Building Bottom-up Accountability in an Era of Land Grabbing in Sub-Saharan Africa

Policy Points and Recommendations from Nigeria, Uganda, Mali and South Africa

Introduction

Access to and control over land and associated natural resources play a key role in whether and how rural working people are able to build decent and dignified livelihoods, avoid or escape hunger, participate in decision-making, avoid or escape political exclusion and marginalization, and sustain collective identities and social reproduction processes. Land is important in itself, but control of land is often also a precondition for access to water, forests, fisheries, and subsoil resources. Today, land and related resources are under increasing pressures from a new global rush to acquire land for a variety of business purposes. Areas targeted for acquisition are often populated and productive; new economic arrangements involve either expulsion or adverse incorporation of people. People have been expelled when the land is needed but their labour is not; in other cases they are incorporated into emerging enterprises as labourers or contract growers, often under unfavourable terms. These processes threaten to squeeze out rural working families and put an end to small scale farming, fishing and other livelihood practices.

Yet the aspiration for greater state accountability to rural working people runs deep, despite the strong pressures narrowing the space for them to (re)gain effective control of their natural resources. Accountability is about holding those in power responsible for their decisions; accountability politics is about whether and how this can be done. Accountability encompasses rights, rules and procedures that enable citizens to demand answers and penalize misconduct, as well as citizen action to challenge power, claim citizenship and improve and expand democratic processes. Neither of these two dimensions of accountability arises out of thin air. Rights, rules and procedures must be formulated, adopted, interpreted and implemented, while citizen action must be envisioned, planned, organized and undertaken – often in political-legal contexts of hostility, power imbalance, and impunity.

This policy brief outlines recommendations resulting from a three-year action research programme undertaken by local civil society organizations in collaboration with threatened communities of smallholder farmers and fishers (among others) in Nigeria, Mali, Uganda and South Africa. Through participatory action research, the organizations and communities used The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (henceforth TGs) to analyse and assess unjust situations around the governance of their land and associated resources, and to point the way forward in terms of advocacy. This effort marks a small but meaningful step forward in a much longer political struggle to recalibrate the political-legal terrain and create new social-political conditions more favourable for claiming greater respect for human rights and more democratic land control in a ‘global land grab hotspot’. Building on insights from these efforts to use the TGs to assess and analyse their situations, key policy points and recommendations that emerged at the individual country level are shared below. Each civil society organization is briefly introduced, to place recommendations in context.
Nigeria

ERA (Environmental Rights Action/Friends of the Earth Nigeria) is a Nigerian non-governmental advocacy organization concerned with the protection, preservation and conservation of the natural environment, and the sustainable use of natural resources. ERA is the Nigerian chapter of Friends of the Earth International (FoEI), the co-coordinating NGO in Africa for Oilwatch International and the 2016 host of the secretariat of the Oilwatch International. It is dedicated to the democratization of development, defence of human ecosystems in terms of human rights, and promotion of environmentally responsible governmental, commercial, community and individual practice in Nigeria through the empowerment of local people.

Nigeria has been made vulnerable to large land grabs by the government's prioritization of international investment in the country's agricultural sector, on the grounds that investments will increase food production and make Nigeria a food exporting country. This has led to an influx of multinational companies entering community territories in the name of development. Yearly, large areas of forest as well as communal farmland is grabbed for industrial monoculture tree plantations in a bid to meet the growing market for raw materials from multi-national corporations. Many smallholder farmers and community members have been negatively impacted, giving rise to conflicts and underdevelopment in many communities. Due to gaps and weaknesses in the country's land tenure system, government facilitation of large scale land deals often results in land grabbing.

In 2000, agribusiness group Wilmar International acquired 30,000 hectares of land in Nigeria's Cross River State. Since then ERA/FoEI has worked with local communities to document and expose the impacts of pollution, environmental degradation, forced evictions, deforestation and land grabbing in the State. Their work has built capacity and enabled local people to defend their environmental human rights in law. In 2015, the organization began undertaking action research in four communities - Betem, Akpet, Idoma, and Akamkpa - where they used the TGs to critically assess the system of land tenure that governed the land and forest in the communities, and the drivers and differentiated impacts of land grabbing, as well as to forge strategies of engagement and resistance, and bottom-up accountability initiatives.

