



**Implementing the Tenure Guidelines  
for Women and Small-scale Food  
Producers: an analysis of Mozambique,  
Tanzania, Senegal, and Haiti**

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## **Cover photo**

Women farmers from Bawodene Village in Tanzania. Andrew McConnell/Panos Pictures/ActionAid

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## Glossary

<b>AfDB</b>	African Development Bank
<b>AU</b>	African Union
<b>CAADP</b>	Comprehensive Africa Agriculture Development Programme
<b>CEDAW</b>	Convention to Eliminate All Forms of Discrimination Against Women
<b>CIAT</b>	Haiti's Inter-ministerial Committee for Territorial Development
<b>CNCR</b>	The National Farmer Platform (Senegal)
<b>CONGAD</b>	Senegal umbrella of NGOs
<b>CSOs</b>	civil society organizations
<b>DGI</b>	Haiti's General Directorate of Taxation
<b>DUAT</b>	Mozambique's Direito de Uso e Aproveitamento da Terra – right of use and benefit of land
<b>FAO</b>	The Food and Agriculture Organization of the United Nations
<b>FPIC</b>	Free, Prior and Informed Consent
<b>F&amp;G</b>	Framework and Guidelines for Land Policy in Africa
<b>G7/G8</b>	The Group of Seven (G7, formerly G8) is a governmental forum of leading advanced economies in the world
<b>GPs</b>	Guiding Principles
<b>IFC</b>	International Finance Corporation, a World Bank-backed financial institution
<b>Je Nan Je</b>	“Eye to Eye” an organization working on land rights in Haiti
<b>LPI</b>	African Union's Land Policy Initiative
<b>LSLBI</b>	large-scale land-based investment
<b>NGO</b>	non-governmental organization
<b>ONACA</b>	Haiti's National Cadastral Office
<b>PNISA</b>	Mozambique's National Plan for Agricultural Sector Investment
<b>PPP</b>	Public Private Partnership
<b>SAGCOT</b>	Southern Agricultural Growth Corridor of Tanzania
<b>TGs</b>	Tenure Guidelines, short for Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

# Executive Summary

Against a backdrop of intensifying pressures on land and widespread reports of land grabbing, the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* were negotiated and agreed upon at the United Nations Committee on World Food Security in 2012 to provide a comprehensive framework of human rights based standards for the governance of land tenure. As such, the guidelines recognize both the importance of land to sustainable development and the intimate connection between the right to food and the recognition of land rights for marginalized and vulnerable people.

Referred to in this report as the Tenure Guidelines (or TGs), the framework is grounded in the reality that access to land and security of tenure are essential to ensure the right to adequate food. The eradication of poverty and hunger and the sustainable use of the environment depend in large measure on how people and local communities gain access to land, fisheries, and forests. The livelihoods of hundreds of millions of poor people are based on secure and equitable access to and control over land-based natural resources.

The Tenure Guidelines build upon and are strengthened by the *Framework and Guidelines for Land Policy in Africa* (the F&G) developed through the African Union's Land Policy Initiative (LPI). The F&G, adopted in 2009, make similar provisions to the Tenure Guidelines in the process of land tenure governance including multi stakeholder participation, gender equality and women's rights to land, conflict resolution, etc. While the F&G are of particular relevance to African Union members, the Tenure Guidelines are a globally applicable normative tool for "all countries, and at all levels of development." The TGs are grounded in human rights, especially the right to food, and focused on improving land tenure governance for the benefit of all, with an emphasis on vulnerable and marginalized people.

With a concentration on women and small-scale food producers, this report assesses the legal framework and tenure governance arrangements in Mozambique, Tanzania, Senegal and Haiti. Six core principles drawn from the Tenure Guidelines are used to highlight what each country needs to do in order to fulfill these principles and implement the TGs to ensure improved governance of tenure, enhance women's rights to land and tenure security, and protect local communities from land-grabbing.

## **Six core principles:**

1. Inclusive multi-stakeholder platforms
2. Recognition of customary rights and informal tenure
3. Gender equality

4. Protection from land grabs
5. Effective land administration
6. Conflict resolution mechanisms

## **Main Findings**

When applying these six principles through a baseline assessment of the legal and policy framework of these four countries, this report finds that although highly differentiated by their histories, ecologies and cultures, all four countries have to contend with similar issues, and many key principles have not been implemented to date.

In each case, there is a profound gap in terms of gender equality in access to land; land administration and conflict resolution mechanisms are weak, under-resourced, costly, corrupt, and ineffective; and vulnerability to land grabs is pervasive. In all but the case of Haiti, existing customary and informal tenure rights are given some form of legal recognition, but in the face of pressure from large-scale land acquisitions and land grabs, these rights are not always recognized, upheld, and enforced. Furthermore, at the date of the research, Senegal was the only one of the countries to have established a multi-stakeholder platform on implementing and monitoring the TGs.

While the TGs are designated as “voluntary,” they offer norms for governing land tenure in order to realize the right to adequate food. Since in many countries, part of the population suffers from food insecurity, the Tenure Guidelines are a standard by which countries and companies can be held accountable as to whether or not they have taken needed action on land tenure to realize the right to adequate food, and to address discrimination against women and marginalized people.

## **Multi-stakeholder Platforms**

Inclusive multi-stakeholder platforms are essential to guide, monitor, and evaluate the implementation of the Tenure Guidelines. They are a key governance arrangement to ensure participation of all stakeholders, as well as oversight, monitoring, evaluation, transparency, and accountability. Since the TGs prioritize marginalized and vulnerable groups, these groups must be represented in the platforms, including women, youth, and small-scale food producers of all ethnic groups. As the TGs encourage the consideration of redistributive reforms, groups that have been displaced and/or whose livelihoods are insecure due to disaster, conflict, or economic change should be included in the multi-stakeholder platform. The formation of a multi-stakeholder platform should include a process of sensitization about the importance and relevance of land and natural resource tenure governance throughout the country, including areas that lack good communication infrastructure. Interviews with ActionAid country staff indicate that many women and small-scale food producers living in rural areas are unaware of the provisions of the TGs and that far greater effort must be made to raise awareness in local communities and disseminate appropriate information at local and grassroots levels.

Senegal has made important progress by being the first of the four countries to organize a multi-stakeholder platform. However, it is crucial that such platforms remain open to increasing inclusivity while actively and regularly monitoring land tenure issues and implementation of the Guidelines.

## **Recognition of Customary Rights and Informal Tenure**

Mozambique, Tanzania, and Senegal all have overlapping statutory and customary tenure systems that recognize the validity of a range of individual and collective informal and customary tenure rights. Haiti's statutory law does not recognize these rights, and this gap must be addressed. However, although Mozambique has one of the most progressive land laws that is in line with many of the provisions in both the TGs and the F&G, merely changing the law is not enough. Effective implementation involves a whole range of factors, from the political will to reform and direct government services to embrace the new legislation, to empowering administrative structures with new skills and adequate resources, and training community-based paralegals and informing women and local communities about their new rights and how to use and enforce them.

## **Gender Equality**

Although statutory law in Mozambique, Tanzania, Senegal, and Haiti establishes equality for women and men with regard to a range of land rights – such as acquiring, holding, using, controlling, and dealing with land – this report finds that women often continue to lose these rights in practice and that administrative systems do little to promote and safeguard these rights within customary tenure regimes. For example, under customary systems in Senegal, women generally do not inherit land from their husbands, and when women are divorced or widowed they frequently forfeit their secondary rights to their husband's land and need to return to their parents' home to access land for farming.

In many countries information about women's land tenure is lacking, making it impossible to provide accurate global estimates. Statistics that are available show great inequality in spite of laws intended to give equal land rights to women. For example a 2010 survey in Tanzania found that 77% of households have rights to agricultural land, but only 30% of women reported having land rights, 22% of women said they held land jointly with a husband, and 8% on their own. There is also little information about the quantity and quality of land women hold, or the degree of empowerment and freedom they have in using it.<sup>1</sup>

Patrilineal systems and norms, low levels of formal education, social exclusion, and lack of strong female voice and representation on rural councils all contribute to weak de facto recognition and enforcement of women's equal rights to land, especially in customary settings. Sustained affirmative action – through public education, change of attitudes towards women's rights to land, work with traditional leadership, paralegal training, and greater female representation on village land councils – are key measures to ensure implementation of guidelines to increase gender equality.



## Protection from Land Grabs

Despite policies in the four studied countries that give assurances of prior consultation for local communities affected by development projects, the threat of land grabs or expropriation without due process remains. Prior consultations are often ignored or not properly conducted, and small-scale food producers, especially women, rarely participate in wider land use planning. Expropriation is particularly likely where a broad and ambiguous interpretation by the state of the concept of ‘public purpose’ or ‘public utility’ is used. Measures to protect women and local communities from land grabs are inadequate; these include new legislation to clearly define ‘public purpose’, ceilings on land transactions, and parliamentary approval for large-scale land deals. While the Tenure Guidelines highlight the internationally recognized right of indigenous peoples to make decisions on land deals based on a process of free, prior, and informed consent (FPIC), civil society organizations in the Committee on World Food Security have called upon governments and companies to extend this right to all communities affected by large-scale land acquisitions.<sup>2</sup>

## Effective Land Administration

Obligations under the TGs to comprehensively identify, map, and recognize all legitimate tenure right holders – including all existing customary and informal tenure rights – require robust, responsive and effective land administration systems and services. However, we found land administration systems in all four countries were hampered by widespread weaknesses and dysfunctions, including overstretched and poorly trained staff, insufficient human and technical resources, over centralization, inadequate village

A HERDER WITH HIS CATTLE ON LAND SELECTED FOR AN INDUSTRIAL PLANTATION IN NDIJEL, SENEGAL.

CREDIT: GIADA CONNASTARI/  
ACTIONAID



registries, inaccessible and un-integrated central land registries and databases, complex and high cost formalization of land titling allowing elite capture of benefits at all levels, and a lack of transparency with few checks and balances to prevent corruption.

## **Conflict Resolution Mechanisms**

Ensuring affordable access to independent, reliable, and effective conflict resolution mechanisms is a key aspect to implementing the TGs and the enjoyment of land tenure security for poor communities. However, access to formal courts in all four countries studied is restricted because of high costs, long distances, insufficient legal training for judges and lawyers, and corruption. Due in part to the lack awareness of statutory law, alternative customary conflict resolution mechanisms and community courts are in widespread use, yet they often tend to be biased towards large-scale investors, and discriminate against women. Measures to remedy the problem include increased technical and human resources to reduce costs, retraining judges and lawyers, grassroots information campaigns, decentralization of alternative dispute resolution mechanisms, and promotion of women's-rights focused paralegals at the community level.

# 1. Introduction

This report assesses and analyzes the practical implications of implementing the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* – hereafter, the Tenure Guidelines (TGs) – in four countries: Mozambique, Tanzania, Senegal and Haiti. With a focus on women and small-scale food producers, it assesses each country’s current legal framework and tenure governance arrangements against six key principles drawn from the TGs, highlighting what each country needs to do to fulfill these six principles and implement the TGs to ensure improved governance of tenure, enhance women’s rights to land and tenure security, and protect local communities from land-grabbing.

The six key principles drawn from the TGs that we assess against the current legal and tenure governance situation in Mozambique, Tanzania, Senegal and Haiti, are:

1. Inclusive multi-stakeholder platforms
2. Recognition of customary rights and informal tenure
3. Gender equality
4. Protection from land grabs
5. Effective land administration
6. Conflict resolution mechanisms

The eradication of poverty and hunger, and the sustainable use of the environment, depends largely on how people and local communities gain access to land, fisheries, and forests. The livelihoods of hundreds of millions of people experiencing poverty, particularly the rural poor, are based on secure and equitable access to and control over these natural resources. They are the source of food and shelter, the basis for social, cultural and religious practices, and a central factor in economic growth.<sup>3</sup>

Women are widely marginalized and their rights to land are especially insecure. While women produce much of the food in poor countries,<sup>4</sup> their ownership and control of agricultural land is considerably less compared to men.<sup>5</sup> UN experts highlight that access to land and security of tenure are essential to ensure the enjoyment of the right to adequate food.<sup>6</sup> The right to food requires that governments should refrain from taking measures that may deprive individuals of access to productive resources on which they depend for food, they should protect such access from encroachment by private parties, and they should seek to strengthen people’s access to and use of resources and means to ensure their livelihoods, including food security.<sup>7</sup> The human rights standards, obligations, and responsibilities set out in the TGs are intended to guide states to improve their governance of tenure with the overall goal of achieving food security and

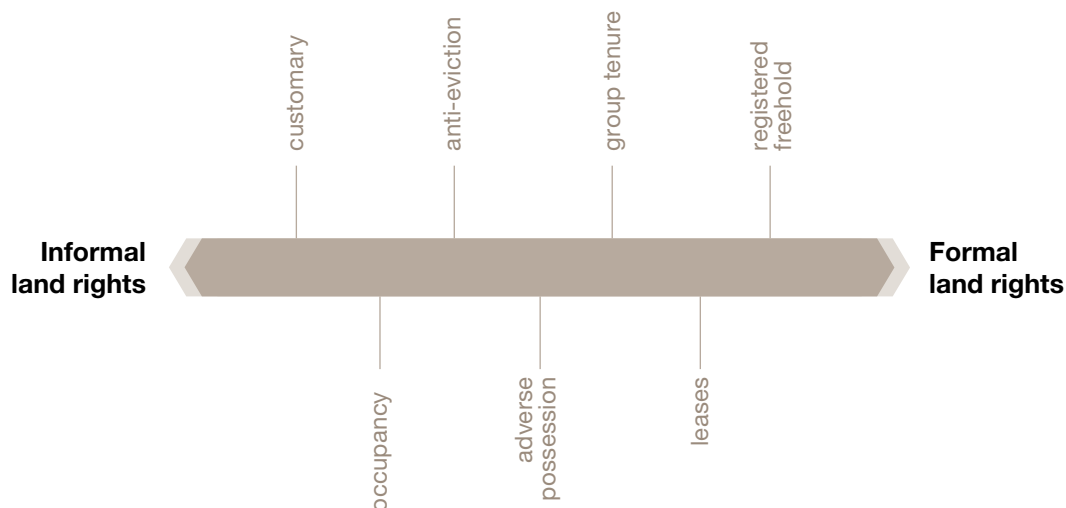
the progressive realization of the right to food for all – **with a particular emphasis on the needs of vulnerable and marginalized people.**<sup>8</sup>

The TGs – which were agreed through an exhaustive, three-year long, multi-stakeholder negotiation at the Committee on World Food Security and adopted in 2012 – were developed in response to widespread land-grabbing which has caused alarming levels of expropriation, dispossession, forced eviction and displacement for hundreds of thousands of women, small-scale food producers, pastoralists, shifting cultivators, forest dwellers, fishers, and tribal and indigenous peoples worldwide.<sup>9</sup> While many land grabs are being done under the claim of fostering development, investigations by ActionAid<sup>10</sup> and others<sup>11</sup> have found that they are in fact hurting the most marginalized and food insecure communities, often with the benefit of creating only a few low-paying jobs.

