

Assessing implementation of the Voluntary Tenure Guidelines and the AU Framework and Guidelines for Land Policy; **A toolkit approach**



Acknowledgements

This report is the result of a collaboration among AAI staff, consultants and partners. Consultants Jenny Springer and Nidhi Tandon led the preparation of this consolidated report and development of the assessment tools. The country assessments summarized in the report were led by ActionAid country staff including Zakaria Sambakhe (Senegal), Sally Anderson (Australia), Barbara Van Paassen (Netherlands), and Lamin Mohammed and Fanta Jatta (The Gambia), working with consultant Nicole Mathot on the Netherlands country report and ACTIVISTA/Danyanko Company LTD on The Gambia country report. Catherine Gatundu of the ActionAid Global Secretariat provided overall leadership and guidance to this VGGT assessment initiative. Angela Burton edited the report and Nick Purser (www.nickpurserdesign.com) prepared the design and layout. ActionAid would like to thank all the partners who contributed to this work by participating in assessment meetings, providing information and/or commenting on assessment reports.

COVER PHOTO:

The Monozi Village members during a focus group discussion in Mbire. The focus group discussion was organised by ActionAid Zimbabwe. Credit. Takaitei/ActionAid.

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List of acronyms

AU F&G	African Union Framework and Guidelines
CAER	Corporate Analysis Enhanced Responsibility
CFS	Committee on World Food Security
CSO	Civil society organisation
FAO	Food and Agriculture Organization
FPIC	Free, Prior and Informed Consent
IFC PS	International Finance Corporation Performance Standards
LG MSD	Land Governance Multi-Stakeholder Dialogue (The Netherlands)
LSLBI	Large-scale, land-based investment
LG MSD	Land Governance Multi-Stakeholder Dialogue
MFA	Ministry of Foreign Affairs (The Netherlands)
MSP	Multi-stakeholder platform
NCP	National Contact Point
NGO	Non-governmental organisation
OECD	Organisation for Economic Cooperation and Development
SDGs	Sustainable Development Goals
UNGP	United Nations Guiding Principles on Business and Human Rights
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

Preamble

Access to and control over land and natural resources is crucial to people's livelihoods and to ensuring secure livelihoods, their rights to food, water, work, housing and a healthy environment. Governments and donor institutions have the opportunity and responsibility to ensure that their policies and actions contribute to the recognition and respect of these rights.

ActionAid International has been working over the last few years with women and rural communities to challenge commercialization of land, which leads to loss of their rights to land. The Voluntary Guidelines on the Responsible Governance of tenure of land, forest and Fisheries- VGGTs, together with the AU Framework and Guidelines for land policy in Africa- AU F&G, both provide progressive internationally accepted principles and norms for defining policies and practice for governance of tenure that particularly safeguard the interests of the poor and marginalized land dependent sections of society.

To give effect to these guidelines, ActionAid developed a Toolkit for assessing gender-sensitive implementation of the VGGTs and the AU F&G at country-level. The toolkit was piloted in four countries- Senegal, the Gambia, Netherlands and Australia, with key lessons emerging and captured in this report.

We hope that this report and lessons herein will encourage greater participatory policy and practice changes that will support women's and communities' secure access to and control over land across land tenure regimes. It is only if governments and their agencies embrace and demonstrate political will for stakeholder participation in responsible governance of tenure through policy and practice, and if they champion and take a feminist perspective on land issues, that the Sustainable Development Goals call that no one is to be left behind shall be realized.

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Section 1: Introduction

Secure tenure over land, fisheries and forests is central to global efforts to end rural poverty and hunger, and to ensure sustainable management of the environment. The livelihoods of hundreds of millions of people, particularly poor people in rural areas, depend on secure and equitable rights to natural resources, which not only provide their main source of food and shelter, but are also a core economic asset and the basis for their social, cultural and religious practices.

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) present an international framework based on human rights obligations and standards for the governance of tenure of land, fisheries and forests. Adopted in 2012 by UN Committee for World Food Security- CFS member countries and following an inclusive negotiation process, they recognise the importance of land to countries' development, and stress that good land governance and broad access to land enable food security for all people.¹

The VGGT were negotiated against a backdrop of global food insecurity and local communities' fears over loss of tenure rights and livelihoods as the result of large-scale land grabs, environmental degradation and climate change. The VGGT provide an accountability mechanism through which local communities can hold both the State and private actors to account in development planning and decision-making around large-scale land investments.² They also provide communities and civil society actors (CSOs) with a framework in which to advocate for more robust national policies on land tenure, and stronger implementation of those policies.

The VGGT provide an important framework to guide ActionAid's land rights work, which (through empowerment, research, advocacy and solidarity activities in over 30 countries) seeks to enable:

- women and smallholder farmers to claim and enjoy secure tenure over the land upon which they depend (and leading to enjoyment of other rights), particularly through the formulation and implementation of just land laws and effective land tenure governance systems;
- smallholder farmers and rural women to have increased capacity, awareness and knowledge of their rights;
- a fundamental change of attitude relating to women's ownership and control of land by community leaders and family members.

The extent to which the VGGT have been implemented is a good barometer of national commitment to and progress on land tenure governance, including measures to secure the tenure of women and communities to lands and natural resources and reduce their vulnerability to environmental, social and economic shocks.

The VGGT Assessment Toolkit is ActionAid's contribution to comprehensive, international VGGT monitoring, and builds on the organisation's work³ to assess legal frameworks and tenure governance arrangements in Mozambique, Tanzania, Senegal and Haiti, with a focus on women and small-scale food producers. It is from this previous work that the six key principles used in this assessment were prioritised by ActionAid, drawn from the VGGT and the African Union Framework and Guidelines on Land Policy in Africa (AU F&G). These principles are used to highlight what each country needs to do in order to ensure improved governance of tenure, enhance women's rights to land and tenure security, and protect local communities from land-grabbing. The toolkit also builds on existing FAO Governance of Tenure technical guides⁴ and notable efforts by organisations such as Food First Information and Action Network (FIAN) International⁵ to monitor VGGT implementation.⁶ To this end, the toolkit seeks to:

- monitor country implementation of the VGGT, with a focus on women and small-scale food producers and agricultural communities;
- incorporate community empowerment and capacity building to enhance communities' understanding of the VGGT (and related land frameworks), and build their capacity to advocate for VGGT implementation;
- build understanding of how Organisation of Economic Cooperation and Development (OECD) countries align any foreign aid, trade and investment programmes that impact on tenure governance in other countries with the VGGT;
- enable concise presentation of VGGT implementation results as a basis for cross-country comparison, and for tracking changes over time;
- serve as a basis for dialogue and cooperation towards better VGGT implementation.

Section 2 of this report highlights the importance of secure tenure in addressing hunger and poverty and promoting women's rights and sustainable ecosystems; and the need for strong policy responses and appropriate implementation. Section 3 presents the ActionAid VGGT Assessment Toolkit, including key principles. Section 4 summarises experiences and reflections based on pilot assessments conducted to date. Section 5 sets out points of comparison from the pilot assessments, and Section 6 outlines key recommendations.

Section 2: Background

Tenure rights are the social relations and institutions that govern access to and use of land and natural resources.⁷ They are increasingly recognised as the foundation for a wide range of local, national and global development goals. Since many rural people rely on land, fisheries and forests as the primary source of their livelihoods, secure rights to these resources provide an essential foundation for poverty reduction and food security. In addition, secure land and resource rights enable communities and smallholders to make long-term investments in the productivity of their land, and provide a foundation for them to participate in a range of income-generating activities.⁸

Secure land and resource rights are particularly important for groups who are socially and/or politically marginalised. Tenure rights contribute to the empowerment of women and to the broader well-being of families.⁹ For indigenous peoples and other communities with customary tenure systems, lands, territories and resources are fundamental to their identities, cultures and ways of life.

Recognition of community-based tenure systems also contributes to the global goals of tackling climate change and protecting the environment. For example, where communities have legal recognition of their rights to forests and government support for registration, enforcement of rights and technical assistance for community forest management, deforestation rates are found to be significantly lower than in forests outside these areas.¹⁰ A 10-country study of local institutions managing forest commons found that incorporating local knowledge and decentralised decision-making is associated with reduced carbon emissions and livelihood benefits.¹¹

Over the past decade, international policy consensus on the importance of secure tenure over land and natural resources has grown. The VGGT, unanimously endorsed by members of the UN Committee on World Food Security in 2012, form the basis of this document as the most widely applicable international framework on tenure rights to land, forests and fisheries. The VGGT highlight the need to recognise and respect all legitimate tenure rights, including customary rights.

Several other international frameworks establish important standards regarding tenure rights. The United Nations Declaration on the Rights on Indigenous Peoples (UNDRIP), and International Labor Organization (ILO) Convention 169 on Indigenous and Tribal Peoples both recognise the rights of indigenous peoples to the lands, territories and resources that they traditionally own, occupy or use.