They established and trained community forest watchers to understand the 1978 Land Use Act in the light of safeguards provided for in the TGs. According to the forest watchers, understanding the concept of tenure rights enabled them to more effectively lobby and engage with the government, with the aim of regaining their lost communal/individual lands and forests. Their improved understanding of tenure rights further enabled them to answer the question “who owns the land in Nigeria?” and thus to move ahead with community forest watch actions. Training on the legal recognition and allocation of tenure rights and duties (with a focus on safeguards for indigenous peoples and other communities with customary tenure systems), and guidelines for investments, expropriation and compensation provided for in the TGs, enabled the communities and the community forest watchers to take a strong stand against land grabbing, through letter/petition writing, civic engagement, lobbying and effective advocacy, which in turn resulted in government authorities taking them seriously – something which had rarely happened in the past.

The participatory action research resulted in the following policy points and recommendations in Nigeria:

• Large-scale plantations are not forests and are not an effective strategy to deliver sustainable food production. Rather, support to small-scale farm holders for food production, storage, preservation, and distribution is the key to national food security. Communities' access to land to grow staples should be sustained.

• Communities should commence surveys of their land using the TGs as a basis to secure communal land rights. This is more practicable if communities are well resourced to hire the services of qualified surveyors.

• The Land Use Act of 1978 should be amended to reinforce communal land rights, reflecting the provisions of the TGs.

• The State and Corporations should recognize communities' right to Free Prior and Informed Consent in any proposed development to prevent future occurrence of land grabbing. To this end, FPIC should be recognized within the Environmental Impact Assessment (EIA) provisions and other laws on land and resource governance in the state.
• The mandatory, EIA prescribed by law should be conducted properly, with active public participation for informed decision making on any proposed development. Project proponents should, as part of the EIA process, make a down payment of a fixed bond in case of any potential social and environmental damage.

• Evictions and displacements should always result in fair compensation and, in any event, should not be allowed to involve or to lead to human rights violations and homelessness.

• Increased empowerment of the Community Forests Watch members working with CSOs to commence the development of an all-inclusive land policy change at the local, state and national level should be supported.

Uganda

Katoni Women Development Trust (KWDT) is a non-governmental organization that aims to improve the living standards of rural communities of Ntenjeru, Mpata, Mpunge and Nakisunga sub-counties in Mukono District in the Lake Victoria area of Uganda. KWDT assists disadvantaged lakeshore fishing communities, especially women, facing dispossession. As an affiliate of the World Forum of Fish Harvesters and Fish Workers (WFF) and host of the WFF Secretariat for several years, KWDT participated in the development of both the TGs and the FAO Small-scale Fisheries Guidelines (SSFGs). The TGs and the SSFGs are complementary, with the TGs addressing tenure issues and the SSFGs addressing issues related to fishing practices. Taking these guidelines together is especially relevant in this case.

In 2015 KWDT began exploring using both sets of guidelines to increase community members' awareness about human rights and their rights to land and lake resources. This enabled a collective campaign to document violations of these rights. Land and water grabbing is constricting small-scale fishers' access to Lake Victoria and squeezing them and their families into increasingly limited space on landing sites. Villagers' use of fisheries resources is tied to their access to lake shore landing sites, for keeping their boats and processing and trading their fish catch. Use of land and fisheries are entwined; as are villagers' tenure issues and livelihood practices. Reported resource grabbing in and around the lake is a major threat to fishers in these villages and farmers in adjacent villages. While it is often men who fish, women, who dry and sell the catch, tend to be deeply affected. Their activities, especially, require access to land around landing sites. In addition to land and lake grabbing, women's dependency on their husbands for access rights makes them extremely vulnerable. Complaints of failing marriages leading to denied access to land are increasingly common, greatly affecting women.

Learning about the TGs and SSFGs is helping villagers to understand how and why their resources are being grabbed, to reflect on the gender-differentiated impacts of resource grabbing, and to identify gaps in existing law and policy on access to and control of land and lake resources. This is a new response to a common saying in the area that 'why this is happening is because everyone is riding on the ignorance of the masses'. For many this is their first experience of coming together to analyse and assess their situation. Participatory research methods are thus being used to encourage active participation by people affected, with particular attention to women.