From the forests of Niyamgiri in India and the coastal lands at Dakatcha in Kenya, to the northern mountains of Haiti and the scrubland reserves at Ndiaël in Senegal, ActionAid works directly with local communities to protect and enforce their customary tenure rights and resist expropriation of their lands and natural resources to make way for large-scale land acquisitions by powerful biofuels, mining and agribusiness corporations.<sup>12</sup> At the same time, ActionAid also works with community-based women’s groups to claim and enforce women’s rights to land in countries such as India, Guatemala, and Sierra Leone, and previously in Malawi, Mozambique, South Africa, Zambia, and Zimbabwe.<sup>13</sup>

The three African countries selected in this study represent a sample of countries that have joined the New Alliance for Food Security and Nutrition, a G8 (now G7) sponsored initiative to promote large-scale foreign investment in agriculture via public-private partnerships and national policy reforms.<sup>14</sup> ActionAid and many other organizations warn that New Alliance agreements undermine tenure security and threaten large-scale land grabbing.<sup>15</sup> Haiti was selected due to its precarious land tenure situation exacerbated by

## Continuum of land rights



policies after the 2010 earthquake, and to demonstrate that the analysis is applicable in a global context.<sup>16</sup>

In this report the Tenure Guidelines are used as the comparative standard for all four countries. But given that three of the countries are in Africa, reference is also made to the African Union's *Framework and Guidelines for Land Policy in Africa* (the F&G) in order to describe the compatibility of the frameworks. This is significant as the Tenure Guidelines stress that they "should be interpreted and applied consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments."<sup>17</sup>

## 2. Key Land Tenure Issues

The Food and Agriculture Organization of the United Nations (FAO) defines land tenure as the way land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land. In other words, tenure reflects relationships between people and land directly, and between individuals and groups of people in their dealings in land.<sup>18</sup>

Land tenure systems are often complex, comprised not only of formal legal rights, but also informal or social relationships with land. Each system of tenure has, in different contexts, both strengths and weaknesses. Customary systems for instance can help secure broad access to land, but the internal management of customary tenure systems can also be dominated by men and detrimental to the rights of women.<sup>19</sup> Public ownership can help secure equal access to land use rights, but centralized power can result in distortions in land distribution due to corruption and conflicting economic policies that encourage large-scale land concessions and consolidation.<sup>20</sup> Privately owned land may encourage investment, but may also exclude the most vulnerable from accessing important land, grazing grounds, forests, and fisheries.<sup>21</sup>

In addition, these systems of tenure are not mutually exclusive but often overlap, co-existing within the same space, in what the Global Land Tool Network describes as a continuum.<sup>22</sup> Across this continuum, different forms of tenure operate simultaneously and may "change in status" depending upon the context. For instance informal rights may become formal if informal land users are granted titles. Likewise, customary systems may become illegal when statutory systems are introduced.<sup>23</sup> Often the two co-exist, with customary and informal rights maintaining their legitimacy within a statutory system.<sup>24</sup> In some instances, the failure to recognize the full spectrum on the continuum of land rights has created widespread "uncertainty, insecurity and disputes" surrounding land tenure, which is made worse by weak, corrupt and under-resourced land administration services.<sup>25</sup>

## 2.1 Security of Land Tenure

Given that there are many types of tenure, security of land tenure cannot be reduced simply to the formalization of rights to land through titling and registration. Neither should the assumption be that land titling and registration automatically lead to tenure security in the absence of well-functioning, affordable, and equitable governance structures that ensure the ability of the poor and marginalized to protect their land rights. Rather, land tenure security should be defined in a variety of ways and should include the recognition of all legitimate tenure rights, including existing customary, collective, and informal rights. It should include the “degree of confidence” that users have in the security of their tenure, the conviction that their rights will be recognized and protected by the State and the extent to which these rights can be defended within the legal and social framework available.<sup>26</sup> The need for secure land tenure rights is important for a number of reasons, particularly for women and small-scale food producers whose livelihoods depend on access to land and who are key actors in local food systems and in the global fight against poverty and hunger:<sup>27</sup>

- Secure tenure can help increase household incomes and food security by creating incentives to enhance investment in labor and agricultural methods, leading to increased productivity.<sup>28</sup>
- Secure tenure rights, depending on the customary or statutory framework, may allow land to be “sold, rented out, mortgaged, loaned or bequeathed”. This can provide options of mobility, access to credit and capital, and act as a financial safety net.<sup>29</sup>
- Land tenure structures are complex, comprised of various complementary or competing interests influenced by “social, technical, economic, institutional, legal and political aspects.”<sup>30</sup> Land tenure security therefore encompasses “all aspects of power/politics and social position” and can be used to tackle issues such as “gender discrimination [and the] social exclusion of vulnerable groups.”<sup>31</sup>
- Land tenure security applies not only to individuals and households, but also to whole communities. Because small-scale food producers rely on social relationships in communities for livelihood and well-being, land tenure systems that

*“Before we were eating up to 10 cups of rice [per family, per day] because of the produce we were getting from our farms. But since Addax came, we can no longer eat the amount of rice we used to eat. Now we are eating 5 cups. We cannot even imagine getting 6 cups because our source of getting money is very slim.”*

Zaria Conteh (alias), female farmer from Bombali in Sierra Leone, referring to land lost to Swiss-based Addax Bioenergy to make way for a sugar cane biofuels plantation<sup>33</sup>



focus only on individual tenure security, may destabilize community security. This can occur in situations where wealthy investors can accumulate land piecemeal from a poor community, to the point that the community no longer has enough resources to maintain its form of social organization and related livelihoods.

A WOMEN ON THE  
NDIAEL RESERVE IN  
SENEGAL HARVESTS IN  
THE FIELD.

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CONNESTARI/  
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Despite its importance, tenure security for many small-scale food producers, and especially women, has traditionally been weak in developing countries, leaving many poor and marginalized people vulnerable to loss of land and resources. This vulnerability is magnified in the current context of the global land rush in which increased pressures on land and renewed foreign and domestic interest in large-scale land investments has opened up many countries to the threat of large-scale land grabbing.<sup>32</sup>

## 2.2 Women and Land Tenure Security

In many developing countries, rural women comprise “the most resource poor and neglected socio-economic groups worldwide.”<sup>34</sup> While no precise estimates quantifying women’s contributions to food production exist, experts agree that women’s food production is crucial for the global food supply, and that women in many situations contribute more than their male counterparts.<sup>35</sup> However, women’s access to and control of land is far weaker than that of men. Although accurate data on land tenure are scarce, it is incontestable that women all over the world own much less land on an individual

basis than men, and where land is owned jointly, the amount of control women are able to exercise over this land is often limited.<sup>36</sup> In communal settings, women's level of control over communal and common resources is also lower as they are often excluded from decision-making and rarely represented in traditional institutions governing land. Women's land rights are crucial, however, not only for empowering women to enjoy their inherent rights, but also due to the positive correlation between these rights and poverty reduction.<sup>37</sup> Women often use gains from land to enhance their family welfare, spending more of their incomes on nutritious food, education, and healthcare, and also to negotiate their relationships within social structures, including family structures.<sup>38</sup>

Despite international human rights instruments such as the *Convention to Eliminate All Forms of Discrimination Against Women* (CEDAW), which states that "(b)oth spouses shall have equal rights in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property," many countries do not have specific provisions in domestic law addressing women's equal rights to land.<sup>39</sup> Even in countries where women's rights to land have been addressed within national statutory frameworks, women can remain excluded and marginalized in terms of their access to land and security of tenure. For instance, women remain vulnerable in cases where customary law maintains patriarchal social structures that deny women the right to inherit land from their spouses, or make a claim to land in the case of divorce.<sup>40</sup> Under international human rights agreements, neither statutory nor customary law should discriminate against women.

### 3. Tenure Guidelines

Adopted in 2012, the TGs are a framework based on human rights obligations and standards for the governance of tenure of land, fisheries, and forests, which recognize both the importance of land to sustainable development and the role good land governance and broad access to land play in ensuring food security for all people.<sup>41</sup> The TGs were negotiated in a context where concerns over global food insecurity were punctuated by fears of loss of tenure rights and livelihoods by local communities due to large-scale 'land grabs', environmental degradation and climate change.<sup>42</sup> These issues put land tenure security at the top of the agenda in many countries where there is endemic food insecurity. The framework is seen as an "accountability mechanism" through which local communities can hold both the State and private actors to account in land use planning processes.<sup>43</sup> The TGs provide communities and civil society actors a framework around which to advocate for improved national policies on land tenure.

The TGs were written through multi-stakeholder negotiations, including "governments, international organizations, civil society groups, and the private sector," giving them widespread legitimacy.<sup>44</sup> However, as a framework intended for global applicability, the

TGs are necessarily broad. Their implementation as a means of ensuring tenure security for smallholder farmers is regularized by the national context of each country, including current national laws related to land tenure, statutory and customary, as well as regional and international obligations. The socio-political context, financial ability, and status of their land administration services and justice systems, also affect the progress of implementation and the extent to which the TGs positively improve land tenure security, particularly for small scale food producers and women who struggle with food insecurity.

The Tenure Guidelines are not the only relevant document for making land tenure policies. There are a number of other important frameworks and initiatives which aim to guide and inform tenure policies, particularly the African Union's *Framework and Guidelines for Land Policy in Africa* (F&G), and which offer guidance and recommendations to national governments on policy formulation. This framework, developed through a participatory multi-stakeholder process between 2006 and 2009, makes similar provisions in the process of land tenure governance including multi stakeholder participation, gender equality and women's rights to land, conflict resolution, etc. The TGs, on the other hand, offer a globally applicable normative tool that focuses on human rights for ensuring land tenure security "in all countries, and at all levels of development."

While the TGs are designated as "voluntary," they offer norms for governing land tenure in order to realize the right to adequate food. Since in many countries part of the population suffers from food insecurity, the Tenure Guidelines are a standard by which countries and companies can be held accountable as to whether or not they have taken necessary action on land tenure to realize the right to adequate food, and to address discrimination against women and marginalized people.

### **3.1 Practical Implications of Implementing the Tenure Guidelines**

While ActionAid has advocated extensively for the implementation of the TGs and the F&G within international and regional spheres, as well as in 21 countries around the world, there remains an urgent need to develop a global understanding of the implications of implementing these frameworks locally.<sup>45</sup> Based on lessons learned from its experiences, and within the broad scope of these frameworks, ActionAid draws out and highlights six overarching key principles that advance land governance and tenure security for women and small-scale food producers who continue to struggle with food insecurity.