The AU F&G, published in 2010, highlight the role of sound land policies as a basis for sustainable human development, identify best practice standards for policy reforms, and stress the need for a participatory approach to formulating and implementing land policy. Recognising that the new “scramble for land by foreign investors”¹² has raised serious problems for sustainable food production where agricultural land has been converted for other purposes, the African Union also adopted six Guiding Principles (GPs) for Large Scale Land Acquisition in 2014 (see Box 1).

Box 1: AU Guiding Principles for large-scale, land-based investments (LSLBIs)

- **Principle 1:** LSBIBs respect the human rights of communities to contribute to the responsible governance of land and land-based resources, including respecting customary land rights, and are conducted in compliance with the rule of law.
- **Principle 2:** Decisions on LSBIBs are guided by a national strategy for sustainable agricultural development that recognises the strategic importance of African agricultural land and the role of smallholder farmers in achieving food security, poverty reduction and economic growth.
- **Principle 3:** Decisions on LSBIBs and their implementation are based on good governance, including transparency, subsidiarity, inclusiveness, free, prior and informed participation and social acceptance of affected communities.
- **Principle 4:** LSBIBs respect the land rights of women, recognise their voice, generate meaningful opportunities for women alongside men, and do not exacerbate the marginalisation of women.
- **Principle 5:** Decisions on the desirability and feasibility of LSBIBs are made based on independent, holistic assessment of the economic, financial, social and environmental costs and benefits associated with the proposed investment, throughout the lifetime of the investment.
- **Principle 6:** Member States uphold high standards of cooperation, collaboration and mutual accountability to ensure that LSBIBs are beneficial to African economies and their people.

The Sustainable Development Goals (SDGs) adopted by the UN General Assembly in September 2015 also include targets on land to achieve the goals relating to poverty reduction, food security and gender equality.¹³ Specific points include:

- SDG 1 (End Poverty): Target 1.4 “...ensure that all men and women have equal rights to ownership and control over land”
- SDG 2 (End Hunger): Target 2.3 “... double the agricultural productivity and incomes of small-scale farmers, in particular women, indigenous peoples ... including through secure and equal access to land ...”
- SDG 5 (Gender Equality): Target 5a “... undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws ...”

Despite increasing international recognition of the importance of secure tenure to global development goals and greater formal recognition of tenure rights in some countries, significant implementation gaps remain.¹⁴ As an indication of the scale of the issue, one study estimates that approximately one billion of the world’s poorest people lack secure rights to the land upon which they rely for subsistence.¹⁵ Women’s tenure rights in developing countries tend to be weaker than men’s, with women and female-headed households far less likely to own or control land.¹⁶ When women do own land, their landholdings tend to be smaller and of lower value than those of men.¹⁷ Moreover, customary tenure rights often lack legal protection. Communities and indigenous peoples are estimated to hold as much as 65% of the world’s land area under customary systems, while only 18% is formally recognised by governments as owned or controlled by them.¹⁸ Even where land

rights are legally recognised under statutory law, these laws may not be implemented, enforced or respected because of competing pressures on land, weak government capacity and/or poor land administration.¹⁹

These patterns of tenure insecurity undermine local livelihoods and food security, and leave local people vulnerable to dispossession and displacement. In particular, as global demand for natural resources and agricultural commodities has grown, governments have allocated large areas of land to large-scale concessions, even where there are existing rights or claims to land from smallholders and communities.²⁰ Many of these land-related investments target countries with weak governance – leading to land-grabbing²¹ – and are being made in countries that also have a high incidence of hunger and weak land tenure security.²²

These gaps in tenure security and strong pressures on land highlight the importance of national action to realise sound principles for the governance of tenure, and the corresponding need for ways to monitor implementation of these high-level policy commitments. Such monitoring should also raise awareness among communities about the obligations of their governments related to tenure rights, and how they can advocate for more robust implementation.

Section 3 presents the VGGT Assessment Toolkit which is designed to support monitoring of countries' VGGT implementation, with a particular focus on the tenure rights of women, small-scale food producers and local communities. It incorporates a participatory assessment to support communities in identifying gaps that can be a basis for local advocacy and engagement with governments on VGGT implementation. It also includes a tool to assess how OECD countries support and align their overseas actions with the VGGTs. The use of scorecards for presenting results aims to provide a basis for cross-country comparison, as well as for tracking changes within countries over time.

Section 3: VGGT Assessment Toolkit structure and contents

This section describes the elements of the VGGT Assessment Toolkit, including its key underlying principles; three assessment tools; and recommended assessment methods for each tool.

3.1 Key principles

ActionAid has identified²³ six key, interrelated principles that capture the aspects of the VGGT that are of greatest concern for its programmes, and the partners and communities with which it works. The principles are:

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

Principle 1: Inclusive multi-stakeholder platforms

Multi-stakeholder platforms (MSPs) are the recommended approach for VGGT implementation, monitoring and evaluation²⁴ in order to ensure inclusiveness, participation, collaboration, transparency and accountability in land governance efforts. MSPs can be established at any level, should be gender-sensitive and in particular involve representatives of marginalised and vulnerable groups. The AU F&G provide a template for the “design of land policy implementation strategies” and a detailed action plan to which States can refer when implementing the six land policy principles.²⁵ They also recommend tracking systems through which all stakeholders can monitor and evaluate implementation.²⁶ Both frameworks emphasise the need for inclusiveness and participation in monitoring and evaluation mechanisms.

Principle 2: Recognition of customary rights and informal tenure

One of the principal VGGT tenets is recognition of all existing legitimate forms of tenure, both formal and informal.²⁷ Indigenous peoples and other communities with customary tenure systems often face an absence of legal frameworks that recognise these rights – and even where legal frameworks exist may not have secured titles and/or documentation that would enable them to prove and defend them. To address these limitations, the VGGT call on States to provide “appropriate recognition and protection of the legitimate tenure rights of indigenous peoples and other communities with customary tenure systems” and to adapt their policy, legal and organisational frameworks to recognise such tenure systems.²⁸ Similarly, the AU F&G advocate for recognition of the “legitimacy of indigenous land rights” and call for consultation and participation in policy processes by those who have legitimate tenure rights that could be affected by policy decisions.

Principle 3: Gender equality

The VGGT see gender equality as essential to responsible governance of tenure of land, fisheries and forests, and call on States to ensure that women and girls have equal tenure rights, regardless of their civil and marital status.²⁹ The AU F&G recognise that gender discrimination is pervasive in Africa and that women's land rights need to be strengthened, including through legal procedures enabling them to register their land rights whether married, divorced or widowed.³⁰ A State that implements the VGGT and/or the AU F&G will legally recognise the equal rights of women and men to access, use, control, inherit and own land. This may be constitutionally enshrined so that all subsequent laws will be subject to these constitutional principles. In addition, current laws that contradict this principle should be reviewed and legally revoked. Supplementary laws that apply this principle in a more specific ways, for instance family laws concerned with issues such as divorce and inheritance, should be enacted, consistent with human rights law.³¹

Principle 4: Protection from land grabs³²

Land grabs and large-scale land acquisitions pose a significant threat to the land tenure security of women and small-scale food producers, especially in countries where large sections of the population have no formal proof of tenure. The VGGT recommend several measures States can take to prevent land grabs resulting from large-scale land acquisitions, in accordance with human rights principles. They note that the “State should provide safeguards to protect legitimate tenure rights, human rights, livelihoods, food security and the environment” from risks associated with large-scale land acquisitions.³³ They further call on States to consider promoting alternative production and investment models that avoid the transfer of tenure rights to investors.

While the AU F&G recommend no such alternative models of investment (and in fact note that enhanced agricultural exports could lead to increased State revenue,³⁴ implying a bias towards large-scale commercial agriculture), they nonetheless concede that the recent “scramble for land by foreign investors” raises serious problems for sustainable food production where agricultural land has been converted for other purposes.³⁵ In light of this, the AU adopted its Guiding Principles (GPs) for Large Scale Land-based Investment (LSLBI)³⁶ in 2014, which outline six fundamental principles that must be considered in the case of a large-scale land-based investment (see Box 1).

