



MAKING WOMEN’S VOICES COUNT IN COMMUNITY DECISION-MAKING ON LAND INVESTMENTS

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EXECUTIVE SUMMARY

The adverse impacts of commercialization and large-scale land acquisitions in the global South are often disproportionately borne by women. The loss of access to farmland and common areas hit women harder than men in many communities, and women are often excluded from compensation and benefit schemes. Women’s social disadvantages, including their lack of formal land rights and generally subordinate position, make it difficult for them to voice their interests in the management and proposed allocation of community land to investors. While the development community and civil society have pushed for standards and safeguard policies that promote the meaningful involvement of rural communities generally in land acquisitions and investments, strengthening the participation of women as a distinct stakeholder group requires specific attention.

This working paper examines options for strengthening women’s participatory rights in the face of increasing commercial pressures on land in three countries: Mozambique, Tanzania, and the Philippines. It focuses on how regulatory reform—reforms in the rules, regulations, guidelines, and procedures that implement national land acquisition and investment laws—can promote gender equity and allow women to realize the rights afforded by national legal frameworks and international standards. The paper stems from a collaborative project between World Resources Institute and partner organizations in the three countries studied (see Box ES1).

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Box ES1 | Promoting Gender-equitable and Participatory Community Decision-making Processes on Land Investments

In 2014, World Resources Institute partnered with Centro Terra Viva in Mozambique, the Tanzania Women Lawyers' Association and Lawyers Environmental Action Team in Tanzania, and the Ateneo de Manila University School of Government in the Philippines on a project entitled "Promoting Gender-equitable and Participatory Community Decision-making Processes on Land Investments."

In the first phase of the project, we researched the processes through which community lands are acquired by agricultural and other investors and the implications for women. We reviewed formal processes as detailed in the country's legal framework, and informal processes and practices described in the literature and gleaned from fieldwork. We sought to identify gaps within the statutory and regulatory frameworks, and between frameworks and practice, and developed evidence-based options for regulatory reform. The second phase focuses on outreach and engagement with all key stakeholders—governments, women and men in local communities, investors, and civil society and community-based organizations—as well as monitoring practice on the ground.

Divergence Between Law and Practice

Mozambique, Tanzania, and the Philippines promote the commercialization of land and the entry of private investors as a development strategy. At the same time, most of the lands allocated to or intended for investors are legally recognized as owned or occupied by communities. For this reason, the laws of all three countries require community consultation and consent before investors are allowed access to community lands.

Consultation procedures and consent standards vary from country to country. Mozambique's law calls for two consultation meetings; community consent involves a determination that the land applied for is free and unoccupied. In Tanzania, the Village Council and Village Assembly (all residents aged 18 and up) decide on allocations of land parcels less than 250 hectares; for larger parcels, the Village Assembly makes a recommendation to the deciding government minister. The land to be allocated to the investor is then reclassified from land in the name of the village to land in the name

of the state. The Philippines has adopted the international standard of "free, prior and informed consent," with different procedures for small-scale or non-extractive projects and large-scale or extractive projects. Small-scale projects require two meetings with community elders and leaders as representatives of their community, while large-scale projects require two community assemblies. In both instances, the law requires a consensus-building period during which community members employ their traditional decision-making processes.

In practice, community consultations are fraught with irregularities and seldom reflect genuine community consent. Consultations are often perfunctory, with government agents clearly on the side of investors. For their part, communities are barely in a position to participate meaningfully: power asymmetries and low levels of education hamper their ability to fully understand the process, their legal rights, and the nature and implications of the investment. Promises of job opportunities and other benefits induce community consent, but are often unfulfilled, leaving communities with no recourse. Likewise, many projects fail to get off the ground or founder soon after.

For women in the affected communities, the situation is often even worse. In Mozambique, Tanzania, and the Philippines, women are often either absent from consultations or present but silent. Women tend to recede into the background, with limited opportunities to influence important decisions that will affect the entire community. Women's lower rates of literacy, limited mobility, and care responsibilities can also present barriers to the exercise of their rights.

Weaknesses in National Gender Frameworks

All three countries studied have constitutions and laws that espouse gender equality. Mozambique's 1997 Land Law explicitly grants women the right to hold land and to register it in their name; Tanzania's 1999 Land Act and Village Land Act likewise accord women equal land rights and provide strong protections against their discrimination under customary laws. The Philippines' Indigenous Peoples Rights Act recognizes equal rights of women in the social, economic, political, and cultural spheres.

However, close examination of the gender framework in each country reveals features that limit women's opportunities to participate effectively in community decisions. Three stand out:

- *Gender-neutral terminology or language.* When mediated by custom in practice, gender-neutral terms such as “community” in provisions relating to decision-making can result in the exclusion of women from community decisions. In Mozambique, for example, the land law simply states that “local communities” shall be consulted in applications for land-use rights by investors.
- *Unqualified affirmation of customary norms and practices.* The unqualified recognition of customary law in community decision-making can work to exclude women. This is the case in the Philippines, where free, prior, and informed consent (FPIC) is implemented according to customary laws and practices. In effect, women’s participation hinges on whether it is permitted by community tradition.
- *A lack of mechanisms to ensure that electoral quotas translate to actual representation.* The law may require electoral quotas for women in community decision-making bodies, but lack mechanisms to ensure that numbers translate into effective representation. This is the case in Tanzania, where local government law requires that women make up one-fourth of the village council, but fails to support the numerical target with a quorum requirement.

only focus group discussions and set aside a specific slot in the consultation meeting agenda for women to speak out.

- *Promoting rights awareness.* Women’s low level of knowledge about the land acquisition process and their rights could be addressed through rights-awareness activities. These activities could also focus on building women’s capacity to participate and voice their concerns and interests.

Although aimed at the three countries studied, these types of reforms can help support more participatory and gender-sensitive community decision-making on land investments in other countries as well. They should form part of a range of initiatives and interventions that aim to narrow power asymmetries that disadvantage communities and women in communities.

Increasing Women’s Participation through Regulatory Reform

By reforming their regulatory frameworks, Mozambique, Tanzania, and the Philippines can help address gaps that work to weaken women’s participatory rights and increase spaces in which women can voice their interests and concerns regarding large-scale land investments. Reforms proposed by WRI and the country partners are tailored to each country’s legal framework and can be grouped into three types of measures:

- *Strengthening the legal language.* All three countries could make the language of the law more gender sensitive. In Mozambique, this includes specifying women as participants in community consultation guidelines. In Tanzania, the legal language could be strengthened in a set of gender sensitive provisions for village by-laws. In the Philippines, a gender checklist would help government agents implementing FPIC ensure that women are not sidelined.
- *Sidestepping restrictive norms.* To sidestep restrictive norms, consultation procedures could include women-

I. INTRODUCTION

The disparate impact on women of growing commercialization and large-scale acquisitions of land in the global South is coming under heightened scrutiny. Earlier research on land commercialization focused more broadly on the marginalization and adverse impacts experienced by local communities as a whole (Anseeuw et al. 2012; Oakland Institute 2011a, 2011b; German et al. 2011; Cotula et al. 2009; among others). More recent studies demonstrate that, within communities, differentiated gender roles, rights, and responsibilities lead to different opportunities for men and women to engage in land deals, and shape how impacts are felt (Berhman et al. 2011; Action Aid 2012; Daley and Pallas 2013; Tsikata and Yaro 2014, Doss et al. 2014; among others).

Women face social and economic disadvantages that make them more vulnerable when land is commercialized or acquired by investors. These disadvantages include lack of rights or access to land, insecure tenure, lower literacy rates, lack of representation in community governance bodies, and subordinate positions within the household and community. Women have historically been marginalized in many land-use and management decisions, including decisions regarding the allocation of community lands to investors. Yet women often disproportionately bear the negative impacts of land acquisitions, particularly the loss of access to land for subsistence farming and loss of access to communal

lands from which resources such as water, fuelwood, and wild fruits and plants are gathered. They are also often bypassed in compensation schemes and employment opportunities, which usually favor men.¹ Given women's essential roles in agriculture, household food provision, and rural economies, as well as from a human rights perspective, it is critical for them to be involved in decisions about land investments (Rossi and Lambrou 2008; Berhman et al. 2011; Daley 2011; Julia and White 2012; Daley and Pallas 2013; Tsikata and Yaro 2014; Verma 2014; Doss et al. 2014; Elmhirst et al. 2015).

The international community has paid considerable attention to promoting inclusiveness and community participation in decisions that impact land tenure and carry significant social and environmental consequences. Efforts include calls for transparency and “free, prior, and informed consent” (FPIC), and the establishment of international standards, notably the *Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests* (2012), which has specific provisions for advancing women's participatory rights. Other initiatives include safeguard policies and performance standards set by international financial institutions for their investment projects,² and guidance from donors and development agencies on improving stakeholder and women's engagement in large-scale land-based investments.³ Many developing countries have also mandated community consultation and engagement in the allocation of land to investors.

While these developments are positive, it remains challenging for women to be heard and to engage meaningfully in the investment process, especially where cultural norms and practices hinder their participation. It is thus important to explore different ways by which women can be more empowered in decision-making.

This working paper examines options for strengthening rural women's participatory rights in the face of increasing land commercialization in three countries: Tanzania, Mozambique, and the Philippines. The paper stems from the project entitled *Promoting Gender-equitable and Participatory Community Decision-making Processes on Land Investments* (see Box 1), launched by the World Resources Institute (WRI) in early 2014 with the Tanzania Women Lawyers' Association (TAWLA) and the Lawyers Environmental Action Team (LEAT) in Tanzania, Centro Terra Viva (CTV) in Mozambique, and the Ateneo de Manila University School of Government (ASoG) in the Philippines. The project countries are among the top 10 targeted for land acquisitions as identified in the Land Matrix, an independent online database of large-scale land investments worldwide (see Box 2).⁴

The WRI project explored specifically the potential of regulatory reform—reforms in the rules, regulations, guidelines, and procedures that implement national laws governing land acquisitions and investments—for promoting gender equity in the three countries studied. Implementing rules, regulations, and guidelines

Box 1 | Promoting Gender-equitable and Participatory Community Decision-making on Land Investments

Project Goal: Strengthen women's participation in community decision-making related to large-scale land acquisitions and investments in community lands in Tanzania, Mozambique, and the Philippines.

Approach: Regulatory reforms that build on or implement national laws mandating community participation and gender equality.

Project Phases

First Phase: Research

Understand the formal and informal process of land acquisitions—review of statutory and regulatory frameworks, review of literature, and fieldwork conducted in each country.

Outcome: Evidence-based recommendations for reform.

Second Phase: Outreach and Advocacy

Press for regulatory reform and engage key stakeholders: national and local governments; civil society and community-based organizations, companies, and investors; and women and men in local communities.

Outcome: Reforms enacted, stakeholder sensitization and buy-in.

determine how a law is interpreted in practice. They must, therefore, be consistent with the legal provisions from which they are derived, and with the overall spirit of the law and constitutional principles. The project considered how regulations could be reformed to ensure that legal mandates for community participation can be better exercised in practice by women and, more broadly, help achieve gender equity in accordance with constitutional principles.

WRI and the local partners examined the laws and practices around large-scale land acquisitions in the three project countries. The objective was to identify gaps and disparities between laws and implementing regulations, and discrepancies in the implementing regulations themselves, that contribute to women's lack of effective participation. We then developed options to help address these gaps and discrepancies. This paper presents the research findings. It expands on an earlier version presented by WRI researchers at the 2015 World Bank Land and Poverty Conference and the 2015 LANDac Conference on Land Governance.

Following this introduction, Section II summarizes our research methodology and Section III presents our findings. In Section IV, we analyze the patterns in policy,

law, and practice across the three countries. In the final section, we present recommendations for reform in each country and brief concluding remarks.

II. METHODOLOGY

Our research considered both the formal and informal processes by which community lands are acquired by investors, and the implications of these processes for communities and women in each project country. Formal processes are the processes and procedures detailed in statutes and implementing regulations, mainly land laws and regulations, and in related laws, such as investment laws and laws pertaining to gender or women. For Tanzania, we reviewed the 1999 Land Act and 1999 Village Land Act, and the 1982 Local Government (District) Authorities Act; for Mozambique, the 1997 Land Law, 1998 Land Law Regulations, Decree No. 43/2010 amending the Land Law Regulations, and Ministerial Diploma No. 158/2011 on Community Consultations; and for the Philippines, the Indigenous Peoples' Rights Act and Administrative Order No. 2012-03: The Revised Guidelines on FPIC and Related Processes. We also examined

Box 2 | Top 10 Target Countries for Land Acquisitions

CONCLUDED AND INTENDED DEALS		INTENDED DEALS	
COUNTRY	AMOUNT OF LAND	COUNTRY	AMOUNT OF LAND
Indonesia	5,496,521 ha	Philippines	3,111,500 ha
Papua New Guinea	3,804,453 ha	Sudan	2,991,253 ha
Sudan	3,592,100 ha	Indonesia	2,286,986 ha
South Sudan	3,462,573 ha	Mozambique	877,319 ha
Russian Federation	3,371,012 ha	Sierra Leone	877,017 ha
Mozambique	3,310,490 ha	Uganda	850,127 ha
Philippines	3,221,650 ha	South Sudan	771,120 ha
Brazil	2,941,035 ha	Angola	757,000 ha
DRC	2,819,683 ha	Tanzania	607,382 ha
Ukraine	2,393,495 ha	Madagascar	592,000 ha

Source: Land Matrix website as of May 2, 2016. For intended deals, data as of March 31, 2016. Data may change as the database is updated.

constitutional provisions on gender and international instruments on women's participatory rights.

