



Mainstreaming gender in Tanzania's local land governance

Nasieku Kisambu



Tanzania Women Lawyers Association
(TAWLA)

Legal tools for citizen empowerment

Around the world, citizens' groups are taking action to change the way investment in natural resources is happening and to protect rights and the environment for a fairer and more sustainable world. IIED's Legal Tools for Citizen Empowerment initiative develops analysis, tests approaches, documents lessons and shares tools and tactics amongst practitioners (www.iied.org/legal-tools).

The Legal Tools for Citizen Empowerment series provides an avenue for practitioners to share lessons from their innovative approaches to claim rights. This ranges from grassroots action and engaging in legal reform, to mobilising international human rights bodies and making use of grievance mechanisms, through to scrutinising international investment treaties, contracts and arbitration.

This paper is one of a number of reports by practitioners on their lessons from such approaches. Other reports can be downloaded from www.iied.org/pubs and include:

- Community-based advocacy: Lessons from a natural gas project in Mozambique. 2015. Salomão, A.
- Bringing community perspectives to investor-state arbitration: The Pac Rim case. 2015. Orellana, M. *et al.*
- Advocacy on investment treaty negotiations: Lessons from Malaysian civil society. 2015. Abdul Aziz, F.
- Democratising international investment law: Recent trends and lessons from experience. 2015. Cotula, L.
- Community-based monitoring of land acquisition: Lessons from the Buseruka oil refinery, Uganda. 2015. Twesigye, B.
- Catalysing farmers' influence in shaping law reform: Experience from Senegal. 2015. Coumba Diouf, N.
- Legal advice for environmental justice: Experience from eastern India. 2015. Upadhyay, S. and Jain, S.

In addition, under our Land, Investment and Rights series, we generate evidence around changing pressures on land, multiple investment models, applicable legal frameworks and ways for people to claim rights.

Reports in the Land, Investment and Rights series can be downloaded from www.iied.org/pubs. Recent publications include:

- Land investments, accountability and the law: Lessons from West Africa. 2016. Cotula, L. and Jokubauskaite, G. Also available in French.
- Land investments, accountability and the law: Lessons from Cameroon. 2016. Kenfack, P.-E., Nguiffo, S., Nkuintchua, T. Also available in French.
- Land investments, accountability and the law: Lessons from Ghana. 2016. Yeboah, E. and Kakraba-Ampeh, M. Also available in French.
- Land investments, accountability and the law: Lessons from Senegal. 2016. Fall, M. and Ngaido, M. Also available in French.
- Land rights and investment treaties: exploring the interface. 2015. Cotula, L.
- Agro-industrial investments in Cameroon: large-scale land acquisitions since 2005. 2015. Nguiffo, S. and Sonkoue Watio, M.

To contact IIED regarding these publications please email legaltools@iied.org

Mainstreaming gender in Tanzania's local land governance

Nasieku Kisambu

About the author

Nasieku Kisambu is a lawyer and the Director of programmes at the Tanzania Women Lawyers Association (TAWLA). She is an Alumni of the Women's Land Rights Visiting Professional Program, hosted by the Landesa Center for Women's Land Rights. She has eight years' experience working on women's rights issues and has coordinated several programmes promoting women's access to land and gender-equitable decision-making on agricultural investments. Nasieku's current focus is designing programmes on using the law to safeguard women's land rights in Tanzania.

Acknowledgements

The author wishes to thank her colleague Naomi Mwangi, a legal counsel at the Federation of Women Lawyers (FIDA-Kenya), for her immense support and helpful comments; Celine Salcedo-La Viña of WRI for helpful comments on an earlier version of the paper; and Emily Polack and Thierry Berger for their valuable contributions to the drafting of the report.

First published by the International Institute for Environment and Development (UK) in 2016
Copyright © International Institute for Environment and Development (IIED)
All rights reserved

ISBN: 978-1-78431-379-1
IIED order no.: 12594IIED

For copies of this publication, please contact IIED:
International Institute for Environment and Development
80-86 Gray's Inn Road
London WC1X 8NH
United Kingdom

Email: newbooks@iied.org
Twitter: @iied
Facebook: www.facebook.com/thellIED
Download more publications at www.iied.org/pubs

A catalogue record for this book is available from the British Library.

