



Tanzania Women Lawyers Association (TAWLA)

Fact Sheet

Gender Equitable Decision Making Processes on Land Investments; Legal Framework

1. Introduction

Tanzania's land laws include the Land Act and the Village Land Act of 1999 and the Courts (Land Disputes Settlements) Act of 2002, which was described as responding to the challenges of double allocations, overlapping and often contradicting legislation which lead to widespread confusion over which institutions had the right to allocate land, issue land title deeds and settle land disputes. The need to enact the above mentioned laws was further aggravated by a rapidly growing population, a land administration and land use planning system that had broken down due to lack of capacity, and by outright corruption. Already in the late 1980s it was clear that the ordinary court system was unable to handle the major part of land conflict cases (Pedersen, 2013). However, a conflicting view to the above description was to the effect that Tanzania's land reform was a response to the increase in the demand for land and corresponding land administration services (Daley 2008, 72; Kombe and Kreibich 2006, 33) in Pedersen, *ibid.*). This fact brief focuses on village land and women participation in decision making processes for village land acquired or allocated for investment purposes.

2. Village Land Management and administration in Tanzania



Village land is vested in the Village council (VC) which is appointed by the Village Assembly. Women are required to be in various village land committees including those for the allocation of land and for dispute resolutions. The minimum number of women to be included in the land allocation committee and dispute settlement forums is specified by law as described below:

- The Village land Act (VLA) requires women representation in land allocation committees and land administration council including the Village Land Councils and the ward tribunals;
- According to the Village Land Act, the Village Land Council must consist of seven persons of which three (3) must be women (S. 60) VLA;
- The quorum of a meeting of the Village Land Council is four and at least two (2) should be women. (S. 60) VLA
- In mediation of land disputes the ward tribunal must consist of three members at least one (1) of whom has to be a woman.
- Without meeting the above minimum requirements the committees cannot make any valid decision by law.



Women now can be allocated land in their own names where they cultivate and feed their children

Therefore the Land Acts contain strong provisions for gender protection. The real life on the ground may not demonstrate this fact. Advocates and policy makers are still called upon to advocate for the implementation of these positive laws as well as adopting alternative approaches to protecting women gender land rights through legislation.

3.0 Procedure For Acquisition of Land for Investment Purposes

3.1 Land allocated by the President

The President may allocate land for investment purposes through his power to change land categories or to impose mandatory land acquisition for public interest. The transfer of Village Land to General Land for this purpose is subject to the payment of compensation to the villagers identified to be affected by the transfer.

3.2 Transfer of Land Through Administrative Authorities

Transfer of land for investment purposes may be made through administrative authorities, such as the Tanzania Investment Center (TIC), Rufiji Basin Development Authority (RUBADA) and Export Processing Zones Authority (EPZA), which may then enter into contracts with investors and provide them land for investment. Through its website, EPZA reports that it has 23,000 hectares of land earmarked for investment¹. The TIC holds granted rights of occupancy to general land and creates derivative rights of occupancy to investors².

¹ Massay, G and Kassile, T, Land Based Investment in Tanzania, Legal Framework and Realities on the Ground; LDPI; P. 8

² Ibid., Section 2

3.3 Land Allocation through Investor direct negotiation with the Village Council

Investors may also negotiate land acquisition directly with a Village Council and after securing the approval of both the Council and Village Assembly, register the transfer with the Ministry of Land which shall then facilitate the change in category from village land to general land for investment purposes. Village land may also be acquired by way of allocation by the Village Council as provided for under the Village Land Act³.

4.1 International law Relevant to Women Land Rights Including Participation in Decision Making Matters for Investment Purposes

Tanzania is state party to several international instruments⁴ such as the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) of 1979, the Beijing Platform for Action (1995), Millennium Declaration and Development Goals (MDGs) – with MDG-3 on gender equality and women’s empowerment and the UN Security Council Resolution 1325 (2000). At regional level Tanzania is state party to the African Charter on Human and Peoples’ Rights (AfCHPR/ African Charter) of 1989 and the Protocol to the African Charter Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol).

In the case of *Transport Equipment & Reginald John Nolan v Devram P. Valambbia*, Appeal Case No 19 of 1993 the Court of Appeal held that international Agreements and Conventions signed and ratified by the Tanzanian government are valid undertakings and that the government is bound by its commitments to others.