We assessed the formal processes against informal processes, or practice on the ground, based on the literature (both individual case studies and multi-country or global-scale reports) and gleaned from field interviews by our country partners in communities affected by large-scale land acquisitions. Each country partner selected its sample sites and used its own interview and data collection methods. In Tanzania, field interviews were conducted by TAWLA and LEAT in Vilabwa and Kidugalo villages in Kisaware district, which are among several villages affected by a large-scale biofuels investment. The field interviews consisted of focus group discussions and key informant interviews. Groups of five men and five women were separately interviewed in each village. The women were given the option to join a mixed group but expressed preference for a women-only focus group. Interviews were also conducted with village officials of both villages (the village chairman, village executive officer, and ward executive officer) and national government officials (the Kisaware district land officer and the Tanzania Investment Centre officer).

In Mozambique, CTV visited 15 communities affected by mining and oil and gas megaprojects across three provinces: Inhambane, Cabo Delgado, and Tete. In Inhambane, the communities were spread across the districts of Zavala, Morrumbene, and Jangamo; in Cabo Delgado, the districts of Palma, Ancuabe, and Balama; and in Tete, the districts of Moatize and Marata. The fieldwork consisted of interviews and observation of community consultation meetings. Nine men-only focus group discussions and eight women-only focus group discussions were held, each involving between 10 and 15 people. Key informant interviews were also conducted, of which four were with community leaders and three with representatives of civil society organizations. CTV attended two rounds of community consultations in four communities in Cabo Delgado province.

In the Philippines, ASoG commissioned case studies in two Indigenous Peoples' communities. The first case study was conducted by the Legal Rights and Natural Resources Center–Kasama sa Kalikasan (Friends of the Earth Philippines (LRC)) in Barangay Didipio, Nueva Vizcaya province, a community affected by a mining concession.⁵ The second case study was conducted by Ateneo de Davao University–Department of Anthropology (ADDU)

in Barangay Kuden, Sultan Kudarat province, the site of an industrial forest-management concession.⁶ Both case studies profiled the process of land acquisition and how the affected communities negotiated with investors.

Because the field visits or samples were limited (except for Mozambique) and thus not statistically representative, and considering that the country partners used different fieldwork methodologies, we make no cross-country comparisons in this paper of the data gathered in the field. However, the findings from the fieldwork, integrated with findings from the literature, paint a better picture of practice on the ground in each country. With our country partners, we assessed practice or implementation against the legal framework to identify ways in which women's engagement in community decision-making on land management and allocation can be strengthened.

Box 3 | Key Terms

Gender equity. Refers to fairness of treatment for women and men, according to their respective needs. This may include equal treatment or treatment that is different but which is considered equivalent in terms of rights, benefits, obligations, and opportunities. In the development context, a gender equity goal often requires built-in measures to compensate for the historical and social disadvantages of women.

See IFAD: <http://www.ifad.org/gender/glossary.htm>.

Local communities. Groupings of individuals and families that share common interests in a definable local land area within which they normally reside. Communities vary in size, identity, internal equity, and land-use systems, and may distribute rights to land in different ways.

See LandMarkmap.org: <http://www.landmarkmap.org/data/>.

Community land. Lands held or occupied by communities under group tenure, either under customary and statutory tenure systems, including land managed as common property (commonage such as forest and pasture) or allocated to individuals and households (e.g., homesteads and family farms).

Based on definition in LandMarkmap.org: <http://www.landmarkmap.org/data/>.

III. RESEARCH FINDINGS

Mozambique: Land Investments and Community Consultations

The Land Matrix database shows commercial land investments covering almost three million hectares in Mozambique since the early 2000s.⁷ The major investments are for food crops, plantation forestry, and biofuel production, but there are also ventures in livestock production, tourism, and conservation. Investments in hydrocarbons and mining, as well as land acquisitions by domestic investors, both of which can be significant, are not accounted for in the Land Matrix platform. A government-commissioned zoning exercise in 2008 indicated 7 million hectares available for concession to investors; this figure is expected to change, however, with the completion of a second, more detailed, zoning study.⁸

Some of the commercial land projects in Mozambique have become mired in controversy, such as the ProCana ethanol project involving 30,000 hectares in the southern province of Gaza. The project was touted to bring in US\$510 million and to create thousands of jobs. The government cancelled it a year after its launch in 2008 due to inactivity and conflict with local communities. A government audit of approved investment projects revealed that, like ProCana, many large land concessions remain underused or undeveloped several years after their grant. Some projects lacked or ran out of funding, others were unviable from the beginning, and others were acquired for speculative purposes⁹ (Oakland Institute 2011a).

The Process of Land Acquisition

Land acquisitions for commercial investments in Mozambique are governed by the 1997 Land Law, its implementing regulations,¹⁰ and various amendments (the “Land Law”). The overarching policy behind the Land Law is articulated in the 1995 National Land Policy and in the Mozambican Constitution. The 1995 National Land Policy recognizes “the diverse rights of the Mozambican people over the land and other natural resources, while promoting new investment and the sustainable and equitable use of land.”¹¹ The Constitution vests ownership of all land in the state, but recognizes the right of all citizens to use and enjoy land, subject to the state’s prerogative to grant rights to non-citizens for social and economic purposes (Articles 109 & 110). The state seeks to reconcile the predominance of customary land tenure and management systems in the country with the need for land-based commercial investments as a driver

of development and in response to the global market economy. Policy initiatives such as the Green Revolution, and the Beira, Nacala, and Zambezi Valley Agricultural Growth Corridors encourage private sector engagement and large-scale commercial ventures in agriculture.¹² The new Policy and Strategy for Mineral Resources (*Resolução No 89/2013 de 31 de Dezembro, Política e Estratégia dos Recursos Minerais*) identifies foreign investment as a key strategy for mineral development, while also emphasizing benefits for Mozambican nationals and sustainability.¹³

Under the Land Law, citizens and communities who have occupied land under customary law or for at least 10 years in good faith enjoy land-use rights, called *Direito de Uso e Aproveitamento da Terra* (DUAT).¹⁴ The right is recognized regardless of formal titling or registration, although the latter is encouraged.¹⁵ Investors, on the other hand, may acquire DUAT rights by formal application to the state under the procedure prescribed in the Land Law.¹⁶ Key steps in the application process include identifying and mapping the land to be acquired; submitting an exploitation plan for domestic investors, or an approved investment project for foreign investors; identifying the affected communities; and conducting community consultations.¹⁷ The provincial cadastre¹⁸ shepherds the DUAT application process, while the district administrator¹⁹ issues a formal statement or opinion, after community consultations are held, on whether the area is “free and has no occupants,”²⁰ and hence available for investment. If it is otherwise occupied, the district administrator sets forth in the opinion the terms of a “partnership” agreed upon by the community and the investor.²¹ The district administrator’s opinion is submitted to the approving authority, which varies according to the size of the area applied for: the provincial governor, in the case of parcels not exceeding 1,000 ha; the Minister of Agriculture, for parcels between 1,000 and 10,000 ha; and the Council of Ministers, for parcels exceeding 10,000 ha.²²

Consultations with affected communities must precede the district administrator’s opinion. This requirement is set forth under Article 13 of the Land Law and further elaborated in the implementing regulations, as subsequently amended under Decree No. 43/2010 and Ministerial Order 158/2011.²³ Community consultation is a multi-stakeholder activity that includes the government,²⁴ the local community (including occupants or owners of adjoining lands), and the investor/applicant or its representative.²⁵ Prior to consultations, the law requires the district administrator to publish a 30-day notice of the

DUAT application at the district headquarters and in the area where the land to be acquired is located.²⁶ Ministerial Order 158/2011 also contains a general directive to national, district, and local authorities to publicize and circulate to local communities around the country the procedures for consultation in order to ensure effective community participation.²⁷

Two consultation meetings with local communities are required under Ministerial Order 158/2011. In the first, communities are informed about the DUAT application and the proposed project. The second meeting, 30 days after the first, is for the community to pronounce whether or not the land is available for the proposed project. Additional meetings may be held optionally whenever there is new information to be presented by the government or investor to the local communities.²⁸ The provision on consent does not explicitly state that communities can decline a project, but experts opine that there is an implied power to say no (Knight 2010; Tanner et al. 2006; among others).

During the consultations, if the land to be acquired is more than 100 hectares, the district administrator and the Consultative Council for Villages and Towns²⁹ must explain to the community the advantages and disadvantages of the application.³⁰ The consultation proceedings are recorded and the minutes or *acta* must be signed by the Consultative Council. Notably, in the earlier version of the regulations, the signatories to the minutes were the representatives of the local community itself and the owners and occupiers of neighboring land.³¹ Copies of the *acta* and the district administrator's opinion are delivered to the local community.³² The relevant government authority then provisionally approves the DUAT application.³³ Final approval is granted when the land is demarcated and the exploitation plan or investment project is fulfilled within the time required by the law.³⁴ A DUAT granted for economic activities is valid for up to 50 years, renewable for an equal period upon application.³⁵

Figure 1 shows a flow chart of the land acquisition process prepared by Mozambique's Commercial Agriculture Promotion Center (Oakland Institute 2011a, 17).

In Practice

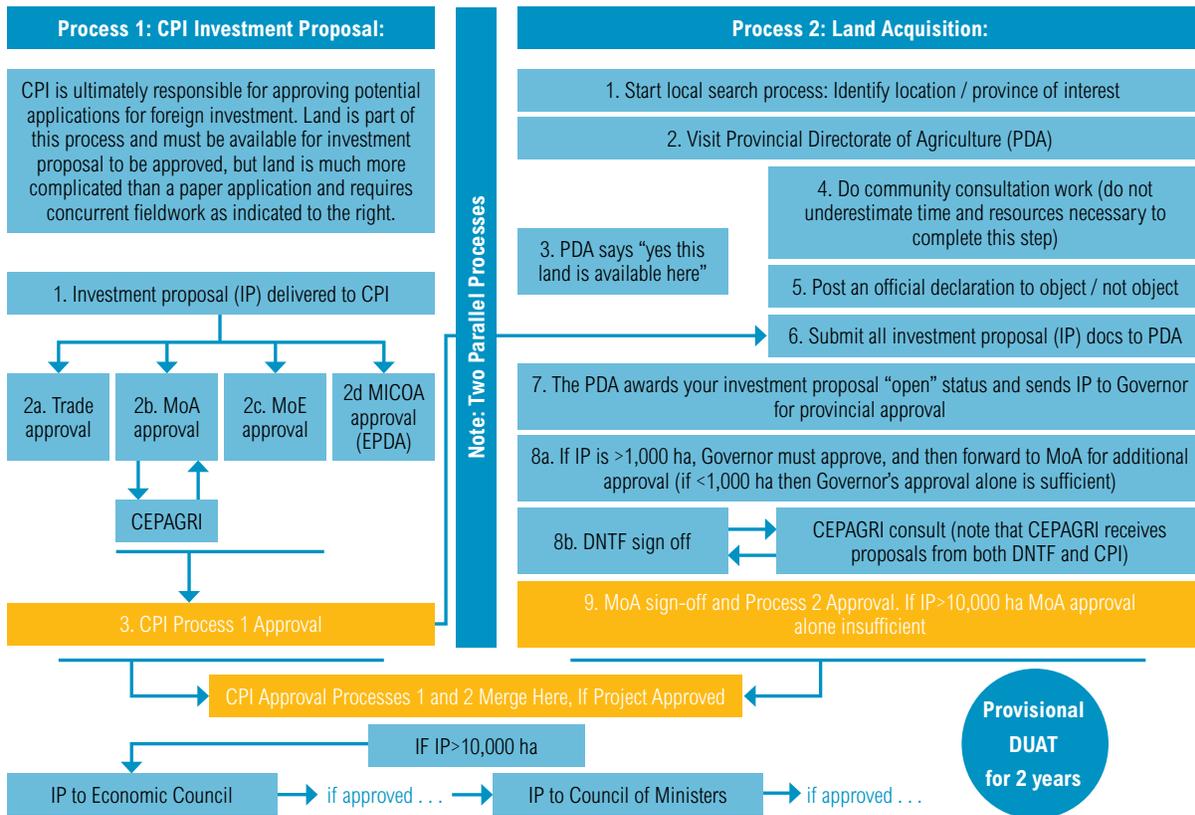
Although the Land Law appears to be fairly inclusive of local communities in the consideration of DUAT applications, a review of the literature and fieldwork conducted by the project partner, CTV, paints a different

picture. Rather, practice on the ground reveals a lack of real and meaningful participation by local communities in the consultation process. An FAO review of 260 land applications across seven provinces in Mozambique (Tanner and Baleira 2006) indicates that, prior to Ministerial Order 158/2011, only one consultation meeting was typically conducted, usually in a perfunctory manner and imbued with a sense of *fait accompli*. In the few instances where more than one meeting was held, the first was merely a preparatory meeting to set the time and date for the main consultation, with little provided in terms of information about the project itself.