Citation: Kisambu, N. (2016) Mainstreaming gender in Tanzania's local land governance. IIED, London.

Cover photo: Local businesswomen in Mawemeru village in Geita District, Tanzania, on March 16, 2015. © Brian Sokol/Panos Pictures
Typesetting: Judith Fisher, www.regent-typesetting.co.uk

Contents

Acronyms	ii
Abstract.....	iii
1. Background	1
2. Development of model by-laws	4
3. Achievements and opportunities for implementation and scaling up.....	8
4. Lessons learned: key considerations for replication	10
References	12

Acronyms

CSO	Civil Society Organisation
LEAT	Lawyers' Environmental Action Team
LGA	Local Government Authority
LGDA	Local Government (District Authorities) Act of 1982
LSLA	Large-Scale Land Acquisitions
TAWLA	Tanzania Women Lawyers Association
TIC	Tanzania Investment Centre
WRI	World Resources Institute
VLA	Village Land Act of 1999

Abstract

Despite progressive provisions on gender equality in Tanzania's land laws, women have little representation in land allocation decisions, including meetings of village councils and village assemblies. Mainstreaming gender in local regulations can help to address this problem.

The Tanzania Women Lawyers Association (TAWLA), in partnership with the World Resources Institute (WRI) and Lawyers' Environmental Action Team (LEAT), developed model by-laws to improve women's participation in local-level decision-making on village land management. This initiative took place in Kidugalo and Vilabwa, two villages in the Kisarawe district. The model by-laws were developed through a bottom-up, participatory process, and include explicit provisions to promote meaningful participation by women in village-level decision making.

This report outlines the processes followed to develop the by-laws, the results so far, lessons learned and prospects for scaling up.

1. Background

The government of Tanzania has committed to promote agricultural investment in the country to boost socio-economic development. Through the Tanzania Investment Centre (TIC)¹ the Tanzanian government provides investment incentives to attract foreign investors into the country. The recent wave of large-scale land acquisitions (LSLAs) for agribusiness investments has had far-reaching implications for rural citizens in Tanzania. Whilst some investment has brought development benefits, many concerns have been raised in relation to how the land has been acquired, the transparency of the acquisitions and the sharing of economic benefits with rural populations. Recent research shows that women, who are major actors in the agriculture sector, have experienced more negative outcomes overall than men (Dancer and Tsikata, 2015).

This is in part due to women's poor participation in community-level decision-making, which leads to poor involvement in negotiations and agreements with investors (LEAT and TAWLA, 2014). Women's low participation in land governance and more particularly in LSLAs are rooted in social cultural norms that dictate gender roles and divisions of labour. Women are expected to perform more caregiving tasks than men, which takes up much of their time, thereby limiting their participation in community forums such as village assemblies. If this is not specifically addressed by consultation and negotiation processes by investors, gender equity in investment processes and outcomes are unlikely to result.

Local government authorities (LGA) in Tanzania are established from the village upwards by the Local Government (District Authorities) Act of 1982 (LGDA). At the village level, the village assembly and an elected village council are two of the formal governance bodies. The village councils establish committees to support the discharge of their mandates (see Box 1). The village assembly is the supreme authority on all matters of general policy-making in relation to the village affairs and is also responsible for the election of the village council and the removal of any or all the members from the council². In essence, the village council is accountable to the village assembly for land management decisions. Under the Village Land Act (VLA), every village is required to establish a "village land council" to handle disputes relating to village land³.

1. Tanzania established the Tanzania Investment Centre (TIC) in 1997 by the Act of Parliament No. 26 of 1997. TIC is the primary government agency to coordinate, encourage, promote and facilitate investment and is one initiative as part of an open-door policy on investments in Tanzania.

2. See section 141 of the LGDA.

3. See Part V of the VLA and in particular section 60 (1), which provides that every village shall establish a village land council to mediate between and assist parties to arrive at a mutually acceptable solution on any matter concerning village land.