The TGs are grounded in human rights and so their implementation "should be consistent with States' existing obligations under international law, especially the Universal Declaration of Human Rights and other international human rights instruments."<sup>46</sup> Respect for human rights is a core principle of the TGs,<sup>47</sup> and the adoption of this approach by governments is a key way to ensure greater transparency, participation, consultation and accountability. The approach includes core principles such as human dignity, non-discrimination, equity and justice, gender equality, a holistic and sustainable approach, consultation and participation, transparency, rule of law, and



accountability. The TGs also remind states and non-state actors that all human rights are universal, indivisible, interdependent, and interrelated.<sup>48</sup>

In broad terms, the TGs request that governments do their utmost to carefully identify all those who are using, renting, and owning land before land is transferred to any other use. Second, they ask that governments review all existing legislation and amend or develop it further to ensure the protection of human rights with regard to land tenure, including the Right to Food. Finally, the TGs demand a systematic policy response to improve tenure governance and subsequently land tenure security for all, particularly for women and small-scale food producers.<sup>49</sup>

### **Tenure Guidelines and human rights<sup>50</sup>**

The main human rights declarations, treaties and principles embodied in the Tenure Guidelines include:

- The Universal Declaration of Human Rights
- The International Convention on the Elimination of All Forms of Racial Discrimination
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The Convention on the Elimination of All Forms of Discrimination Against Women
- The International Labor Organization Declaration on Fundamental Principles and Rights at Work
- UN Guiding Principles on Business and Human Rights
- The UN Basic Principles and Guidelines on Development-based Evictions and Displacement
- The UN Principles on Housing and Property Restitution for Refugees and Displaced Persons ('The Pinheiro Principles')

The TGs explicitly build on and support *The Voluntary Guidelines for the Progressive Realization of the Right to Adequate Food*, and the findings of the International Conference on Agrarian Reform and Rural Development in 2006. They also mention key human rights instruments relevant to tribal groups and indigenous peoples with customary tenure systems, including:

- The International Labor Organization Convention No.169
- The Convention on Biological Diversity
- The UN Declaration on the Rights of Indigenous Peoples

### 3.2 Inclusive Multi-stakeholder Platforms

A crucial element of implementing the Tenure Guidelines is the creation of multi-stakeholder platforms – ensuring enhanced participation, oversight, monitoring, evaluation, transparency, and accountability. In order to assure that implementation of the Tenure Guidelines considers reforms that benefit the marginalized and vulnerable people prioritized in the Objectives of the Guidelines, these platforms should include the participation of representatives of marginalized and vulnerable groups, including displaced persons, the landless and those without sufficient land to sustain their livelihoods. Similarly, the African Union’s (AU) F&G provides a template for the “design of land policy implementation strategies” and a detailed action plan to which states can refer when implementing the principles of the AU’s Land Policy Initiative.<sup>51</sup> It also recommends tracking systems through which all stakeholders can monitor and evaluate the progress of implementation.<sup>52</sup> Both frameworks emphasize the need for inclusivity and participation in monitoring and evaluation mechanisms.

TENURE GUIDELINES SECTION	SUB-SECTION
<b>OBJECTIVE</b>	<b>1.1</b> These Voluntary Guidelines seek to improve governance of tenure of land*, fisheries and forests. They seek to do so for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development.
<b>PROMOTION, IMPLEMENTATION, MONITORING AND EVALUATION</b>	<b>26.2</b> States are encouraged to set up multi-stakeholder platforms and frameworks at local, national and regional levels or use such existing platforms and frameworks to collaborate on the implementation of these Guidelines; to monitor and evaluate the implementation in their jurisdictions; and to evaluate the impact on improved governance of tenure of land.
<b>REDISTRIBUTIVE REFORMS</b>	<b>15.3</b> In the national context and in accordance with national law and legislation, redistributive reforms may be considered for social, economic and environmental reasons, among others, where a high degree of ownership concentration is combined with a significant level of rural poverty attributable to lack of access to land, fisheries and forests respecting, in line with the provisions of Section 15, the rights of all legitimate tenure holders. Redistributive reforms should guarantee equal access of men and women to land, fisheries and forests.

A country that is truly implementing the TGs and/or the F&G will create a national multi-stakeholder platform with a diverse membership that includes representatives of small-scale food producers, women, youth, indigenous, tribal, religious, trade unions, and community-based and civil society organizations, including organizations of landless people and those with insufficient land for their livelihoods, as well as relevant government departments and donors. Once established, a country will provide the necessary financial and technological resources to allow members of the platform to

communicate and have equal voice. Governments should create forums, both physical and web-based, to facilitate these platforms, which will help guide, monitor, and evaluate the implementation of the TGs and the F&G. This includes participation in policy formulation to give the frameworks legal basis, and the implementation of such policies. At the district and local level, women and local communities should also be empowered to take an active oversight role in their local land use planning and land tenure governance through deliberative and participatory processes.<sup>53</sup> Rural women, for example, have recently increased their voice and visibility in village land committees in Tanzania, Kenya, and Zambia.<sup>54</sup>

### 3.3 Recognition of Customary Rights and Informal Tenure

One of the key principles of the TGs is the recognition of all existing legitimate forms of tenure, both formal and informal.<sup>55</sup> Given that many poor and indigenous communities living under customary tenure regimes do not possess recognized records of their rights, the legal recognition of informal, unwritten, collective and customary tenure rights – including subsidiary gathering rights held by women, landless and vulnerable communities – would greatly increase their tenure security in the face of government and commercial pressures.

TENURE GUIDELINES SECTION	SUB-SECTION
<b>POLICY, LEGAL AND ORGANIZATIONAL FRAMEWORKS RELATED TO TENURE</b>	<b>5.3</b> States should ensure that policy, legal and organizational frameworks for tenure governance recognize and respect [...] legitimate tenure rights including legitimate customary tenure rights that are not currently protected by law.
<b>PUBLIC LAND, FISHERIES AND FORESTS</b>	<b>8.8</b> States have the power to allocate tenure rights in various forms, from limited use to full ownership, and should recognize the range of tenure rights and right holders.
<b>INDIGENOUS PEOPLES AND OTHER COMMUNITIES WITH CUSTOMARY TENURE SYSTEMS</b>	<b>9.4</b> States should provide appropriate recognition and protection of the legitimate tenure rights of indigenous peoples and other communities with customary tenure systems.
<b>INFORMAL TENURE</b>	<b>10.1</b> Where informal tenure to land, fisheries and forests exists, States should acknowledge it in a manner that respects existing formal rights under national law and in ways that recognize the reality of the situation. In particular, States should acknowledge the emergence of informal tenure arising from large-scale migrations.

Similarly, the AU F&G advocates the recognition of the “legitimacy of indigenous land rights” and calls for consultation and participation in policy processes, by those who have legitimate tenure rights that could be affected by policy decisions.

This principle is consistent with the concept of a continuum of land tenure, which is a useful tool for governments to ensure secure tenure in a variety of contexts. By fully implementing this principle, governments would legitimate this continuum of rights. In

practice, this might mean governments giving the same legal recognition to rights held formally and informally – for instance, rights gained through occupancy – and tenure held under customary practices by placing the internal management of community lands under customary law. This is consistent with principles of human rights.<sup>56</sup>

*“I learned of the project when I saw bulldozers clearing the forest and attempting to forcefully evict people from their homesteads. Yet I am a village elder here.”*

Jacob Kokani, a village elder from Marafa in Malindi, referring to the creation of a 50,000 ha biofuels plantation on community land by Italian-owned Kenya Jatropha Energy Ltd in 2009<sup>57</sup>



### 3.4. Gender Equality

Important in the context of land tenure security, as well as sustainable development, is the implementation of principle of gender equality as outlined in the Tenure Guidelines.

TENURE GUIDELINES SECTION	SUB-SECTION
<b>PRINCIPLES OF IMPLEMENTATION: 3B</b>	<b>4. Gender equality:</b> Ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary. States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status.
<b>RIGHTS AND RESPONSIBILITIES RELATED TO TENURE</b>	<b>4.6</b> States should remove and prohibit all forms of discrimination related to tenure rights, including those resulting from change of marital status, lack of legal capacity, and lack of access to economic resources. In particular, States should ensure equal tenure rights for women and men, including the right to inherit and bequeath these rights.
<b>POLICY, LEGAL AND ORGANIZATIONAL FRAMEWORKS RELATED TO TENURE</b>	<b>5.4</b> States should consider the particular obstacles faced by women and girls with regard to tenure and associated tenure rights, and take measures to ensure that legal and policy frameworks provide adequate protection for women and that laws recognizing women’s tenure rights are implemented and enforced.
<b>INDIGENOUS PEOPLES AND OTHER COMMUNITIES WITH CUSTOMARY TENURE SYSTEMS</b>	<b>9.6</b> Where constitutional or legal reforms strengthen the rights of women and place them in conflict with custom, all parties should cooperate to accommodate such changes in the customary tenure systems.

The F&G also recognizes that “gender discrimination” is a major problem in Africa and that there is need for women’s land rights to be strengthened. The F&G therefore specifically advocates legal procedures that will enable women to register their land rights whether married, divorced, or widowed.<sup>58</sup>

A government that implements the TGs or the F&G will legally recognize the equal rights of women and men to access, use, control, inherit, and own land. This may be constitutionally enshrined so that all subsequent laws will be subject to these constitutional principles. In addition, current laws that conflict with this principle should be reviewed and revoked. Supplementary laws that apply this principle in a concrete way, for instance family laws concerned with issues such as divorce and inheritance should be enacted, consistent with human rights law.<sup>59</sup>

Customary practices and norms in many countries also contain challenges to ensure gender equality as they sometimes discriminate against women's rights to own, control, inherit or bequeath land. States need to evaluate, sensitize, publicize and work with customary authorities and leaders on these issues and take measures addressing power imbalances – such as promoting joint titling for spouses, greater representation on village land committees, and promoting paralegal training and support for implementation of women's land rights. Where constitutional and legal reforms strengthen women's rights to land and place them in conflict with custom, the TGs clearly give preference to universal non-discrimination principles over customary systems.<sup>60</sup>

By implementing this principle, governments will guarantee women's tenure rights are adequately protected and enforced. This means giving primacy to women's rights and working with local communities and leaders to incorporate gender justice into customary practices.<sup>61</sup> States could implement this principle by providing assistive services to women, such as promoting social land mapping, and education campaigns to help women better advocate on their own behalf. Such campaigns could coincide with negotiations with local communities to audit and accommodate changes in their customary practices. Overall, a country that has implemented the principle will have publicized and taken significant measures to eliminate discrimination against women in land tenure governance and dedicate resources to ensure that women's land rights are implemented and enforced.

### **3.5 Protection from Land Grabs**

Land grabs and large-scale land acquisitions pose a significant threat to the land tenure security of women and small-scale food producers, especially in countries where large parts of the population do not have formal proof of tenure. The TGs offer various recommendations on measures that governments can take to protect human rights and prevent land grabs resulting from agricultural investment initiatives.<sup>62</sup>

TENURE GUIDELINES SECTION	SUB-SECTION
INVESTMENTS	<b>12.6</b> States should provide safeguards to protect legitimate tenure rights, human rights, livelihoods, food security and the environment from risks that could arise from large-scale transactions in tenure rights. Such safeguards could include introducing ceilings on permissible land transactions and regulating how transfers exceeding a certain scale should be approved, such as by parliamentary approval. States should consider promoting a range of production and investment models that do not result in the large-scale transfer of tenure rights to investors.
	<b>12.7</b> States and other parties should hold participatory good faith consultation with local communities, before initiating any investment project affecting the resources for which the communities hold rights. For Indigenous Peoples, Free Prior and Informed Consent must be obtained.

The AU F&G does not recommend any alternative models of investment, noting that enhanced agricultural exports could lead to an increase in state revenue.<sup>63</sup> This implies a bias towards large-scale commercial agriculture. However, the AU Land Policy Initiative does concede that the new “scramble for land by foreign investors” has raised serious problems for sustainable food production where agricultural land has been converted for other purposes.<sup>64</sup> With this recognition, the AU has adopted Guiding Principles (GPs) for Large Scale Land Acquisition in 2014, which outlines six fundamental principles that must be considered in case of a large-scale land-based investment (LSLBI). These are:

- Fundamental Principle 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.
- Fundamental Principle 2: Decisions on LSLBI are guided by a national strategy for sustainable agricultural development that recognizes the strategic importance of African agricultural land and the role of smallholder farmers in achieving food security, poverty reduction and economic growth.
- Fundamental Principle 3: Decisions on LSLBI and their implementation are based on good governance, including transparency, subsidiarity, inclusiveness, prior informed participation, and social acceptance of affected communities.
- Fundamental Principle 4: LSLBI respect the land rights of women, recognize their voice, generate meaningful opportunities for women alongside men, and do not exacerbate the marginalization of women.
- Fundamental Principle 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.
- Fundamental Principle 6: Member States uphold high standards of cooperation, collaboration and mutual accountability to ensure that LSLBI are beneficial to African economies and their people.

A country implementing the TGs or the AU's F&G should provide safeguards that protect the tenure rights of marginalized and rural peoples. For example, States could introduce ceilings on large-scale land acquisitions or require Parliamentary approval for transactions over a certain size. Governments could also provide assistance to communities to facilitate prior consultations with investors and actively monitor and enforce outcomes. The Tenure Guidelines highlight the internationally recognized right of indigenous peoples to make decisions on land deals based on a process of free, prior, and informed consent (FPIC). However, many marginalized communities of food producers are either not indigenous or have not been given recognition as such, therefore civil society organizations in the Committee on World Food Security have called upon governments and companies to extend this right to all communities affected by large-scale land acquisition.

### 3.6 Effective Land Administration

*“We want a project that belongs to us, not a project that robs us of our rights as the Senhuile Project does. We ask them to move from here. They didn’t consult women, youth, and children.”*

Madame Awa Sow, member of Ndiael Women’s Pastoralist Association in Ngith, referring to the 20,000 hectare Senhuile-Senethanol biofuels plantation in Senegal<sup>65</sup>

A problem afflicting many developing countries is the absence of effective institutions and land registries for land management. The TGs provide multiple recommendations about land administration to increase the land tenure security of small-scale food producers.