Moreover, those who participated in consultations were normally the *régulos* (chiefs) and other local leaders, and the chiefs' opinion nearly always predominated. Very few community members were involved in consultations. Meetings with above average attendance rates were still poorly attended relative to the number of people affected by the land application. The views and comments of those present in meetings, particularly their requests or conditions such as provision of community infrastructure and services, were frequently not reflected in the agreement between the community and the investor (Knight 2010³⁶). Inasmuch as the Land Law and Regulations do not explicitly require that communities consent to an investment, government officials treat consultations as merely the right of communities to confirm whether the land is occupied and, if it is, to negotiate a share of the benefits with the investor (Knight 2010; Tanner and Baleira 2006; Akesson et al. 2009).

The FAO review found that, even when communities are consulted, women were seldom present or actively engaged. In observed meetings, women "sat on the ground, talking little and in a low voice in the presence of men," even stating that "they did not speak Portuguese in order not to be encouraged to get involved" (Tanner and Baleira 2006, 20–21³⁷). Outside the presence of men, in focus group discussions, women did speak up and expressed their views, but in ways that reflect gender relations in which men are deemed to manage and make key decisions on land (Tanner and Baleira 2006). In their study of biofuels investments in Mozambique, Nhantumbo and Salomão (2010, 35) similarly observed a lack of women's involvement in consultation processes, "despite being the majority of the workforce in rural lands." Another study of land deals in Mozambique found that women are largely left out of negotiation processes, even though they are the ones working the land (Behrman et al. 2011).

Figure 1 | **Mozambique Land Acquisition Process**



CPI - Centro de Promoção de Investimentos (Investment Promotion Center)
 CEPAGRI - Centro de Promoção da Agricultura (Agriculture Promotion Center)
 MICOA - Ministério para a Coordenação da Acção Ambiental (Ministry for the Coordination of Environmental Affairs)

DNTF - Direcção Nacional de Terras e Florestas (Directorate of Lands and Forests)
 MoA - Ministério da Agricultura (Ministry of Agriculture)

Source: CEPAGRI, Ministry of Agriculture (See Oakland 2011a)

CTV's fieldwork in 15 communities affected by ongoing and proposed major commercial land investments yielded similar findings (see Methodology above for list of communities). Many communities practice a top-down approach, where decisions are made predominantly by male community leaders, often in men-only meetings. Some communities allow wider participation, but while women are present in meetings and sometimes even outnumber men, they remain on the sidelines. For example, in public consultations for a resettlement plan to make way for a liquefied natural gas facility in Palma district in northern Mozambique, women represented about 60 percent of the attendees. But of 22 recorded comments, only two came from women, representing just 9 percent of all comments. Based on the consultations it observed, CTV estimates that women voiced an average of 5 percent of the comments, underscoring a discrepancy between quantitative and qualitative presence.³⁸

Where women managed to raise their concerns, their priorities can be inferred. For example, in the resettlement consultations for a coal-mining project in Moatize and Marata districts, in the eastern province of Tete, women asked whether they would receive land not just for housing, but also for cultivation. They also asked whether drinking water, a school, and a health center would be provided. In community consultations in Palma for the liquefied natural gas project, a woman asked whether she and her husband's two other wives would be allocated separate houses (CTV 2014, 13).

When women's concerns were excluded or ignored, there were ramifications for family food security and resettlement conditions. In Tete, women were excluded from the identification of new land for agriculture and for fuelwood extraction, and were not consulted on the design of the resettlement houses. Many resettled

lands turned out to be unfit for farming, which greatly affected women's ability to plant food crops to feed their families. One woman reported to CTV that the land where she and her family were resettled four years ago was too rocky to cultivate. In Cateme, the location of the door in resettlement houses was moved from the kitchen to the front room, contrary to the traditional design—making day-to-day tasks more burdensome for women (CTV 2014, 18).

The Gender Framework

The Mozambican Constitution enshrines equality before the law and enjoins the state to “encourage [women’s] growing role in society, in all spheres of political, economic, social and cultural life (Articles 36 and 122).”³⁹

The 1997 Land Law recognizes women’s joint and equal rights to community land. Article 10(1) provides that “men and women, as well as local communities, may be holders of right of land use and benefit.” Women may request individual titles after their plots are partitioned from community land (Article 13[5]). The Land Law also removes gender distinctions with respect to inheritance, and allows both women and men to mortgage immovable assets within individually held lands (Article 16).⁴⁰

Mozambique has ratified key international instruments promoting women’s rights. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) acquired the force of law in Mozambique in 1997, requiring all national legislation to be brought into line with its principles of equality and non-discrimination. Article 14.2 of CEDAW obligates state parties to take appropriate measures to ensure that women participate in development planning at all levels, and enjoy equal treatment in land and agrarian reform and land resettlement. Article 15 mandates equal rights for women to conclude contracts and administer property.⁴¹ Mozambique is also a State Party to the African Charter on Human and Peoples’ Rights (AfCHPR) and the Protocol to the AfCHPR on the Rights of Women in Africa, or the Maputo Protocol. Article 19 of the Maputo Protocol affirms the right of women to sustainable development and requires that state parties take measures to guarantee their right to property. State Parties are further required to promote women’s access to, and control over, productive resources such as land, and to ensure women’s participation in the conceptualization, decision-making, implementation, and evaluation of development policies and programs. Article 19 also requires that State Parties minimize any adverse effects of trade and economic policies and programs on women.⁴²

Despite favorable provisions in domestic law and support under international conventions, Mozambican women continue to be disadvantaged in terms of control and decision-making regarding community land and natural resources. Studies suggest various explanations for this discrepancy, including women’s lack of awareness of and capacity to exercise rights granted under legislation (Kaarhus and Martins 2012). These disadvantages can in turn be traced to women’s lower literacy levels, limited mobility, largely subordinate position in society, and other factors (Tvedten et al. 2008; SIDA 2007). Mozambique remains poor in gender equality terms, with men holding most positions of power nationally⁴³ and controlling land and other basic means of production in the agricultural sector. At the local level, men have more authority and power in communities and within households, and male-headed households are in a better economic position than female-headed households (Tvedten 2011; SIDA 2007).

Kaarhus and Dondeyne (2015) studied community land delimitation⁴⁴ in Manica Province in central Mozambique, and demonstrated how the grant of equal land rights to women in the law does not guarantee their participation in processes relating to group or community-wide rights. While the community was actively involved in the process of delimiting or mapping its lands, local men assumed the role of community representatives and used the occasion to strengthen their power and authority over land and people. Local government officials involved in the process did not question the evident male bias in local land tenure arrangements and appeared more concerned with asserting their own positions of authority. In the absence of specific mechanisms that provide spaces for articulating their interests, local women were unable to put their need for access to land in the agenda and were marginalized in the process.

Our project research reveals similar findings with respect to the land acquisition process. Women interviewed by CTV generally found it hard to engage in consultation proceedings related to investors’ DUAT applications. Based on our study, given social and cultural barriers, it is important that the law and regulations are worded to ensure that women are not sidelined. As presently worded, however, the Land Law and regulations have a gender-neutral approach to community participation and consultation. Article 24 of the law provides that “local communities” shall participate in natural resource management, resolution of conflicts, and identification of the boundaries of community lands, while Article 13 states that “communities” shall be consulted and participate in

the process of allocating or transferring land rights to commercial investors.⁴⁵ This is reiterated in Ministerial Order 158/2011 on consultations, which requires two meetings with the “local community” affected by the proposed investment.

The intent of the law may have been to cover all members of community, but the use of gender-neutral terminology in a context where patriarchal norms predominate can be problematic for women. Local men tend to appropriate the term “community,” leading to Mozambican women’s *de facto* exclusion from community decision-making processes. The use of the generic term “community” also masks important distinctions. As pointed out in the CTV report, communities are made up of men and women, young and old, rich and poor, all with particular and potentially competing interests (CTV 2014). The distinct contributions and responsibilities of women in agriculture and household food security—demonstrated in the literature and project research—are not necessarily articulated by men. Without specific spaces created for them within the legal framework, women will continually find it challenging to express their views, and may be resigned to the fact that men speak on their behalf as a legitimate expression of customary norms. The recognition in the Land Law of customary norms and practices as a basis for the management of natural resources and for conflict resolution by the community (Article 24) has a similar disadvantageous effect on women. In many cases, either the customary rule or practice is discriminatory or interpreted by government agents in a way that preserves male-oriented social power relations (Dancer 2015).

Tanzania: Land Investments and Village Decision-making

There is great demand for land for commercial investment in Tanzania. A government study of land applications over a four-year period, 2004 to 2007, showed demand for about 9.6 million hectares (DILAPS 2010).⁴⁶ For a time, the most significant slice of this demand came from biofuels investments, for which land applications reached 4 million hectares⁴⁷ in 2009 (Sulle and Nelson 2013). Some high-profile biofuels investments foundered not long after commencing operations, including a 34,000-hectare project by a Dutch/Belgian company, Bioshape Ltd., and an 8,211-hectare project by UK-based Sun Biofuels. In both cases, the land occupied by village communities was transferred to the government in order to facilitate the lease of the land to the companies. When the investments

failed to take off, not only were the villagers deprived of the anticipated economic opportunities, but they were also barred from returning to their lands (Sulle and Nelson 2013; Oakland Institute 2011b).

As the biofuels boom has waned, investments are focusing more heavily on commercial agriculture, industrial forestry, wildlife tourism, and conservation.⁴⁸ To meet this demand, the Tanzanian government, through the Tanzania Investment Centre, established a “land bank” of specific parcels throughout the country that will be made available to investors. An initial survey yielded roughly 2.6 million hectares available for the land bank.⁴⁹ According to a Tanzania Investment Centre spokesperson, the agency expects to secure land from every region of the country.⁵⁰

The Process of Land Acquisition

Land acquisitions in Tanzania are governed primarily by the 1999 Land Act and Village Land Act, as well as the 1967 Land Acquisition Act, supplemented by provisions in the 1997 Tanzania Investment Act and the 1982 Local Government (District Authorities) Act. These laws, particularly the land laws and investment law, are components of the state policy to put land to its most productive use,⁵¹ and “transform Tanzania from a rural-based subsistence agricultural economy to a more diversified industrialized one.”⁵² Pursuant to this goal, the National Land Policy provides that government shall identify “[s]pecial areas for various investments which will be . . . set aside for allocation to investors.”⁵³ The government has launched initiatives, such as *Kilimo Kwanza* (Agriculture First); Big Results Now, which names agriculture as one of six priority areas of the economy;⁵⁴ and the Southern Agricultural Growth Corridor, which promotes private sector-driven agricultural commercialization.⁵⁵

The Land Act and the Village Land Act provide the overall framework for land tenure, including land use, administration, and allocation to third parties. A key tenet of the land laws is public ownership of all land, vested in the President as trustee on behalf of all citizens. Land is divided into three categories: General, Reserved, and Village Land.⁵⁶ General and Reserved Lands are under government control and management, while Village Land—which constitutes 70 percent of land in Tanzania⁵⁷—is managed by the Village Council, the village governing body established under local government legislation.⁵⁸ An important proviso in the land laws is the President’s power to transfer land from one category to

another, that is, to reclassify General or Reserved Land as Village Land and vice versa.⁵⁹ This is in addition to the President's power to expropriate or compulsorily acquire land under the 1967 Land Acquisition Act.