Principle 5: Protection from land grabs

A continuing challenge in many countries is the absence of effective institutions, land registries and community action for land management. The VGGT provide multiple recommendations for land administration to strengthen land tenure security of small-scale food producers, setting out that, “States should provide systems ... to record individual and collective tenure rights in order to improve security of tenure rights.”³⁷ For effective land administration, both the VGGT and the AU F&G advocate for building the capacity of implementing agencies to ensure that policies and laws are put in place in an effective and gender-sensitive way.³⁸ This should be done through the provision of human, financial and other inputs needed for the implementation of the guidelines, as well as ensuring the co-operation of all involved.³⁹ Both the VGGT and the AU F&G advocate for delivery of services by ascertaining legitimate landholders and registering and recording their land rights.⁴⁰ Policies and laws should be established to promote information sharing regarding tenure rights, allowing everyone the right to access information on land.⁴¹

Principle 6: Conflict-resolution mechanisms

Independent, reliable and effective conflict-resolution mechanisms are key to ensuring justice and land tenure security of the poor, including for women.⁴² Corruption, inefficiency and high costs plague the formal court systems in many poor countries, preventing the rule of law, and impeding the accessibility and transparency of conflict-resolution mechanisms.⁴³ These factors discourage the use of formal dispute resolution and cause many aggrieved parties to turn to informal mechanisms, some of which are based on customary practices in local communities. The VGGT acknowledge both issues, and promote the development of alternative forms of dispute resolution, while the AU F&G advocate for the “prevention of conflict”, “resolution through mutually acceptable dispute processing mechanisms” and strengthening conflict-resolution methods.⁴⁴

3.2 Tools

The toolkit uses three tools to explore countries’ alignment with the six principles:

- **Tool 1** assesses the actions of governments to align policy and legal frameworks with the core VGGT principles and to implement measures to fulfill them in their own countries.
- **Tool 2** assesses how legal frameworks and implementation measures operate at the local level and how outcomes are perceived by people and communities attached to the land; it also helps identify and close gaps affecting the ability of vulnerable and marginalised groups to strengthen their democratic control of land.
- **Tool 3** provides a set of indicators, questions, and scorecards to assess the overseas actions of high-income or OECD countries in supporting and complying with the VGGT principles and in implementing measures to fulfill them in overseas actions, particularly in areas of investment, aid and trade.

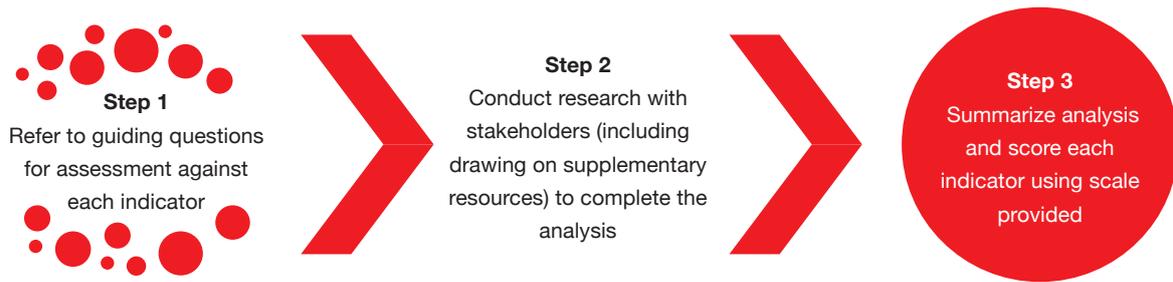
Each tool has six sections (one for each of the six principles), each of which has: 1-2 qualitative indicators; guiding questions for assessing progress in relation to the indicator; and a red-yellow-green scale for capturing overall progress in relation to the indicator. Indicators have been defined to capture key aspects of each principle. For example:

- **Tool 1 indicators** focus on how each of the six principles is realised in:
 - National legal and policy frameworks
 - Key government implementation measures
- **Tool 2 indicators** focus on two aspects of VGGT reality on the ground:
 - Community members’ general awareness and perceptions of the six principles
 - Views on the extent of realisation of the principles in practice
- **Tool 3 indicators** focus on two main aspects of VGGT alignment:
 - The extent of proactive government development assistance for each principle
 - The extent to which governments hold themselves accountable to VGGT principles in their aid and investment policies and programmes for developing countries

The guiding questions provided in the tools are intended to prompt critical reflection rather than to serve as sub-indicators. Tools 1 and 2 also list other information resources and conceptual background information that may contribute to the assessment of each indicator.⁴⁵ A red-yellow-green scoring scale for each Indicator is also provided, with an orientation towards capturing directional performance (i.e., where are we today, where do we need to be heading).

Each tool also contains a scorecard for documenting the narrative analysis and the score for each indicator. The narrative assessment is very important – in addition to providing the evidence base and justification for the scoring, it provides a broader and more qualitative picture of progress against the indicator than can be captured in the score itself. The overall assessment process is summarised in Figure 1.

Figure 1: Key steps for using the toolkit



Assessment methods

Recommended methods for undertaking assessments using the tools vary depending on the main types and sources of information.

Tool 1 focuses on laws and policies and the implementation measures in place and uses desk studies, interviews and peer, stakeholder and expert reviews of the draft assessments to validate and provide feedback on the assessment.

Tool 2 uses focus groups with community members as the recommended methodology. As highlighted in the guidance section of tool 2, it is important that these interactions:

- support the optimal participation of local community members and their governing bodies, agencies and representatives;
- are broadly inclusive; engaging with the landless, farmer households, community members involved in contract farming, households on the margins of plantations (but not necessarily involved in farming or contract farming), local government authorities, chiefs and other land governance authorities;
- enhance gender-sensitivity and recognition of all types of land tenure

(Tools 1 and 2 are intended for use together to provide a holistic picture of land governance, particularly by balancing the view from the 'paper trail' – i.e. laws, policies, administrative measures etc – with a grassroots community view of such policies' impact on the ground – at least in sample locations.)

Tool 3 focuses mainly on aid and investment policies and programmes, uses desk studies and reviews of primary and secondary sources, combined with interviews and peer, expert and stakeholder reviews.

Improving the governance of existing land relations and the substantive strengthening of social justice, equity and equality in land governance go hand in hand. Together the tools aim to provide users with a comprehensive gap analysis to build local awareness, engagement and solidarity, and to help channel advocacy efforts towards a transparent and participatory land governance system.

Section 4: Findings from initial country assessments

Several ActionAid offices contributed to the development of the VGG Assessment Toolkit. Four country offices expressed interest in conducting country-based pilot assessments using the tools – Senegal and The Gambia (using tools 1 and 2), and Australia and the Netherlands (using tool 3). This section presents key findings from these country assessments, followed by initial points of comparison and analysis.

The Gambia

Source: ACTIVISTA/Danyanko Company LTD. Assessment of Implementation of VGGTs in The Gambia through a Score Card. December 2016.

Background: Over 90% of The Gambia's arable land is cultivated by smallholder farmers, most of whom own farms of less than 1.5 ha. Despite the large area of land under cultivation, the country meets less than 50% of its own food demand, making it food insecure. This could be attributed to the very low productivity of smallholder farmers who lack the necessary inputs to improve their productivity. Pressures on land have been increasing from private-sector investment and large-scale land acquisition for purposes including agriculture, estate development, and speculation for future sale. These pressures are particularly (but not exclusively) found in the Greater Banjul and West Coast Regions.

Several data collection methods were used for this study, including: desk reviews of relevant literature on the VGGT and national policy documents and instruments on land and related sub-sectors; interviews with key informants at policy, technical, private sector and grassroots levels; inspection of some of the sites developed by private estate agents to gauge the magnitude of large-scale land transactions; and focus group discussions with farmers' organisations and civil society organisation staff.

Assessment objectives: To provide an inter- and intra-country comparative analysis on land governance in The Gambia, including aspects such as:

- the country's current legal framework, regulatory mechanisms and institutional arrangements versus VGGT requirements;
- the gender responsiveness of land tenure governance systems both at policy level and from a community perspective, and through overall VGGT adoption;
- the country's land governance achievements using VGGT score card indicators.

1. Inclusive multi-stakeholder platform

NGOs and CSOs have facilitated the establishment of a national platform on the VGGT. The main goal of the platform is to advocate for improved governance of land for the benefit of all (especially the poor and vulnerable) in relation to food security and development in general. However, since the launch and initial CSO-sponsored information-sharing workshop on the VGGT in September 2015, there has been no visible activity conducted by the platform to that effect (according to the platform chair, this is the result of a lack of resources).

Despite this, the composition of the committee is reasonably multi-sectoral, with a broad-based membership representing key constituencies including government (mainly the Ministry of Lands and Regional Governments), NGOs, CSOs and women's associations.

2. Recognition of customary rights and informal tenure

The Lands (Regions) Act provides that “the occupation and use of Provinces lands by indigenes shall be governed and regulated by customary laws obtaining in the localities in which such land is situated”. The use of a traditional land tenure system is therefore strongly supported by statutory laws. However, the absence of adequate registration and documentation of tenure rights has limited the effectiveness of statute. Decision-making by local land dispute commissions under the customary system is sometimes undemocratic and in many cases politically influenced. Lack of adequate mapping of the land area as well as an increase in commercialisation of land at provincial and regional level has also resulted in disputes over ownership among communities and individual investors – further aggravating the level of political interference in land administration.

3. Gender equality

Although The Gambia's gender policy 2009-2020 calls for equal rights for women and men to access, use, control, inherit and own land, national laws such as the Land Act fail to make such provisions. Under customary tenure systems, women's rights are generally suppressed.

Women can enter into contracts concerning tenure right on the basis of equality with men and have access to legal services to defend their tenure interests, but this is not a widespread practice and exists only where land is highly commercialised – especially in the West Coast Region and Greater Banjul areas.