Resulting policy points and recommendations in Uganda:

• Most relevant laws and policies remain on paper without proper and full implementation. Interventions need to go beyond making laws, to implementing them and creating community awareness.

• All laws and policies should ultimately be seen from the human rights perspective. Landlords, as well as international actors, should not be allowed to carry out transactions that hamper the livelihoods of people, even if the land purchases are technically legal. Before any laws and policies, the human right to food, shelter and other human rights should be respected at all costs.

• The land laws of Uganda should not be understood in isolation from human rights policies and guidelines at the international level to which Uganda is party. The TGs, for instance, would provide a strong support for rural communities in Uganda whose right to land and water is sometimes violated through 'legally acceptable' land transfers. International instruments should be used to protect and provide back up to the national laws and policies, where these fail to offer adequate protections.
• The new amendment to the Land Act needs to be implemented expeditiously. The amendment provided that tenants who have lived on the land for 12 years or more cannot be evicted for any reason other than the nonpayment of nominal ground rent.

• Existing national law on “buffer zones” around bodies of water should be implemented with immediate effect.

• There is need to respect the customary land tenure system, which is accepted and recognized by the current land lords, but being pushed away by land market forces. Instead of compelling all people to acquire costly titles to land and transforming all land into the free hold tenure system, families and communities should be allowed to own their land in a customary manner.

• To reduce evictions, the government needs to review the procedures for handling land cases. The handling of such cases is characterized by corruption and inefficiency, leaving the poorest and most marginalized people without justice.

• The government, through the ministry of lands, should develop a ‘shelter plan’ for all poor and marginalized people that are still being displaced due to the market forces on land.

Mali

CNOP (Coordination Nationale des Organisations Paysannes) is a peasant organization and member of La Via Campesina working for the protection peasant land rights in Mali.3 CNOP investigates cases of land grabbing, particularly in the Office du Niger region, to produce documentation to enable affected communities to file cases, and organizes national and international meetings aimed at defining common strategies to defend the rights of peasants and at building alliances in defence of peasants' lands. Since 2012, it has conducted its work as part of the Convergence Malienne contre l’Accaparement des Terres (CMAT), a network of five civil society organizations.4

The Malian government has been promoting large-scale private investment in agriculture, claiming that agricultural ‘modernization’ is necessary but that the state lacks sufficient resources. Measures to facilitate large-scale land acquisitions, especially by foreign investors, include the 1991 Investment Code and several new amendments increasing tax breaks for large investors, reducing social and environmental requirements, and streamlining investment procedures, among others. As a result, cases of land grabbing have increased.

One such land deal, for agro-industrial projects in the Office du Niger region, has affected 7 villages, including Dalla. CMAT used the TGs to help people in the affected communities to resist what they saw as a land grab. The collaboration included training on key provisions related to: (i) improving tenure governance ‘for the benefit of all, with an emphasis on vulnerable and marginalized people’; (ii) the legal recognition of tenure rights and duties and particularly the recognition of customary tenure systems; and (iii) the protection of defenders of peasant, fisher, and pastoralist rights from criminalization. Provisions supporting women and youth seeking to claim their rights within the existing customary system were also discussed. The trainings emboldened people to demand an immediate halt to the land deal, the recognition of their legitimate customary tenure rights to the land, and adequate evaluation of and compensation for damage done to their lands. The ground shifted as people who once felt powerless mobilized to engage and confront public authorities in defense of their rights, resulting in formal recognition and tracing of community lands based on the community customary tenure system. Since 2015, the Dalla experience is being adapted in another village called (Fonsira) where a Chinese company (COVEC) is conducting quarrying operations on community land.

Resulting policy points and recommendations in Mali:

• The struggles and advocacy work around the implementation of the recently adopted Agricultural Land Law (Loi Foncière Agricole) need to be underpinned by:

• Building together and sharing a vision for national development, including transparent management of land and promoting respect for collective customary land rights, human rights, the right to food, the protection of
marginalized communities and the environment, and the active participation of actors involved in defending communities and customary rights.

- Clarifying the role of each governmental actor involved in land governance, while establishing culturally accepted and inclusive, legitimate, and proven successful management bodies.