The right to use land is called a "right of occupancy," and is deemed a property right. There are two primary modes of obtaining rights of occupancy: one is through allocation by the state of General or Reserved land, called "granted right of occupancy" and regulated under the Land Act; and the other is through customary tenure, called "customary right of occupancy" and regulated under the Village Land Act. Tanzania has more than 12,000 villages, all of which have customary rights of occupancy to lands they inhabit and possess. These occupancy rights are either informal, referred to as "deemed right of occupancy," or formal, under a Certificate of Village Land issued by the Commissioner of Lands once Village Land is demarcated and its boundaries clearly determined and not in dispute.⁶⁰ The law allows holders of rights of occupancy to transfer all or some of their rights and interests in land to third parties. This can be done by granting "derivative rights," defined as a right created out of rights of occupancy, such as a lease, sub-lease, and license or usufruct right.⁶¹

Interested investors thus have several ways by which to acquire land in Tanzania. They can apply for rights of occupancy to General or Reserved Land, or acquire derivative rights from the Tanzania Investment Centre or from holders of rights of occupancy.⁶² However, an important caveat applies: foreign investors may acquire rights of occupancy only in connection with an investment approved under the Tanzania Investment Act.⁶³ The procedure to be followed depends on the category of land to be acquired. If the land applied for is General or Reserved Land, the investor (domestic or foreign) makes an application to the Commissioner of Land⁶⁴ or to the Tanzania Investment Centre.⁶⁵ If the land is held under a right of occupancy, the investor may acquire a sub-lease or purchase the land under right of occupancy.⁶⁶

More often, land identified for investment is Village Land being used and occupied by local communities (Sulle and Nelson 2009). In this case, the procedure favored by government is to transfer Village Land to General Land under the President's power to reclassify Village Land for public interest purposes, including "investments of national interest."⁶⁷ Under the Village Land Act, consent of the Village Council and the Village Assembly, which consists of all residents of the village 18 years and older,⁶⁸

is required. The government must publish the proposed acquisition in the Gazette and send notice to the Village Council of the area where the land is located. The Village Council considers the proposal and informs all villagers who may be directly affected, allowing them time to make representations to the Council and the Commissioner of Land. The Village Council then convenes the Village Assembly, with the Commissioner or an authorized representative in attendance, to discuss the intended use of the land and answer any questions on the investment the villagers may have. The investor will also attend the meeting if requested by the Village Council or Assembly.

The final approving authority for the land application depends on the size of the land. If it is less than 250 hectares, the Village Assembly decides. If it is greater than 250 hectares, the Village Assembly makes a recommendation to the Minister of Lands, who then makes the final decision. The district government in the area where the land is situated may make representations to the Village Council or to the Minister regarding the investment, which will be considered in the decision.⁶⁹

The land acquisition shall be subject to compensation as agreed upon by the government and the Village Council. Compensation may include the transfer of General or Reserved Land to the village in exchange for Village Land to be transferred to the investor. If the parties fail to agree on the compensation, the issue shall be brought to the Tanzanian High Court for final determination, pending which the government may direct payment to the village in the amount it deems proper.⁷⁰ The 2001 Land (Compensation Claims) Regulations and 2001 Land (Assessment of the Value of Land for Compensation) Regulations provide guidelines for compensation claims.⁷¹

Another way by which domestic and foreign investors can acquire Village Land is through derivative rights, or leases, directly granted by the Village Council.⁷² The Village Land Act lists three classes of derivative titles that the Village Council can grant, classified according to the size of land and duration of grant. Class A covers leases of up to five hectares for up to five years; Class B covers leases of more than five but less than 30 hectares for up to 10 years, subject to confirmation by the Village Assembly; and Class C refers to leases of more than 30 hectares or for more than 10 years, subject to confirmation by the Village Assembly and advice by the Commissioner of Lands.⁷³ Some limitations apply: derivative rights may not be issued for communal village lands or for lands

set aside for use by the village on a public basis.⁷⁴ This mode of acquiring land is not publicized on the Tanzania Investment Centre website and villagers are generally unaware of this option (Nshala 2014).

In Practice

Generally, investors identify suitable land with the help of local brokers, Tanzania Investment Centre officials, or politicians. The district government facilitates the transfer of land. Consent of the Village Council and Village Assembly is obtained, but this is more of a formality than decision-making in any real sense. Most villagers do not fully understand the land acquisition process, the nature of the investment, their rights under the law, and the implications of the investment for their village. For their part, government agents shepherding the land acquisition process tend to be on the side of the investor. They often present the investment to the village in a way that highlights its potential benefits and downplays the negative impacts.⁷⁵ Villagers are drawn by the promise of job opportunities, social services, and community infrastructure. Often, investors' promises remain oral pledges and are not put into writing as a contract. When the investment fails, or when the investor fails to deliver on its promises, there is little that villagers can do to hold them to account (Sulle and Nelson 2013; Chachage and Baha 2011; Oakland Institute 2011b; Theting and Brekke 2010).

A crucial fact of which villagers are often unaware is that the procedure followed by the government will extinguish their customary occupancy rights and reclassify their land as General Land under the President's power of land reclassification, including for "investments of national interest."⁷⁶ Some experts describe the procedure as tantamount to compulsory acquisition—on top of takings for public purpose under the Land Acquisition Act—with a modicum of decision-making yielded to the community. It creates an incentive for investors to request larger areas in order to facilitate approval, particularly as there is no legal limit to the size of the land that can be given to an investor, leaving communities vulnerable to losing larger tracts of land (Makwarimba and Ngowi 2012; Knight 2010). Box 4 shows a comparison of the procedure for acquisition as detailed in the Village Land Act and as it often occurs in practice.

More research is needed on the implications of land acquisitions for Tanzanian women, although some studies of community impacts more broadly find that women are only nominally engaged in the process. Isaksson and

Sigte (2009), for example, report that nongovernmental organizations (NGOs) working with villages have noted that women do not attend Village Assembly meetings as often as men. When they do, they tend to be less active in discussions and largely uninvolved in decision-making. The fieldwork conducted by the country partners, TAWLA and LEAT, confirms these observations. In Vilabwa, one of the villages affected by the failed Sun Biofuels investment, women interviewed reported that they skip village meetings because of household tasks and care responsibilities. Some of the women were part of a collective⁷⁷ that cultivated crops for sale—rice, okra, and tomatoes—but the land they were using was transferred to the company. The loss of livelihood has made them worse off. In the villages of Vilabwa and Kidugalo, women who attended the village meeting where the Sun Biofuels project was deliberated remarked that they did not voice concerns because the men in the village "have said it all and there was nothing for them to contribute" (TAWLA and LEAT 2014, 36). Nearly all the women interviewed were illiterate. At the same time, Tanzanian society is still largely patriarchal, with men dominating village institutions and household and community decisions (Tanzania Ministry of Community Development, Gender and Children 2015).

The Gender Framework

The Tanzanian Constitution guarantees equality before the law and prohibits discrimination against any person, including on the basis of gender.⁷⁸ The Constitution provides that, in the formulation of policies and programs, the "[g]overnment and all its agencies [shall] accord equal opportunities to all citizens, men and women alike without regard to their color, tribe, religion, or station in life."⁷⁹ Furthermore, "every citizen has the right to participate fully in the process leading to the decision on matters affecting him, his well-being or the nation."⁸⁰

The land laws uphold these constitutional precepts. Both the Land Act and Village Land Act grant women equal rights to land and provide strong protections from discrimination against women and other vulnerable groups under customary laws.⁸¹ Tanzania has a quota system that promotes gender-inclusive land administration and management bodies.⁸² At the village level, the local government law requires 25 percent of Village Council members to be women. Two bodies created under the Village Land Act, the Village Land Council (a dispute resolution body) and the Village Adjudication Committee (the body that determines

Procedure in the Village Land Act

1. **Publication and notice to Village Council.** The Minister publishes in the Gazette and sends to the concerned Village Council a notice specifying the location and boundaries of the area to be acquired, the reason for the transfer, and the date when the President may exercise his power to transfer the land or part of it (not less than 60 days from publication of notice).
2. **Notice to individual or group rights holders.** If any portion of the land to be transferred is allocated to or being used by a villager or a group of villagers or other authorized persons, the Village Council shall inform the affected persons of the contents of the notice.
3. **Representation by affected rights holders.** The affected individual or group rights holders may make representations to the Commissioner and the Village Council regarding the proposed transfer, which shall be taken into account in the final decision.
4. **Village Assembly meeting.** The Village Council shall convene the Village Assembly to consider the transfer. This meeting (and any similar Village Council meeting) shall be attended by the Commissioner or an authorized officer who shall explain the reasons for the transfer and answer questions. The investor, if identified, shall attend the meeting upon request by the Village Council or Assembly to answer questions.
5. **Village Assembly decision/recommendation.** If the area to be transferred is **less** than 250 ha, the Village Assembly shall decide. If the area is **greater** than 250 ha, the Village Assembly shall recommend to the Minister who shall make the final decision.
6. **Presidential action.** Upon approval of the transfer in whole or in part, the President may exercise his power to transfer Village Land to General Land.
7. **Notice and effectivity of transfer.** Once finalized, the transfer of Village Land to General Land shall be published in the Gazette and come to effect 30 days after publication date.

Source: Sec. 4, VLA.

Procedure in practice

1. **Investor identifies suitable area.** The investor, with the help of local brokers or Tanzania Investment Centre officials or politicians, approaches the district council of the area where suitable land may be found.
2. **District Council identifies land.** The district council then identifies a suitable location within its jurisdiction and approaches the Village Council to secure approval of the request for land.
3. **Village Council decides.** The Village Council and the Village Land Council (a land dispute settlement body established under the Village Land Act²) considers the request and makes a decision, usually approving the request.
4. **Village Assembly decides.** The Village Council then convenes the Village Assembly to decide on the request, usually approving it as well. The minutes of the meeting serve as evidence of approval of the use of Village Land for investment.
5. **Submission to the Tanzania Investment Centre.** The minutes of the Village Assembly meeting are submitted to either the Tanzania Investment Centre or the Commissioner in order to facilitate the transfer of Village Land to General Land, subject to compensation.
 - a. The Village Land Council is required to be established in every village. Its main purpose is “to mediate between and assist parties to arrive at a mutually acceptable solution on any matter concerning Village Land.” (Sec. 60, VLA).

Source: Sulle and Nelson (2013), 9.

boundaries of individual land parcels), establish a defined number of seats for women.⁸³ Tanzania ratified the CEDAW in 1986 and is a state party to the AfCHPR, which prohibit all forms of discrimination against women, and the Maputo Protocol, which directs state parties to ensure increased and effective representation and participation of women at all levels of decision-making.⁸⁴ The Tanzania Development Vision 2025, which aims to propel the country from least developed to middle income status, includes “gender equality and women’s empowerment in all socio-economic and political relations and culture” as a goal.⁸⁵

In short, the Tanzanian legal framework appears progressive and generous in terms of gender. Nevertheless, women continue to be marginalized in village decision-making processes. Village governance structures remain the domain of men. Women who may formally be part of decision-making bodies are mostly inactive in practice, reluctant to participate, or subordinate to men’s interests (Carpano 2010). There is a need to bridge the gap between law and practice on the ground. This is particularly critical in terms of the Village Council, which is the primary governing body in the village community, and thus represents an important venue for women to articulate their concerns and perspectives on land.

One way to achieve women’s representation and meaningful presence is through capacity-building activities—such as awareness-raising and skills building—to increase confidence and empower women to exercise their rights. Equally important is ensuring that the law provides sufficient mechanisms to guarantee that women can fully realize the rights granted to them. Our research indicates that the gender quotas provided by law can be an important tool for Tanzanian women to achieve parity in representation and to increase their involvement in village land governance and decision-making. But the quotas must be structured in a way that actually leads to effective and meaningful participation for women. This is not the case with the electoral quota for the Village Council. While the local government law mandates that women should make up at least one-quarter of the council membership, the provision on quorum fails to protect this quota. By requiring a quorum of not less than half of all council members,⁸⁶ the law makes it possible to conduct meetings without women councillors in attendance. A quorum is present even if all the councillors in the room are men, provided they constitute half of the membership. The Village Land Act, in contrast, provides a gender requirement for the quorum in two ancillary organs created to assist the Village Council (the Village Land

Council and Village Adjudication Committee).⁸⁷ However, the Village Council and its ancillary organs could become more gender-equitable by mandating a gender quota for voting, to avoid women being numerically outvoted.

The same lack of mechanisms for effective exercise of participatory rights applies to the Village Assembly, which is another venue for women’s engagement in village land governance. The Village Assembly approves land acquisitions of less than 250 hectares, confirms the grant of derivative rights to parcels between 5 and 30 hectares and for a period of up to 10 years, approves general policies on village affairs, and elects the Village Council.⁸⁸ Again, there is no gender requirement in the quorum for Village Assembly meetings. Given the patriarchal nature of Tanzanian society, the adoption of gender quotas and quorum requirements can help to create an enabling environment for women’s engagement in decisions that affect them.

The Philippines: Land Investments in Indigenous Territories and the Right of Free, Prior, and Informed Consent

Indigenous Peoples constitute approximately 15 percent of the total Philippine population, or about 14–17 million people; they make up more than 100 ethno-linguistic groups dispersed throughout the country (UNDP 2013). The Philippine Constitution officially recognizes indigenous cultural communities and calls for the protection of their rights to ancestral lands.⁸⁹ These lands—called ancestral domains—are generally located in geographically remote areas that lack infrastructure and social services, but are rich in commercially valuable natural resources, including minerals, timber, and water.