Despite progressive provisions on gender equality in land access and ownership in Tanzania's laws⁴, women have little representation in land allocation decisions, including in the meetings of village councils and village assemblies. Even though Tanzania's land and local government laws provide for minimum ratios of women's representation⁵, in practice women are rarely represented in an effective way. Women are often excluded from community land dealings, as these are often viewed as the preserve of men. And despite the presence of a few women in village assembly meetings, their contribution is often minimal and not taken into account.

Box 1. Governance bodies at village level in Tanzania

The village assembly is composed of all villagers who are ordinarily resident in the village and are over the age of 18. The assembly meets on a quarterly basis. This is the highest decision-making body in the village (LGDA, sections 55, 103 and 141).

The village council comprises 25 members, with a minimum of 8 women. Council members are elected by the village assembly. The required quorum is half the members of the council. The council regulates its own procedures (TAWLA, 2013).

Committees of the village council are established by the village council for efficient and effective discharge of its mandate. Examples include committees on land use planning, social welfare, HIV/AIDS, etc. (TAWLA, 2013).

A key mandate of village councils is the development of village by-laws⁶. To do so, the village council will convene a meeting of the village assembly and propose by-laws to be considered and adopted with or without amendments before these are passed on to the district council (the LGA at the district level) for approval⁷. In the wake of rising large-scale land acquisitions (LSLAs) for agribusiness and natural resource investments in Tanzania, host communities are at risk of exploitation by investors and loss of livelihoods if LSLAs are not adequately regulated. While the right to participate in the land allocation process is generally granted under Tanzanian land laws, by-laws can also be important to safeguard the interests of communities by regulating and ensuring community participation in internal village governance. By-laws are formulated to set out procedures on land governance in compliance with the various land laws. Most of the existing village by-laws

4. For example, the 1977 Constitution of Tanzania (as amended), which promotes the equality of all human beings (article 12); the Land Act No. 4 of 1999, which promotes equal rights for men and women in land, enshrining women's equal rights to 'acquire, hold, use and deal with land [...] to the same extent and subject to the same restriction [...] as the right of any man' (section 3(2)); and the LGDA.

5. For instance section 53 of the Village Land Act of 1999 (VLA) provides that where a village assembly approves a recommendation to set an adjudication process [to sell land to investors] in motion, the village council will establish a village adjudication committee of no more than nine persons, of whom no less than four members shall be women, who will serve for a term of three years and will be eligible to be re-elected for one further term of three years. Likewise, at least three women need to be nominated to the village land council (which consists of between five and seven persons) (section 60(2) of the VLA).

6. Under section 163 (1) of the LGDA as read together with the Local Government Laws (Miscellaneous Amendment Act) of 1999.

7. See section 164 (1) of the LGDA.

in Tanzania are not gender sensitive and do not reflect gender equality, good governance practices or accountability.

The Tanzania Women Lawyers Association (TAWLA), in partnership with the World Resources Institute (WRI) and Lawyers' Environmental Action Team (LEAT) has developed model by-laws to improve women's participation in local-level decision-making on village land management⁸. This initiative took place in Kidugalo and Vilabwa, two villages in the Kisarawe district. Developed through a bottom-up, participatory process, the model by-laws include explicit provisions to promote meaningful participation by women in village-level decision-making. This report outlines the processes followed to develop the by-laws, the results so far, lessons learned and prospects for scaling up.

8. This took place under the project "Promoting Gender-Equitable and Participatory Community Decision-Making on Land Investments".

2. Development of model by-laws

TAWLA, WRI and LEAT set out to establish a gender-equitable and participatory regulatory framework in an effort to increase the participation of women in decision-making processes in LSLAs. As part of the research for the project, they conducted a scoping study to identify gaps in policies and practices that hinder women's active participation in village assemblies and other village-level decision-making fora.

The villages of Kidugalo and Vilabwa were selected for the scoping study based on the presence of ongoing agribusiness investments. The study found shortcomings in women's participation in the consultation processes linked to those investments. Based on the gaps identified during this research, the project supported the development of by-laws that could address the issues raised in the two pilot villages. The following steps describe the process that was followed to develop the by-laws.