TENURE GUIDELINES SECTION	SUB-SECTION
<b>RECORDS OF TENURE RIGHTS</b>	<p><b>17.1</b> States should provide systems (such as registration, cadastre or licensing systems) to record individual and collective tenure rights in order to improve security of tenure rights.</p> <p><b>17.2</b> Strive to ensure that everyone is able to record their tenure rights and obtain information without discrimination on any basis.</p> <p><b>17.4</b> Implementing agencies should adopt simplified procedures and locally suitable technology to reduce the costs and time required for delivering services.</p>
<b>DELIVERY OF SERVICES</b>	<p><b>6.1, 6.3, 6.9</b> States should ensure that implementing agencies and judicial authorities have the human, physical, financial, and other forms of capacity to implement policies and laws in a timely, effective gender-sensitive manner.</p> <p><b>6.3</b> States should provide prompt, accessible, and non-discriminatory services to protect tenure rights... and eliminate unnecessary legal and procedural requirements.</p> <p><b>6.9</b> States should adopt and enforce anti-corruption measures including applying checks and balances, limiting the arbitrary use of power, addressing conflicts of interest, and adopting clear rules and regulations.</p>

For effective land administration, the TGs and the F&G advocate for building the capacity of implementing agencies to ensure that policies and laws are put in place in an effective and gender sensitive manner.<sup>66</sup> This should be done through the provision of human, financial and other inputs needed for the implementation of the Guidelines as well as ensuring co-operation of the actors involved.<sup>67</sup> Both advocate for delivery of services by ascertaining legitimate landholders and registering and recording their land rights.<sup>68</sup> Policies and laws should be established to promote sharing of information regarding tenure rights whereby everyone has a right to access information on land.<sup>69</sup>

States would greatly increase tenure security by improving and adequately resourcing land administration institutions. In adopting these provisions, countries should employ a single registrar with one implementing agency and use a decentralized and integrated land registration data system that is transparent and publicly accessible. Simultaneously, the elimination of expensive procedural transaction costs to registering land would promote the registration of tenure rights by rural communities, especially women. The human, financial, and technical elements needed for this require budget prioritization and significant donor support. Measures should be taken to address corruption in land administration, such as introducing systems of checks and balances, structural controls and greater transparency and community oversight of budgets.

### 3.7 Conflict Resolution Mechanisms

Independent, reliable, and effective conflict resolution mechanisms are key to ensuring justice and land tenure security of the poor, particularly women.<sup>70</sup> Corruption, inefficiency, and high costs plague the formal court systems in many poor countries, preventing the rule of law, and accessibility and transparency in conflict resolution mechanisms.<sup>71</sup> These factors discourage the use of formal dispute resolution and cause many women and small-scale food producers to turn to informal mechanisms, many of which are based on customary practices within local communities, often putting women at a disadvantage. The TGs acknowledge both issues, and promote the development of alternative forms of dispute resolution, while the F&G advocates for the “prevention of conflict” and “resolution through mutually acceptable dispute processing mechanisms” and strengthening conflict resolution methods.<sup>72</sup>

TENURE GUIDELINES SECTION	SUB-SECTION
RESOLUTION OF DISPUTES OVER TENURE RIGHTS	<b>21.1</b> States should provide access to impartial and competent judicial and administrative bodies, and to timely, affordable, and effective means of resolving disputes over tenure rights, including alternative means of resolving such disputes. Such mechanisms should be accessible to all, women and men, in terms of location, language and procedures.
	<b>21.3</b> States should strengthen and develop alternative forms of dispute resolution, especially at the local level. Where customary or other established forms of dispute settlement exist, they should provide for fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over land tenure rights.



A country should provide effective conflict resolution through formal judicial and administrative bodies that are low-cost, timely and accessible for the poorest. They will also bolster local and alternative dispute resolution mechanisms by providing resources, technical assistance and education in order to curb customary practices that disadvantage women. This may necessitate retraining of lawyers, notaries and judges in gender equality law and high levels of monitoring to ensure that these principles are being fully applied. Training members of local communities as paralegals and the distribution of information regarding land rights are also important ways to ensure judgments adhere to these principles.

## 4. Baseline Assessment of Four Implementing Countries

### 4.1 Mozambique

#### 4.1.1 Legal Framework

Since Independence in 1975, property in land has been vested in the state. The 2004 Constitution states that “land may not be sold or otherwise disposed of, nor may it be mortgaged or subject to attachment.”<sup>73</sup> However, customary laws have continued to play an important role in land management and are formally recognized in the 1995 National Land Policy and the 1997 Land Law and its implementing Regulation.<sup>74</sup>

#### Statutory Law

The Land Law establishes the principle of the *Direito de Uso e Aproveitamento da Terra* – right of use and benefit of land, or DUAT.<sup>75</sup> DUATs are a form of state leasehold and are Mozambique’s only “legally recognized form of land tenure right.”<sup>76</sup> They are acquired in two ways: the right of land use through occupancy or award on a concessionary basis.<sup>77</sup>

The right of land use through long-standing occupancy refers to land occupied by individuals and communities who hold land rights in co-title; that is, “the community holds a single DUAT and acquires a legal personality through its title.”<sup>78</sup> The responsibility for the internal allocation and management of land is then delegated to the local community where the customary system applies.<sup>79</sup> These rights can also be in the form of good faith occupation – the occupation of land by individuals who have been using it productively for 10 years or more.<sup>80</sup> These rights are subject to the same legal recognition as state granted land.<sup>81</sup>

## Weak Monitoring Capacity

Between 2008 and 2012 the Mozambican Government undertook audits of DUATs issued in Manica, Sofala and Tete provinces. These audits revealed that:

- Not all DUATs that were issued were audited
- A significant portion of the land held under larger DUATs was only partially used or not used at all
- Even where land was not used productively DUATs were often not cancelled

This is evidence of the state's weak capacity to monitor "land title use" in Mozambique.

Source: 'Mozambique Land Policy Development Case Study', <sup>7</sup>

"Award on a concessionary basis" refers to rights to use land that are granted to an individual or corporation, following an application to either the municipal, provincial or national authorities.<sup>82</sup> These forms of state leasehold are granted for 50 years and are renewable for another 50 years.<sup>83</sup> The request should include an approved development plan, and DUATs remain provisional until the development plan is implemented.<sup>84</sup> Consultation with local communities should be carried out prior to the acquisition of land rights to ensure that either the land in question is available or negotiate conditions under which the current occupant would be willing to give up their rights to the land.<sup>85</sup> However, in practice consultations are poorly conducted, and in most cases do not take place at all.<sup>86</sup>

## Customary Law

Prior to the implementation of the 1997 Land Law, "90 percent of land was under customary land practices."<sup>87</sup> As such, provisions for the internal management of land rights according to customary principles were included in the Land Law.<sup>88</sup> Customary law is of extreme importance in the context of land access as it governs inheritance and marital property for the majority of people.<sup>89</sup> However, customary land tenure regimes and norms are often far from egalitarian; in both matrilineal and patrilineal communities, women's access to and control of land rights is primarily defined by their relationships to men.<sup>90</sup>

## Gender Equality

Women were guaranteed equal rights to land in the 1997 Land Law, but due to a lack of awareness of the law and poorly coordinated administrative practices, women have not duly enjoyed these rights.<sup>91</sup> The majority of rural women's access to land in Mozambique is determined by customary law and is gained through their male relatives.<sup>92</sup> However, with the advent of the Land Law, the 2004 Family Law and the 2004 Constitution, new forms of protection have become available to women, and customary practices are now subject to "higher constitutional principles."<sup>93</sup> Women are

In Mozambique, important aspects of the Tenure Guidelines are already reflected in the country's land laws. However, in practice, the knowledge of these laws and related policies is not well publicized amongst vulnerable communities where the application of customary practices in many ways still disadvantage women's ability to use and control land.

With dedicated funding, ActionAid Mozambique hopes to focus its efforts on raising awareness of the relevant policies, particularly among women and smallholder farmers, so that they can claim their rights, advocate for, and monitor the full implementation of the law. The Tenure Guidelines can help catalyze the creation of stakeholder platforms and a people's movement to help communities advocate for coherence to ensure that national laws are implemented, and that policies are designed and implemented based on the existing statutory obligations reinforced by the TGs. The application of the Tenure Guidelines can be particularly relevant to influencing large-scale projects impacting community land rights, including advocacy around the Pro-Savanna project in collaboration with other ActionAid countries able to influence the implementation of the Tenure Guidelines in this context.

Source: ActionAid, *Appendix A: Country-specific implementation plans*, p. 5.

now constitutionally empowered to participate in land related discussions at the community level, meaning that “pre-existing inheritance and marriage laws that are contradictory to the constitution are automatically revoked.”<sup>94</sup>

Nevertheless, the extent to which these rights are practiced in reality is limited; without means to monitor the implementation of these constitutional principles, access to land remains “situated within fields of social and power relations that may or may not articulate with a national land law.”<sup>95</sup> Common to all customary systems for instance is the “unfavorable position of women and the wife in the order of succession” and in circumstances of divorce.<sup>96</sup> This means that land rights of widows and divorced women in patrilineal and matrilineal areas are extremely vulnerable, and access to agricultural land is often limited to poor quality land provided by the natal family.<sup>97</sup>

## **Effective Land Administration**

The Land Law states that customary and good faith occupants do not need to register their land in order to attain legal recognition and protection.<sup>98</sup> However, due to a lack of formal registration, the national land cadastre system holds incomplete records of land holdings, leaving community land and land held in good faith extremely vulnerable to expropriation.<sup>99</sup> In 2000, a technical annex to the Land Law Regulations came into effect as an alternative way of formalizing rights in the absence of titling. The technical annex establishes procedures for delimitation and is used to prove land rights.<sup>100</sup> Delimitation exercises are expensive and virtually all delimitations to date have been supported by civil society organizations, or CSOs.<sup>101</sup>



However, in April 2015 the Mozambican government launched a five-year program called “secured land” aiming to map and assign DUATs across the country. The government announced that it intends to involve civil society organizations that are already working in the DUAT assignment areas to ensure there are partners in the program to support communities and individuals in land delimitation and other legal procedures.

LUGELA FAMILY IN THEIR MAIZE FIELD—MOZAMBIQUE.

CREDIT: FABIO ERDOS/ACTIONAID

Another problem is that identity documents are often needed in order to collect delimitation certificates, but the majority of rural inhabitants do not have such documentation.<sup>102</sup> Though DUAT holders have use rights rather than “owning” land, “fixed assets on that land, such as houses, buildings, infrastructure, trees or other improvements”, can be owned.<sup>103</sup> However, registration of DUATs in the Public Property Registry (*Registo Predial*) is necessary in order to make rights transactable, enter into contracts and gain access to credit.<sup>104</sup> This is problematic for the rural poor since registry offices are often based far away in cities.<sup>105</sup>

## Conflict Resolution Mechanisms

Land-related disputes fall under the jurisdiction of Mozambique's formal court system.<sup>106</sup> However, corruption and a lack of legal awareness, skilled personnel, and adequately trained judges have undermined the effectiveness of the legal process.<sup>107</sup> There have been efforts to train paralegals and retrain lawyers and judges, yet even when rulings are made in favor of local communities and individuals, decisions are often ignored, deterring people from further seeking justice through the court system.<sup>108</sup> In addition, the legal process is complex, time consuming, and expensive;<sup>109</sup> experts describe it as a 'dysfunctional institutional landscape.'<sup>110</sup> Therefore, much of the population has little or no access to higher-level courts.<sup>111</sup>

Disputes over "boundaries, inheritance and other intra-family rights or land transactions" are often tried in community courts or addressed through other forms of informal mediation.<sup>112</sup> These systems are separate from the formal court system and tend to apply a combination of both statutory and customary law.<sup>113</sup> Where customary law is applied, however, it is often unfavorable for women, particularly where customary family law intersects with customary land law.<sup>114</sup> With regard to gender, the extent to which community courts are used as tools of prevailing power interests, rather than legitimate sites of arbitration, should be taken into consideration.<sup>115</sup> This situation may be changing, as some civil society organizations are training paralegals to support communities on solving land conflicts in the community courts as well.

## Protection from Land Grabs

The Land Law has a dual aim: it seeks to protect existing rights of local communities and good faith occupants, while at the same time promoting private investment, both domestic and foreign.<sup>116</sup> However, Article 13.3 of the Land Law states that consultation with local communities should be undertaken prior to expropriation of any land.<sup>117</sup> The consultation process requires defining occupation by establishing where communities have legal rights, even if the land is currently not in use.<sup>118</sup> In practice, most consultations are carried out poorly, have a negligible impact upon the acquisition of land by private investors. Such consultations are seen largely as a box-ticking exercise where “negotiations take place, agreements are rarely respected,” and following consultations, agreed areas are deceptively enlarged during the registration and implementation process.<sup>119</sup>

Promises of employment and social facilities such as schools are often hollow.<sup>120</sup> In many districts, it has been reported that smallholders are evicted from their lands or pushed into marginal areas.<sup>121</sup> In an effort to prevent widespread land grabs, the government instituted a moratorium to halt land concessions over 1,000 hectares until October 2011. However, land concessions continued after the moratorium ended, although on a smaller scale, and some additional measures have been put in place to judge project viability and development impacts.<sup>122</sup>

## Multi-stakeholder Platforms

To date, no formal multi-stakeholder platform has been established in Mozambique to implement the TGs and to monitor, evaluate, and oversee them. However, there is some precedence for organizing a multi-stakeholder platform in the Joint Sector Review process that monitors implementation of the Comprehensive Africa Agriculture Development Programme (CAADP).