Because of their natural resources, ancestral lands are a target for mining and agribusiness, sectors that are promoted by the Philippine government as drivers of economic growth (Government of the Philippines Development Plan 2011–2016; Pulhin and Ramirez 2013). In its medium-term development plan, the government proposed mobilizing 2 million hectares for agribusiness.⁹⁰ In the Land Matrix database, land deals covering 3,221,650 hectares are reported for the Philippines, some already concluded but the majority still under various stages of negotiation.⁹¹ Although the data do not indicate how much of the investment land is in ancestral domains, it can be assumed to be a sizeable chunk considering the Philippine government’s active promotion of land investments in rural areas and Indigenous Peoples’ lands (Pulhin and Ramirez 2013; Petilla 2012).

Many investments in ancestral lands have adversely impacted indigenous livelihoods and cultures, as well as the environment. Many investments have resulted in conflict with the affected communities, which at times have turned deadly. Around 140 indigenous leaders and members were reported to have been killed between 2001 and 2009, including women and children, while opposing the establishment of agricultural plantations, mining or forestry concessions, or large-scale dams in indigenous territories (LRC 2009).

Investments in Indigenous Lands

Commercial investments in indigenous lands are governed by the 1997 Indigenous Peoples Rights Act. The Act is considered a landmark for recognizing not only Indigenous Peoples' land rights and right to self-determination, but also the applicability of customary laws for establishing the extent of ancestral domains and the governance of property rights.⁹² A key feature of the law is the requirement of Free, Prior, and Informed Consent (FPIC) for any proposed acquisition of or investment in indigenous lands. FPIC is defined in the law as the consensus of all members of the community as determined according to customary laws and practices, free from any external manipulation, interference or coercion, and obtained after full disclosure of the intent and scope of the activity, in a language and process understandable to the community.⁹³ The requirement is mandatory for any type of investment in or exploitation of natural resources within ancestral domains, including proposed access to biological and genetic resources, archaeological explorations, and any project that will result in the displacement and relocation of the indigenous community outside its lands.⁹⁴

The government agency charged with implementing the Indigenous Peoples Rights Act, the National Commission on Indigenous Peoples, oversees the FPIC process. All government departments and agencies are required to obtain an FPIC compliance certification from the Commission prior to the grant or renewal of any concession, lease, or license relating to ancestral lands.⁹⁵ The FPIC process is governed by guidelines issued by the Commission, which were updated for the third time in 2012.⁹⁶ The revised guidelines—Administrative Order 2012–03, *The Revised Guidelines on Free and Prior Informed Consent (FPIC) and Related Processes of 2012*—differentiate between small-scale or non-extractive projects or activities and large-scale or extractive and intrusive projects or activities.⁹⁷

For small-scale or non-extractive projects, the Revised FPIC Guidelines require the National Commission on Indigenous Peoples to facilitate two meetings between community elders and leaders and the project proponent.⁹⁸ The first meeting is for presentation of the project: the scope and extent of activities, costs, and benefits to the indigenous community and its lands, and probable adverse effects and proposed mitigations measures. The second or “decision” meeting is for community elders and leaders to convey their consent or non-consent to the project.

Large-scale projects require a lengthier process.⁹⁹ Two community assemblies must be held in a strategic place within the ancestral domain. The first assembly is intended as a preparatory stage. It includes orienting the indigenous community about the Indigenous Peoples Rights Act and the FPIC process; confirming the areas and communities (including non-indigenous communities) affected by the project; validating the elders and leaders representing the community; determining the decision-making or consensus-building process within the community; deciding on the involvement of NGOs and independent experts; and establishing dispute resolution mechanisms. The second community assembly involves an exhaustive presentation of the project plan, presentation of the results of the environmental and social impact assessment required under environmental laws, sharing of expert opinions and remarks by NGOs invited to assist in the process, and an open forum for members of the indigenous community to raise questions and concerns.

A critical step in the FPIC process is the consensus-building period, which is the time given to the Indigenous Peoples' community members to consult among themselves, using their traditional customs and processes, about whether to consent to the proposed project.¹⁰⁰ People who are not members of the community are not allowed to participate or interfere in this process. For small-scale projects, the consensus-building period follows the first meeting. Community elders consult among themselves and with the community as a whole in accordance with their customary mechanisms. For large-scale projects, consensus building comes after the second community assembly when the proposed investment has been explained to the entire indigenous community.

Another key feature of the Revised FPIC Guidelines is the explicit recognition of the right of Indigenous Peoples to withhold consent to a proposed investment. This makes unequivocal what was previously implied in the law but

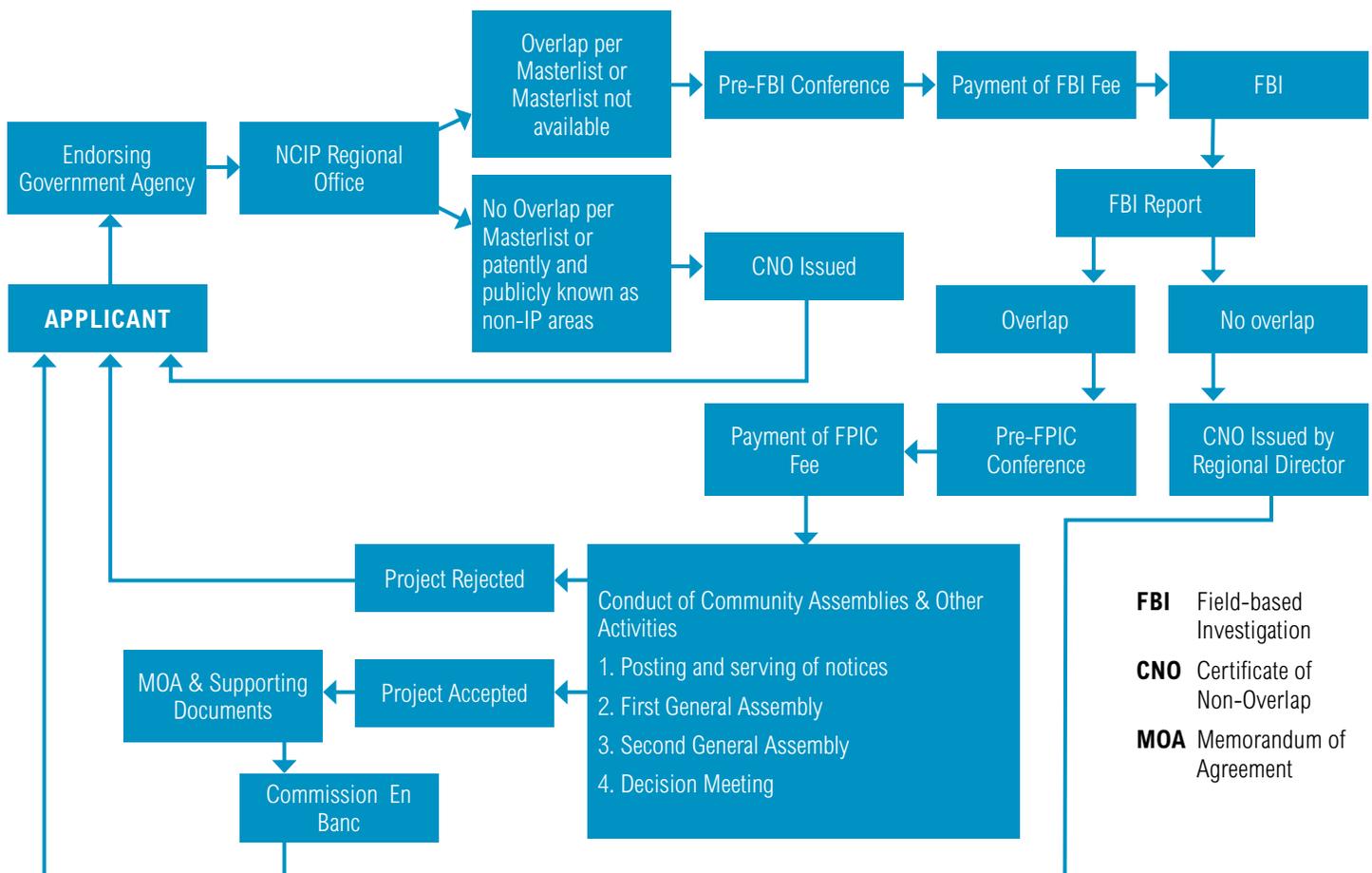
frequently unheeded. Thus, Indigenous Peoples may issue a Resolution of Non-Consent after arriving at the decision not to agree to the project during the consensus-building period. But should consent be given, a memorandum of agreement is executed between the Indigenous Peoples' community, the project proponent, the National Commission on Indigenous Peoples, and any other party that may be involved in project implementation.¹⁰¹ The memorandum of agreement must be written in both English and the indigenous language, and contain, among other provisions, terms for benefit sharing, benefits to be derived by the community, and measures to protect indigenous value systems and conserve the environment in the ancestral domain. For large-scale projects, a validation assembly must be convened within the ancestral domain, during which the memorandum of agreement provisions are explained to the community in a language they

speak and understand. Violations of the terms of the memorandum of agreement may render the responsible party liable in accordance with the customary laws and practices of the indigenous community. Figure 2 shows the steps in the FPIC process for large-scale projects.

In Practice

The Revised FPIC Guidelines are intended to strengthen the FPIC process in light of findings of rampant misinterpretation and non-compliance with the rules. Among the studies informing the new guidelines is an assessment of FPIC implementation in the Philippines sponsored by the German Association for International Cooperation (GIZ) and the Philippine Department of Environment and Natural Resources (Calde et al. 2013).¹⁰² The study found that no more than half of 34 FPIC

Figure 2 | **The Process of Free, Prior, and Informed Consent (FPIC) for Large-scale Projects**



Source: National Commission on Indigenous Peoples.^a

a. Adapted from *An Institutionalized FPIC Process in the Philippines*, PowerPoint presentation by Jonathan D. Adaci, Director ADO IV, NCIP (National Commission on Indigenous Peoples). Retrieved from: http://www.unredd.net/index.php?view=document&alias=7122-6-2-an-institutionalized-fpic-process-in-the-philippines-7122&category_slug=presentations-1517&layout=default&option=com_docman&Itemid=134

cases reviewed had fully and faithfully complied with FPIC rules. Violations included conducting company presentations off site to discourage attendance; inviting only certain leaders and community members to presentations; and using attendance sheets to signify project consent. The most common violation cited in the study was providing inadequate or misleading information, including insufficiently explaining the scope and extent of the project activities, highlighting project benefits while glossing over adverse environmental and social impacts, failing to inform the community that it will be prohibited from conducting traditional livelihood activities and spiritual functions once operations commence, and insufficient information and education regarding the FPIC process and the grievance mechanisms available to the community. Other rule infringements included failure to respect customary decision-making processes, especially the time needed for consensus-building, as well as bribery, coercion, and intimidation of community members. In some instances, the timing of FPIC contravened the principle of prior consent. An indigenous community elder in Agusan del Norte province in the southern Philippines exclaimed, “while we were doing the FPIC, mining is going on in the mountains!” (Calde et al. 2013, 38.)

Women’s ability to participate in the FPIC process is also problematic. Under the Revised FPIC Guidelines, indigenous communities use their own decision-making structures and systems to determine consent to an investment. But as the joint GIZ–Department of Environment and Natural Resources study noted, “there is rich diversity among indigenous communities in the manner by which community consent is obtained, even in sites where rituals are no longer conducted,” each with varying degrees of gender participation (Calde et al. 2013, 45). For example, in Barangay Didipio in the northern province of Nueva Vizcaya, where ASoG and its partner, LRC, studied a mining concession, women were active in the community organization that was formed to protest mining in the area. Invoking their human right to water, the women filed complaints with the water resources agency to protest the mining company’s application for water permits¹⁰³ (LRC 2016). On the other hand, in Kulaman Valley in the southern province of Sultan Kudarat, where ASoG partner ADDU studied a forestry concession, women from the Dulangan Manobo tribe reported that the men speak on behalf of the household during community meetings. On further inquiry, the research team learned that women’s lack of

participation was due not only to traditional norms. They were also reticent to speak in public meetings because of their lack of education and the lack of sympathy from local government officials whom they had approached in the past regarding their concerns about the forestry concession (Hilario-Patiño et al. 2016).

A study of the impacts of large-scale mining investments on women found that indigenous women are usually excluded from the community assemblies and consensus-building processes required under the FPIC Guidelines. Women are not informed about the proceedings, and hence are unable to raise concerns vital to their families and communities, including food security, environmental protection, and peace and order. One case involved women of the B’laan tribe on the southern island of Mindanao, who were among those affected by a large-scale copper and gold mining operation. The women reported that local leaders endorsed the project without consulting them, and they were kept in the dark about the government’s issuance of an environmental compliance certificate for the project. In partnership with a local NGO, some women in the community tried to raise their concerns regarding toxic mine tailings, possible social disintegration, and the ensuing difficulty of gathering food and water for their families. The women immediately faced threats of violence (Pasimio 2013).