2.1 Identification of gaps in women's participation in land-related decision-making

The research identified some of the root causes of women's limited participation, including high levels of illiteracy amongst women generally, the timing of village assembly and village council meetings, the burden of domestic chores, including cooking and fetching water, and the weight of local customary practices restricting the ability of women to speak out. The project also reviewed the regulatory framework, highlighting the entries that national law offers to promote gender equality in land relations and their implementation gaps. TAWLA consulted different stakeholders on the gaps identified by the field research and made recommendations for action. One of the challenges identified was law enforcement. The provisions in the land laws that promote women's rights are not implemented by the institutions mandated to manage and administer land. A strong recommendation was therefore made to develop gender-sensitive village by-laws to address the gaps in village-level governance bodies.

2.2 Drafting of key principles

To improve women's participation in local-level decision-making, the project supported local dialogue on key principles that could provide the foundations for local by-laws (see Box 2). While these principles could not address the practical barriers that affect women's participation in local land governance (such as the lack of time), they do set parameters for the functioning of local government

bodies. In turn, this sets the framework for tackling some of the practical barriers in implementation and monitoring.

Box 2. Key principles of the model by-laws

1. Gender quotas in leadership of village-level governance bodies (village council, village committees, village land council, etc.).
2. Men-to-women rotation of leadership (village chair person, village land council, chairs in different committees).
3. 50% of men and 50% of women in councils and committees (equal representation – promote women's representation, especially in village councils).
4. Specific quorums for village assembly meetings that includes equal representation of men and women.
5. Meeting quorums to be equally comprised of men and women (village assembly, village committee, village council).

2.3 Consultation on key principles

The project then conducted consultations on the key principles in the pilot sites. These consultations involved women, local leaders, district officials, civil society organisations (CSOs), community paralegals and researchers. They aimed to generate further awareness and obtain additional input on how to promote gender-equitable decision-making on land governance. In 2014, the project conducted two consultation meetings in Kisarawe with the district council, to share the research findings, the gaps identified and the key principles proposed for the village by-laws.

Since district councils have the mandate to approve or reject village by-laws under the LGDAA⁹, it was important to involve district officials at the consultation stage.

2.4 Drafting of by-laws by district task force

In order to generate more broad-based buy-in and bring the necessary expertise on board, the project established a district task force to formulate the village by-laws in the local working language (Swahili). The team included the district lawyer, a community development officer, a gender focal officer, two paralegals and one chairperson from each pilot village. The task force prepared the by-laws based on the key principles and following the format required by national law.

9. See section 164(3) of the LGDAA.

2.5 Dissemination and validation of the proposed by-laws

The project conducted a series of community meetings between 2015 and 2016 to disseminate, discuss and validate the draft by-laws. The meetings included women, village council members, youths, men, paralegals and women's groups. The task force was present in all the meetings to take note of comments from the community. The task force then incorporated all concerns and further inputs into the proposed by-laws. One objection concerned the proposed rotation in leadership positions between men and women, specifically in relation to the village chair. As the chair position is a political one, rotation requirements could conflict with the local government law and local government election law, which regulate the election procedures of the village chair. Given this situation, the discussion focused on other leadership positions concerning the internal governance of the village councils (such as the committees and village land councils), which are not subject to comparable legal requirements.

2.6 Submission to the village councils

The project conducted meetings with the village councils in the two pilot villages to present, discuss and disseminate the final by-laws and submit them for consideration and approval by the village assembly. After examination, there was general acceptance of the proposed by-laws by the council members, aside from the quorum required for village council and assembly meetings. Given that women's participation is limited by lack of time, council members were concerned that the proposal could result in delays in decision-making. This issue was resolved by consulting women on the best time and day for them to attend meetings, and by scheduling ordinary quarterly meetings well in advance so that women can make arrangements to attend. It was agreed that the schedule of meetings and agenda would be displayed on the notice boards of the Executive Village Office.