4. Protection from land grabs

There is no specific legal provision for compensation for large-scale land transactions, and no regulatory mechanism to monitor and control large-scale land acquisitions (other than the National Environment Agency, which focuses on protection of the environment rather than land rights). Although large-scale land acquisition for different purposes is increasing, no practical steps have so far been taken to address the situation at a policy level.

Free, Prior and Informed Consent (FPIC) is not consistently practiced. In one of the situations reviewed, government allocated an agricultural concession without villagers' prior consent or approval (notwithstanding that it is considered to have had positive economic and employment impacts). In another review, an NGO-led land acquisition for an agricultural centre went through the customary tenure system, with full endorsement of the community and without direct governmental involvement.

5. Effective land administration

Very limited or no safeguards exist to protect the legitimate tenure rights of spouses, family members and others not shown as holders of tenure rights in recording systems for statute and customary laws. No record of tenure rights exists that would enable target groups to record and obtain information about their (individual and/or collective) tenure rights.

6. Conflict-resolution mechanisms

Conflict-resolution mechanisms exist at several levels. Under the traditional system, disputes are resolved by village elders. Where this fails, disputes can be referred to District and Regional Land Tribunals, which are formally constituted bodies established by the District Authority or Governor, or alternatively to the Magistrate

and Cadhis courts. In the event that any party is dissatisfied with the judgment one of these higher level courts, the case could go to the High Court, and ultimately to the Supreme Court.

Land dispute resolution services are being strengthened with the decentralisation of the judiciary system. The establishment of local tribunals for the settlement of land disputes at regional and district levels – as well as interventions by the judiciary in dispute resolution – reflect some effort by government, but these mechanisms are slow and the tribunals lack transparency.

Tenure conflict-resolution services exist, but they are not easily accessible to vulnerable and marginalised people who are constrained by lack of knowledge and finance. The number of courts available for dispute resolution is also limited. The Alternative Dispute Resolution office (a cheaper service that could provide an alternative) is also little known about, and its decisions are not enforceable. Vulnerable people therefore rely on the tradition system of arbitration – the decisions of which are non-transparent and sometimes politically motivated.

Senegal

Source: ActionAid Senegal 2016. Assessing Implementation of the VGGT in Senegal:

Background: VGGT implementation in Senegal has coincided with the land grab problems faced by many of the country's districts. The context is also marked by land disputes between pre-independence landowners who left lands fallow, and communities that have settled and made investments on these lands. Communities and women face problems of access and control over land, displacement of some communities without fair and equitable compensation, and inequitable power relations among community members, between state actors and communities, and between foreign investors and community members.

Country assessment information was collected mainly through focus group discussions in Djilor, Dioussong Missirah, Kedougou, Bala, Bakel, and Koussanar districts, and secondary data collection from various reports and cases studies. This exercise targeted women's dialogue groups, youth, and smallholder farmers.

Assessment objectives: This assessment aims to:

- measure the country's land governance achievements using VGGT scorecard indicators;
- examine the challenges faced by Senegal on land governance, especially in relation to gender responsiveness;
- formulate recommendations for improvement.

1. Inclusive multi-stakeholder platform

In collaboration with the Coalition against Land Grabs and the Food and Agriculture Organization (FAO) Senegal, ActionAid Senegal helped to set up a multi-stakeholder platform in April 2014 to monitor VGGT implementation as part of the country's land reform process. The platform facilitates discussion and interaction among stakeholders (including civil society, farmers' organisations, state actors, the private sector, communal authorities and research organisations) on land governance and common agendas to better implement the VGGT. The platform is co-chaired by the Ministry of Agriculture and the National Farmers' Platform for Rural Development. Three national workshops have been organised since 2014, and 150 members of CSOs and the National Commission for Land reform have been trained on the VGGT, with technical and financial support from FAO.

ActionAid and other partners have also supported dialogue groups at local levels in some areas, where women's groups, young people, mayors' associations and community-based organisations can interact. At both national

and local levels, attention is paid to the representation of women for consideration of their specific interests regarding access to and control over land and natural resources.

2. Recognition of customary rights and informal tenure

Despite the fact that in rural areas customary law is common practice, Senegal's land legislation did not recognise the customary land tenure system and almost no land was recognised as customary land prior to the 2016 land law. To change this situation, CSOs and other social movements have undertaken consultation with communities to collect ideas and testimonies to influence land policy. In addition, ActionAid – in collaboration with the National Farmer's Platform and other CSOs – has built the capacity of Land Reform Commission members as well as rural VGGT counsellors to enable them to make sound decisions that respect women's land rights.

As result of the capacity building, the new land policy in Senegal has clearly integrated the objectives of the VGGT and almost all the land governance principles have been clearly taken into account in the new land policy that recognises customary land rights. This helps protect and secure communities' and women's land rights.

3. Gender equality

National laws respect equality between men and women (Article 15 of the January 2001 constitution), but illiteracy and cultural barriers block the realisation of women's land rights. In rural areas where customary law particularly does not favour women's land rights, women are not well positioned to access land equally with men. Weak implementation of the national constitution on land tenure allows room for abuse.

4. Protection from land grabs

Land grabs in Senegal by foreign and national investors, international private actors and senior politicians have increased since 2000, and it is suspected that between 2002 and 2012 approximately 700,000⁴⁶ hectares of land were grabbed.⁴⁷ Land grabs occur in Senegal largely because the National Domain Law's definition of 'public utility' and 'general interest' is ambiguous. In some cases, government can raise a public interest to displace people from their land without fair compensation,⁴⁸ and this ambiguity introduces an element of profound insecurity for local communities.

In December 2012 more than 15 Senegalese CSOs formed a National Platform Against Land Grabs. The platform has engaged with parliamentarians and communities to call for an end to land grabs and for transparent and inclusive land reform. In response, at the end of 2013 the Senegalese government created a National Commission for Land Reform with the participation of CSOs to ensure secure land tenure for smallholder farmers, including women.

The advocacy work of CSOs and social movements at local, national and international levels since 2012 has also contributed to a significant reduction in land grabbing and land conflicts in several regions. For example, Italian company Senehuile Senethanol has given back 10,000 hectares to communities and the commune of Ngith in northern Senegal. In addition 80,000 hectares have been given back to communities in eastern Senegal after more than four years of resistance against Spanish company Lanka that had been granted a lease for the land for its commercial use.

5. Land administration

In Senegal, the Mayors and rural councils are the main institution responsible for rural land management. Under the National Domain Law these rural councils are responsible for the allocation and withdrawal of state land, but the application of this law has proven to be ineffective, unsustainable and unfair to small-scale farmers,

especially women.⁴⁹ The procedures for measuring productive land use are not clearly or legally defined. Farmers' user rights cannot be converted into leases or title deeds, allowing rural councils to withdraw or reallocate smallholders' lands at their own discretion.⁵⁰

The National Domain Law also requires that land allocations, withdrawals, notifications, transfers and dispossessions be recorded in a land register by the rural councils.⁵¹ In practice these provisions are not implemented and the rural councils do not maintain up-to-date records.⁵² In focus group discussions, communities note that language barriers and lack of knowledge of the procedures limit their ability to record their tenure rights. Moreover, rural councils face budgetary and human resource constraints. Finally, rural councils are highly politicised and members are predominantly from the elite and the ruling party, biasing land allocations and withdrawals.⁵³

6. Conflict-resolution mechanisms

Land disputes in Senegal are widespread, including some between communities and rural councils resulting from inaccurate records or conflicts regarding inheritance.⁵⁴ These disputes are resolved through both formal and informal customary mechanisms. Rural councils have jurisdiction over land conflicts, but if they fail to resolve the dispute, it can be heard through the formal court system.⁵⁵ Civil society and community-based organisations also assist with dispute resolution by helping parties to negotiate.⁵⁶ In some districts, dialogue groups on land issue and other natural resources have become spaces for conflict resolution.

In practice, success in resolving conflict varies from place to place. For example, in Wassadou in eastern Senegal, communities said there has been no concrete action to solve their land dispute with outside investors. In other places, like Kedougou, Fanaye, however, solutions have been found for people facing similar situations.

Conflict-resolution systems face a number of challenges. Formal courts are criticised for being “inefficient, corrupt, biased, and lacking necessary resources”.⁵⁷ Justice is slow and procedures are complex and costly for the rural poor.⁵⁸ Rural councils are ill equipped and know very little about conflict management; most members are not formally educated and lack the knowledge and skills to apply the subtleties of land law.⁵⁹ Resolution is predominantly reached through consensus negotiation rather than by application of the law. Consequently, power plays an important role in the resolution process as it determines the relative weight of the parties involved in the negotiations.⁶⁰

Key findings from OECD countries (Australia and the Netherlands)

Australia

Source: Sally Henderson, The Australian Government and the Voluntary Guidelines for the Governance of Tenure. ActionAid Australia.