The Gender Framework

The Philippine Constitution enshrines the fundamental equality of men and women before the law and recognizes the role of women in nation-building.¹⁰⁴ This principle is reflected in the Indigenous Peoples Rights Act, which stipulates that indigenous women “shall enjoy equal right and opportunities with men, as regards the social, economic, political and cultural spheres of life” and shall have rights to “participation in decision making processes in all levels, as well as in the development of society.”¹⁰⁵ The Philippine legislature has also enacted specific legislation for women. The 2009 Magna Carta of Women gives equal status to women and men in land titling and promotes equal rights to use and manage land, water, and other natural resources.¹⁰⁶ The law recognizes special rights of indigenous women, including their “rights to the enjoyment, use, and management of land, water, and other natural resources within their communities or ancestral domains.”¹⁰⁷ The law calls for the protection of indigenous women’s “knowledge systems and practices, traditional livelihoods, and other manifestations of their cultures and ways of life . . . [p]rovided that [such]

cultural systems and practices are not discriminatory to women.”¹⁰⁸ The National Commission on Indigenous Peoples avows support for the Magna Carta of Women.¹⁰⁹ In addition, the Philippines is a signatory to CEDAW.

This relatively robust rights framework has yet to translate effectively to gender parity in terms of indigenous women’s participatory rights. Based on the literature and our project research, it appears that a significant hurdle is the unqualified adherence to customary norms during the community consensus-building period required under the FPIC guidelines. This requirement follows the declared policy in the Indigenous Peoples Rights Act to “recognize, respect and protect the rights of [indigenous communities] to preserve and develop their cultures, traditions and institutions” (Sec. 2[c]). In practice, this has meant that some indigenous women can participate in FPIC processes while others cannot, depending on the traditions and customs of the community to which they belong. This issue was raised at a roundtable organized by ASoG with the National Commission on Indigenous Peoples and other government agencies. The Commission representative was resolute in asserting the primacy of custom, even if it results in the exclusion of indigenous women.¹¹⁰

There is a need to balance respect for cultural integrity with the principle of gender equality. While the primacy accorded to customary decision-making processes is in keeping with international norms relating to Indigenous Peoples,¹¹¹ it should not override human rights and constitutional precepts of non-discrimination and equality before the law. Notably, the Magna Carta of Women provides that “[c]ustomary laws shall be respected, provided they do not discriminate against women,” while the Philippine Civil Code provides that “customs which are contrary to law, public order or public policy shall not be countenanced. The Philippine Commission on Women has prepared a Women’s Empowerment, Development and Gender Equality Plan 2013–2016, which recommends a “review of laws, policies, and customary practices that are discriminatory to indigenous women,” including relevant customary laws and the traditional justice system and the FPIC Guidelines.¹¹² It is unclear to date whether the Philippine Commission on Women would recommend the explicit declaration of discriminatory customs and traditions as void or invalid.¹¹³

IV. ANALYSIS: PATTERNS IN POLICY, LAW, AND PRACTICE

The policies, laws, and practices of land acquisitions in Mozambique, Tanzania, and the Philippines exhibit similar patterns, albeit in different national contexts. The laws of all three countries contain progressive elements that could potentially help communities—and women in communities—deal with the surge in demand for their lands. Key elements include the legal recognition of customary land tenure, the requirement for community participation in decision-making around land investments, and the mandate of gender equality.

Mozambique and Tanzania’s land laws recognize customary land rights whether or not they are formally registered (although radical title¹¹⁴ remains with the state). The special law for indigenous minorities in the Philippines recognizes their claims to ancestral domains regardless of formal titling, and they are treated as private ownership claims. The laws of all three countries require prior consultation with the affected communities for any proposed allocation of land to investors. The procedure for consultation and the standard of consent vary from country to country, but feature essentially the same methods of tripartite engagement between the government, the community, and the investor. The constitution and laws of each country also espouse gender equality. Mozambique’s Land Law grants women the right to hold land and register it in their own name. So does Tanzania’s Land Law, which goes further by according strong protections against women’s discrimination under customary law. The Philippines’ Indigenous Peoples Rights Act does not explicitly provide equal land rights for indigenous women, but implies it in the declaration of equal rights in all spheres of community life—social, economic, political, and cultural.

Despite these features, the laws of all three countries are prone to being undermined by caveats found in policy pronouncements, in the laws themselves, and in practice. All three countries (like many others in the developing world) promote land commercialization—for food and flex-crop production, extractives exploitation, and other land-based investments—as part of national strategies for growth, rural development, and poverty reduction. Foreign direct investment is perceived as indispensable for implementing policy initiatives, with expectations of new technologies, employment opportunities, and infrastructure development to be ushered in by investors. The three countries all have investment laws that liberalize inward foreign investment.¹¹⁵

Related to the policy of commercialization, there appears to be an assumption by the governments of the project countries that vast tracts of land are underutilized, marginal, or idle and thus available for and indeed requiring commercialization to maximize their potential. Each country has identified millions of hectares to be mobilized for this purpose. However, as noted in the literature, the terms “marginal,” “idle” or “underutilized” are subject to controversy and often belie realities on the ground with respect to pre-existing land claims and uses by local communities (Cotula et al. 2009; Aabø and Kring 2012). Often, these lands are common property of the community, from which rural women derive resources such as water, edible and medicinal plants, firewood, and building materials that are critical for supplementing household nutrition and livelihoods. (Rossi and Lambrou 2008; Action Aid 2012; Daley and Pallas 2013; Doss et al. 2014; Elmhirst et al. 2015)

While consultation and consent are prerequisites for land investments, the position of local communities as they engage in the process is much weaker than that of investors and the government. In Mozambique and Tanzania, the law itself sets limitations that can undermine the position of communities. Mozambique’s Land Law describes community consent as simply a determination of whether the land applied for is unoccupied, and if it is, the terms under which it will be ceded to the investor. In Tanzania, village approval is confined to land applications for smaller parcels of less than 250 hectares, or leases up to 50 hectares; for larger tracts, the government holds approval power, regardless of the land’s status as Village Land. More problematic, the President has the overriding power to remove Village Land from village jurisdiction by reclassifying it as General Land for purposes of “investments of national interest.”

The power asymmetry in the consultation process is particularly evident in practice, documented in the literature and observed by the project partners in their fieldwork. With governments prioritizing investments, project presentations to local communities are skewed toward potential benefits while downplaying negative impacts. Consultation is generally treated as a box-ticking exercise, with instances of manipulative practices, such as conducting meetings outside the community to discourage attendance, or using attendance sheets to signify consent. For their part, local communities are barely in a position to participate in any meaningful way. Low levels of education hamper their ability to fully understand the

acquisition process, rights under the law, and the nature and implications of the investment. These factors go hand-in-hand with pervasive rural poverty, which makes the promise of job opportunities, social services, and local infrastructure appealing. Most promises are unwritten and go unfulfilled. Many projects fail to get off the ground or founder not long after, leaving communities empty-handed.

The research shows that when communities are weak, women, especially the poor and vulnerable among them, will be even weaker (Daley and Pallas 2013). They are squeezed between traditional patriarchy on one side, and the forces and actors driving the global demand for land on the other. Even when entitled by law to participate in community decision-making, women are typically held back from engaging meaningfully by patriarchal norms and institutions that practice top-down governance. Women’s lower rates of literacy, more limited mobility, and myriad domestic and care responsibilities may also prevent them from attending meetings in the first place.

Yet women often bear more of the adverse impacts of land acquisitions. Women are primarily responsible for nutrition in rural households and, while the loss of access to land and resources hit women harder than men, they have fewer options for alternative livelihoods.¹¹⁶ Gender disparity extends to compensation and benefits schemes; women are seldom direct recipients of monetary compensation (which tends to be paid to male household heads) and often do not receive an adequate share of the money. Compensation, in any case, fails to replace the many ways women use and benefit from the land, especially communal lands, where natural resources are gathered. In terms of employment, where women are favored as laborers, wages and conditions are often low and further subordinate women rather than empower them. Figure 3 summarizes the positive features in the laws for communities and women and the caveats that water them down in practice.

Examining the gender framework of each project country, it appears that despite the declared policy of gender equality, which extends to land ownership, key provisions regarding community decision-making tend to be problematic. Our research shows three features in particular that work against women: gender-neutral terminology that disadvantages women in practice; the unqualified legal affirmation of customary law, and the lack of mechanisms to ensure that women’s electoral quotas translate into actual participation (see Figure 4).

Figure 3 | **Positive Elements in the Legal Framework and Caveats**



The problem with gender-neutral terminology or language runs across all three project countries. The literature and project fieldwork show that generic terms in provisions relating to community decision-making—such as “local community” in Mozambique, “villagers” in Tanzania, or “Indigenous Peoples” in the Philippines—have served as indirect exclusion mechanisms for women. The terms are operationalized within contexts where men dominate decision-making and women have little or no space to voice their interests and concerns. The CEDAW Committee’s General Recommendation No. 25 (2004)¹¹⁷ explains the implications of gender-neutrality:

“Indirect discrimination against women may occur when laws, policies and programmes are based on seemingly gender-neutral criteria which in their actual effect have a detrimental impact on women. Gender-neutral laws, policies and programmes unintentionally may perpetuate the consequences of past discrimination. They may be inadvertently modelled on male lifestyles and thus fail to take into account aspects of women’s life experiences which may differ from those of men. These differences may exist because of stereotypical expectations, attitudes and behaviour directed towards women which are based on the biological differences between women and men. They may also exist because of the generally existing subordination of women by men.”

Given the structural barriers women face, they need to be explicitly specified as participants and stakeholders in community land governance if they are to have a seat at the table.

Another limiting feature for women is the unqualified support of customary norms in community governance. In all three countries, traditional norms and practices mediate community decision-making, many times to the detriment of women. In the Philippines, the law itself unwittingly allows indigenous women to be excluded from internal decision-making related to investments in ancestral lands. The Revised FPIC Guidelines, which recognize the primacy of custom in community consensus-building, may empower indigenous communities as a whole but may also reinforce male-centric customs that are discriminatory to women. This affects a significant number of indigenous women because many of the country’s indigenous tribes have patriarchal traditions. Customary law deserves recognition and respect, but it should not override universally accepted principles of gender equality and non-discrimination enshrined in the Philippine Constitution and international instruments ratified by the state.

Finally, as in Tanzania, the law may mandate electoral quotas for women in local governance bodies, but fail to guarantee that numerical targets translate into effective representation. Increasing women’s political representation at all levels is a widely held development goal.¹¹⁸ It draws on the normative principle of equality of rights and opportunities for both men and women, enunciated in internationally binding instruments such as the International Covenant on Civil and Political Rights, CEDAW, AfCHPR, Maputo Protocol, and 1995 Beijing Declaration and Platform of Action (IDEA 2013). It also rests on the widely held idea that including women in governance structures is more likely to have policy impacts that benefit other women and promote gender equality. This has been proven true in some countries, for example,

Figure 4 | **Weaknesses or Gaps in the Gender Framework**



in Rwanda, where the implementation of gender quotas helped catalyze significant cultural change. In a survey, Rwandan women reported that the institution of gender quotas made them “[feel] freer to speak out in public, increased [their] access to education, and [allowed them to] become ‘entrepreneurs’ in every arena, including politics” (Wilson Center 2015).

However, to avoid being merely symbolic, gender quotas must be accompanied by mechanisms, such as quorum and voting requirements, which will facilitate actual participation and enable women to influence decisions and outcomes.¹¹⁹ Ultimately, the participation of rural women (and the community as a whole) in land management needs to be conceived of as qualitative participation and engagement, for which quantitative participation is a crucial first step.

The project research unpacks a number of ways in which gaps in procedural frameworks weaken the rights of communities and women. The findings are drawn from the three project countries but may be relevant beyond them. Further research involving a wider comparison of more countries can help demonstrate this.

VI. THE WAY FORWARD: RECOMMENDATIONS FOR REFORM

The authors and project partners have identified specific reforms to help address the gender gaps and weaknesses in each country’s regulatory framework. The overarching aim of the proposed reforms is to have women explicitly recognized as stakeholders in the land acquisition process. Women are part of the community but they have distinct concerns that need to be taken into account, as well as unique perspectives that they can bring to the negotiating table.

The proposed regulatory reforms are tailored to each project country’s legal framework and designed with regard for the political context and existing opportunities for reform. For purposes of this paper, the reforms may be grouped into three types of measures: strengthening the legal language, sidestepping restrictive norms, and promoting rights-awareness.

