



# Strengthening women's voices in the context of agricultural investments: Lessons from Tanzania

Man-Kwun Chan, Grace Kamugisha, Mary Kesi and Annmarie Mavenjina



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# Strengthening women's voices in the context of agricultural investments: Lessons from Tanzania

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International Institute for Environment and Development  
80-86 Gray's Inn Road  
London WC1X 8NH  
United Kingdom

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## Acronyms

ASDP	Agricultural Sector Development Programme
EIA	Environmental Impact Assessment
FGD	Focus Group Discussion
GFP	Gender Focal Point
IIED	International Institute for Environment and Development
KII	Key informant interview
LSLA	Large-scale agricultural investment
MAFSC	Ministry of Agriculture, Food Security and Cooperatives, United Republic of Tanzania
MCDGC	Ministry of Community Development, Gender and Children, United Republic of Tanzania
MEM	Ministry of Energy and Minerals, United Republic of Tanzania
TAFSIP	Tanzania Agriculture and Food Security and Investment Plan
TAWLA	Tanzania Women Lawyers Association
TIC	Tanzania Investment Centre
URT	United Republic of Tanzania
USAID	United States Agency for International Development
SAGCOT	Southern Agricultural Growth Corridor of Tanzania

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## About the authors

Man-Kwun Chan is a social development and corporate social responsibility (CSR) professional with 23 years' experience in a wide range of sectors and roles, with substantial overseas experience in 13 countries. For the last 7 years, she has worked as an independent consultant specialising in improving the gender, labour and social impacts of global business operations in developing countries.

Grace Kamugisha Kazoba is a lawyer and a senior academic at the Institute of Finance Management (IFM) with over 10 years' work experience in the field of law, gender and women rights. A visiting lecturer to Ruaha Catholic University, where she teaches investment law and dispute settlements, she has published widely in areas of gender and human rights. She holds a Bachelor and a PhD of laws from the University of Dar es Salaam and a Masters of laws in Human Rights from the University of Pretoria.

Mary Kessi has over 14 years' work experience in women and children's rights, child protection, legal and human rights issues, programme development and management, fundraising and donor relations, gender, governance, research and advocacy. A member of the Tanzania Women Lawyers Association (TAWLA), she has worked with the Tanzanian government, the United Nations and civil society organizations at the grass-roots, national and international levels.

Annamarie Mavenjina Nkelame has 15 years' work experience in women's rights, legal and human rights issues, gender, programme development and management, fundraising and donor relations, gender, governance, research and advocacy, facilitation and documentation. A member of TAWLA, she has worked with civil society organizations at the grass-roots, national and international levels.



## Executive summary

This report constitutes one of four countrywide assessments produced under the International Institute for Environment and Development's (IIED) 'Gender, land and accountability in the context of agricultural and other natural resource investments' initiative. The goal of the initiative is to strengthen rural women's livelihood opportunities by empowering them in relation to community land stewardship and increasing their ability to hold agricultural investors in East and West Africa to account. The main aim of this report is to provide a backdrop of relevant policies and practice. The report draws on a literature review conducted by the Tanzania Women Lawyers Association (TAWLA) and IIED, as well as on primary field research conducted by TAWLA in 2015.

Investor interest in large-scale land deals for agribusiness has raised commercial pressures on land and livelihoods across sub-Saharan Africa. While such projects can potentially benefit local communities, research suggests that investments can often have negative consequences and vulnerable groups, in particular women, tend to suffer disproportionately. This is because such investments tend to reinforce, or even exacerbate, underlying gender discriminatory attitudes and practices rooted in customary norms. Such norms remain prevalent in many rural areas in Africa despite the introduction of progressive laws and policies in many African countries. Understanding these customary norms, as well as the opportunities and challenges presented by existing statutory laws relating to land and investment, is therefore crucial in developing appropriate and effective interventions to strengthen women's voices and accountability in land and investment governance. This report therefore provides a gender analysis of the policy framework governing land and investments in Tanzania. Key findings are summarised below.

Tanzania's broad regulatory framework for promoting gender quality is relatively strong, with substantial mainstreaming of gender into national law and policy and a relatively robust national machinery. However, whilst implementation has been strong in some areas, notably in strengthening female representation in decision-making, overall implementation of gender laws and policies has been weak. Patriarchal norms and practices – including gender discriminatory customary land practices – remain dominant, particularly in rural areas. These undermine the implementation of progressive laws and policies designed to promote women's land rights and representation in land governance structures. Much greater efforts are therefore needed to challenge underlying patriarchal norms and attitudes in rural areas.