- Establishing clear standards of behavior for different actors based on current legislation and local human rights conventions rooted in principles and values offered by the Agricultural Policy Law (Politique Foncière Agricole): equity, solidarity, differentiation (different but coherent mechanisms to guarantee a fair access to land resources for communities across the diversity of realities and agroecological regions in Mali), respect for customs, cohesion, accountability, progressiveness.

- Recognizing the role of communities, peasant organizations and social movements as “agents for accountability”; protecting and involving them in social and policy dialogue, and at the institutional level, for the monitoring and implementation of regulations, recommendations and decisions.

- Establishing a binding system with institutional and legal sanctions to circumvent the impunity of many state and non-state actors.

- Building accountability tools providing frameworks and power for taking action.

South Africa

Masifundise Development Trust (MDT) has been working in South African fishing communities for 15 years and serving as the International Secretariat of the World Forum of Fisher Peoples (WFFP) since 2014. It works closely with nearly 100 fishing communities in four coastal provinces, who are struggling to realise their human rights, including rights provided for in Article 1 of the African Charter on Human and Peoples’ Rights. In 2004 MDT assisted fishers in the Western Cape to establish Coastal Links, an organization with more than 4000 members; as the secretariat it continues to shape the organization’s national programme. Through its work with the WFFP, Masifundise was involved in negotiations around the formulation and adoption of the TGs and the SSFGs.

In South Africa, fishers have typically been left out of key decision-making processes which designate sections of the coast as Marine Protected Areas (MPAs). MPAs are ‘no-take’ zones, which exclude all fishers, regardless of scale, from harvesting marine resources along the shores and fishing off the coast. Fishers’ tenure rights have also been compromised by growing tourism, industrialisation and weapons testing. On top of the erosion of traditional tenure rights in favour of commercial and conservation interests, small-scale fishers have suffered from legacies of exclusion and oppression from a history of colonial and apartheid laws that marginalised and disenfranchised those they categorized as ‘black’, ‘coloured’ or ‘Indian’.

MDT has been working with Coastal Links to explore using the TGs to support struggles from below for democratic control of fisheries, through action research in Arniston, a community in the Western Capes’ South Coast region. The TGs were used to assess the situation of small-scale fishing communities, as part of a process of community empowerment. They started by organizing a national training workshop attended by fishers, farmers and forestry workers, in order to raise awareness about the TGs and to open a space to reflect and to design strategies for using the guidelines. Many participants in the workshop live in areas adjacent to MPAs. Studying the TGs provided a useful frame of reference for them to analyse how MPAs have impacted small-scale fishers – especially human rights principles and the notions of legitimate tenure rights and customary tenure rights. Using the TGs to assess the South African Constitution and the national policy on small-scale fishers, they found both to be well aligned with the TGs, validating their own belief that their rights are being violated. Emboldened, the fishers used the TGs to collectively prepare and submit, among others, their comments on the draft regulations for Marine Protected Areas (MPA’s) being prepared by the Department of Environmental Affairs.
Since South Africa has committed itself to many International conventions, protocols and agreements, it is tempting to assume that all its citizens are protected. This is not the case. Instead, the poor feel that laws are interpreted and implemented to advance and promote environmental conservation at the expense of social sustainability principles, including equitable access to resources, sharing benefits from protected areas and the active participation of indigenous peoples and local communities. They feel excluded from planning, management and decision-making processes and believe that the South African constitution is failing them. The Arniston fishers are looking to the TGs, SSFGs and the SSF policy for support and justice. They use them to empower their communities with ideas for policy.

Resulting policy points and recommendations in South Africa:

• The establishment of the De Hoop Marine Protected Area should not restrict small scale fishers’ and their communities’ access to traditional fishing grounds. The main accountable government body to address this claim is the Department of Environmental Affairs.

• To DENEL, the body managing the weapon-testing plan in Arniston, the key demand and recommendation is that military weapons should not be tested in the waters traditionally used by small-scale fishers.

• Access to marine resources needs to be enforced through the immediate implementation of the Small-Scale Fisheries policy. The Department of Agriculture, Forestry and Fisheries is held accountable for this action.

Conclusion

In these four cases, local actors found the TGs to be, in varying degrees, useful for analyzing and understanding dispossession, and for demanding the recognition of their rights to land and associated resources. Depending on the nature and strength of the state, existing legal frameworks, and the degree of public awareness of and support for land rights, the way in which the TGs were mobilized to support land rights, and the success of this use, varied.