Strengthening the Legal Language

Regulations can be amended to better conform to or reflect the provisions on gender equity in the main laws (land laws, gender laws, constitution). Amendments could address all three forms of weaknesses or gaps identified in the regulations. The country partners are seeking to introduce more gender-sensitive language in the regulatory framework as follows:

- In Mozambique, by pushing for revisions in the *Community Consultation Guidelines or Ministerial Order 158/2011* to include specifying women as participants in consultations, as well as other gender-sensitive provisions. This reform targets generic language in the law that has worked against women in past land acquisitions. CTV has joined Mozambique’s civil society platform and other national organizations to push for reforms, taking advantage of political space opened up by government initiatives to improve the community consultation guidelines, create regulations on land leasing, and review the regulations on environmental impact assessments.¹²⁰

- In Tanzania, by introducing reforms at the village governance level through the introduction of gender-sensitive provisions in village by-laws. LEAT, WRI, and TAWLA produced a set of model by-law provisions that can be adopted by villages to promote effective electoral quotas and expand women's participatory rights. This initiative builds upon the authority granted to villages under the local government law to create their own rules, or by-laws, for village governance, including land use and management. The suggested provisions are compiled in a document entitled *Model Gender Provisions for Village By-laws*. Provisions include quorum and voting requirements and the establishment of village gender committees. TAWLA successfully piloted the model gender by-laws in the two villages where field research was conducted, Vilabwa and Kidugalo villages, and has advocated its endorsement by district council to all other villages in Kisaware District.¹²¹ TAWLA is also working with Tanzanian civil society to push for national guidelines endorsing the model provisions as a template for the by-laws of all villages in Tanzania. Draft national guidelines have been prepared and are being reviewed by a working group constituted by TAWLA .
- In the Philippines, by proposing a supplement to the Revised FPIC Guidelines or Administrative Order 2012-03 in the form of a *gender checklist*. The gender checklist will be used as a guide by government agents facilitating FPIC processes in indigenous communities. Actions on the checklist include collecting sex-disaggregated data and gender-related information, analyzing the gender issues based on the data and information collected, and designing strategies for resolving the gender issues identified. This proposed reform is an adaptation of earlier government initiatives to introduce gender checklists for environmental management programs and projects and for development assistance projects.

Sidestepping Restrictive Norms

These proposed reforms aim to ensure that women's voices are heard despite customs and traditions that limit their formal participation in community decision-making. They address the issue of unqualified recognition of customary rules and practices regardless of gender equity, as well as gender-neutral language that tends to reinforce patriarchal decision-making traditions. The project countries have commonly identified the following measures:

- Focus group discussions or separate women-only meetings that can provide a forum where women can freely air their concerns and perspectives. All three project countries propose that focus group discussions be held at some point between the first meeting, when the project or investment is introduced to the whole community, and the meeting when the decision is made on the land investment. The concerns and ideas presented by women at the focus group will then be conveyed to the community at, or prior to, the next consultation or FPIC meeting. In Mozambique, the focus group discussions will form part of an expanded consultation process under revised community consultation guidelines; in Tanzania, focus group discussion is one of the proposed model gender provisions for village by-laws; and in the Philippines, it will form part of the gender analysis and strategies for resolving gender issues in the gender checklist supplementing the Revised FPIC Guidelines.
- A specific slot in the meeting agenda for community consultation or FPIC when women can speak out as a stakeholder group. This will notify the government and investor, and others in the community, about women's particular concerns. In Mozambique, the specific slot for women in the meeting agenda will be a feature of the expanded community consultation guidelines, which will further require that the minutes of meetings include a section indicating the number of women attendees and the comments made by women. In Tanzania, a "special permanent agenda item on women's concerns" as part of every Village Assembly meeting is one of the proposed provisions in the model gender by-laws. In the Philippines, the slot for women to speak out or for women's concerns to be discussed in community assemblies is envisioned as one of the indicators in the FPIC gender checklist.

Promoting Rights-Awareness

These are activities intended to address the low levels of knowledge and lack of capacity of women, and local communities generally, to understand and follow the land acquisition process and negotiate on more equal terms. In Mozambique, “social preparation” of the community is one of the steps in the consultation process under the expanded community consultation guidelines. Social preparation could be conducted by government agents or outsourced to NGOs, and will involve educating the community on land and natural resource laws, rights and duties under them, gender inclusion, negotiation and partnership, compensation and resettlement, and other relevant matters. In Tanzania, under the model gender by-laws the village gender committees are charged with raising awareness of women’s issues and land investments, and conducting focus group discussions. In the Philippines, raising awareness and educating women and communities can be strategies for resolving gender issues.

Although the reforms focus on the three project countries, the types of measures recommended may help support more inclusive and participatory community decision-making on land investments in other settings. The issue of land commercialization is complex. No single intervention can resolve the power asymmetries that disadvantage communities, and women in particular, in the processes involved. Change is needed beyond formal legal requirements. A range of tools, interventions, and policies is necessary to create a level playing field for women and change entrenched attitudes and behaviors that prevent them from having a voice and expressing their choices in decisions that will impact their lives in profound ways.

LAWS AND POLICIES REVIEWED

Mozambique

- Constitution of Mozambique
- 1995 National Land Policy
- National Agriculture Investment Plan 2014–2018
- 1997 Land Law
- 1998 Land Law Regulations
- Decree No. 43/2010, “Amending Art. 27 (2) of the Land Law Regulations”
- Ministerial Order 158/2011, “Establishing procedures for consultation with the local communities on the use and property rights of land under Art. 27 par. 2 of the Land Law Regulations”

Tanzania

- Constitution of Tanzania
- 1995 National Land Policy, revised in 1997
- 1996 National Investment Promotion Policy
- 1999 Land Act
- 1999 Village Land Act
- 1967 Land Acquisition Act
- 1997 Tanzania Investment Act
- 1982 Local Government (District Authorities) Act
- 2001 Land (Compensation Claims) Regulation
- Tanzania Development Vision 2025

Philippines

- 1987 Philippine Constitution
- Philippine Development Plan 2011–2016
- The Magna Carta of Women, R.A. No. 9710 (2009)
- 1997 Indigenous Peoples Rights Act (IPRA)
- NCIP Administrative Order No. 3 Series of 2012, “The Revised Guidelines on Free and Prior Informed Consent (FPIC) and Related Processes of 2012”

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ENDNOTES

1. While there are commercial ventures that prefer female labor, studies find that the pay and conditions of work are often so poor that they amount to women's further subordination (See Berhman et al. 2011; Anseeuw et al. 2012).
2. Includes the International Finance Corporation's Performance Standards on Environmental and Social Sustainability (2012) for borrowing corporations and entities, and the World Bank's Environmental and Social Framework (under review) for borrowing governments.
3. Includes the Committee on Food Security's Principles for Responsible Investment in Agriculture (2014), USAID's Operational Guidelines on Responsible Land-based Investment (2015) and the New Alliance's Analytical Framework for Land-based Investments in African Agriculture (2015).
4. The goal of the Land Matrix is to "facilitate an open development community of citizens, researchers, policymakers and technology specialists to promote transparency and accountability in decisions over land and investment." The platform is designed as an open tool, allowing for "participation in constantly evolving, correcting and improving the information it contains." The website admits that the numbers in the database "will never be error-free," as "limited research has been undertaken in many countries" and land deals change, are annulled or unreported, or new deals emerge. Land deals are also "notoriously un-transparent." Furthermore, the database excludes minerals and logging concessions, as well as deals by domestic investors. Thus, the likelihood is that the aggregate numbers in the dataset are an "under-estimation of the scale of land deals." See <http://landmatrix.org/en/get-the-idea/web-transnational-deals/>.
5. A community in Kasibu municipality in Nueva Vizcaya province.
6. A site in Kulaman Valley, Senator Ninoy Aquino municipality, Sultan Kudarat province.
7. Covers land deals that are concluded and those still in various stages of negotiation, i.e., intended deals. See www.landmatrix.org/en/. Again, the numbers in the Land Matrix dataset may not be accurate due to limitations in data collection. See Endnote 4 above.
8. Cited in Oakland Institute (2011a).
9. According to the Agriculture Minister in 2011, a total of 2,906 parcels covering 914,000 hectares were underused or undeveloped by investors, some of them as long as five years after the land was acquired. See Oakland Institute (2011a).
10. These are the 1998 Land Law Regulations, 2000 Technical Annex, and 2006 Urban Land Regulations.
11. Cited in International Fund for Agricultural Development (IFAD) and Global Land Tool Network, *Land and Natural Resources in Mozambique*. See: http://www.ifad.org/english/land/perspectives/gltn/Mozambique_FactSheet.pdf.
12. See: *Concept, Principles and Strategy of the Green Revolution in Mozambique* prepared by the Ministry of Agriculture, at: http://fsg.afre.msu.edu/mozambique/caadp/Strategy_Green_Revolution_English%20final_021107_Eng_v2.pdf. See also Paul and Steinbrecher (2013).
13. SAL and Caldeira, Advogados, *Mining in Mozambique: Overview*. At: <http://uk.practicallaw.com/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1247695448831&ssbinary=true>.
14. Translated as "land use and benefit right."
15. Art. 12, Land Law.
16. Art. 12, Land Law.
17. Arts. 11–13, 19–20, 24–25, Land Law; Arts. 20–30, Land Law Regulations. The investor's exploitation plan or investment project is submitted for approval to the government agency charged with the proposed activity, for example, the directorate of mining or tourism.
18. The Provincial Geography and Cadastre Department (*Serviços Provinciais de Geografia e Cadastro*) is under the Ministry of Agriculture. It is responsible for land surveying and processing DUAT applications, and managing the provincial land cadastre. See: <http://www.acismoz.com/lib/services/publications/docs/Rural%20Land%20Edition%20III%20English.pdf>.
19. The district level is "the principal territorial unit for the organization and functioning of the local administration" under the Law on the Local Organs of the State (Law 8/2003). See Local Public Sector Country Profile: Mozambique, at: <http://www.localpublicsector.net/profiles/moz2010.htm>.
20. Art. 13(3), Land Law, which provides that: "The application for a title for the right of land use and benefit shall include a statement by the local administrative authorities, preceded by consultation with the respective communities, for the purpose of confirming that the area is free and has no occupants."
21. Art. 27(3), Land Law Regulations, which provides that: "The opinion of the District Administrator shall refer to the existence or otherwise of rights of land use and benefit acquired by occupancy in respect of the area applied for. In the event that the area applied for is subject to other rights, the opinion shall contain the terms under which the partnership between the applicant and the holders of the right of land use and benefit acquired by occupancy shall be governed."
22. Art. 22, Land Law.
23. Decreto 43/2010 of October 20, amending Art. 27(2) of the Land Law Regulations; Diploma Ministerial (Ministerial Order) 158/2011 "Establishing procedures for consultation with the local communities on the use and property rights of land under Art. 27 par. 2 of the Land Law Regulations."
24. Consisting of the District Administrator or his representative, a representative of the cadaster services, and members of the Advisory Boards of Villages and Towns.
25. Art. 13(3), Land Law; Arts. 24(1)(e), 27(2,3), Land Law Regulations; Art. 2, Decreto 43/2010; Art. 2, Diploma Ministerial 158/2011.
26. Art. 27, Land Law Regulations; Decreto 43/2010.
27. Art. 6, Diploma Ministerial 158/2011.
28. Art. 1, Diploma Ministerial No. 158/2011.
29. An elective body tasked with explaining governmental policies to local communities and encouraging citizen participation, as well as fostering interaction between communities and the state.
30. Art. 6, Diploma Ministerial 158/2011.
31. See Art. 27(2) of the Land Law Regulations. The first amendment to Art. 27(2) is Decreto 43/2010, which expanded the participants in community consultations from three sets of stakeholders—the cadaster services, the District Administrator, and the local community—to six, to henceforth include members of Advisory Boards of Town and Local Community, owners or occupants of adjoining land, and the applicant. It also changed the signatories of the minutes.
32. Arts. 2 and 3, Diploma Ministerial No. 158/2011.