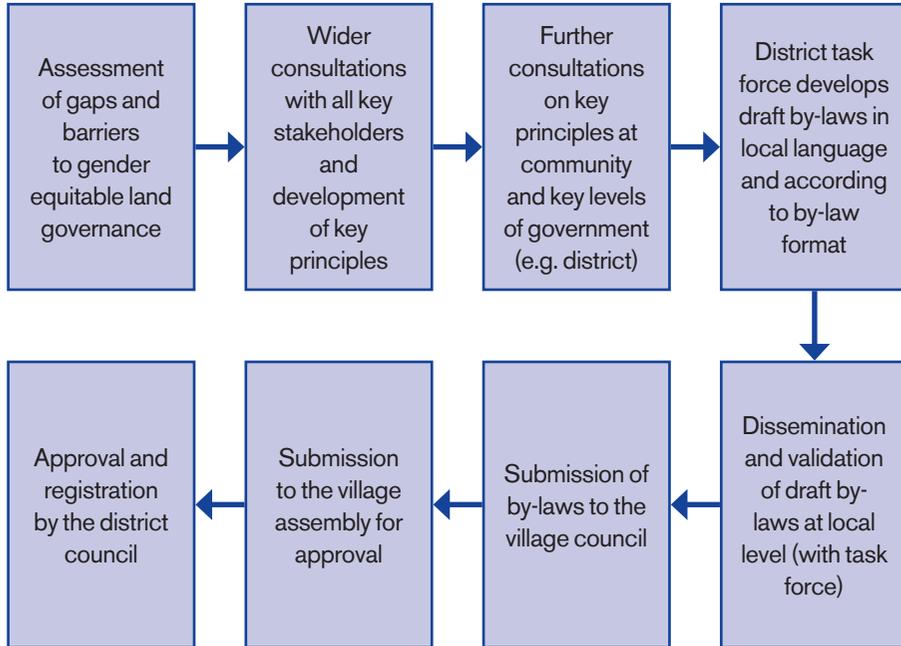
2.7 Approval by the village assembly

As the villagers were involved right from the beginning of the process, the village assemblies approved the by-laws without reservation in 2015 and 2016.

2.8 Approval and registration at the district level

Finally, the village by-laws and minutes of the village assembly were submitted to the district council for approval and registration.

These key steps are summarised in Figure 1.

Figure 1. Key steps for developing the by-laws

3. Achievements and opportunities for implementation and scaling up

The by-laws promote good governance and gender equality in land governance at the village level. The process has generated new know-how for enhancing women's participation in land governance at the village level, has challenged gender stereotypes and has created greater demand for gender equity in local governance. After having been adopted in two villages, one of the next steps is for the by-laws to be properly implemented. Women's participation in land governance is all the more important considering the recent rise of LSLAs. TAWLA continues to make follow-up visits in the pilot villages to monitor implementation of the by-laws. The village councils are determined to go forward, which is promising, but monitoring will be important to assess progress and ultimate outcomes. Of particular importance is the extent to which the rebalanced institutional setup will result in village governance bodies taking measures to remove practical barriers to women's participation.

TAWLA has also been engaging women in informal meetings on a weekly basis to raise awareness about the importance of their participation in decision-making processes. This ongoing effort is expected to increase women's demand for greater participation in land governance.

Another key step is to advocate the scaling up of the adoption of gender-equitable local by-laws across the country¹⁰. WRI, LEAT and TAWLA have developed the first version of national-level guidelines on the model by-laws, which will be used for national-level advocacy. TAWLA has also pushed for, and is now waiting for the chairperson of the Kisarawe district council to issue a circular so that the model by-laws are adopted in the district's remaining 64 villages. TAWLA will also advocate at the national level for the relevant line ministry (mandated by LGDAA) to promote similar village by-laws in other districts as a model for safeguarding women's participation in decision-making (see Box 3).

Box 3. Power to make uniform by-laws in Tanzania

Section 165 of the LGDAA provides the minister responsible for local government with the power to make uniform by-laws for villages or particular categories of villages through the district councils.

10. This is one of the projects being undertaken as part of the partnership between TAWLA, LEAT and WRI.

TAWLA is also in the process of reviewing existing by-laws covering other fields (e.g. land use planning, environmental conservation). The aim is to mainstream gender in by-laws that are typically gender-blind. To this end, TAWLA has formed a working group comprising academics, CSOs, investors and government officials. The group will support the development of a strategic advocacy plan at the national level. TAWLA will push for the creation of a task force by the government to address issues of women's participation in land governance. Tanzania is reviewing its national land policy, and the working group has made recommendations for gender-equitable land governance and submitted them to the ministerial committee responsible for developing the new policy.