In general, the value of using the TGs comes from the fact that they are invested with international public authority. While States are tasked with implementing the TGs, marginalized and threatened people must not wait for the state, but can directly begin trying to make use of the TGs to claim rights and demand accountability, as part of a larger repertoire of action. The TGs, arguably, are built for use as a lens to (re)analyse, (re)assess and (re)interpret the context, conditions and consequences of resource grabs affecting people's lives. As seen in the country cases above, subaltern groups can apply knowledge gained from using the TGs in this way to craft collective action to recalibrate the political-legal terrain towards greater respect for human rights and more democratic land control.

In the course of this action research process the organizations identified above were able use the TGs in the following ways: 1) to train community members on community organizing and mobilizing; and to train key community organisers on national and international legal frameworks governing natural resources in order to build a critical mass of land/forest defenders or pressure groups; 2) to create political spaces to interact with public authorities at different levels (local, province/state, national, regional depending on which level was prioritized); 3) to inform/reform customary systems and national law frameworks governing natural resources; 4) to devise distinctive accountability strategies for corporations and public authorities; 5) to build and cultivate allies in the broader society. These uses of the TGs contributed towards overcoming legal and extra-legal obstacles and were therefore embedded in larger and more comprehensive accountability strategies.

These notwithstanding, during the project a number of significant dynamics emerged, revealing the need to go beyond using the TGs to explore and challenge the behaviour of states and corporations, suggesting that the principles of the guidelines could also play a valuable role in allowing movements to critique and reform their own internal dynamics. In bottom-up accountability strategies, researchers observed that the voices and interests of women were often pushed to the back, although they were active participants and leaders in the participatory action research activities. This sidelining of women's interests seemed to arise from the fact that they were rarely brought to the negotiating and decision making circles especially in Nigeria and Mali, although they often took the lead in public actions. In cases of
compensation, for example, key decisions were made with only men participating and, as such, damages to women's land use activities were often disregarded, leaving women more marginalized although they were usually primarily responsible for household food and subsistence needs.

In a second example, CNOP-CMAT in Mali successfully used some provisions of the TGs to influence the content of the recently voted 2017 land law to recognize community (individual and collective) customary land tenure rights. This law is considered to be the first in West Africa that recognizes the customary collective land rights of communities and formalizes management bodies from the villages themselves, which is rightly regarded as a significant victory in the struggle for accountability and land rights. In the framework of this new law, village land commissions will be set up to issue certificates of possession which will then be registered at the council level and archived in the land department. However, the composition and the tasks of these village land commissions need to be defined by decree and article 12 of the law stipulates that transmission and transferability will be according to custom and practice, which is often not favorable to women and young people. Thus, there is need to support the process of setting up village land commissions in order to ensure that women and youths are represented and that an inclusive and transparent land observatory is established.

Struggles for accountability and community land and resource rights do not, and cannot, stop with the establishment of a beneficial law. Rather supporting traditional land rights and structures must be balanced with an approach that recognizes the equal human rights and dignity of all, and strives to realize the right of all community members to a decent and dignified livelihood.

This research project also identified a particular accountability challenge that has been insufficiently addressed in practice and in the literature. Very often, impacted communities face intersections of different resource grabs (land and forests, land and fisheries, land and water pollution/environmental destruction, agriculture and environment/climate, land and people's health). Women in particular are affected by intersecting resources grabs in very specific, gendered ways. Different resources are governed by different but intertwining sets of legal frameworks, institutions and relevant social actors. The researchers also found that, when designing an accountability strategy, marginalized rural groups tended to focus their collective action on one field/issue only depending on: what they perceived as being the most pressing issue, their experience as well as history of interactions with certain institutions and social actors. However, livelihoods are complex and multi-layered, and the driving factors for resource grabs cut across different fields and regimes. Thus focusing on one single field/issue presents serious limitations to any accountability strategy. On the other hand, as described above, the capitalist penetration of the countryside has led to a realignment among dominant economic and political forces, changing the parameters of struggles for social justice around land.

In working towards increased accountability it will be vital for communities to ensure that systems which are put in place ensure rights and access to resources for everyone, especially women and youths.

