

# **URGENT TO STEP UP INCLUSIVE AND SUSTAINABLE LAND RIGHTS & LAND USE GOVERNANCE**

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**Compiled by Danny Wijnhoud, June 2022**



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# FOREWORD

This brief is compiled based on desk research predominantly on ActionAid and partners' own track record, visions and positions, a comprehensive survey based on a questionnaire, informal conversations with some ActionAid external peers and personal experiences and insights of the author.

The conclusions and opinions are predominantly shared positions within ActionAid, but not all and some of them are still being debated too. This means that they are included under the responsibility of undersigned compiler.

Just to note that there are a few key points speaking for themselves or with reference(s) that have not been elaborated further in the remainder of the text of this short brief.

I would like to thank all colleagues, partners, community representatives and other stakeholders that inspired this policy and discussion brief.

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## KEY POINTS

- Stepping up inclusive and sustainable water & land rights and water & land-use governance is more urgent than ever. In the context of a multitude of crises, including growing extreme inequalities, climate, biodiversity, food, environmental, water scarcity and covid19 crises inclusive water & land rights governance and inclusive and sustainable water & land management is essential.
- In recent decades there was a land rush that started with subsequent financial crises (late 1990s and late 2000's) the global run to other assets, including fertile land and land with access to water, and agricultural commodities. In addition, there has been the ever-growing global demand for food, fodder and (bio) fuels (FFF) in particular driven by and serving the supply chains agribusiness multinationals, commodity traders and serving the "growth" portfolios of international financial institutions<sup>i</sup>.
- Originally rooted in colonial patterns and related to the global land rush, water & land grabbing, the expansion of industrial monocultures and livestock factory farming has been on the increase. It does not only contribute to the emission of over 30% of all Green House Gases (GHG), but also results in large scale

## Why analysis and discussion of water and land rights governance is essential and urgent?

The analysis about inclusive and sustainable water & land rights governance is relevant for the following reasons:

- i) Support to inclusive gendered land rights governance is essential for shifting the power addressing power imbalances, extreme gender and broader socioeconomic inequalities, women and human rights violations, and climate, environmental, hunger, nutrition and livelihood crises as aimed at just climate, energy & extractives and agricultural & food transitions towards a feminist economy and society.
- ii) The impression – that got confirmed as being real - that support to inclusive gendered land rights governance as a prime and basic developmental requirement does not really get rooted and sufficient or appropriate attention like required or, if it does, it is too little and not successful enough. If and where it is on the agenda progress being made is slow and local, but the broader global trend is that land concentration and therefore land rights inequality is increasing like recently confirmed by studies on land inequality and drivers<sup>vi, vii</sup>, and the latest Land Matrix assessment report<sup>viii</sup>. The studies painfully reveal that our initial impression got confirmed and is real. The study reports reveal a growing gap in access to and control over land hitting smallholder farmers, women and indigenous and rural communities hardest. As paradox smallholders and women have been and are the prime producers and providers of nutritious food in low and lower middle-income countries (LLMICs). The referred study concludes that the concentration of land is benefiting only a minority of "owners" and investors and resulted in intensification of production

deforestation, loss in biodiversity and impacting on regional climate conditions while undermining local agroecological food farming, food sovereignty and the right to food<sup>ii</sup>.

- As directly linked to community water & land rights as a precondition, ActionAid does promote agroecology, inclusive bottom-up agriculture and related social, cultural and socioeconomic practices, like territorial markets. Agroecology therefore serves as a practice, farmer & community participatory science and as a social movement. As directly depending on community and women – and their enterprises- land rights and participatory water & land management, agroecology is feminist and critical to address the climate, food, loss of biodiversity and gender inequality and women rights crises<sup>iii</sup>.
- Patriarchy is at the root of the climate crisis, food crisis and crisis of increasing inequalities. Support to women's land rights and agroecology as a feminist practice, requires deliberate steering of intersectional feminist principles and practices. In the global south feminism should be driven by grassroot women and broader social movements.
- Support to land governance initiatives and community and women -and their local enterprises - like through support to the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs)<sup>iv</sup>, in particular its gender dimensions, as well as the Free, Prior and Informed Consent (FPIC) principles<sup>v</sup> has not resulted in major improvements and inclusive land tenure at large. Just to note that the assumption that FPIC does represent the VGGT “meaningful consultations” principle is not correct meaning “meaningful consultation” in the VGGT is vague and little concrete at best.
- VGGT are somehow comprehensive and vague with few stakeholders, even experts and key policy makers, having full

in almost all regions of the world since 1980. This means that the land and water being grabbed from smallholder farmers or from forests and nature usually is converted into large-scale industrial agriculture or mining with high and increasing GHG emissions and undermining carbon sequestration and feeding into the climate crisis. Instead of sustainable land-use for decent livelihoods, food sovereignty, the right to food and sustainable climate resilient land use, financialization based on investment in agricultural - not necessarily and often not food & nutrition relevant - and mineral raw commodities, and more recently even non-inclusive conservation and carbon off-setting are prime driving force underlying land concentration and the patterns of tenure, ownership and land-use.