### 4.1.2 Analysis of Mozambique Against the Tenure Guidelines:

PRINCIPLES OF GUIDELINES	PRACTICAL IMPLICATIONS	COUNTRY PROGRESS & RELATED ISSUES	STEPS NEEDED
<b>RECOGNITION OF CUSTOMARY RIGHTS AND INFORMAL TENURE</b>	<ul style="list-style-type: none"> <li>• Policy, legal and organizational frameworks recognize legitimate tenure rights and customary tenure rights.</li> <li>• States recognize a range of tenure types and rights holders.</li> <li>• Acknowledge the emergence of informal tenure following migrations caused by natural disasters.</li> </ul>	<ul style="list-style-type: none"> <li>• Statutory law recognizes individual and collective customary tenure rights; rights through occupancy are subject to the same legal recognition as State granted land.</li> <li>• There are provisions for the internal management of land rights according to customary principles.</li> </ul>	<ul style="list-style-type: none"> <li>• Disseminate information about rights through occupancy.</li> <li>• Ensure state-granted DUAT concessions are preceded by prior meaningful consultation with all potentially affected local communities.</li> </ul>

<b>GENDER EQUALITY</b>	<ul style="list-style-type: none"> <li>• Eliminate tenure-related discrimination against women.</li> <li>• Provide non-discriminatory and gender-sensitive assistance, including legal services.</li> <li>• Accommodate changes in customary systems that conflict with rights of women.</li> </ul>	<ul style="list-style-type: none"> <li>• Statutory law provides for equal rights to land for women and men.</li> <li>• Customary practices disadvantage women in their rights to secure land tenure.</li> </ul>	<ul style="list-style-type: none"> <li>• Implement campaigns to educate women on their rights and strengthen advocacy efforts.</li> <li>• Provide legal assistance and paralegal training to help women enforce and defend their land rights.</li> <li>• Work with communities to change discriminatory customary practices, including norms on inheritance and marital property.</li> </ul>
<b>EFFECTIVE LAND ADMINISTRATION</b>	<ul style="list-style-type: none"> <li>• Adopt cadastral or registration system to record individual and collective rights.</li> <li>• Provide adequate resources and training to implementing agencies.</li> <li>• Remove unnecessary procedural requirements to recording land.</li> <li>• Prevent corruption and adopt checks and balances.</li> </ul>	<ul style="list-style-type: none"> <li>• Customary occupants do not need to register their land to attain legal recognition and protection.</li> <li>• The national land cadastre holds incomplete records of land holdings.</li> <li>• Delineations are used to prove land rights but are expensive and require ID.</li> <li>• Registration in the Public Property Registry is necessary to make rights transactable, enter into contracts and gain access to credit.</li> <li>• Land administration bodies lack human and technical capacity.</li> </ul>	<ul style="list-style-type: none"> <li>• End high transaction costs to register property rights and delimiting land.</li> <li>• Strengthen the capacity and oversight of local and district land registration bodies through human resources training, anti-corruption measures, and technical capacity building.</li> <li>• Provide additional resources to land administration agencies and local jurisdictions.</li> </ul>

<b>CONFLICT RESOLUTION MECHANISMS</b>	<ul style="list-style-type: none"> <li>• Provide competent, impartial, and prompt judicial and administrative bodies.</li> <li>• Ensure accessibility to conflict resolution in terms of affordability, language, location, and procedures.</li> <li>• Strengthen alternative forms of conflict resolution at local levels.</li> </ul>	<ul style="list-style-type: none"> <li>• Formal courts are corrupt, inefficient, costly, and physically distanced from rural communities.</li> <li>• Judges and attorneys are not well qualified to handle land-related disputes.</li> <li>• Disputes over transactions, boundaries, inheritance and intra-family rights are tried in community courts that apply a combination of statutory and customary law.</li> <li>• Customary law is often unfavorable to women.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide paralegal assistance to local communities.</li> <li>• Retrain judges and lawyers in land law and gender equality laws.</li> <li>• Decentralize and help bolster informal community-based conflict resolution, while ensuring constitutional law is given primacy over customary law when it conflicts with women's rights.</li> <li>• Provide high levels of monitoring and train members of local communities as paralegals.</li> <li>• Widely distribute information regarding land rights and women's rights.</li> </ul>
<b>PROTECTION FROM LAND GRABS</b>	<ul style="list-style-type: none"> <li>• Create laws promoting responsible investment and protecting marginalized communities.</li> <li>• Mandate and facilitate consultation with local communities using land in question.</li> </ul>	<ul style="list-style-type: none"> <li>• Statutory law seeks to protect existing rights of local communities while also promoting private investment.</li> <li>• Consultations with local communities should be undertaken prior to appropriation of any land but have been carried out poorly in the past.</li> <li>• Smallholders have been evicted from their lands or pushed into marginal areas.</li> </ul>	<ul style="list-style-type: none"> <li>• Distribute information about customary and informal rights through occupancy to inform local communities in the face of large-scale land deals.</li> <li>• New projects should be preceded by delimitations to determine what land is already covered by customarily acquired and good faith DUATs.</li> <li>• Implement policies that ensure and monitor prior consultation with local communities when their land is threatened.</li> </ul>
<b>MULTI-STAKEHOLDER PLATFORMS</b>	<ul style="list-style-type: none"> <li>• Establish multi-stakeholder platforms to collaborate on the implementation of the TGs at local, national and regional levels.</li> </ul>	<ul style="list-style-type: none"> <li>• The national multi-stakeholder platform has not yet been established.</li> </ul>	<ul style="list-style-type: none"> <li>• Establish a national multi-stakeholder platform to implement, monitor and evaluate the TGs, including a diverse range of CSOs, and primarily focused on the needs of women and small-scale food producers including those who are landless.</li> </ul>





## 4.2 Tanzania

### 4.2.1 Legal Framework

Tanzania's statutory framework for land tenure is seen by some as one of the most progressive frameworks in the East Africa region. Land rights for women and marginalized people are formally protected by the law. However, implementation of the land laws is inconsistent and land tenure rights are governed by customary tenure systems in which women and vulnerable groups – such as pastoralists and shifting cultivators – are often further marginalized.<sup>123</sup> Land policy in Tanzania is also criticized for being overly centralized on the president and for the support it gives to “foreign and commercial interests by providing for broad land acquisition.”<sup>124</sup>

#### Statutory Law

Tanzania's land tenure system is governed by the Land Policy of 1995 (amended in 1997), and the 1999 Land Act and Village Land Act. The latter two acts divide all land in Tanzania into three categories: village land, reserved land, and general land. Reserved land constitutes 28% of the mainland and is “land set aside for special purposes, including forest reserves, game parks, game reserves, land reserved for public utilities and highways, and hazardous land.”<sup>125</sup> General land, approximately two percent of the mainland area, is all land that is neither reserved nor village land, and includes both state

ALLY AME AND PILI  
HASSAN MUSA IN THEIR  
FIELD OF CASSAVA IN  
BOZI, TANZANIA

CREDIT: STEPHANO  
KANIKI GOGI/  
ACTIONAID

holdings and granted private holdings.<sup>126</sup> Village land – which covers 70% of mainland Tanzania – is delimited by local village councils and includes registered land as well as land that has been used and occupied for at least 12 years under customary law.<sup>127</sup> The village assembly and the village council are the principal institutions governing village land. The village assembly comprises all men and women in the village, and its purpose is to elect the village council and oversee the management of village land, including approval of transfer of village land.<sup>128</sup> The village council consists of 15-25 members, a quarter of whom should be women. Council duties include identifying and registering village boundaries, registering land rights, and issuing Certificates of Customary Rights of Occupancy, allowing for the practice of customary law in land tenure governance.<sup>129</sup> However, formalization is often high-cost and complex. As a result, in early 2010 only seven percent of Tanzania's 10,397 villages had received such certificates.<sup>130</sup>

## **Customary Law**

The Village Land Act recognizes the validity of customary norms as long as they are consistent with statutory law.<sup>131</sup> Customary norms are supposed to be nullified when they discriminate against women and marginalized groups, however, discriminatory norms continue to govern many aspects of people's lives.<sup>132</sup> In many communities, the belief that women have no rights to land persists, resulting in a loss of access to land when women become divorced or widowed.<sup>133</sup>

## **Gender Equality**

Tanzania's land tenure framework is seen as progressive regarding gender equality. The Land Act establishes the equal rights of women to acquire, hold, use, and deal with land under the same rules as men.<sup>134</sup>

There is a provision for land registration in the name of both spouses which theoretically means that land cannot be sold without the consent of both occupants. Despite these statutory protections, the implementation of the law is poor, and women tend to face discrimination and bias under customary norms; women usually only have rights to land on a usufruct basis, whereas men are more likely to control and "own" land.<sup>135</sup>

Discriminatory norms are often applied to divorce and inheritance. The majority of ethnic groups have patrilineal systems of inheritance (80%), whereas the remaining 20% have matrilineal systems.<sup>136</sup> In the latter, a woman's access to and ownership of land is usually protected when her husband dies, but in the former her land tenure is jeopardized. In patrilineal systems, a widow without children loses her husband's land to male relatives and has to return to her natal village. The tenure of widows with children is usually guaranteed until the latter become adults.<sup>137</sup> Upon divorce, women return to their original family home, thereby losing any previous rights to land they cultivated.<sup>138</sup> With only 30% of women stating that they have land rights, including only 8% claiming land independently of men, gender issues regarding land need immediate attention.<sup>139</sup> Public education and affirmative action by public authorities is necessary to encourage women to get land registered in their names or jointly with spouses, and efforts to train and deploy more female land professionals are required.<sup>140</sup>

## Effective Land Administration

As a partial measure towards implementing legislation, institutions such as the Land Commissioners Office, the Land Allocations Committees, and the National Land Advisory Council were set up. Local government, district councils and village councils were allocated advisory roles. The aim was to streamline land legislation administration and implementation, but instead produced a system characterized by centralized decision-making.<sup>141</sup>

General land is under the control and jurisdiction of the president, as represented by the Commissioner of Lands, who can also convert village land into general land.<sup>142</sup> Granted rights of occupancy are rights that can be held on reserved and general land, and the Ministry of Lands has sole authority to issue these rights.<sup>143</sup> Grants of occupancy are valid up to ninety-nine years, and rights holders are expected to pay annual fees for the use of the land. The Ministry of Lands surveys and registers these titles, and derivative rights of occupancy are the only rights that can be held by non-citizens.<sup>144</sup>

The Ministry of Lands licenses villages to manage village land and issue Certificates of Customary Rights of Occupancy, which can be awarded on an individual or collective basis.<sup>145</sup> This village licensing process consists of demarcating village boundaries, land planning, and the creation of a land registry.<sup>146</sup> However, land planning exercises and registries are often not in place due to an absence of training and resources.<sup>147</sup> Villages often don't confirm the boundaries defined in their granted certificate, resulting in the loss of land.<sup>148</sup>

Certificates of Customary Rights of Occupancy are obtained through a high-cost application process with the village council, including a fee and a developmental plan for the land.<sup>149</sup> Possession of the certificate is determined "by the perceived capacity of the landowner to develop the land in question."<sup>150</sup> The application process gives considerable power to the village council in defining the conditions under which land is allocated and used. Applications are considered without consulting the village assembly, meaning that local elites are capable of capturing land.<sup>151</sup>

An absence of accurate land survey maps and publicly available land records is a key reason that Tanzania's elaborate land system is ineffective at securing users' rights.

## Conflict Resolution Mechanisms

Both formal and informal tribunals have jurisdiction over land disputes. The Courts (Land Disputes Settlements) Act of 2002, the Village Land Act, and the Land Act recognize the jurisdiction of informal elder's councils, village councils, and formal tribunals.<sup>152</sup> The Village Land Act establishes the village land council to mediate and resolve issues concerning village land.<sup>153</sup> The council should have at least seven people, three of whom are women, although often this is not respected.<sup>154</sup> However, as the Village Land Act states, "no person, or non-village organization shall be compelled or required to use the services of the village land council for mediation in any dispute concerning village land."<sup>155</sup> This means that village land councils do not have the power to enforce decisions of disputes, causing rural communities to use informal resolution mechanisms

that are often biased against women.<sup>156</sup> Instead of using informal dispute resolution to quickly resolve disputes and intercommunity conflicts, lower level courts at ward and district levels adopted court-like proceedings. High costs act as a key barrier for poor communities, and in many cases involving disputes between citizens and the government or foreign investors, Tanzania's formal judicial bodies are perceived as biased in favor of the latter.<sup>157</sup>

## **Protection from Land Grabs**

Advertising over 350,000 hectares of supposedly available farmland, hoping to attract \$3.3 billion in foreign investment, the Southern Agricultural Growth Corridor of Tanzania (SAGCOT) is the largest Public Private Partnership (PPP) supported by the G7 New Alliance in Tanzania.<sup>158</sup> Given that only general and reserved land is open to foreign investment, the government is seeking to transfer 17.9% of village land to general land to facilitate commercial development, raising the overall percentage of general land to approximately 20% from two percent.<sup>159</sup> The Land Act allows transferring village land to general land in the "public interest," however, the law provides a vague definition of "public interest." Only the Land Acquisition Act (1967) provides a partial definition of "public interest", which includes developmental and economic considerations or any other concerns that the president considers to be in the public interest.<sup>160</sup> All stakeholders affected by land transfers should be consulted, but this does not always occur.<sup>161</sup>

For example, villages can only submit opinions to the Ministry of Lands regarding transfers under 250 hectares.<sup>162</sup> For transfers over that amount, villages do not have any say in the process.<sup>163</sup> This exclusion combined with weak land use planning and overly centralized powers creates a "major problem" of expropriation. Experts conclude that virtually all land for urban expansion or establishment of large-scale private investment in rural areas is obtained through expropriation, whether it is for mining, farming or hunting.<sup>164</sup>

## **Multi-stakeholder platforms**

No formal multi-stakeholder platform has been established in Tanzania to implement the Tenure Guidelines and to monitor, evaluate and oversee them. Tanzania has significant land conflicts in several regions due to inadequate land to meet the needs of indigenous pastoralists. In addition, there are disputes regarding settlements upon land claimed by the state. Therefore it is important that multi-stakeholder platforms be organized with representatives of these and other marginalized groups, including women and youth. These land conflicts should be assessed and the TGs should be implemented in favor of these priority groups, before any consideration of large-scale land allocations to investors.