Disclaimer: This review of the Australian Government's application of the principles of the VGGT is based on publicly available documents. It is yet to be verified through peer Australian NGOs and with the Department of Foreign Affairs and Trade.

Background: Australia is a high-income country where the majority of citizens are prosperous, but there are persistent and growing levels of inequality in the country, including for the Aboriginal and Torres Strait Island communities (ATSI). There are also many Australian companies that invest overseas – for example, Australian mining companies are among the largest in the world.

Assessment objectives: The aim of this study was for ActionAid Australia to determine the extent to which the Australian Government – in publicly available documents – articulates and respects the rights enshrined in the VGGTs (including through development aid) with the ultimate intention of starting a process whereby the rights enshrined in the VGGT are implemented more fully. This is important in light of Australia’s recent election to the UN Human Rights Council, the review of its report by the Economic, Social and Cultural Rights Committee and the preparation of its report for the International Covenant on Civil and Political Rights.

1. Multi-stakeholder platforms

Documents reviewed indicate limited Australian government support for multi-stakeholder platforms to ensure enhanced participation, oversight, monitoring, evaluation, transparency and accountability for land governance. While a small number of aid investment plans⁶¹ mention the need for land reform in a particular country or region, there is no direct reference to the VGGT nor multi-stakeholder participation or involvement. An exception are the handbooks developed by the Department of Foreign Affairs and Trade’s extractive sector for use by partner governments in workshops with mining companies.^{62, 63, 64} These make strong and frequent reference to multi-stakeholder forums and consultations, although the extent of their use is unknown.

Over 650 of Australia’s biggest companies invest overseas, including 58 in mining,⁶⁵ creating significant potential impact on land tenure rights. Although the Australian government belongs to many regional bodies in the Pacific, Asia, Africa and the Indian Ocean Rim, this assessment found no instances of Australian government participation in multi-stakeholder platforms for land governance.

2. Recognition of customary and informal tenure

The Australian government has a publicly available safeguard policy on displacement and resettlement that requires informed consent to be explicitly sought, documented and confirmed by interested third parties in relation to customary land set aside for aid related activities. The safeguard policy explicitly states that: “Voluntary land transactions, such as changes in land use or ownership, or access to resources that are not imposed (such as market-based transactions or voluntary donations) are not considered displacement. Voluntary transactions are based on informed consent; the land owners or users involved are aware of the relevant implications and likely consequences of the proposed aid activity and have the power to choose whether to participate on a voluntary basis. Voluntary market-based transactions are limited to where the seller is not obliged to sell. Where land is donated, this policy requires adequate documentation, including confirmation by disinterested third parties, demonstrating that such arrangements are, in fact, based on informed consent. Where customary communal land is provided voluntarily, the informed consent of a clear majority of the community is also documented.” Where displacement of indigenous peoples is anticipated, the policy also refers to a requirement for meaningful consultation with indigenous populations, including culturally appropriate and land-based resettlement strategies for livelihood improvement or restoration; opportunities for affected indigenous communities to benefit from the project affecting them; and consideration of measures to strengthen indigenous communities’ claims to, and control of, customary land and resources. However, the extent of support for strengthening indigenous land rights could not be determined from publicly available documents. The NGO Aidwatch has been critical of previous Australian government-funded projects on land governance in Melanesia and Vanuatu, claiming that they overly focus on land as an economic commodity and not on the cultural and social dimensions associated with customary land.⁶⁶

With regard to investment, the Australian government has several programmes that support overseas investments, such as Export Finance and Investment Credit (EFIC) grants to develop export markets, trade deals, and bilateral investment treaties. Any investment through the Australian Aid Programme must uphold the Environment Protection and Biodiversity Conversation Act (1999) and apply the displacement and resettlement safeguard.

This assessment identifies that the Australian government, while prepared to advise overseas investors around customary tenure on request, has no binding requirements to which investors must adhere.

Australia has negotiated several trade agreements and bilateral investment treaties and these are not screened for how they may affect tenure rights (including those of customary land owners) as they are oriented towards the interests of foreign investors rather than communities. Moreover, the inclusion of Investor State Dispute Settlement provisions could potentially affect a country legislating to protect customary land rights.⁶⁷ The National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises potentially offers some guidance for Australian companies on customary rights as these , reference the OECD-FAO Guidance for Responsible Agriculture Supply Chains that mention the VGGTs directly. However, this has been relatively inactive and underresourced.

3. Gender equality

In 2013 the Australian government elevated women's empowerment and gender equality from a cross-cutting theme to an aid investment priority. However, the extent of support for women's land rights is difficult to assess from available documents.

Much of the analysis in the previous section on customary tenure is also relevant here. The Australian Trade and Investment Commission⁶⁸ has no gender strategy available on its website. However, it has engaged in several activities that look into gender and mining, mostly to increase women's employment and representation in governance structures. EFIC also has no specific gender strategy for its transactions, nor is there any specific reference to gender in its procedures for the environmental and social review of transactions.

4. Protection from land grabs

Government regulation of overseas activities in relation to large-scale land acquisition appears to be very weak, despite risks associated with Australian investment. For example, the NGO GRAIN has highlighted three Australian-based or registered companies using large tracts of land in Mozambique, Papua New Guinea and New Zealand.⁶⁹ Oxfam has also documented case studies whereby Australia's four big banks have funded organisations engaged in land grabbing.⁷⁰ They called on the banks to change their policies to have zero tolerance of land grabs, following which two have made changes.⁷¹ Oxfam and Corporate Analysis Enhanced Responsibility (CAER) in 2013 analysed the policies of 53 Australian extractive companies and found only one committed to FPIC.⁷² Five others had committed to free, prior and informed consultation, though as Oxfam and CAER pointed out this is not the same as consent.

There is a lack of transparency and information available on investments. For instance Australia holds the third largest amount of pension funds⁷³ of all OECD member countries but it is difficult to find information on whether they invest in assets such as land overseas. Australia also has negotiated several trade agreements and bilateral investment treaties with Investor State Dispute Settlement provision. As discussed previously this may have a chilling effect in that countries may be discouraged in bringing in legislation to protect against land grabbing as they may have to pay large amounts of compensation to companies who have acquired the land.

The OECD National Contact Point is, in theory, a mechanism by which communities could bring grievances in relation to land grabbing, and some complaints related to mining companies are registered on the Australian website. However, the NCP is under-resourced, many communities in the investment host countries do not know that it exists and there are power imbalances that undermine their ability to make a complaint.

In terms of development assistance, the Australian government supports smallholder farmers in its agriculture, fisheries and water strategy.⁷⁴ However, while there are mentions of sustainable and inclusive growth, there is also a strong link to agribusiness and creating an enabling environment for business investment.

5. Effective land administration

The references to land administration that exist in some Australian aid investment plans are generally measures to streamline processes that enable land to be recognised as a commodity and credit obtained.

In 2005, Aidwatch reported that there had been 50 Australian government land projects of which 23 were classed as 'land titling, land administration, surveying and mapping'. These projects were predominantly undertaken in a number of Asian and Pacific countries.⁷⁵ Aidwatch is sceptical of the approach taken by the Australian government as it claims they are making land open to capture by corporates and corrupt government officials.

Australia has had three land titling projects in the more recent past in Papua New Guinea, Laos and the Philippines. Information on the (now ended) projects in Laos and the Philippines from the implementing organisation (Land Equity) indicate that activities were aimed at easing land titling and registration, collection of revenues for land and community awareness.^{76, 77}

6. Conflict-resolution mechanisms

The Australian government supports formal justice projects in development assistance. However, there is insufficient detail in the Australian government's publicly available documents to determine whether, and to what extent, justice-related support focuses on or contributes to the resolution of land conflicts.

With regard to the Australian government's own grievance mechanisms, those available for investments and programmes are not functioning well. The Department of Foreign Affairs and Trade has a complaints mechanism regarding adherence to its procurement guidelines. Complaints can also be registered with the Commonwealth Ombudsman as with all Australian government departments. The Export Finance and Investment Credit Agency has a grievance mechanism but, as we understand it, this has not yet been used. AusTrade has a grievance mechanism for businesses. The National Contact Point for the OECD guidelines potentially offers another grievance mechanism but the Corporation Accountability Research team has found that many communities do not know about it, and there is a potential conflict of interest as it is located in the department of Treasury.

Recommendations for the Australian government and civil society

- The National Contact Point should be reformed and relocated into the Department of Foreign Affairs and Trade. It should be an adequately resourced function able to genuinely mediate cases, publicise its existence to community members and facilitate their access to it.
- The Australian government should commit to engaging in negotiations towards a binding UN treaty on Business and Human Rights.
- The Australian government should apply its safeguard and gender policies across its entire foreign affairs and trade portfolio, not just aid.
- Inheritance of land is critical to women's empowerment and this link should be recognised in Australian's new foreign policy, enabling it to truly empower women in line with its stated women's empowerment and gender equality goal.
- The formation and operation of multi-stakeholder platforms to deal with land issues should be included in the Australian Aid Programme's agriculture, fisheries and water strategy, and be recommended in guidance for Australian companies operating and investing overseas.
- The support on land administration given in the Aid Programme should enable women to register their land and reflect local communities and their values. It should not be aimed at commoditising land for market purposes.
- Civil society in Australia should strengthen their influence and engagement with government around FPIC and the principles enshrined in the VGGT to improve its definitions and approach to this.

