluate their recognition.

**Private sector commitment:** One of the key stakeholders in the implementation of these guidelines is the private sector – from investors to private developers. But experience shows that there is low turnout from the private sector in policy debate forums.

**Lack of adequate resources and lead institution:** Implementing these guidelines depends on the availability of resources such as funds from national budgets and civil service personnel. The guidelines are unlikely to be fully implemented if the targeted implementing partners do not have an institution to lead this process and it has adequate funds to disseminate, implement, monitor and evaluate these guidelines.

**Policy recommendations**

African policymakers need to take action to improve land governance and administration by implementing land governance frameworks which their states have signed: the FAO Voluntary Guidelines and AU Framework and Guidelines among others. The AU’s Guiding Principles form a useful guide for implementation of these frameworks. These frameworks require that states:

1. **Translate the FAO and AU guidelines into binding regulations and enforceable laws at national level.** This is a precondition for these guidelines to improve land governance and regulate land-based investments occurring in African states. This would facilitate the protection of marginalised groups – indigenous communities and women – in their rights to access, own and control land and other resources.

2. **Recognise customary tenure as property.** States must recognise and protect customary tenure of land and other natural resources as real and defensible property rights in civil law. These provisions need to meet the requirement in international law that holders of such property rights have the power to provide or withhold ‘free, prior and informed consent’ regarding any transaction of land and other natural resources that they use through custom.
3. **Encourage private investments that empower small-scale farmers** and which do not displace African farmers and other rural land users. Current approaches to compensation for displaced people create long intergenerational problems with affected communities losing access to resources needed for their livelihoods, without adequate resources to create alternative livelihoods for the next generation.

4. **Promote inclusive business models** to enable African farmers to partner with private investors so as to improve their land use, productivity and access to markets. Inclusive business models include joint ventures between villagers or communities and investors.

5. **Allocate sufficient funding and trained personnel** to land and other line ministries and institutions that administer and defend informal and customary land rights, to screen business proposals, conduct solid contract negotiations with investors, implement the changes required by these guidelines, in policy, law and regulations, and to strengthen land governance institutions across the country.

6. **Improve transparency and accountability in both public and private sectors** by facilitating and empowering the government oversight institutions –parliaments and civil society organisations to monitor, evaluate and improve the implementation of these guidelines on the ground.

**Conclusion**

International and regional guidelines and frameworks on land governance provide a useful roadmap for African states to follow to improve governance of the tenure of land, fisheries, forests and other natural resources. These resources remain the basis of the livelihoods of most rural African citizens, yet they are also increasingly prized by private investors.

To avoid a large-scale resource grab by corporate interests, the FAO and AU have appealed to African states to implement these guidelines so as to strengthen land and resource rights, providing legal recognition and institutional support for indigenous, customary and other informal property rights.

To implement such reforms will require strong leadership from line ministries responsible for land rights and land administration, as well as adequate resourcing from national budgets and development partners.

Until these systems are in place, rural communities are likely to remain unaware of their rights and responsibilities under FAO, AU and other guidelines. The three cases from Tanzania, Malawi and Namibia show how urgently African farmers and other rural citizens need information regarding their rights and entitlements, and support to engage with external investors so as to either give or withhold their consent for new investments and, where they wish to partner with private sector partners, to leverage beneficial terms and establish inclusive business partnerships. These are the ways in which improving governance of land
tenure underpins sustainable rural livelihoods. Only with these measures in place can resource grabs be avoided and private investment be channelled into inclusive agricultural development.

It is now the role of African policymakers, parliamentarians, civil society organisations and academics to put pressure on their states to ensure these international and regional guidelines are translated into enforceable national laws, are implemented, and reach rural people throughout their countries.

End Notes

3. A global research network called the Land Deal Politics Initiative (LDPI; www.iss.nl/idpi) partnered with academic institutions to host two international academic conferences – the LDPI Global Land Grabbing Conference I at the University of Sussex in 2011 and the LDPI Global Land Grabbing Conference II at Cornell University in 2012.
4. www.landmatrix.org
15. Interview, April 2014
16. Interview, October 2014
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