## **Land Grab in Bagamoyo District**

ActionAid conducted extensive research on a 20,000 hectare land grab by EcoEnergy to create a sugar cane plantation in the Bagamoyo district. The project claimed to be proceeding according to the Performance Standards of the African Development Bank (AfDB) and the International Finance Corporation (IFC, a World Bank-backed financial institution). However, these standards do not require Free Prior and Informed Consent (FPIC) for all project-affected people as called for by a wide range of civil society organizations and institutions in the Tirana Declaration against land-grabbing.<sup>165</sup>

ActionAid documented the project's failure to obtain the free, prior, and informed consent of local communities, and confirmed that consultations in the main project area did not offer communities any choice but to give away the land they currently use and relocate to new sites.

*"There was no choice to stay or leave our land; it was only to leave. We have been given no option on how the land will be used. I have already invested in that area and now I am expected to move."<sup>166</sup>*

**Sefu Mkomeni, smallholder farmer from Matapwili, Tanzania.**

*"There was no dialogue and there was no consultation [about taking the land]. It's not that I am against investments and projects for the betterment of the community, but we would like to be consulted and have a dialogue and not end up in a situation where we are forced into something that might be a dead end."<sup>167</sup>*

**Vincent Nawahi, smallholder farmer from Bozi, Tanzania**

*"We never had a chance to influence the decisions concerning our land and future. There has been no transparency whatsoever. We don't know if we will be resettled, where it will be, or if we will be compensated. We don't know how much the compensation will be, or if it will be at all."<sup>168</sup>*

**Anza Ramadhani, smallholder farmer Razaba, Tanzania**

## 4.2.2 Analysis of Tanzania Against the Tenure Guidelines

PRINCIPLES OF TENURE GUIDELINES	PRACTICAL IMPLICATIONS	COUNTRY PROGRESS & RELATED ISSUES	STEPS NEEDED
<b>RECOGNITION OF CUSTOMARY RIGHTS AND INFORMAL TENURE</b>	<ul style="list-style-type: none"> <li>• Policy, legal, and organizational frameworks recognize legitimate tenure rights and customary tenure rights.</li> <li>• States recognize a range of tenure types and rights holders.</li> <li>• Acknowledge the emergence of informal tenure following migrations caused by natural disasters.</li> </ul>	<ul style="list-style-type: none"> <li>• The Village Land Act recognizes the validity of customary norms as long as they consistent with statutory law.</li> <li>• Customary Rights of Occupancy may be obtained through applications with village councils.</li> </ul>	<ul style="list-style-type: none"> <li>• Disseminate information to local communities informing them of their Customary Rights of Occupancy.</li> <li>• Undertake local monitoring to ensure that customary norms are consistent with statutory law in terms of protections.</li> </ul>
<b>GENDER EQUALITY</b>	<ul style="list-style-type: none"> <li>• Eliminate tenure-related discrimination against women.</li> <li>• Provide non-discriminatory and gender-sensitive assistance, including legal services.</li> <li>• Accommodate changes in customary systems that conflict with women's rights.</li> </ul>	<ul style="list-style-type: none"> <li>• Women have equal rights to acquire, hold, use, and deal with land and customary norms that discriminate against women are void under statutory law.</li> <li>• In practice, customary norms continue to govern land tenure in rural communities and disadvantage women.</li> </ul>	<ul style="list-style-type: none"> <li>• Implement public campaigns to educate women on their rights and strengthen advocacy efforts.</li> <li>• Provide paralegal assistance to women to defend their rights.</li> <li>• Undertake local monitoring to ensure customary norms are consistent with statutory law in terms of protections.</li> <li>• Work with local communities and leaders to change discriminatory customary practices.</li> </ul>
<b>EFFECTIVE LAND ADMINISTRATION</b>	<ul style="list-style-type: none"> <li>• Adopt cadastral or registration system to record individual and collective rights.</li> <li>• Provide adequate resources and training to implementing agencies.</li> <li>• Remove unnecessary procedural requirements to recording land.</li> <li>• Prevent corruption and adopt checks and balances.</li> </ul>	<ul style="list-style-type: none"> <li>• Village councils are responsible for creating registries, however this does not happen due to a lack of training and resources.</li> <li>• Transaction costs of application for Customary Rights of Occupancy prevent community members from registering their rights.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide resources and training to village councils to better manage low-cost formalization and create transparent land registries.</li> <li>• Create clear, simple and low-cost procedures for applying for Customary Rights of Occupancy.</li> <li>• Promote local and participatory land use planning.</li> </ul>

<b>CONFLICT RESOLUTION MECHANISMS</b>	<ul style="list-style-type: none"> <li>• Provide competent, impartial and prompt judicial and administrative bodies.</li> <li>• Ensure accessibility to conflict resolution in terms of affordability, language, location, and procedures.</li> <li>• Strengthen alternative forms of conflict resolution at local levels.</li> </ul>	<ul style="list-style-type: none"> <li>• Statutory law gives jurisdiction to informal and formal tribunals to hear land disputes, including village councils.</li> <li>• Village Land Act creates Village Land Council as non-binding mediating body.</li> <li>• Community members often turn to informal mechanisms that are biased against women.</li> <li>• Formal judicial bodies favor foreign companies and government over rural communities.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide paralegal assistance to women to help defend their rights.</li> <li>• Train communities in non-discriminatory informal conflict resolution practices.</li> <li>• Review and reform judicial system to provide low-cost, decentralized and impartial conflict resolution.</li> </ul>
<b>PROTECTION FROM LAND GRABS</b>	<ul style="list-style-type: none"> <li>• Create laws promoting responsible investment and protecting marginalized communities.</li> <li>• Mandate and facilitate consultation with local communities living on land in question.</li> </ul>	<ul style="list-style-type: none"> <li>• Vague legislation provides a means of expropriating land in the “public interest”.</li> <li>• Communities can only participate in consultations over land acquisitions under 250 hectares.</li> </ul>	<ul style="list-style-type: none"> <li>• Review and reform legislation on “eminent domain” by providing a clear definition of public interest.</li> <li>• Reform legislation of participatory processes and ensure prior informed consent for all potentially affected communities.</li> </ul>
<b>MULTI-STAKEHOLDER PLATFORMS</b>	<ul style="list-style-type: none"> <li>• Establish multi-stakeholder platforms to collaborate on the implementation of the TGs at local, national, and regional levels.</li> </ul>	<ul style="list-style-type: none"> <li>• No national multi-stakeholder platform established yet.</li> </ul>	<ul style="list-style-type: none"> <li>• Establish a national multi-stakeholder platform to implement, monitor, and evaluate the TGs.</li> <li>• Ensure the multi-stakeholder platform includes a diverse range of CSOs and is focused primarily on the needs of small-scale food producers, including pastoralists and those who are landless.</li> </ul>

## 4.3 Senegal

### 4.3.1 Legal Framework

Senegal’s legal framework for land tenure consists of civil, religious and customary laws. Following independence in 1960, Senegal implemented a progressive tenure system, enshrined in the 1964 National Domain Law that aimed to reconcile customary and statutory land laws. It also advanced plans for the devolution of state control over land to local governing bodies.<sup>169</sup> However, these bodies are biased by “family lineage, religion and political party membership,” which affects how others access land.<sup>170</sup>

### **Senegal Multi-Stakeholders Dialogue on the Tenure Guidelines**

The multi-stakeholder platform in Senegal brings together multiple organizations and actors, such as civil society, farmers' organizations, state actors, and the private sector, to share experiences on land governance and to develop common agenda to better implement the Tenure Guidelines. At the national and local level, attention will be paid to the representation of women for consideration of their specific interests.

The objectives of this platform are to ensure the implementation of the Tenure Guidelines at the national and local level, to link various initiatives on land governance and to build the capacity and policy influence of the Tenure Guidelines on land governance.

#### **How would a multi-stakeholder platform be implemented?**

The committee plans to work with all sector frameworks that want to share their current initiatives to promote dialogue between the stakeholders in land governance. They will prepare a progress report on their work before each meeting that could include initiatives on land governance and the implementation of the Tenure Guidelines.

The committee may establish thematic working groups, for example on the tenure of fisheries or the forms of agribusiness, and the results will be returned at the meetings of the platform. The committee will be co-chaired by a government representative and a representative of civil society, chosen annually. Civil society organizations plan to ensure that the voices of rural women farmers are included and their viewpoints are vigorously promoted and championed.

## **Statutory Law**

The Senegalese Constitution (2001) provides for fundamental socioeconomic and property rights. Nonetheless, a limited understanding of its provisions means that the constitution is generally not upheld.<sup>171</sup> In 1964, the National Domain Law to ensure land is used productively and to promote economic development through export of agricultural products was passed by the Senegalese government. Under this law, approximately 95% of all land in Senegal was converted to common property, with an additional two percent designated State property.<sup>172</sup> Three percent of land in Senegal is still under private ownership for those who obtained private title deeds during the colonial era.<sup>173</sup>

Since new government decentralization measures were taken in 2013, authority over the national land is vested in democratically elected councils representing each commune or municipality, previously it was vested in similar rural councils.<sup>174</sup> Depending on the population, a council has between 18 and 32 members and one elected mayor.<sup>175</sup> Under the National Domain Law, farmers who are residents of the community are free to access land but only on the basis of non-transferable user rights. Councils allocate and withdraw



land, basing their decision upon whether it is used productively or not.<sup>176</sup> Allocation of land should be recorded in the land register in order to demonstrate “proof of a right of use”.<sup>177</sup> User rights expire upon the death of the person to whom the land was originally allocated.<sup>178</sup> The sons of the deceased are required to re-register the user rights, however, this rule has generally not been adhered to and the rural councils would rarely meet to consider the inheritors’ capacity to use the land productively.<sup>179</sup> The 2011 Land Tenure Act aims to secure tenure by issuing land permits for permanent title deeds, and was intended to harmonize discrepancies between the various land laws and codes.<sup>180</sup>

## **Customary Law**

In practice, and at the local level, tenure security and community rights are secured through customary norms. Under customary law, families hold land communally, especially in rural areas. Over time, these lands have been partitioned among individual family members. Local customary law in most parts of the country governs loans, leases, gifts of land, and inheritance.<sup>181</sup> Land inheritance is based on transmission of land from father to son, where the eldest son is the main inheritor. Women are not allowed to inherit land, therefore if there are no sons in the family, land is inherited by a male individual in the next generation.<sup>182</sup>

## **Gender Equality**

Article 15 of Senegal’s Constitution guarantees gender equality in land ownership,<sup>183</sup> and the National Land Policy also advocates for equal access to land. Despite this, women rights to land are often not respected and are still governed by customary “social and religious norms.”<sup>184</sup> Women in Senegal are seen as inferior, and women’s fear and respect for tradition further complicates the issue.<sup>185</sup> Unable to inherit land, women access it through their husbands. When they are divorced or widowed, women return to their parents’ home in order to access land for farming from their parents or families.<sup>186</sup> However, low quality land is often allocated to divorced, abandoned, or widowed.<sup>187</sup>

Historically, female representation in rural councils has been weak, and this affects women’s ability to access and control land.<sup>188</sup> Progress has been made since 2010 through the adoption of a parity law to increase the number of elected women as councilors. The number of women on councils was 10% before the parity law and rose to 39% in 2013.<sup>189</sup> This is partly the result of CSO advocacy and mobilization to pass the Parity Law, and also to train communities on the land legislation that promotes women’s access and control over land.

Women’s land rights are also impacted by lack of access to formal education. Approximately 70% of women in Senegal are not formally educated and have “limited if any knowledge of formal law and judicial procedure”.<sup>190</sup> Due to women’s under-representation in councils, allocation of land often favors male over female applicants, and in practice, applications for land by women have been rarely reviewed.<sup>191</sup> When women are considered, they are allocated smaller and less fertile land, requiring more work to make it productive. After land has been allocated, women are more likely to be evicted, especially if their land is seen to be more productive than that of men.<sup>192</sup>

### **Creating Multi Stakeholder Platforms in Senegal**

ActionAid Senegal has had strong, visible success creating a multi stakeholder platform that meets monthly to bring together state actors, the investment agency in Senegal (APIX), CSOs, farmers, consumer associations, NGOs, and the FAO, to discuss land governance. As part of this effort, they are also coordinating the Consortium on Land Reform, holding trainings on the Tenure Guidelines and conducting research through case studies and video testimonies.<sup>193</sup>

### **Effective Land Administration**

In Senegal, local municipal or communal councils are the main institution responsible for rural land management. Under the National Domain Law, these councils are responsible for the allocation and withdrawal of state land, but the application of this law has proven to be ineffective, unsustainable, and unfair to small-scale farmers, especially women.<sup>194</sup> The procedures for measuring productive land use are not clearly or legally defined. Farmers' user rights cannot be converted into leases or title deeds, allowing councils to withdraw or reallocate smallholders' lands at their own discretion.<sup>195</sup>

The National Domain Law also requires that land allocations, withdrawals, notifications, transfers, and dispossessions be recorded in a land register operated by the local councils.<sup>196</sup> In practice these provisions are not implemented and the councils do not maintain up-to-date records.<sup>197</sup> In some rural communities this leads to repeated applications for land allocations by farmers if their initial applications were not reviewed or considered.<sup>198</sup> Moreover, local councils face budgetary and human resource constraints. Finally, these councils are highly politicized and members are predominantly from the elite and the ruling party, biasing land allocations and withdrawals.<sup>199</sup>

### **Conflict Resolution Mechanisms**

Land disputes in Senegal are widespread, including disputes between communities and occasionally within councils due to inaccurate records or conflicts regarding inheritance.<sup>200</sup> These disputes are resolved through both formal and informal customary mechanisms.<sup>201</sup> Local councils have jurisdiction over land conflicts, but if they fail to resolve the dispute, it can be heard through the formal court system.<sup>202</sup> Civil society and community-based organizations also assist in resolving disputes by helping parties to negotiate.<sup>203</sup>

Conflict resolution systems face a number of challenges. Formal courts are criticized for being "inefficient, corrupt, biased, and lacking necessary resources".<sup>204</sup> Justice is slow and procedures are complex and costly for the rural poor.<sup>205</sup> Councils are ill equipped, and know very little about conflict management; most members are not formally educated and lack the knowledge and skills to apply the subtleties of the land law.<sup>206</sup> Resolution is predominantly reached through consensus negotiation rather than by



application of the law. Consequently, power plays an important role in the resolution process as it determines the relative weight of the parties involved in the negotiations.<sup>207</sup>

### Protection from Land Grabs

Since 2000, land grabs in Senegal by foreign investors, international private actors, and senior politicians have increased. It is suspected that between 2000 and 2012,

*"We are ready to defend our interests to the end because we have nowhere to go. We are not saying the state should not allocate land, but it is the way in which [the deal] was made that revolts us. Pastoralism is our main source of income, but today we are experiencing a difficult situation because our food production and grazing areas are blocked by perimeters and channels of water."*

Bayal Sow, a councilor from Ngith in Ndiael in northern Senegal, who lost access to community land to make way for a sweet potato-based biofuels plantation operated by Italian joint-venture Senhuile-Senethanol <sup>211</sup>

RAMADHANI ATHUMANI LWINDE IS A FARMER FROM KISARAWA DISTRICT IN TANZANIA. HE AND HIS FAMILY LOST 1,600 ACRES OF LAND TO THE SUN BIOFUELS PLANTATION.