The Netherlands

Source: NDM Mathot (for ActionAid Netherlands), Analysis and Conclusions on Dutch alignment with the VGGT in Foreign Government Policies, August 2017.

Scope, sources and disclaimer: This analysis is mainly based on publicly available (policy) documents related to Dutch foreign policies on aid and investment between May 2012 (when the VGGT were adopted) and July 2017. Short interviews⁷⁸ have been conducted to cross-check the main findings for the six principles.

In March 2017 a peer review was organised with a limited number of interested NGOs and academics⁷⁹ on the proposed methodology for tool 3. Some of these recommendations were included during the current pilot phase, while other recommendations will be taken into account in the evaluation of the pilot.

Both the tool and the draft analysis and conclusions have been shared with the Ministry of Foreign Affairs and the same peer review group as above. Their main feedback on the assessment has been integrated in the report. In follow-up to these conversations ActionAid Netherlands will publish a short public brief with recommendations to be discussed with a wider group of stakeholders, including the Dutch Land Governance Multi-Stakeholder Dialogue and the new Minister for Trade and Development.

Assessment objectives: The main objectives of the Dutch study included the refinement and further development of the assessment methodology of tool 3 on the VGGT for OECD countries, as well as the mapping of existing initiatives taken by the Dutch Ministry of Foreign Affairs as part of its commitment to the VGGT.⁸⁰ A policy analysis has been carried out to assess the extent to which the Dutch government applies the VGGT and FPIC in Dutch foreign policy, particularly aid, trade⁸¹ and investment. The research and analysis process, as well as the outcomes, are also an important tool for further dialogue with government and other stakeholders on how to strengthen Dutch implementation of the VGGT.

Both the analysis and conclusions in this report and the methodology used (tool 3) should be seen in the light of the principle of a continuous process of improvement.⁸²

1. Multi-stakeholder platforms

The Dutch Ministry of Foreign Affairs (MFA) supports several multi-stakeholder platforms (MSPs) in aid-receiving countries.⁸³ This support is mainly channelled through LANDac,⁸⁴ which facilitates multi-stakeholder platforms in West and East Africa with a focus on food security and the inclusion of the private sector. The MFA also supports Dutch NGOs⁸⁵ and their southern networks to promote multi-stakeholder dialogue on land governance⁸⁶ and international multi-stakeholder networks such as International Land Coalition and the Global Land Tool Network.⁸⁷ MFA's support to farmers' and women's organisations can also enhance the capacity and participation of these key rights-holders and stakeholders in multi-stakeholder processes related to land.

The Dutch government actively supports and participates in land-related MSPs in the Netherlands and promotes the application of the VGGT in regional/international fora. In response to calls from Dutch civil society, the MFA took the initiative to set up the Land Governance Multi-Stakeholder Dialogue (LG MSD) in 2014. This (for OECD countries) unique initiative⁸⁸ aims to mainstream the VGGT in Dutch international cooperation and engages⁸⁹ the Dutch government, civil society, private sector, financial and knowledge institutions in a joined-up, solution-oriented learning process to improve land governance in countries where the Netherlands is active.⁹⁰ It is not (yet) clear whether the ambitions of the LG MSD have resulted in actual changes in policy and practice as well as impact 'on the ground'.⁹¹

2. Recognition of customary rights and informal tenure

The MFA supports customary rights and informal tenure in various programmes supporting networks, CSOs and institutions such as cadastres (see 4). In its policy on food security and in various letters to the parliament,⁹² the MFA has expressed its full commitment to the VGGT. The MFA's policy does not mention specific requirements on due diligence to examine, record and report who is using land tenure arrangements and informal rights, prior to any land-related investment. The MFA argues that there is no need for a specific policy or safeguards related to customary and informal land rights, as these rights are already covered by the MFA's commitment to the VGGT.⁹³ However, examples from the recent past show that existing customary land use rights, as well as the right to FPIC,⁹⁴ are often overlooked or not fully respected by Dutch companies and investors. This suggests that there is a need for additional guidance⁹⁵ for such complex issues.⁹⁶

The MFA has learned lessons regarding the erosion of women's customary tenure rights in land registration⁹⁷ and now includes a gender perspective in all its land registration projects.⁹⁸ At the international level, the MFA has contributed to discussions related to customary tenure at the World Conference on Indigenous Peoples⁹⁹ and was the first government to publicly support the Global Call to Action – an international civil society campaign to secure indigenous and community land rights.

For investments without government participation, the application of the OECD Guidelines is encouraged but remains voluntary. With regard to investments with government participation, due diligence – in line with the OECD Guidelines and International Finance Corporation Performance Standards (IFC PS) – prior to the implementation of projects is mandatory,¹⁰⁰ but the responsibility for this lies with companies.¹⁰¹ There is no specific reference to land, and customary rights, informal tenure,¹⁰² or to FPIC in the OECD Guidelines, which makes additional guidance and guidelines relevant. The MFA is currently reviewing its policy and has committed to include in its action plan¹⁰³ the monitoring of the application of the VGGT, CFS Principles for Responsible Agriculture Investment (RAI) and OECD-FAO Guidance on Due Diligence in Agricultural Supply Chains by all implementing agencies of the government's private sector development programme.

3. Gender equality

Women's rights and gender equality are included as a priority theme¹⁰⁴ in the MFA's policy agenda for aid (and investment) programmes, both as ends in themselves and as conditions for realising other priorities, such as food security.¹⁰⁵ A Taskforce on Women's Rights & Gender Equality has been set up to ensure policy translation into programmes.¹⁰⁶

Currently there is significant support for women's tenure rights in the MFA's development aid,¹⁰⁷ and it has recently committed to a more coherent gender strategy in aid projects, including gender-disaggregated data for monitoring and impact measurement.¹⁰⁸ Parliamentary questions led to the MFA committing to better integrate gender in briefings prior to trade missions and to promote gender assessments in all International Corporate Social Responsibility agreements.¹⁰⁹

The MFA's policy on investment and private sector development is based on the OECD Guidelines and on the IFC PS on Environmental and Social Sustainability. While a gender perspective on tenure is lacking in the OECD Guidelines, gender (however not women's rights) is a cross-cutting issue in the IFC PS.¹¹⁰

As a result of the MFA's commitments in the Action Plan Policy Coherence for Development,¹¹¹ the integration of gender due diligence should be improved.

4. Protection from land grabs

The Netherlands is a key player in (large-scale) land investment overseas,¹¹² through pension funds, banks, direct investments and government-related or funded institutions, as well as more indirectly through imports and consumption.¹¹³ Preventing land grabs has been high on the political agenda over the past years and an important part of discussions in the MSP. While the MFA prioritises investment in small-scale food producers, there are no Dutch laws in place to prevent land grabbing in overseas investments¹¹⁴ nor specific policies that aim to avoid or minimise land transfers as suggested by the VGGT. ‘ States should provide safeguards to protect legitimate tenure rights... from risks that could arise from large-scale transactions’ The importance that the MFA attaches to investing in small-scale farmers is underscored in its long-standing support to southern farmers’ organisations and in its Food Security Policy.¹¹⁵

In the recent past, several cases of land-related human rights infringements have been reported in which Dutch companies and financial institutions were involved.¹¹⁶ The MFA has committed to prevent land grabs in a structural way by actively promoting and supporting ‘good land governance’.¹¹⁷ The Netherlands has actively contributed to the development and promotion of international standards such as the OECD Guidelines, CFS-RAI and the OECD-FAO Guidance. The MFA supports and encourages – but does not oblige – international enterprises to subscribe to the OECD Guidelines, the main Dutch reference for international corporate social responsibility. However, land rights are not yet well integrated and only a limited number of Dutch companies are familiar with the OECD Guidelines.¹¹⁸ As the MFA focuses on dialogue and voluntary, non-binding agreements¹¹⁹ for high-risk sectors, the Netherlands has not (yet) committed itself to an internationally binding treaty related to private sector infringements of human rights abroad.¹²⁰

In Dutch policy, there are no consistent requirements for investors regarding transparency in international corporate social responsibility reporting and there is no sanctionable obligation for investors to assess human rights infringements, including land rights throughout the project. A coherent government policy related to the (monitoring of the) implementation of these guidelines and standards is lacking. As of 2017, a new law obliges companies with more than 500 employees to report on non-financial aspects in their annual reports.¹²¹ In 2016 the MFA made the commitment¹²² to better align Dutch government policy (food security and private sector) with existing standards such as the VGGT, RAI and OECD-FAO Guidance.