**Agroecology vs. industrial agriculture in Mozambique**  
(c) Kadir van Lohuizen /NOOR

insight, let alone their interpretation or perceptions coincide. In addition, VGGT implementation is hampered by policy and institutional constraints and with resistance to it by powerful actors within the political economy. 10 years after their launch, full VGGT implementation is lagging far behind schedule for these “soft law” guidelines. On the contrary, there are several recent reports pointing at the fact that inequality in land governance and land concentration has only increased<sup>iv,vii</sup> and that the majority of large-scale land deals happen without full VGGT considerations<sup>viii</sup>.

- FPIC is derived from United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>x</sup>, and FPIC is unlike VGGT not “soft law”. However, where there is lack of agreement about whether communities are indigenous or not, in particular outside Latin America, FPIC gets contested as not being a legal right. Within segments of civil society there is consensus that FPIC should apply for all local communities residing for decades in their actual habitats. There is some self-regulation about FPIC for local communities and beyond indigenous communities alone, but then it becomes soft law again. Whatsoever, even for indigenous communities there are few examples of appropriate FPIC processes. These should be repetitive efforts with communities full access to information and the right not to provide their consent.
- There are promising developments for Business & Human Rights legislation and legislation for corporate accountability, like in the EU and some EU member states. As this does not apply to all corporations globally, the fact that there are efforts aimed at a UN binding treaty (UNBT) for business and human rights is promising<sup>x</sup>. Whatsoever, there is a need to insist on gendered legislation and feminist treaties. As the OECD Guidelines for multinational enterprises (OECD-GLEP)<sup>xi</sup> may guide some of the legislation and the UN Binding Treaty, it is essential that the lobby to ingrate guidelines protecting community and women’s land rights

The contrast between the problem and the solution is illustrated in above images from one and the same district, Manhica District in Maputo Province, in the south of Mozambique. On the left you see women-led high biodiversity agroecology serving sustainable local food & income systems. On the right you see an industrial sugarcane plantation on land once pertaining to local communities and with large consumption of scarce water and high inputs of fertilizers and pesticides. Due to partial mechanization it only contributes to some employment, mainly for poorly paid harsh seasonal labor for men.

The contrast between these two extremes just next to each other clarifies what is wrong and what could and should be improved. The picture on the right sketches an elite profit driven system undermining local food security and resulting in irreparable damage. The picture on the left shows a system based on cooperation between women & men and nature in which the mutual interests are respected. “Our solutions are in nature” the women stated. This points at the need for systemic analysis and solutions. Community and women’s land rights are indispensable for just transitions of agricultural & food, energy & extractives and climate systems.

- iii) There is a strong and evermore urgent need that efforts aimed at enhancing community and women’s land rights are being stepped up instead of being weakened or reverted like it did happen. To date enhancing community and women’s land rights has been undermined by broader corporate and elite capture and related land grabbing by large corporations and governments, which needs to be addressed in parallel. This points at a need for debunking the myth of pro-poor and sustainable large scale land investments, which are rare or non-existent. Too many requirements for inclusive pro-poor development remain unaddressed. For sub-Saharan Africa, Schoneveld (2013) highlights how investment capital tends to attach itself to and strengthen powerful local coalitions of modern and customary elites to the detriment of the rights of the rural poor<sup>xii</sup>.

## Conclusions

Desk research, a survey by questionnaire and interviews resulted in the following conclusions

- 1) There is a need for more promotion, clarifications and explanations, including revisions, and much to be improved for the full and appropriate implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs)<sup>iv</sup>, in

and women's rights in general will be successful.