PHOTO: TOM PIETRASIK/ ACTIONAID

approximately 700,000 hectares of land was appropriated,<sup>208</sup> leading to food insecurity and reduced agricultural production as local communities have been working for foreign companies instead of on their own farms. Land grabs occur in Senegal largely because

the National Domain Law’s definition of “public utility” and “general interest” is ambiguous. Public utility allows the State to expropriate traditionally held lands for public purposes.<sup>209</sup> In the case of general interest, local councils have the authority to reallocate plots of land in the interest of the general community.<sup>210</sup> This ambiguity introduces an element of profound insecurity for local communities.

### Multi-stakeholder Platforms

A formal multi-stakeholder taskforce has been established in Senegal to oversee the land reform process and to monitor the implementation of the Tenure Guidelines. It is crucial that the multi-stakeholder platform remains active, and that it be inclusive of all stakeholders, especially women, youth, and marginalized or vulnerable groups.

#### National Land Reform Commission in Senegal

In 2012, more than 15 civil society organizations from Senegal formed a national platform against land grabs. The platform has engaged with parliamentarians and communities to stop land grabs and to have transparency and inclusive land reform. In response, at the end of 2013 the Senegalese government created a national commission for land reform with the participation of CSOs to ensure secure land tenure for smallholder farmers and women. The National Farmer Platform (CNCR) and the Senegal umbrella of NGOs (CONGAD) represent civil society in the Land Reform Commission.

Source: Interview with Zakaria Sambakhe, ActionAid Senegal

### 4.3.2 Analysis of Senegal Against the Tenure Guidelines

PRINCIPLES OF TENURE GUIDELINES	PRACTICAL IMPLICATIONS	COUNTRY PROGRESS & RELATED ISSUES	STEPS NEEDED
<b>RECOGNITION OF CUSTOMARY RIGHTS AND INFORMAL TENURE</b>	<ul style="list-style-type: none"> <li>• Policy, legal and organizational frameworks recognize legitimate tenure rights and customary tenure rights.</li> <li>• States recognize a range of tenure types and rights holders.</li> <li>• Acknowledge the emergence of informal tenure following migrations caused by natural disasters.</li> </ul>	<ul style="list-style-type: none"> <li>• Senegalese statutory law recognizes the validity of customary tenure rights.</li> </ul>	<ul style="list-style-type: none"> <li>• Disseminate information to local communities informing them of their rights.</li> </ul>

<b>GENDER EQUALITY</b>	<ul style="list-style-type: none"> <li>• Eliminate tenure related discrimination against women.</li> <li>• Provide non-discriminatory and gender-sensitive assistance, including legal services.</li> <li>• Accommodate changes in customary systems that conflict with rights of women.</li> </ul>	<ul style="list-style-type: none"> <li>• Constitution and land policy stipulates equality of women and men in land access.</li> <li>• Customary practices and rural institutions significantly disadvantage female land tenure.</li> <li>• Inheritance and changes in marital status impact women's tenure rights.</li> <li>• Women are not formally educated and unaware of their land rights.</li> </ul>	<ul style="list-style-type: none"> <li>• Implement campaigns to educate women on their rights and strengthen local advocacy efforts.</li> <li>• Provide paralegal assistance to defend women's rights.</li> <li>• Work with communities to change discriminatory customary practices.</li> </ul>
<b>EFFECTIVE LAND ADMINISTRATION</b>	<ul style="list-style-type: none"> <li>• Adopt cadastral or registration system to record individual and collective rights.</li> <li>• Provide adequate resources and training to implementing agencies.</li> <li>• Remove unnecessary procedural requirements to recording land.</li> <li>• Prevent corruption and adopt checks and balances.</li> </ul>	<ul style="list-style-type: none"> <li>• Local councils administer land for local communities.</li> <li>• Local councils are biased by political and family ties and lack appropriate financial and technical resources.</li> <li>• Land registers are not kept in rural areas.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide resources and training to council members to better manage land.</li> <li>• Assist rural communities in creation of land registers and adoption of checks and balances to fight corruption in councils.</li> </ul>
<b>CONFLICT RESOLUTION MECHANISMS</b>	<ul style="list-style-type: none"> <li>• Provide competent, impartial and prompt judicial and administrative bodies.</li> <li>• Ensure accessibility to conflict resolution in terms of affordability, language, location, and procedures.</li> <li>• Strengthen alternative forms of conflict resolution at local levels.</li> </ul>	<ul style="list-style-type: none"> <li>• Formal courts are slow, corrupt, and costly.</li> <li>• Local councils are not trained in conflict management.</li> <li>• Informal negotiations end conflicts, but are biased by power relations within the community.</li> </ul>	<ul style="list-style-type: none"> <li>• Decrease corruption and bureaucratic procedures in judicial bodies, while lowering cost of participation to rural communities.</li> <li>• Inform councils of appropriate land laws and offer training in mediation.</li> </ul>
<b>PROTECTION FROM LAND GRABS</b>	<ul style="list-style-type: none"> <li>• Create laws promoting responsible investment and protecting marginalized communities.</li> <li>• Mandate and facilitate consultation with local communities living on land in question.</li> </ul>	<ul style="list-style-type: none"> <li>• National Domain Law's eminent domain sections on public interest are ambiguous, facilitating land expropriation.</li> </ul>	<ul style="list-style-type: none"> <li>• Reform legislation on eminent domain by providing a clear definition of public interest.</li> <li>• Extend the right to FPIC to all potentially affected local communities.</li> </ul>

<b>MULTI-STAKEHOLDER PLATFORM</b>	<ul style="list-style-type: none"> <li>• Establish multi-stakeholder platforms to collaborate on the implementation of the TGs at local, national, and regional levels.</li> </ul>	<ul style="list-style-type: none"> <li>• A multi-stakeholder national taskforce has been established to monitor the land reform act and implementation of the TGs.</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure continued support to the multi-stakeholder taskforce to advise, monitor, and evaluate the TGs.</li> <li>• Ensure a diverse range of CSOs participate and the taskforce is primarily focused on the needs of women and small-scale food producers.</li> <li>• Provide land laws and information in local languages.</li> </ul>
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## 4.4 Haiti

### 4.4.1 Legal Framework

Land tenure governance in Haiti falls under a combination of statutory and customary law practices. While statutory law takes precedence over customary law, the fact that only about five percent of land in Haiti has been formally mapped and titled indicates that the vast majority of land is governed customarily or informally.<sup>212</sup>

#### Statutory Law

The basis for statutory regulation of land ownership in Haiti stems from the Constitution of 1987, which recognizes the right to private property.<sup>213</sup> The Constitution prohibits against unlawful expropriation and protects citizens through provisions for due process and compensation. However, the Constitution is not upheld in practice and progressive provisions are undermined by ten preceding laws that gave the executive discretionary power in cases invoking the “public interest”, including over privately held land.<sup>214</sup> Under Article 36-1, the government has the right of expropriation for projects of public purpose, but only upon “fair compensation established in advance by an expert evaluation.”<sup>215</sup> Haiti’s Rural Code and Civil Code contain provisions on property; however both have “limited application to land tenure.”<sup>216</sup> Statutory law also provides for equal inheritance of land for men and women.<sup>217</sup> Haitian statutory law does not recognize customary or informally held land unless it has been registered with the government, thus customary tenure rights are not valid under statutory law.

*“Farmers were given little time to react or organize before the crops they had painstakingly cultivated were rolled over and replaced with miles of concrete. ‘We had five days’ notice. They came and said they were taking the land, and were going to inform us about how it was going to happen’ explained one farmer.”<sup>218</sup>*

From ActionAid, Building Back Better? The Caracol Industrial Park and post-earthquake aid to Haiti

However, the registration process is costly and complicated by the fact that three different agencies formally manage land: the National Cadastral Office (ONACA), the General Directorate of Taxation (DGI) and the Inter-ministerial Committee for Territorial Development (CIAT). Unregistered land in Haiti is considered to belong to the government and is characterized as public or private domain.<sup>219</sup> Citizens may rent private domain land, and after five years have “a pre-emptive right to acquire” the land, known as the right of first refusal, if they formally register with the government.<sup>220</sup> However, most citizens do not formalize their rights due to the high costs of registration, the fear of being confronted with a corrupt and inefficient government structure, or nefarious private sector interests.<sup>221</sup>

*“When (the representative of the government) came here, he came to all the farmers and made them believe a bunch of things about their land. He said we would receive a sum of money that even when our children had children, it would be more than they needed. That’s what he said. They pressured us, too. We gave the land because they required us to give it, but said we would make a profit. Now for my half of a hectare (1.2 acres) they gave me 47,630 gourdes (\$1,190 US).”<sup>222</sup>*

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## **Customary Law**

Under customary law individuals are expected to provide access to land for family members. Rural landholders access land through ownership, leaseholds, sharecropping, and other forms of tenancy.<sup>223</sup> Rights to ownership of land result from inheritance and informal transactions, both of which are often achieved through verbal agreements.<sup>224</sup> In the case of inheritance, children born inside a legal marriage have equal claim to their parents’ land under statutory law and some customary systems, thus land is generally distributed evenly among such heirs, leading to fragmentation of holdings. However, customary law forecloses the sale of land to non-family members, allowing male heirs to reconsolidate shares when women marry outside the family.<sup>225</sup> In terms of informal purchase, Haitians engage in informal transactions to avoid the pitfalls of formalization, including costs and the possibility of losing land from official action or the influence of more powerful interests, which could result from an official survey that rewrites an individual’s boundaries.<sup>226</sup> Estimates suggest that 95% of transactions are extra-legal.<sup>227</sup>

## **Gender Equality**

Women are fully entitled to access, own, and manage land under Haitian statutory law.<sup>228</sup> However, customary norms greatly reduce women’s access to land. For example, statutory inheritance laws divide land equally between men and women, but in some areas traditional practices preclude female ownership of land, and where it is not



forbidden, women often inherit smaller plots.<sup>229</sup> A woman's marital status also has a significant impact on her inheritance rights. For instance, women are deprived of inheritance rights when a marriage is not an officially registered union. As this is the case for many women in Haiti, rights to land are constantly in jeopardy since women have no legal claim to land if they separate or become widowed.<sup>230</sup> Furthermore, when women marry outside the family, customary practices remove women's rights to their inherited land.<sup>231</sup> In rural areas where customary law permits the purchase of land, women often do not have enough money or access to finance to buy it.<sup>232</sup> On average, female-headed households own fewer and smaller plots of land.<sup>233</sup>

ETIENNE ROBERT IS A FARMER FROM CARACOL IN HAITI. HE WAS FORCED OFF HIS LAND FOR CONSTRUCTION OF AN INDUSTRIAL PARK FUNDED BY THE US GOVERNMENT.

**CREDIT: MARILIA LETI/ACTIONAID**

ActionAid Haiti supports Je Nan Je, an organization working on land rights in Haiti, and is currently planning awareness-raising activities in communities to help them claim their rights and inform them of the government's engagement with the Tenure Guidelines.

ActionAid Haiti is also working with ActionAid USA to better incorporate the Tenure Guidelines into Je Nan Je's advocacy strategy. The coordination leaders of Je Nan Je will expand their knowledge on the Tenure Guidelines through trainings provided by ActionAid Haiti.<sup>234</sup>

## Effective Land Administration

In Haiti, the formal institutional framework for managing land tenure is inefficient and discourages participation from the poor majority. Due to the existence of three institutions that formally govern land tenure, there is confusion on correct procedures and no



consistency in registration and titling practices. The process of formally registering land is time-consuming and financially costly: parties to the sale must produce approximately fifteen different documents and undergo multiple steps with a surveyor and notary before a transaction is registered and transcribed.<sup>235</sup> Formal title is not granted until the sale has been registered and transcribed. Low levels of professionalism and corruption exacerbate these inefficiencies.<sup>236</sup> The combination of these factors incentivizes informal control and transfer of land as they present lower transaction and financial costs to rural farmers and women.