5. Effective land administration

The importance the MFA attaches to effective land administration as a condition for development is underscored in its policy related to Land Governance¹²³ and Food Security.¹²⁴ While initially the MFA’s support was mainly geared towards creating an enabling environment for (Dutch) investors, in recent years attention has shifted to a more holistic and human rights-based land governance approach.¹²⁵ Accordingly, the government provides significant development assistance to the strengthening of land administration institutions.

The Netherlands’ Cadastre supports and strengthens land registration in developing countries through the ‘fit-for-purpose’ method¹²⁶ and the ‘social tenure domain model’,¹²⁷ both developed to meet the needs for tenure security for poor people. The LAND¹²⁸ programme focuses on strengthening the capacities of local governments and surveyors, but private companies, embassies and local NGOs are also targeted. The Netherlands explicitly supports countries in which the right for women to inherit land has not yet been enshrined in national law. Since the MFA received criticism related to the erosion of customary land rights for women in land registration projects, an explicit gender analysis has been included in all land registration projects.¹²⁹

Dutch support for land registration emphasises the use of participatory processes and the inclusion of a gender analysis. The use of high-tech innovations, e.g. community mapping, also has an impact on the role of land administrators¹³⁰ who increasingly become facilitators of participatory processes. This requires different skills

and competencies, as well as a review of guiding ethical principles¹³¹ and mainstreaming the principles of the VGGT in surveying curricula around the world.¹³² Both the VGGT and the SDGs are included in the training material provided by the LAND programme. No assessment is available yet of the inclusiveness of these new participatory approaches and the impact on tenure security in practice.¹³³

6. Conflict-resolution mechanisms

The MFA's support for conflict-resolution mechanisms is based on its policy on Land Governance¹³⁴ as well as on its overall policy for development cooperation,¹³⁵ in which Security and the Rule of Law is included as a priority theme. Government aid programmes support conflict-resolution and access to justice projects via several channels,¹³⁶ and include both formal and informal conflict-resolution mechanisms and support related to customary and women's tenure rights.

There is no specific complaint mechanism in place for Dutch development aid and state sponsored private investments. However, the Dutch National Ombudsman can be used for complaints related to any government body. With regards to Dutch overseas investments, the Dutch National Contact Point (NCP) for the OECD Guidelines serves as an overall complaint mechanism for alleged human rights infringements from international Dutch (and state-owned) enterprises. The NCP works through mediation and its declarations are not binding. Formally the NCP does not (yet) cover land, even if in practice there is space to file cases related to land.

In response to several land-related conflicts with financial involvement from the Dutch Development Bank FMO and pressure from civil society, FMO set up an Independent Complaints Mechanism in 2014 – the first in a bilateral European development bank. Under Dutch and European law, several legal options to hold companies accountable remain unused.¹³⁷ Entry points for individuals and companies can be found in civil, administrative and criminal law, though most of these options are expensive and time consuming.¹³⁸

Section 5: Points of comparison and analysis based on the four country studies

From The Gambia and Senegal assessments:

- Efforts to set up MSPs have been made in both countries, but the results have been mixed. To the extent that efforts have been successful, they have largely depended on active support from NGOs and the FAO.
- Challenges persist for women under customary tenure regimes although pockets of success have been witnessed, which should be scaled up. Land grabbing is a significant issue in both countries and possibly spurred the revision of the land law in Senegal. Policy measures to address land grabbing are still needed in The Gambia.
- Records of land rights remain absent (in The Gambia) or are poorly maintained and hard to access (in Senegal).
- Multiple levels and types of conflict-resolution mechanisms are available in both countries, yet judicial mechanisms remain difficult and costly to access for the rural poor.

From Australia and the Netherlands country assessments:

- There is an overall contrast in the high levels of development assistance for land governance (including VGGT implementation) from the Netherlands and the limited levels from Australia indicated by available documents; however, the Australian government has adopted a safeguard policy on displacement and resettlement. The Netherlands relies on its commitment to the VGGT, though recent past Dutch company activities point to a need for additional guidance.
- Despite instances of company and/or investor involvement in land-related infringements, there are no binding regulations on corporations' overseas investments. OECD guidelines and IFC standards are an important framework, but land rights issues – especially customary and informal tenure – are not yet well integrated, and support mechanisms need greater investment.
- Gender is a cross-cutting strategy and /or priority for both countries for land related policies, but needs to be translated into specific strategies that can be monitored
- Both countries support some land tenure related projects and networks. Based on lessons learned, the Netherlands has adopted a continuum of land rights approach. Some NGOs working on land issues see support from Australia as too oriented towards commodification of land.
- Grievance mechanisms have been established but there is little information on how well they are operating. International grievance mechanisms, and thus sanctions for companies and governments infringing on tenure rights, are limited.
- An MSP approach is standard practice for the Netherlands, and a very useful tool, but not a sufficient to improve actual policies and practices (there is limited information on this issue from Australia).

Section 6: Recommendations

Recommendations regarding the process for undertaking assessments using these tools include the following:

- The tools have found to be very useful to get a good overview of policies and programmes (tool 1 and 3), as well as community perspectives on land tenure, and use this analysis to bring about conversation and change. This requires an **integrated approach and strategy** to women and community empowerment, participatory and policy analysis, dialogue and lobby/ advocacy.
- **Dedicate sufficient time and capacity to the assessment.** Experience from the first round of pilot assessments indicates that conducting the assessment – particularly the full process of literature reviews/ desk studies, focus groups, stakeholder and peer reviews, and revisions – requires significant time as well as advance planning. Securing dedicated capacity in the form of consultants or staff/partners with clear time allocations also helps to ensure steady progress.
- **Engage with broader civil society and other key stakeholders, including governments, as well as national processes related to the VGGT and tenure in general.** While the pilot tools integrate engagement with stakeholders and experts as part of conducting and reviewing each assessment, wider engagement in the overall development and use of the tools, and communication of findings, is an important area for future attention. At country level, collaboration with related civil society efforts promotes alignment and can strengthen advocacy, while engaging with relevant government agencies on the process and results of the assessment can inform national implementation and reforms. At the global level, it will be useful to further explore how this work relates and can contribute to other VGGT support and monitoring initiatives.
- **Build a larger sample over time.** One aim of the toolkit initiative is to enable cross-country comparisons on alignment with and realisation of VGGT principles. In this first phase, the number of countries piloting the tools has been quite small. Building a larger sample by completing assessments in more countries will provide a more robust basis for understanding similarities and differences within and across regions.
- **Conduct a workshop to prepare for the next stage of development and use of the tools.** A workshop would offer several advantages, including providing a space for discussion of possible refinements to the tools themselves, facilitating engagement with a wider range of organisations involved in VGGT/land tenure issues, and enabling a shared and in-depth understanding of the tools and assessment process among those who will be conducting further assessments.