Endnotes
1 For a more elaborate understanding of this consult Franco J., and Monsalve S. S., 2017(forthcoming) Why wait for the state? Using the CFS Tenure Guidelines to recalibrate the political-legal terrain in struggles for human rights and democratic control of land, fisheries and forests, TWQ.
3 At the time of this writing CNOP was the regional coordinator of La Via Campesina for West and Central Africa.
4 In addition to CNOP, the other members of CMAT are: Association des Organisations Professionnelles Paysannes (AOPP), Union des associations et coordinations pour le développement et la défense des droits des démunis (UACDDDD), Ligue pour la justice, le développement et les droits de l'homme (LJDH) CAD-MALI.
5 This and more detailed ways in which CSOs used the TGs in bottom-up accountability initiatives are elaborated in a forthcoming academic paper written by the research team members.
6 Ibid.
TNI is an international research and advocacy institute committed to building a just, democratic and sustainable planet. For more than 40 years, TNI has served as a unique nexus between social movements, engaged scholars, and policy makers. It works to strengthen international social movements with rigorous research, reliable information, sound analysis and constructive proposals that advance progressive, democratic policy change and common solutions to global problems. Through its Agrarian and Environmental Justice Project, TNI works with rural social movements to defend and claim their economic, social and cultural rights to land and related natural resources.

FIAN is an international human rights organization working for the realization of the right to adequate food. It consists of national sections and individual members in over 50 countries around the world. FIAN strives to secure people’s access to the resources that they need in order to feed themselves, now and in the future, and cooperates with peasant organizations around the world. Since 2006, FIAN facilitates the IPC for Food Sovereignty working group on land and territory. In this role, FIAN facilitated the civil society process of participating in the development and negotiation of the Tenure Guidelines.

The critical agrarian studies cluster in ISS has been in the cutting edge of research on global land deals, and has spearheaded innovative initiatives that bridge together academic, policy and grassroots activist circles. It is an institutional co-anchor for the global network of academics working on land deals, the Land Deal Politics Initiatives (LDPI – www.iss.nl/ldpi).

PLAAS of the University of the Western Cape in South Africa is a world leading research institute that conducts and coordinates research across the African region. It is the region’s leading research institute working on land issues and land governance. PLAAS collaborates closely with ISS in The Hague especially around the land Deal Politics Initiatives (LDPI, www.iss.nl/ldpi).

Founded in 1993, ERA is a non-governmental organization concerned with the protection, preservation and conservation of the natural environment, and the sustainable exploitation of natural resources. It is the Nigerian chapter of Friends of the Earth International, the environmental justice federation campaigning to protect the environment and to create sustainable societies. ERA is dedicated to the democratization of development, defense of human ecosystems and human rights, and promotion of environmentally responsible practices through local peoples empowerment. ERA/FoEN coordinates Oilwatch International in Africa and currently host its secretariat.

CNOP is a leading peasant organization in Africa working for the protection of the rights of peasants to on the ground and at national level. It has been conducting capacity building and advocacy work in support of communities affected by Large Scale Land Acquisitions (LSLAs). CNOP is the regional coordinator of La Via Campesina for West and Central Africa. Since 2012, CNOP has been conducting its work in the context of the Convergence Malienne contre l’accaparement des terres (CMAT), a network of 5 Malian peasant and other civil society organizations.

Masifundise is a South African organization working with disadvantaged and traditional fishing communities. It dealing with the impact of the current fishery management regime on the social, cultural and economic life in their communities to contribute to the eradication of poverty and promotion of food sovereignty in small-scale fishing communities by advocating for peoples’ social and economic rights, including the right to equitable access to marine resources. Masifundise emphasizes capacity building of coastal communities so that they themselves can engage in processes to reach this objective. In recent years Masifundise has been helping communities to deal with the impact of the current fishery management regime on social, cultural and economic life.

Katosis Women Development Trust (KWDT) is a non-governmental organization aiming to improve the living standards of poor, rural peasant communities in four sub counties in Mukono District in Uganda. KWDT evolved out of the sucess of Katosis Women Fishing & Development Association which attracted other women's groups to join, prompting the formation of a network where women equitably share resources, knowledge and skills to improve their lives. After 15 years in operation, KWDT currently networks 16 women's groups, and actively supports fishing communities facing dispossession in the Lake Victoria region.

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