However after noting that international instruments are not self executing and that there has to be an Act of Parliament to make such international instrument operative (domestication), the Justices of Appeal applied the international Covenant on Civil and Political Rights (ICCPR) to construe the relevant provision of the Constitution of the United Republic of Tanzania and held that the “court has to interpret and apply all derogating law extremely strictly”. *CEDAW*

The Convention provides that women should have equal rights with men to conclude contracts and administer property, including equal access to mortgages, and shall have equality before courts and tribunals, with restrictions to the legal capacity of women deemed null and void.

- **The AfCHPR**

The Charter provides for several obligations for Tanzania including the the adoption of legislative or other measures to give effect to it so as to ensure that every individual including women shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the Charter without distinction of any kind including on the ground of sex.

- In addition, Article 3 of the Convention provides that every individual shall be equal before the law and shall be entitled to equal protection of the law.
- Articles 18 and 14 of this Convention are of key relevancy. Article 18 in particular sub-article 3 provides that the ‘State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman as stipulated in international declarations and conventions’. Article 14 on its part protects the right to property for every individual including woman.

³ URT, 1999, Village Land Act, section 32.

⁴ By virtue of a Article 63 (3) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time, Tanzania is a dualist country thus international law only needs to be domesticated after it has been ratified by the parliament so as to make it fully part of the law of the country.

- **Maputo Protocol**

As a state party to the Maputo Protocol, Tanzania is obliged to combat all forms of discrimination against women through appropriate legislative, institutional, and other measures.⁵ The protocol directs state parties to ensure increased and effective representation and participation of women at all levels of decision making.⁶ It also recognizes *inter alia* the right of women to acquire and own property during the subsistence of a marriage and to an equitable share of joint property in the event of separation or divorce.⁷ The Protocol also recognizes the right to access and own land as part and parcel of the right to food security and the right to sustainable development⁸.

In a nutshell, Tanzania has obligations under international law to ensure among other rights that there is an equal playing field for men and women in matters related to land. This has over the years been reflected and incorporated into various policies and strategies.

4.2 Strategies

4.2.1 Tanzania Vision 2025

- Tanzania's Vision 2025 aims at a number of achievements, and one of them is high quality of livelihood. In this regard, Tanzania aims to ensure that at least by year 2025 all forms of gender inequality which hinder economic development are eliminated.

4.2.2 National Strategy for Growth and poverty Reduction II

The National Strategy for Growth and Poverty Reduction II, or MKUKUTA II, recognizes the need to institute mechanisms for targeting poor and vulnerable groups to ensure that they are not left behind in the bid to bring about economic and social development.⁹ It sets a target of 45% of vulnerable groups reporting having full access to their rights such as education, health, water, sanitation and social protection.

4.2.3 The National Land Policy (NLP), 1995

The National Land Policy (NLP) provides guidelines on land tenure, land use, land administration, as well as ownership, use and administration.¹⁰

On the matter of village land administration, the NLP recognizes the Village Council as the organ responsible for that purpose and that consultation and consent of the Village Council shall be necessary whenever alienating village land. The Policy also provides that the Village Council shall report all decisions on land allocations to the Village Assembly¹¹.

4.1.3 The Investment Promotion Policy of 1996

The policy provides for the promotion of investments in the country. But it has clear gaps on the rights and obligations of investors as well as those of local communities.¹² Among others, it fails to provide for community involvement in decision-making processes regarding land acquisitions for investment purposes.

5 Article 2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

6 Ibid Article 9.

7 Ibid Article 6 and 7 respectively.

8 Ibid Article 15 and 19 respectively.

9 All the clusters in the Strategy if achieved would place women and other vulnerable groups at a relatively better position in so far as reduction of income poverty, improvement of quality of life and social wellbeing and good governance and accountability which are basically the three key results areas of the strategy.

10 A national policy is a "broad set of rules and regulations that guide and govern action throughout the country on the subject matter" (See FurahaNgeregereLugoe "Linkages between Lands and Agricultural Policies and Strategies and their Effects on Food Production", Rector/Managing Director Dar Es Salaam Institute of Land Administration and Policy Studies, DILAPS, at <http://www.dilaps.or.tz/> (accessed on 2nd June, 2015).