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26. Land Policy in Africa, 37.
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 - violations of human rights, particularly the equal rights of women
 - not based on free, prior and informed consent of the affected land users
 - not based on a thorough assessment or are in disregard of social, economic and environmental impacts, including the particular impact on women
 - not based on transparent contracts that specify clear and binding commitments about activities, employment and benefit sharing
 - not based on effective democratic planning, independent oversight or meaningful participation.”
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59. Gerti Hesseling, Land reform in Senegal, p.260
60. Mayke Kaag, Accountability in Land Governance, p.19
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64. Working with Indigenous Communities, Leading Practice Sustainable Development Programme for the Mining Industry, Australian Government
65. Overseas Investments of Australian Companies, Trade and Investment Note April 2015, Christina Goodman AusTrade Economics
66. <http://www.aidwatch.org.au/wp-content/uploads/2014/06/AIDWATCH-Briefing-on-Australia-Aid-to-the-Pacific-2009.pdf> , <http://www.aidwatch.org.au/wp-content/uploads/2014/06/AW-In-Defence-of-Melanesian-Customary-Land.pdf>
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75. <http://www.aidwatch.org.au/sites/aidwatch.org.au/files/backgroundpaperma2005.pdf>
76. <http://www.landequity.com.au/projects/lao-pdr-lt-proj/>
77. <http://www.landequity.com.au/projects/lampii/>
78. Eight interviews by phone and three interviews by email with representatives from MFA (including the department Inclusive Green Growth/Cluster Food & Nutrition Security, three Embassies and the multidisciplinary Task Force on Women's Rights and Gender Equality), FMO, the Dutch National Contact Point for the OECD Guidelines, the Dutch Cadastre, think tank LANDac Land Forum, the National Ombudsman and several Dutch NGO's. Not all key stakeholders were available for feedback (e.g. the Dutch Enterprise Agency RVO NL, currently reviewing its policy) and in this round no other Ministries have been included.
79. Netherlands Centre for Indigenous Peoples, Both Ends, Tropenbos International, Solidaridad and Utrecht University.
80. See also 'Answers of the State Secretary for Foreign Affairs Knapen to parliamentary questions from El Fassed related to the endorsement of the VGGT by the member states of the Food and Agriculture Organisation'. Ministry of Foreign Affairs, 19 June 2012.
81. Trade missions are included whereas trade agreements have been excluded in this pilot.
82. VGGT, 3B Principle of Implementation, p 5.
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85. <https://www.government.nl/documents/decrees/2014/05/13/dialogue-and-dissent-strategic-partnerships-for-lobby-and-advocacy>
86. E.g. Pilot Oxfam Novib in Malawi, Nepal, Uganda and Niger to promote the implementation of the VGGT ('Partnerships with the VGGT', Governance of Tenure Newsletter. FAO May 2015).
90. <http://www.landgovernance.org/landdialogue/about-landdialogue/> ;TOR for the LG MSD', September 2014.
91. Summary of the proceedings of the Third High Level Land Governance Multi-Stakeholder Dialogue, 2 February 2017.
92. <https://www.rijksoverheid.nl/documenten/kamerstukken/2014/09/30/kamerbrief-inzake-katalyserende-rol-nederland-bij-versterken-land-governance>
95. The VGGT call on states 'to provide appropriate recognition and protection of the legitimate tenure rights of Indigenous Peoples and other communities with customary tenure systems and to adapt their policy, legal, policy and organizational frameworks to recognize such tenure systems' (VGGT part 3, paragraph 9.4). The same can be said of Gender: whereas MFA is fully committed to the VGGT, including to gender in relation to tenure rights, the VGGT suggest that, in order to realize equity and justice, it may be necessary to take additional measures, e.g. in the form of 'positive action' (VGGT 3B Principle of implementation 3).
97. <https://www.rijksoverheid.nl/documenten/kamerstukken/2016/07/25/beantwoording-kamervragen-over-kwetsbare-positie-van-vrouwen-bij-landregistratieprojecten-in-onder-andere-burundi>
98. <https://www.kadaster.com/nl/partnership-land>
100. <https://www.rijksoverheid.nl/documenten/kamerstukken/2013/05/16/kamerbrief-inzake-nederlandse-inzet-bij-tegengaan-landroof>

101. Government agencies tasked to implement the private sector development program assess project proposals in line with OECD guidelines and IFC PS and, if applicable, advise on an improvement plan to be included in the contract. Financial sanctions can be imposed if companies do not live up to agreements.
103. <https://www.rijksoverheid.nl/documenten/kamerstukken/2016/06/13/kamerbrief-over-actieplan-en-jaarrapportage-beleidscoherentie-voor-ontwikkeling>
104. <https://www.government.nl/documents/letters/2013/04/05/global-dividends-a-new-agenda-for-aid-trade-and-investment>
105. 'Theory of Change (TOC) Women Rights and Gender Equality'. MFA, June 2015 and 'Theory of Change Food Security'. MFA, June 2015.
106. In practice, policy focuses more on women as opposed to gender. In its TOC (2015), MFA assumes that women and women's organisations play a key role in changing gender relations.
107. <http://www.landgovernance.org/publication-strengthening-land-rights-for-women-inspiring-examples-of-interventions-supported-by-the-netherlands/>
108. <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vk2ugnr44gun>
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110. The IFC PS (version 2012) represent a further and more practical elaboration of Due Diligence; they are meant to identify and to evaluate major environmental and social risks and impacts in projects. No specific link is made between gender and land rights/FPIC in PS 7 on 'Indigenous Peoples'. Note that Due Diligence in IFC PS is limited to the scope of the project and impacts beyond the scope of the project or accumulative impacts are not taken into account.
111. <https://www.rijksoverheid.nl/documenten/kamerstukken/2016/06/13/kamerbrief-over-actieplan-en-jaarrapportage-beleidscoherentie-voor-ontwikkeling> (p 21)
112. The Netherlands is among the top 10 investor countries for land deals (see e.g. 'International Land Deals for Agriculture. Fresh Insights from the Land Matrix: Analytical Report II'. CDE, CIRAD, GIGA and the University of Pretoria, April 2016).
113. E.g. <https://milieudefensie.nl/biobrandstoffen/nieuws/nederlandse-banken-en-pensioenfondsen-investeren-miljoenen-in-landroof>
114. According to MFA, and in line with the VGGT, not all large-scale land deals are land grabs and conditions are defined similar to the Tirana definition (assembly International Land Coalition, 26 May 2011) of land grabs that ActionAid upholds in its work and in this analysis.
115. <https://www.rijksoverheid.nl/documenten/kamerstukken/2014/11/18/kamerbrief-over-nederlandse-inzet-voor-wereldwijde-voedselzekerheid>; <https://www.rijksoverheid.nl/documenten/kamerstukken/2016/10/19/kamerbrief-over-resultaten-voedselzekerheid>
116. See 'Customary and Informal Tenure'.
117. See also 'Multi-stakeholder Platforms'.
118. 'Commitment to OECD Guidelines for Dutch Stock Listed Companies'. VBDO (Dutch Association of Investors for Sustainable Development), October 2016.
119. Although not binding, ICSR agreements are not without obligation. See also: 'Inclusive Multi-Stakeholder Platforms'.
120. 'Response Minister Ploumen to Parliamentary questions van Dijk, Gesthuizen en van Bommel', 30 June 2015 and 'Beantwoording kamervragen 'Betrokkenheid van bedrijven uit de Nederlandse financiële sector bij bosbranden in Indonesië'. Minister Ploumen, 8 February 2016. According to MFA, international standards (e.g. UNGP) as well as Dutch ICSR standards established in voluntary agreements, could be undermined by lesser standards in the process of drawing up of a (international) binding law.
121. Reporting requirements include Human Rights, but no explicit reference to land rights is made.
122. <https://www.rijksoverheid.nl/documenten/kamerstukken/2016/06/13/kamerbrief-over-actieplan-en-jaarrapportage-beleidscoherentie-voor-ontwikkeling> (p 21)
123. <https://www.rijksoverheid.nl/documenten/kamerstukken/2014/09/30/kamerbrief-inzake-katalyserende-rol-nederland-bij-versterken-land-governance>
124. 'Theory of Change Voedselzekerheid', 2015.
125. Interview Frits van der Wal (MFA) in 'Land Rights special'. ViceVersa, Spring 2017.
126. Fit-for-purpose guiding principles for country implementation, GLTN, 2016.
127. 'The Social Tenure Domain Model-A Pro-Poor Land Tool', FIG Publication No 52, March 2010. The STDM has been developed by GLTN with contributions from Dutch knowledge institutions.
128. Strategic partnership with MFA: Land Administration for National Development (LAND), Kadaster Nederland, 2015.
129. <https://www.rijksoverheid.nl/documenten/kamerstukken/2016/07/25/beantwoording-kamervragen-over-kwetsbare-positie-van-vrouwen-bij-landregistratieprojecten-in-onder-andere-burundi>
130. 'The role of Land Administration Professionals', Good Governance in Land Tenure and Administration. FAO 2007 and 'Governance of Tenure' on the FIG (International Federation of Surveyors) Working Week in May 2017. FAO, November 2016.
131. Presentation by Robert Chambers on 'participatory ethics' at the Mapping for Change International Conference on Participatory Spatial Information Management and Communication, Nairobi, September 2005.
132. FAO's newsletter 'Governance of Tenure' of November 2016 on the agenda of the FIG (International Federation of Surveyors) Working Week planned in May 2017. See also GLTN's initiative to design a 'Responsible Land Administration Curriculum'.
133. Also, it is not yet very clear how tenure security in the context of a continuum of rights could be measured. At the global level, the measurement of progress towards tenure security within the framework of the SDG is in full development. The Global Land Indicator Initiative of the GLTN takes the lead to explore the development of indicators to measure (perception of) tenure security as defined in e.g. SDG indicator 1.4.2.
134. https://www.parlementairemonitor.nl/9353000/1/j9vtgajcovz8izf_j9vvij5epmj1ey0/vjkh6ucchi4
135. <https://www.government.nl/documents/letters/2013/04/05/global-dividends-a-new-agenda-for-aid-trade-and-investment>
136. See also 'Netherlands Supported Initiatives on the Strengthening of Land Governance'. MFA, 2016.
137. According to the ETO Consortium, 'Extra Territorial Obligations' of states are the missing link in the international Human Rights system that could bridge the 'global governance gap' related to the prevention of private sector Human Rights infringements abroad. Drawn from international law, these principles aim to clarify the content of extraterritorial State obligations to realize economic, social and cultural rights with a view to advancing and giving full effect to the object of the Charter of the United Nations and international Human Rights. <http://www.etoconsortium.org/en/main-navigation/library/maastricht-principles/>
138. <https://www.wodc.nl/onderzoeksdatabase/2531-maatschappelijk-verantwoord-ondernemen-in-het-buitenland.aspx?cp=44&cs=6796#project-informatie> ; <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vk6xe0klr7u1>

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

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November 2017