Tanzania's statutory legal framework governing land is also largely progressive in terms of promoting women's land rights, particularly in the areas of general statutory land laws and marriage laws. However, implementation of these laws, including key gender equality principles, has been weak, and gender inequality in land access persists largely due to the continued dominance of (patrilineal) customary land laws and practice. Most customary laws only give women indirect rights to land. These tend to be insecure and limited to the right to use land, rather than own it.

Key policy gaps also remain. In particular, inheritance laws have yet to be codified, and the most dominant legal systems are strongly gender discriminatory. Moreover, customary law continues to influence the legal aspects of all facets of land governance, creating *de jure* conflicts when customary law violates the gender equality principles outlined in statutory law. Resolving such conflicts, and ensuring effective application of the statutory principle whereby all gender discriminatory customary law is invalidated, is therefore a central policy concern that needs to be addressed. It will also be important to reform inheritance laws and raise awareness of gender equality provisions in statutory law.

As regards the promotion of women's representation in land governance, Tanzanian laws are very progressive. Substantial and largely comprehensive mandatory affirmative action measures are in place to ensure female representation in land governance structures. Moreover, implementation of these measures appears to be effective, with existing gender quotas largely being met. However, women remain under-represented in senior leadership positions and the quality and impact of women's participation is weak, largely as a result of persisting patriarchal attitudes and practices at both community and household levels. Looking forward, the key emphasis should therefore be on broadening the scope of the legal/policy framework to include measures to strengthen the quality of women's participation and to ensure decision-making supports more gender equitable outcomes, with a focus on targeted education and awareness-raising amongst women, men and leaders in rural areas. There is also a need to address existing gaps in affirmative action measures, notably at Village Assembly level.

Overall, the policy framework for investment promotion and regulation is weak in terms of addressing gender concerns. This is only partially mitigated by the fact that two of the three local authorities that must be consulted on land investments (the Village Council and the District Council) are subject to mandatory gender quotas imposed as part of broader regulations on community consultation and consent. Otherwise, all existing investment regulations, including the voluntary Liquid Biofuel Guidelines, are gender blind, and do not include any gender aims or considerations at all. There are no measures in place to ensure that women are consulted as part of impact assessments, or that women will benefit from the proposed business models and production activities. Moreover, official compensation procedures are such that women are much less likely to benefit than men.

Thus, the whole regulatory framework governing the land acquisition process, including the Biofuel Guidelines, needs to be comprehensively reviewed to ensure that necessary measures to promote gender equality and inclusion are included at all key stages in the process. On a broader level, the regulatory framework also needs to be revised to strengthen the ability of local communities to legally enforce conditions agreed with the investor. The implementation of statutory community consultation requirements also needs to be substantially strengthened to ensure investors are more accountable to both men and women.

## 1. Introduction

### 1.1 Background and aims of this report

This report has been produced as part of the International Institute for Environment and Development's (IIED) 'Gender, land and accountability in the context of agricultural and other natural resource investments' initiative. The goal of this initiative is to strengthen rural women's livelihood opportunities by empowering them in relation to community land stewardship and increasing their ability to hold agricultural investors in East and West Africa to account. In particular, the project has sought to gather best practice on gender-sensitive approaches to the protection of community land among key stakeholders working on the security of tenure in rural areas and responses to 'land grabbing' in Senegal, Ghana, Kenya and Tanzania. The stakeholders include relevant civil society and grassroots organisations, and government officials. The project is also testing new approaches to enabling local voices and lessons from local innovations to inform relevant national policy processes in these four countries.

This report, focused on Tanzania, constitutes one of four countrywide assessments produced under the overall project. It draws on a literature review conducted by the Tanzania Women Lawyers Association (TAWLA) and IIED, as well as on primary field research conducted by TAWLA in 2015 (see Section 1.2 below for further information about the research methodology).

The primary aim of this report is to provide a backdrop of relevant policies and practice to inform the next steps of the project. More broadly, it is also hoped that the report will help to engage and inform practitioners, policy makers and researchers about key governance issues relevant to the strengthening of women's empowerment in community land stewardship and the accountability of agricultural investments in Tanzania.