11 URT, The National Land Policy, Para 4.1.1 (iii) & (IV) and 4.2.1 (iii)

12 <http://dx.doi.org/10.1787/9789264204348-en>

4.3 LAWS

4.3.1 The Constitution of United Republic of Tanzania 1977

The Tanzanian Constitution recognizes the right to equality of all citizens and discourages any sort of discrimination of any kind whatsoever.

Article 21 provides that every person has a right to participate fully in the process leading to decision on matters affecting him (or her), his (or her) well-being or that of the nation. All citizens are entitled to take part in matters pertaining to the governance of the country, be it directly or by way of representatives who are elected in accordance with law.

The 13th amendment to the Constitution made in 2000 prohibits discrimination on the basis of gender.

Article 24 (1) of the Constitution provides that every person is entitled to own property and any deprivation of personal property is unlawful unless declared by law and provides for fair and adequate compensation.¹³

4.3.3 The Village Land Act No. 5 of 1999

This law governs village land. Land law in Tanzania is generally regarded as most progressive¹⁴, at least on paper. This law breaks new ground with respect to women's rights. In particular section 20 (2),¹⁵ which renders invalid any customary practice that discriminates against women can be said to be one of such progressive provisions.

The law also authorizes the creation of a Village Adjudication Committee (VAC) and a Village Land Council (VLC) with women membership. The VAC is to be formed of not less than six nor more than nine persons, of whom not less than three persons shall be women¹⁶. The function of the VAC is to assist the village council to adjudicate land ownership of individuals or groups

5. Women Participation in Decision Making processes in Matters of Land for Investment Purposes : Facts Drawn from Kisarawe Case Study

Kisarawe District is among six districts of the coastal region of Tanzania, which is about 70km southwest of Dar es Salaam. The District has an area of 5,028.48km² and a population of about 101,598 according to 2012 national census¹⁷. About 60% of the population is women.¹⁸

The case study was carried out in Kidugalo and Vilabwa villages, Kisarawe District, in the southwest of Dar es Salaam region. The justification for selecting these particular villages was the fact that they are among eleven villages whose land was acquired for agricultural investment. Thus the experienced of those concerned including women during acquisition and the extent of women and community participation in decision making was crucial for this project.

In 2009, Sun Biofuel Ltd, a company based in the United Kingdom which has been operating in Tanzania since 2006, introduced a biofuel plantation project in Kisarawe. The project was registered by Tanzania Investment center (TIC) and thereafter it acquired about 8000 hectares of land from eleven villages for the purpose of establishing a jatropha plantation. The TIC offered the Company a 99 years lease for the acquired land for the purpose of the investment.

13 Ibid Article 24

14 See F. Carpano "Strengthening Women's Access to Land: the Tanzanian experience of the Sustainable Rangeland Management Project", 2010, at <http://www.ifad.org/> (accessed on 22 May, 2015.)

15 The Village Land Act Cap. 114.

16 See section 53(2) of the Village Land Act Cap. 114.

17 <http://www.citypopulation.de/php/tanzania-admin.php?adm2id=0603> visited on 24 February 2015

18 Interview with District Legal Officer in Kisarawe.

Two years after its operations in Kisarawe, Sun Biofuel Company became bankrupt and its shares were bought by a Mauritius based company named 30 Degrees East.¹⁹

Generally women population in Kisarawe is heavily constituted by illiterates. For instance, among ten women in the two villages that formed part of the FGD, at least seven were illiterate²⁰ and only three women out of ten interviewed, were aware and informed of village land matters.

51. Land acquisition process under the Sun Biofuel Ltd Project

According to a focused group discussion involving land officers and other district workers of different positions in Kisarawe District revealed that the procedure for acquisition of land for investment in this particular project was followed.

On the other hand, the group representing the views of the common citizen including women in Vilabwa, Kidugalo, and the other nine affected villages, said that the acquisition process did not follow the procedure provided in the land laws.

Considering the patriarchal system that dominates Tanzania, especially at the community level, women were barely represented in the decision making process.

According to the Village Executive Officers and Chairperson of both villages, the meetings that were conducted for introducing the investor were mostly emergency meetings convened by the District Officers, with the aid of the Ward Executive Officer (WEO). During these meetings, the villagers were simply informed of decisions that have been made regarding their land, and no one dared to protest these decisions.