33. The approving authority depends on the size of the land to be acquired: provincial governors for lands not more than 1,000 ha; the Minister of Agriculture and Fisheries for lands between 1,000 and 10,000 ha, and the Council of Ministers for lands exceeding 10,000 ha. For land areas requiring approval by the Council of Ministers, the Center for Promotion of Investments (CPI) consolidates the land application and investment project documentation for approval by the Council. (Arts. 22 and 25, Land Law; Art. 28, Land Regulations).
34. Arts. 25–27, Land Law.
35. Art. 17, Land Law; Art. 18, Land Law Regulations.
36. Knight cites the findings of Calengo, A. J., J. Monteiro, and C. Tanner (2007), *Mozambique Land and Natural Resources Policy Assessment, Final Report*. Maputo: Centre for Juridical and Judicial Training, Ministry of Justice.
37. Tanner and Baleira cites the study conducted by Seuane, S., and M. Rivers-Moore (2005), *Aspecto do Género e o Impacto do HIV/SIDA sobre os Direitos das Mulheres e das Crianças no Acesso a terra e Recursos Naturais*. Maputo: Centro de Formação Jurídica e Judiciária.
38. CTV also found instances of non-consultation, where affected community members were simply called to the district office and informed that their land would be occupied by an investor in exchange for monetary compensation to be given to them. In other cases, owners or occupants of adjoining land were left out of community consultations.
39. Constitution of Mozambique, 1990, amended and supplemented in 2004.
40. The new Family Law (No. 10/2004) extends inheritance rights to women in informal unions (including customary unions) and gives either spouse responsibility over family decisions regarding assets and property (see Knight 2010, 123).
41. See The Global Initiative for Economic, Social and Cultural Rights, *Using CEDAW to Secure Women's Land and Property Rights: A Practical Guide*: 6–7. Retrieved from: <http://globalinitiative-escr.org/wp-content/uploads/2014/03/CEDAW-Guide.pdf>.
42. See: http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf.
43. Although there is a high percentage of women in the Mozambican parliament, owing to political party quotas, and increased representation in the executive branch, the presence of women shrinks from the central to the provincial and district levels. Women's participation is still very weak at the lowest level of district administrators and administrative posts, which are most visible and directly involved with the local populations. But the promotion of women in the public sphere is combined with continued inequality in economic life (in terms of education, employment and income), in the community, and in the domestic sphere. (Tvedten et al. 2008).
44. The Technical Annex to the Land Law Regulations (Ministerial Decision No. 29-A/2000) defines delimitation as the "identification of the boundaries of the areas occupied by local communities or national individual persons, who are and for at least ten years have been using the land in good faith, including the entry of the information into the National Land Cadastre" (Art. 2[3]).
45. 1997 Land Law.
46. Dar es Salaam Institute of Land Administration and Policy Studies (DILAPS), 2010, *Appraisal of Prime Issues on the Creation of Tanzania Land Bank*. Retrieved from: <http://www.dilaps.or.tz/downloadfiles/3/The%20Land%20Bank%20-%20Appraisal%20of%20Prime%20Issues.pdf>.
47. Out of the 4 million hectares applied for, 640,000 hectares were allocated in 2009.
48. See Sulle (2015). For the other types of investments, see Landmatrix.org, at: <http://www.landmatrix.org/en/get-the-detail/by-target-country/united-republic-of-tanzania/>.
49. See DILAPS, at <http://www.dilaps.or.tz/downloadfiles/3/The%20Land%20Bank%20-%20Appraisal%20of%20Prime%20Issues.pdf>.
50. Interview with TIC Manager for Public Relations, Ms. Pendo Gondwe. Quoted in the article "Tanzania Guidelines for Land Allocation to Investors," posted at: <http://farmlandgrab.org/post/view/21520-guidelines-for-land-allocation-to-investors#sthash.bgS7QLol.dpuf>.
51. Sec. 2.4, 1995 National Land Policy, Second Ed. 1997. The Policy does not define what "productive" means, although there is reference to "optimal" or "best use of land so that land as an investment resource can make the maximum contribution to the country's development process." (Sec. 9.0).
52. Sec. 2.1(f), 1996 National Investment Promotion Policy.
53. Sec. 4.2.8(i), National Land Policy.
54. The other five areas are: Energy and Natural Gas, Water, Education, Transport, and Mobilization of Resources. See: <http://www.pmorag.go.tz/quick-menu/brn/>.
55. See Presentation of Tanzania's Head Unit of Investment Policies and Private Sector Development, Department of Policy and Planning, at: http://www.fao.org/fileadmin/templates/esa/Workshop_reports/Smallholders_2012/Presentations_1/Ngaiza_Kilimo_Kwanza_Tanzania.pdf. See also Paul and Steinbrecher (2013).
56. General Land is defined as land that is not reserved land or Village Land, including unoccupied or unused Village Land. A different definition is provided in the VLA, viz, all public land that is not Reserved Land or Village Land. Reserved Land refers to areas set aside for conservation and protection as well as reserved for public utilities, land where water resources for a natural drainage basin originate, and land declared by the State as hazardous land. Village Land refers to land occupied by the village under customary tenure, including land within the boundaries of the village, lands designated or demarcated as Village Land under other relevant laws or administrative procedure, and land occupied in whatever manner for at least 12 years prior to enactment of the VLA.
57. See LandMarkmap.org <http://www.landmarkmap.org/map/#x=33.79&y=-10.91&l=3>.
58. The Village Council consists of not less than 15 and not more than 25 members, including the Village Chairperson and all Chairpersons of Vitongojjs (hamlets) under the jurisdiction of the Village. See: *The Local Government System in Tanzania* at: <http://www.clgf.org.uk/userfiles/1/files/Tanzania%20local%20government%20profile%202011-12.pdf>.
59. Sec. 5, Land Act; Secs. 4 and 5, VLA.
60. Sec. 2, Land Act; Sec. 2, VLA. Individuals, families, or groups of individuals residing within the village may obtain a Certificate of Customary Right of Occupancy for parcels allocated to them for their use and occupation. Villages are defined under the Local Government (District) Authorities Act and other local government legislation.
61. Sec. 32, VLA.
62. The Tanzania Investment Centre is the government agency charged with coordinating, promoting, and facilitating investment in Tanzania. The TIC maintains a land bank of specific plots of land available to foreign investors. It is argued, however, that foreigners may also acquire derivative rights to customary lands under Sec. 32 of the VLA, see Nshala (2014).
63. Sec. 19, Land Act; Sec. 18(1)[a], VLA.
64. Secs. 25–30, Land Act.

65. Secs. 22, 31 and 33, Land Act; also the Summary of Procedures to Obtain Land in the TIC website at: <http://www.tic.co.tz/procedure/286/165?l=en>.
66. See TIC 2014–2015 Investment Guide. At: http://www.tic.co.tz/media/Guide_book_2014_for_flip.pdf.
67. Sec. 4, VLA.
68. Art. 55, Local Government (District Authorities) Act.
69. Sec. 4(6), VLA.
70. Sec. 4(8), VLA.
71. See <http://faolex.fao.org/docs/pdf/tan28342.pdf> & <http://faolex.fao.org/docs/pdf/tan28341.pdf>. Under the 2001 Land (Assessment of the Value of Land for Compensation) Regulations, compensation for loss of any interest in land shall include value of unexhausted improvement disturbance allowance, transport allowance, accommodation allowance and loss of profits (Sec. 7).
72. Secs. 32–34, VLA.
73. Sec. 32[5], VLA. Note that according to information provided to WRI by an NGO (Tanzania Natural Resource Forum), per regulation the maximum size that may be granted under derivative rights is 50 ha.
74. Sec. 12[1], VLA.
75. Note, though, that research also shows that there are times when government agents want to “do the right thing” for the villagers but lack the guidance and experience to do so (Knight (2010), citing Cotula et al. (2009)).
76. Sec. 5, Land Act; Secs. 4–5, VLA.
77. The collective was called *Shamba la Umoja wa Kina mama*. See *Tanzania Country Report*.
78. Arts. 13(1) and (4).
79. Art. 9(g).
80. Art. 21(2), Constitution of Tanzania.
81. Sec. 3, Land Act; Sec. 3(2), VLA.
82. At the national level, the Constitution provides that women shall constitute not less than 30 percent of the members of the National Assembly, Tanzania’s parliament (Art. 66).
83. Secs. 60(2) and 53(2), VLA. The Village Land Council must have at least two women out of seven members, while Village Adjudication Committees must have least three women out of nine members.
84. Art. 9, Maputo Protocol.
85. <http://www.mof.go.tz/mofdocs/overarch/Vision2025.pdf>.
86. Sec. 105, LGA.
87. The quorum for Village Land Council meetings is four persons, of which at least one is required to be a woman, while the quorum for the Village Adjudication Committee is four persons, where the number of the committee is six, which must include at least two women, and five persons, where the number of the committee is greater than six, which must include at least two women. Secs. 60(9) and 53(5), VLA.
88. The power to elect the Village Council is provided under Sec. 141, LGA.
89. Art. II(22) and Art. XII(5).
90. Refers to the 2004–2010 Medium Term Development Plan. The 2010–2016 Development Plan does not provide a specific target but pursues the same policy objectives. See Pulhin and Ramirez (2013).
91. Landmatrix.org, <http://www.landmatrix.org/en/get-the-idea/web-transnational-deals/>.
92. Sec. 2, IPRA.
93. Sec. 3(g), IPRA.
94. Secs. 57, 33, 35 and 7(c), IPRA.
95. Sec. 59, IPRA.
96. The original FPIC guidelines formed part of the 1998 Implementing Rules and Regulations of the IPRA. The guidelines were revised in 2002 and subsequently in 2006, and then in 2012.
97. Defined in Secs. 19 and 24, NCIP Administrative Order 2012-03, The Revised Guidelines on Free and Prior Informed Consent (FPIC) and Related Processes of 2012.
98. Sec. 24, NCIP Administrative Order 2012-03.
99. Sec. 22, NCIP AO 2012-03.
100. Secs. 22 and 24, NCIP AO 2012-03.
101. Secs. 31 to 34, NCIP AO 2012-03.
102. The report was published in 2013, but the case studies were conducted from May 2011 to mid-2012. See <http://www.ncip.gov.ph/images/pdf/Assessment%20of%20FPIC%20in%20the%20Philippines%20-%20Volume%201.pdf>.
103. Note that the women belonged to several tribes residing within the mining concession area, as indicated in the LRC Report.
104. Art. II, Sec. 14 provides: “The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.”
105. Sec. 26, IPRA.
106. Republic Act No. 9710 (2009). In addition, in 1991, the legislature passed the Women in Development and Nation Building Act (Republic Act No. 7192), which mandates that a substantial portion of official development assistance funds be set aside and utilized by government agencies concerned to support programs and activities for women, particularly to ensure the full participation and involvement of women in the development process.
107. Sec. 20(b)(5), R.A. 9710.
108. Sec. 28, R.A. 9710.
109. NCIP (National Commission on Indigenous Peoples). *Draft Indigenous Peoples Master Plan 2011–2016*. See ASoG (2015).
110. ASoG, LRC, and representatives of other government agencies (Philippine Commission on Women, Environmental Management Bureau, Department of Environment and Natural Resources (DENR), and Land Management Bureau, DENR) expressed the opinion that custom is not static, it evolves as people adapt to changing circumstances. Policies and reforms on gender equality can influence custom (ASoG 2015).
111. See United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
112. WEDGE Plan 2013–2016 (2013), 162.
113. See Section 19, Magna Carta of Women and Article 11 of the Civil Code of the Philippines (1949). It is not clear whether these provisions have been tested against the IPRA or whether they will be invoked by the PCW against gender discriminatory customs.
114. Defined as the comprehensive and fundamental title to or ownership of lands and waters assumed by a nation state. See Oxford Reference, at: <http://www.oxfordreference.com/view/10.1093/acref/9780195557558.001.0001/acref-9780195557558-e-2742>.
115. Mozambique: Lei n° 3/93 de 24 de Junho de 1993 (Lei de Investimentos); Tanzania: The Tanzania Investment Act, 1997; and the Philippines: Foreign Investments Act of 1991.
116. In sub-Saharan Africa, women provide between 60 and 80 percent of the food for household consumption. In Southeast Asia, women provide up to 90 percent of the labor force for rice cultivation. See Behrman et al. 2011.

117. Article 21 of CEDAW empowers the CEDAW Committee on the Elimination of Discrimination against Women to “make suggestions and general recommendations based on the examination of reports and information received from States Parties.” These, as well as comments from States Parties, are included in the session reports of the Committee. Suggestions are usually directed at United Nations entities, while general recommendations are addressed to States Parties and usually elaborate the Committee’s view of the obligations assumed under the Convention. See: <http://www.un.org/womenwatch/daw/cedaw/recommendations/>.
118. See Beijing Declaration and Platform of Action, cited in Grown et al. (2005).
119. Note also that quota systems need to be supplemented with other policies to enable women to be effective representatives. The importance of access to training and skills development to increase confidence to speak up in public forums and develop leadership is emphasized in development circles. See *Women in Power and Decision-Making*, Beijing Platform for Action. <http://www.un.org/womenwatch/daw/beijing/beijingat10/G.%20Women%20in%20power%20and%20decision-making.pdf>.
120. The revised environmental impact assessment regulations were enacted in December 2015, Decree No. 54/2015 of December 31. The revised regulations require at least two public consultation meetings. Aspects relating to strategies that encourage the participation of women, as recommended in the proposal submitted to the government, would be integrated in the Directive for Public Participation that will also be revised.
121. The model gender by-laws were approved by the respective Village Assemblies of Vilabwa and Kidugalo villages in the second quarter of 2016.

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