4. Lessons learned: key considerations for replication

The successful adoption of the model by-laws in the pilot villages was influenced by the following factors:

- Strong buy-in from community members due to extensive consultations right from the outset;
- Close collaboration with local government, in this case the district council, which is the body responsible for approving by-laws. The experience shows the vital importance of sustained engagement with the relevant government officials, especially the district executive director, district lawyers, the village chairman and leaders of the village council, in order to get their buy-in;
- The use of champions at different levels including informal institutions, including paralegals, traditional leaders, religious and interfaith groups, to speak at village assemblies about women's rights to participate in land governance. These champions are very influential members of the community who played an important role in shifting perceptions and attitudes on gender equity.

At the outset, the project faced resistance from government representatives and community members, especially on gender issues because of the entrenchment of the patriarchal system. This was particularly true at the first meetings held at the district level. In response to this, the project provided gender training to district council members, which improved awareness and understanding of gender issues. The training helped dissipate the concerns and myths surrounding the value of women's participation in land governance: land issues are perceived as a matter for men because, traditionally, land is tied to family lineages and men are generally seen to have the sole responsibility for land management and decision-making.

Unpaid leadership positions are often difficult for women to take up and sustain. This is because women struggle to find the time for voluntary work given their responsibility to provide for their family and engage in economic activities. To try and address this issue, TAWLA intends to establish a mentor programme to support women to take on leadership positions in village governance bodies.

Tanzania offers a unique context for developing community by-laws due to its village-level governance structures. Pursuing a similar approach in other countries with different contexts would require careful consideration of:

- Local land governance systems: a decentralised governance system is probably a prerequisite, and the specific institutional setups will dictate which government bodies to work with;
- Gender dynamics: any intervention needs to respond to the specific nature of local gender dynamics.

Mainstreaming gender in Tanzania's local land governance requires more than just progressive national laws. Building the capacity of women at the local level, supporting them with evidence, mentoring programmes and ongoing follow-ups are among some of the strategies that can be used to ensure inclusive land governance and accountability.

References

- Behrman, J., Meinzen-Dick, R. and Quisumbing, A. (2011) *The Gender Implications of Large-Scale Land Deals*, IFPRI Discussion Paper 01056, Washington DC, IFPRI http://www.iss.nl/fileadmin/ASSETS/iss/Documents/Conference_papers/LDPI/56_Behrman_Meinzen-Dick_Quisumbing.pdf
- Dancer, H. and Tsikata, D. (2015) *Researching Land and Commercial Agriculture in Sub-Saharan Africa with a Gender Perspective: Concepts, Issues and Methods*. FAC Working Paper 132, Brighton, UK, Future Agricultures Consortium <http://www.future-agricultures.org/publications/research-and-analysis/working-papers/1984-researching-land-and-commercial-agriculture-in-sub-saharan-africa-with-a-gender-perspective-concepts-issues-and-methods/file>
- LEAT and TAWLA (2014) Study Report on Promoting Gender-Equitable and Participatory Community Decision-Making Processes on Land Investments, conducted (unpublished).
- TAWLA (2013) Training Manual on Women Land Rights (unpublished).

Mainstreaming gender in Tanzania's local land governance

Despite progressive provisions on gender equality in Tanzania's land laws, women have little representation in land allocation decisions, including meetings of village councils and village assemblies. Mainstreaming gender in local regulations can help to address this problem.

The Tanzania Women Lawyers Association (TAWLA), in partnership with the World Resources Institute (WRI) and Lawyers' Environmental Action Team (LEAT), developed model by-laws to improve women's participation in local-level decision-making on village land management. This initiative took place in Kidugalo and Vilabwa, two villages in the Kisarawe district. The model by-laws were developed through a bottom-up, participatory process, and include explicit provisions to promote meaningful participation by women in village-level decision making.

This report outlines the processes followed to develop the by-laws, the results so far, lessons learned and prospects for scaling up.

ISBN: 978-1-78431-379-1

IIED order no.: 12594IIED



Knowledge
Products

Research Report

July 2016

**Law, Land acquisitions
and rights**

Keywords:

Land rights, gender, Tanzania, by-law, participatory, decision making