In both villages, all top positions in village government were held by men and few women were part of village committees²¹.

5.2. Compensation

Compensation is linked to the right of public participation in land decision-making (section(3)(1)(j) Village Land Act, Cap 114). The process of compensation entails involvement of the public at the time of planning, compensation and execution of the project²².

The Land Acts requires full, fair and prompt compensation (Section 3(1)(g)). The essence of compensation is the vindication of the solemnity of individual right to property which is guaranteed in Article 24 of the Constitution (1977). It rests on the reason that once someone has expended his efforts to acquire the property, whoever wants to acquire it must pay.

According to information obtained during focused group discussion with citizens in the study area, during the village meetings for the Sun Biofuel acquisition in 2009, the investor and the Village Assembly together with the Village Council negotiated on a give and take basis. The villagers put forth their terms and surrendered the land based on the understanding that their terms would be fulfilled by the investor. One of the terms agreed upon was that the investor would compensate everyone whose land was affected by the investment.

19 The latter company is not explained in details as this fact sheet is mainly concerned with the way the land was acquired by the first company Sun Diego, how women participated in the decisions for allocation of land and how compensation was effected.

20 Source field data.

21 Kidugalo and Vilabwa Village Executive Officers in FGD

22 Public involvement in land management is fundamental in bringing about good governance to land management (See Clause 4.2.1. & 4.2.2 of the National Land Policy (1995)). The right to public participation is a right not a privilege. This right can be assured through active consultation with community, dissemination of information and constant communication with the people. Not only should there be consultation but also good faith in conforming to procedures.

It was further agreed that the compensation would be paid after the District Land Valuer had provided his report on the value of the acquired land. This report was not shared with the Village Assembly. The investor compensated only those whose lands had some improvements in it, such as coconut or cashew nut trees, otherwise, those whose lands did not have any sort of improvement were not paid. According to the respondents even those who got paid complained that the amount received was much less than the value of the land that they gave to the investor.

‘when the white man came, we were given envelopes which were sealed, they directed us not to open and go straight to the bank...on arrival, the amount on the cheques was less than what was agreed’²³. (source: Field data).

In general the practice in terms of compensation has been to pay less than the actual value of the land to the villagers. Isaksson and Sigte also noted that the use of compensation was also questionable and not fair. The village assembly members felt that they could not participate fully in decisions concerning the use of the compensation paid and were persuaded to use it according to the wishes of the decisions of village leaders. In addition, women were excluded from the discussions and hence lost all rights when it came to the use of the compensation.²⁴ Thus, village leaders decided for everyone how compensation paid to individuals was to be used in total violation of the law and hence the rights of the people including women.

From the perspective of the district several officers who participated in the report sharing focused group discussion, the decision to compensate was done on humanitarian grounds. This is because as explained earlier the respective villages that were to be acquired and reallocated for investment had been abandoned since the 1970 during the Operation Vijiji era.

Concerning the involvement of women they conceded that women did not show interest in effectively participating in such meetings. They however questioned whether lack of women participation is due to the patriarchal system because in other activities such as borrowing schemes popularly known as “VIKOBAs” women usually effectively participate.

6. Land Disputes Settlement System

In addition to the Village Land Act described above, the Courts (Land Dispute Settlements) Act, 2002 establishes the land disputes resolution procedure.

This law establishes the organs for dispute settlements on land conflicts. At the village level, the law provides for the Village Land Council. The Council should be comprised of seven members out of whom three should be women. There seems to be an inconsistency with the Village Land Act, which requires 5-7 members, of which 2 shall be women. The members are to be nominated by the Village Council and approved by the Village Assembly. Among other qualifications, for one to be nominated as a member of the Village Land Council has to be a member and resident of the particular village who has attained the apparent age of eighteen years²⁵.

The Village Land Council shall receive complaints on land matters, convene meetings for hearing disputes of the parties and mediate between the parties helping them to arrive at a mutually acceptable settlement on the disputes on land matters²⁶. The law is however silent on the quorum of the meetings for dispute settlements.

²³ Interview with the Village Council leader.

²⁴ R. Isaksson & I. Sigte Allocation of Tanzanian village land to foreign investors

²⁵ Ibid., Section 5; also see section 60 of Village Land Act No. 5

²⁶ Ibid., section 7



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