- VGGTs as voluntary guidelines and FPIC as an contested principle, if implemented and applied at all, should make way for legislation and mandatory guidelines (beyond indigenous communities alone), principles and practices. This also means there is a need for legislation securing community and women's – and their enterprises- land rights even in the (temporary) absence of investors. Land rights governance legislation, including but not restricted to mandatory FPIC and the right of communities and women to dissent for any requested land deal, is urgent.



particular its gender dimensions, as well as for the Free, Prior and Informed Consent (FPIC)<sup>v</sup> as a principle and right. VGGTs are broad and deal with a multitude of land governance elements and requirements many of them without direct relation to large-scale land-based investments. FPIC applies as principle and juridical binding right for indigenous communities but is contested for communities at large. Large scale land acquisitions require FPIC, referring to the consent of local communities, including women. However, it should be clear that if FPIC applies, communities right either to provide their conditional consent or to object to land acquisitions targeting their land or the land they have been using for their livelihoods. VGGTs as voluntary guidelines and FPIC as a principle and mechanism are considered to be vague, contested, and therefore risk to be abused and not implemented or applied in the appropriate way, if implemented and applied at all.

2. VGGTs as voluntary guidelines and FPIC as an contested principle, if implemented and applied at all, should make way for mandatory guidelines, principles and practices and land rights governance legislation including mandatory FPIC and the right of communities and women to dissent for any requested land deal. The introduction of legislation should protect and enhance community and women's land rights, revert and prevent land grabbing and ensure that the needs for communities, women and local Micro, Small and Medium Enterprises (MSMEs) come first. There could be ways to fast-track land rights governance legislation if integrated in broader efforts aimed at legislation for gendered mandatory business and human rights due diligence (gMHRDD) and a feminist UN Binding Treaty (F-UNBT). Another step in between could be to get gendered land rights safeguards be integrated in the OECD guidelines for Multinational Enterprises (OECD-GL)<sup>xi</sup>. Notwithstanding the OECD-GL are voluntary safeguards, they are expected to serve as the key framework for the efforts aimed at legislation on business and human rights and an UNBT.
- 3) With the ongoing climate, biodiversity and broader environmental crises as well as the related hunger & nutrition crises there is a strong acknowledgement that land rights are a key determinant for land-use practices. In turn land-use practices do determine the inclusiveness and environmental sustainability of local and global social, cultural, political and economic systems and opportunities for food sovereignty, climate change adaptation, mitigation and the protection of the environment.

Secured land tenure for communities, women and

## BEYOND THE KEY POINTS: some additional related recommendations

- More civil society efforts and more support of donors, governments and responsible enterprises is required to synthesize the available evidence and insights and recommendations to spur continued action on community and women's land rights governance beyond 2021.
- While land rights advocacy risks to be neglected in international policy and CSO agendas, it should be at the very core to transition to a feminist economy and society.
- There is a need to further raise the awareness on the relevance of community and women's land rights, gendered land rights due diligence by feeding into much broader thematic areas like just transition (agriculture and food, extractives & energy, climate action), "feminist united" and the feminist economy campaigns of for instance ActionAid. This refers to exploring further the rationale of supporting Women's Land Rights (WLRs) for inclusive and sustainable "development" and community and women's empowerment, decent livelihoods, feminist economy, right to food, climate change adaptation and mitigation.
- Enhance knowledge and competencies of government representatives (policy makers, land administration and management officers etc.), Civil Society Organizations, Private sector, Service providers, Academia, and Communities for achieving inclusive gender-equitable land (tenure) governance; Lobby for national supervisory and coordinating committees for VGGT and FPIC implementation.
- Work towards transitioning from VGGTs promotion and implementation to binding measures and legislation. This does not refer to Business & Human Rights and corporate accountability legislation only,

micro, small and medium enterprises may result in the allocation of more land for high biodiversity inclusive inherently feminist agroecology for nutritious food & income and in support of climate change adaptation and mitigation, all critical within the inherently feminist economy being pursued. This also highlights the relevance of climate and environmentally physical planning and community & women participatory land-use planning in general. It is also essential to note that land is increasingly attractive and prone to land & water grabbing too if it is fertile and has good potential for agricultural practices, even more so if there is access to and control over potable and irrigation water. This is in particular true in the context of the climate crisis and more frequent and prolonged droughts, like in much of semi-arid Africa, Asia and Latin America. Moreover, rural (and semi-urban) land is more attractive and prone to land grabbing depending on its location near urban areas, markets, infrastructural corridors and hubs like ports and airports.

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but also to legislation for community, women and Micro, Small and Medium Enterprises' (MSMEs) land & water rights whether there are other investors and multinationals around or not.

- Support feminist community participatory action research & empowerment centered around enhancing community and women's land rights for inclusive and sustainable land use (including agroecology) for the right to food & income, decent livelihoods and climate resilience.
- Link land governance to land & water governance considering access to and control over (irrigation/ potable / fishing / fish farming) water is directly connected to land rights, certainly in the context of the climate crisis



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