### 1.2 Research methodology

#### 1.2.1 Literature review

The literature review was conducted by TAWLA and IIED and included a review of:

- Over 10 original laws and policies, and selected case law relevant to the scope of the study;
- Over 20 secondary literature sources that variously provided analysis of relevant statutory laws and policies, descriptions and analysis of customary land laws and practices, and evidence of their actual implementation and impact on the ground.

## 1.2.2 Field research

The field research involved a total of 230 respondents, with a mixture of key informant interviews (KIIs) and community level interviews in 12 villages across different regions of Tanzania. Further details of the geographical coverage and the data collection methods used are provided below.

### Geographical scope

The field research took place in six regions covering four out of the five zones in the country, with one district selected as a focus in each region, as follows: Dar es Salaam Region (Eastern Zone); Kisarawe District in Coast Region (Eastern Zone); Mvomero District in Morogoro Region (Eastern Zone); Iringa Rural District in Iringa Region (Southern Highlands Zone); Dodoma Rural District in Dodoma Region (Central Zone); and Manyara Rural District in Manyara Region (Northern Zone). The specific districts and regions were deliberately selected in order to:

- Obtain a good geographical spread capturing a number of zones across the country;
- Include districts and regions that are “hotspots” for large-scale agricultural investments, and thereby include respondents that will have had direct experience of such investments and the issues involved (Morogoro and Coast Regions);
- Ensure that key national level informants from relevant government ministries and civil society organisations (CSOs) could be included (Dar es Salaam);
- Ensure inclusion of matrilineal communities (Mgeta Ward, Morogoro Region) as well as villages following patrilineal practices.

### Data collection methods for key informants

A total of 50 KIIs were conducted through a mixture of group discussions and individual interviews. Two such group discussions – or “dialogues” – were held in Dar es Salaam and Iringa in order to explore key overarching research themes, such as the status of contracts agreed between investors and villagers, and the power of authorities such as the Tanzania Investment Centre (TIC), District Councils and Village Councils to ensure such contracts were implemented. These multi-stakeholder dialogues involved lawyers, paralegals, researchers and government officials, as well as representatives from grassroots organisations, and were used to help refine questions for subsequent individual KIIs.

Individual interviews were conducted at both national and district level. At district level, interviewees included: land officers; legal officers; investment desk officers; planning officers; agriculture and natural resources officers; and community development, gender and welfare officers. At national level, interviews were held with representatives from: government (Ministry of Lands and Human Settlement, Ministry of Trade, and the Prime Ministers’ Office – under which the TIC operates);

civil society (Oxfam, Action Aid, and the Legal and Human Rights Centre); and legal experts and academics.

### Data collection methods at community level

As well as the KIs, the fieldwork team also engaged with 180 community respondents in 10 villages, with two villages selected per district<sup>1</sup>. The strategy used for selecting villages varied according to local circumstances. In some cases, the research team had already established contact with suitable villages through Village Executive Officers (VEOs), such as in Kisarawe District. In Mvomero District, snowball sampling was used to identify appropriate villages. In all other districts, the research team asked district council officers to identify relevant villages that had prior experience of large-scale agricultural investments. A mixture of individual interviews, Focus Group Discussions (FGDs) and observation was used in each village, as follows:

- Individual interviews: In each village, 15 individuals were sampled randomly with the assistance of local government officials who ensured equal representation of men and women.
- FGDs: In each district, FGDs with 6-8 participants were conducted to verify information obtained during individual interviews, and to clarify sensitive matters, such as the roles played by men and women in allocating and governing village land. In all but one village, FGD participants were the same as those participating in the individual interviews.
- Observation: Throughout the community level research, the researchers observed the extent of women's representation and participation in meetings, including the number of women who attended meetings and how they responded to questions in the presence of men.

### 1.2.3 Limitations of the study

Regarding the literature review, it should be noted that the intent was not to provide a comprehensive review of all the available literature on relevant topics, but rather to identify key issues based on a review of selected references judged most relevant to the study's purpose and scope. For this reason, and due to resource constraints, the literature reviewed was primarily limited to English language documents and resources that were available for free on the Internet. Despite these constraints, sources were triangulated as far as possible to ensure that their findings were accurate and reliable.