## **Conflict Resolution Mechanisms**

Similar to the statutory framework for land governance, Haiti's conflict resolution mechanisms are largely inaccessible to the rural poor and marginalized communities. Haiti's judicial system is rife with many of the same issues afflicting land registration, including corruption, lack of resources and professionalism, and excessive legal fees.<sup>237</sup> Furthermore, the rural poor are often geographically isolated from the judicial system<sup>238</sup> and tend to manage disputes through kinship ties or verbal agreements, as well as other informal practices.<sup>239</sup>

## **Protection from Land Grabs**

One of the greatest challenges to land tenure security for rural landholders in Haiti is that Haitian law does not recognize land held informally or under customary law. This means that landholders do not legally exercise control over the land that they occupy unless they have legally recognized documentation. Land disputes often occur when individuals contest the inheritance or sale of property, and the judicial system favors those who have formal documentation. Since most landholders do not possess documentation, this jeopardizes the land tenure security of the rural poor. It is also an avenue for land grabs and evictions in Haiti. Many rural farmers live and work on state-owned land for years, and many pay rent for the use of that land. Yet, the government often opts to evict them from the land, ignoring the obligation to give the first right of refusal to renters. Moreover, through a decree of a project in the public interest, the government may expropriate land and sell it to third parties.<sup>240</sup> Given the informality of so many farmers' tenure, land grabs are a reality in many Haitians' daily lives, particularly in rural areas, in the northern region of the country, and on smaller islands.<sup>241</sup>

## **Multi-stakeholder Platforms**

No formal multi-stakeholder platform has been established in Haiti to implement the TGs and to monitor, evaluate and oversee them.

## 4.4.2 Analysis of Haiti Against the Tenure Guidelines

PRINCIPLES OF TENURE GUIDELINES	PRACTICAL IMPLICATIONS	COUNTRY PROGRESS & RELATED ISSUES	STEPS NEEDED
<b>RECOGNITION OF CUSTOMARY RIGHTS AND INFORMAL TENURE</b>	<ul style="list-style-type: none"> <li>• Policy, legal and organizational frameworks recognize legitimate tenure rights and customary tenure rights.</li> <li>• States recognize a range of tenure types and rights holders.</li> <li>• Acknowledge the emergence of informal tenure following migrations caused by natural disasters.</li> </ul>	<ul style="list-style-type: none"> <li>• Haitian statutory law does not recognize informal or customary tenure rights.</li> <li>• The earthquake in 2010 induced migrations, increasing numbers of informal settlements.</li> </ul>	<ul style="list-style-type: none"> <li>• Promote and enact policies recognizing customary systems of tenure governance and informal tenure rights.</li> <li>• Acknowledge informal tenure as a consequence of the 2010 earthquake and assist informal rights holders to legitimize their tenure.</li> </ul>
<b>GENDER EQUALITY</b>	<ul style="list-style-type: none"> <li>• Eliminate tenure related discrimination against women.</li> <li>• Provide non-discriminatory and gender-sensitive assistance, including legal services.</li> <li>• Accommodate changes in customary systems that conflict with rights of women.</li> </ul>	<ul style="list-style-type: none"> <li>• The Constitution provides equal rights to land for women and men.</li> <li>• Customary practices significantly disadvantage female land tenure.</li> <li>• Customary inheritance norms and changes in marital status impact tenure rights.</li> </ul>	<ul style="list-style-type: none"> <li>• Implement campaigns to educate women on their rights and strengthen advocacy efforts.</li> <li>• Provide paralegal assistance to defend women's rights.</li> <li>• Work with local communities to change discriminatory customary practices.</li> </ul>
<b>EFFECTIVE LAND ADMINISTRATION</b>	<ul style="list-style-type: none"> <li>• Adopt cadastral or registration system to record individual and collective rights.</li> <li>• Provide adequate resources and training to implementing agencies.</li> <li>• Remove unnecessary procedural requirements to recording land.</li> <li>• Prevent corruption and adopt checks and balances.</li> </ul>	<ul style="list-style-type: none"> <li>• The existence of multiple agencies responsible for recording, mapping and registering rights leads to confusion of responsibilities, poor services, and corruption.</li> <li>• Agencies lack proper human, financial, and technological resources.</li> <li>• Process for registering land is expensive, complex, and long.</li> </ul>	<ul style="list-style-type: none"> <li>• Establish one agency to manage land tenure issues.</li> <li>• Create simple, accessible, and integrated registration systems within each jurisdiction.</li> <li>• Provide resources to land administration agency and local jurisdictions.</li> <li>• Eliminate bureaucratic procedures with high transaction costs to incentivize registration of tenure rights.</li> </ul>
<b>CONFLICT RESOLUTION MECHANISMS</b>	<ul style="list-style-type: none"> <li>• Provide competent, impartial and prompt judicial and administrative bodies.</li> <li>• Ensure accessibility to conflict resolution in terms of affordability, language, location, and procedures.</li> <li>• Strengthen alternative forms of conflict resolution at local levels.</li> </ul>	<ul style="list-style-type: none"> <li>• Formal courts are corrupt, inefficient, costly, and physically distant from rural communities.</li> <li>• Judges and attorneys are not well qualified to handle land-related disputes.</li> </ul>	<ul style="list-style-type: none"> <li>• Offer paralegal assistance to local communities who cannot afford it.</li> <li>• Train judges in land law and gender equality laws.</li> <li>• Establish official dispute resolution mechanisms close to local communities.</li> <li>• Bolster informal community-based conflict resolution, while ensuring this process does not discriminate against women.</li> </ul>

<b>PROTECTION FROM LAND GRABS</b>	<ul style="list-style-type: none"> <li>• Create laws promoting responsible investment and protecting marginalized communities.</li> <li>• Mandate and facilitate consultation with local communities living on land in question.</li> </ul>	<ul style="list-style-type: none"> <li>• Policy environment is favorable to large-scale investment.</li> <li>• The lack of formal tenure disadvantages rural communities in the face of large companies.</li> </ul>	<ul style="list-style-type: none"> <li>• Recognize varying forms of tenure to prevent land transfers caused by lack of formal tenure.</li> <li>• Review and reform legislation defining the term “public interest”.</li> <li>• Review and establish policies to extend the right to FPIC for all potentially affected local communities.</li> </ul>
<b>MULTI-STAKEHOLDER PLATFORMS</b>	<ul style="list-style-type: none"> <li>• Establish multi-stakeholder platforms to collaborate on the implementation of the TGs at local, national, and regional levels.</li> </ul>	<ul style="list-style-type: none"> <li>• No national multi-stakeholder platform established yet.</li> </ul>	<ul style="list-style-type: none"> <li>• Establish a national multi-stakeholder platform to implement, monitor, and evaluate the TGs.</li> <li>• Ensure the multi-stakeholder platform includes a diverse range of CSOs and is focused primarily on the needs of women and small-scale food producers, including those who are landless.</li> </ul>

#### 4.5 A Note on Multi-stakeholder Platforms

Of the four target countries, Senegal is the only one that has created a multi-stakeholder platform to guide and monitor the implementation of the TGs. There is, however, potential in a number of the countries to use pre-existing platforms to oversee the TGs. For instance, in Haiti, the ActionAid-supported ‘Je Nan Je’ movement on land rights and affordable housing, made up of “grassroots networks, social movements, and women’s groups,” could be expanded to include government and other actors to initiate a debate on implementing the TGs.<sup>242</sup> Similarly, the Haiti Property Law Working Group is a platform involving different members of the international community and the Haitian government seeking to clarify property rights in Haiti.<sup>243</sup> In Mozambique, the Joint Sector Reviews, established to provide a platform for assessing the “performance and results of the agricultural sector” following the implementation of the National Plan for Agricultural Sector Investment (PNISA), could be used for the purpose of monitoring and evaluating the implementation of the TGs.<sup>244</sup>

## 5. Conclusion

Despite the potential for the TGs to positively impact land tenure security, insufficient research has been carried out to analyze the practical implications of implementing the guidelines. This report identifies six overarching principles encompassed within the framework that enhance land tenure security and land governance, particularly for women and small-scale food producers:

- Creation of inclusive multi-stakeholder platforms
- The recognition of customary rights and informal tenure
- Gender equality
- Effective land administration
- Conflict resolution mechanisms
- Protection from land grabs

If the TGs are to be fully implemented, these six principles and their associated criteria must be met. This report found that although Mozambique, Tanzania, Senegal, and Haiti are highly differentiated by their histories, geographies, and cultures, the countries contend with many similar issues. In each case, de facto gender equality to land is profoundly lacking, land administration and conflict resolution mechanisms are weak, under-resourced, costly, corrupt, and ineffective, and vulnerability to land grabs is pervasive.

In all but the case of Haiti, existing customary and informal tenure rights are given some form of legal recognition; however, in the face of pressure from large-scale land deals and land grabs, these rights are not always recognized, upheld, and enforced. Furthermore, only one of the countries analyzed – Senegal – has established a multi-stakeholder platform on implementing and monitoring the TGs to date, a key arrangement to ensure enhanced participation, oversight, monitoring, evaluation, transparency, and accountability.

The report highlights several key steps to implement the TGs. These include sensitizing local communities about their rights through occupancy and working with customary leadership to ensure customary norms are consistent with statutory law and recognize and protect all legitimate tenure rights. This should be complemented by local campaigns to sensitize and disseminate information about women's land rights and efforts to strengthen gender-focused local paralegal training. Far greater human and technical investment should be made to strengthen land administration and cadastre systems and conflict resolution mechanisms. Improved protection from land grabbing requires urgent attention; all four countries should go beyond provisions in the TGs and ensure all affected communities have the right to prior, informed consent (FPIC) before any large-scale land deals are approved. Finally, the three other countries in the study should take a lead from Senegal and establish a multi-stakeholder platform to ensure oversight and widespread participation in the implementation of the TGs.

# 6. Recommendations

## 6.1 Recommendations for Implementing Governments

### Recognition of Customary and Informal Rights

- Haiti should review and revise its statutory laws so that they fully recognize and protect customary and informal tenure rights.

### Gender Equality

All four countries should:

- Review and revise statutory laws to ensure that women and girls have equal land rights – regardless of age or marital status.
- Tackle and outlaw discriminatory customary practices by working with customary leadership and implementing information campaigns to educate women and local communities on their land rights.
- Provide legal assistance and gender-focused literacy on land issues
- Endorse and facilitate paralegal training in order to provide legal services that are accessible to women and communities.
- Ensure that women are equally or equitably represented on village land committees and facilitated to participate effectively in all land administration bodies through provision of information and capacity building.

### Effective Land Administration

All four countries should:

- Increase human and technical resources in land administration bodies to enhance low-cost, transparent, simplified, and accessible land registry and cadastre systems at village, district, and national levels.
- Promote participatory land use mapping and planning with equal and effective participation of women.
- Institute checks and balances in land administration agencies to tackle corruption.

### Conflict Resolution Mechanisms

All four countries should:

- Retrain judges and lawyers on key provisions in laws and rights related to the TGs.
- Increase human and technical resources to reduce costs, simplify, and enhance access to courts and legally based conflict resolution mechanisms.
- Promote and legally recognize decentralization of community-based alternative dispute resolution mechanisms as the first point of call for women and communities, and support legal assistance and gender-focused paralegal training at local levels.

## Protection from Land Grabs

All four countries should:

- Review, clarify, and reform legal definitions of public purpose and eminent domain through a multi-stakeholder land governance platform.
- Prioritize models of development that do not involve large-scale land rights transfers.
- Ensure that all affected communities have the right to free, prior and informed consent (FPIC), and are facilitated to exercise it, before any large-scale land-based projects are considered.
- Consider imposing a ceiling on permissible land deals and/or the need for parliamentary approval for such deals.
- Consider imposing a moratorium on large-scale land deals until enhanced legal safeguards are in place.

## Multi-stakeholder Platforms

Tanzania, Mozambique and Haiti should:

- Establish national multi-stakeholder platforms to guide, oversee, and monitor the implementation of national land laws and systems that are in line with the Tenure Guidelines.

All four countries should:

- Ensure that multi-stakeholder platforms prioritize the needs of women and small-scale food producers, including those who are landless, and should incorporate rules to prevent conflicts of interest.

## 6.2 Recommendations for Donor Governments

- Tenure Guidelines are a globally applicable tool for all countries, at all levels of development. In addition to applying the TGs to address tenure problems and inequities in their national context, wealthy countries should analyse how their investment and trade policies impact land tenure beyond their borders. They should take all necessary steps to ensure that they are supporting implementation of the Tenure Guidelines and avoid negatively impacting human rights.
- Donor governments should incorporate the Tenure Guidelines and its key principles into their bilateral and multilateral development assistance and where applicable, ensure adherence to the guidance provided by the AU F&G in policy development, support and advice.
- Donors should commit additional financial and technical resources to help poorer governments fully implement all key provisions in the TGs and the LPI Guiding Principles on LSLBI, before considering large-scale projects, and prioritize models of development that do not require large-scale land rights transfers to investors.

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**ActionAid** is a global movement of people working together to achieve greater human rights for all and defeat poverty. We believe people in poverty have the power within them to create change for themselves, their families and communities. ActionAid is a catalyst for that change.

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