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1. No community-level research was conducted in Dar es Salaam Region, since the focus here was on KIs from government, civil society and academic institutions.

In terms of the field research, it was difficult to secure appointments with all relevant district officers in Morogoro because a candidate for the imminent presidential elections was visiting the region at around the same time. In Iringa, there was no investment desk officer so it was difficult to compare relevant findings directly with other districts. Nevertheless, the research team attempted to address these limitations by seeking to obtain the relevant information from other sources, including national level representatives and secondary literature sources. Overall therefore, the authors are reasonably confident that the research findings presented below are valid.

### 1.3 How the report is structured

The remainder of the report is structured as follows:

- Chapter 2 sets the scene for the main sections of the report, providing an overview of large-scale agricultural investments (LSLAs), their impact on local communities in Africa, specific gender implications, and the underlying governance constraints that prevent more positive outcomes.
- Chapter 3 explores the status of women and gender equality in Tanzania in broad terms, briefly reviewing the wider policy framework and the extent to which progressive laws and policies are implemented in practice.
- Chapter 4 addresses the legal framework governing women's access to land, including customary as well as statutory law. It also explores the extent to which gender equitable policy elements are implemented in practice, and the challenges involved.
- Chapter 5 explores the regulatory framework governing women's representation in land governance structures, the extent to which progressive measures are implemented in practice, and the impact of these measures in terms of ensuring effective participation. It also considers women's representation and participation in customary land governance structures and the extent to which these institutions remain influential.
- Chapter 6 describes the legal and policy framework governing large-scale agricultural investments, and analyses the key gender implications involved.
- Finally, Chapter 7 presents brief conclusions and recommendations for practitioners, policy makers and researchers.

## **2. Setting the scene: LSLAs, community, gender impacts and underlying governance constraints**

### **2.1 Introduction**

This brief context-setting chapter provides an overview of LSLAs in Africa, the increased commercial pressure on land they exert, and the impacts on local communities. It then looks at the specific gender implications of LSLAs, and the underlying governance constraints that drive gender unequal outcomes. Section 2.2 explores key trends across sub-Saharan Africa as a whole, whilst Section 2.3 briefly reviews available evidence in the Tanzanian context.

### **2.2 Commercial pressures on land, local communities and gender impacts in sub-Saharan Africa**

Recent years have seen a renewed investor interest in acquiring farmland for agricultural investments in the global South, largely driven by a fast evolving global context that has resulted in more volatile agricultural commodity prices. Africa has attracted a great deal of investor interest and accounts for a large share of recent land acquisition. Several sub-Saharan African countries have experienced strong interest from foreigners interested in buying land and Tanzania is no exception.

While investment in agriculture can create jobs, improve access to markets and develop infrastructure for agricultural development, many large-scale land acquisitions (LSLAs) have been associated with negative impacts for local populations, including the loss of land and other resources. Since many villagers depend on land and natural resources for their food security and livelihoods more generally, ill-conceived land acquisitions can have major, lasting negative repercussions for local livelihoods. Alongside demographic and climatic pressures, commercial pressures on land are therefore putting those with weak security of tenure at greater risk of displacement to more marginal land or outright dispossession. Those who rely on common property resources – often accessed for food, fuel and medicinal products – are the most at risk; and weak security of tenure combined with weak social and environmental safeguards in investments conspire to deliver few social benefits.

Attempts to protect community land rights in response to these threats have often taken limited or no account of gender relations and women's land rights are often misunderstood or go unrecognised. While many guidelines on land governance and responsible investment promote the need for more sensitivity to gender relations, and many statutory laws guarantee women equal property rights, the evidence suggests that implementation is often weak. Women often lose out on the



potential benefits of investments and bear a disproportionate share of the negative impacts.

Moreover, land rights – who holds them, how strong they are – are one of the key factors influencing who participates in land investment negotiations within communities, and who may ultimately benefit from them. This means that women's weaker land rights can make them more vulnerable to losing out in investment processes.

Changes in land use tend to affect men and women differently. Where investments result in communities losing land, women are likely to be disproportionately affected. Although impacts on women and men are varied and context-specific, initial research suggests that changes in land use and/or control can result in:

- Land traditionally used by women being given away. Communities might allocate land traditionally used by women to investors, or men may take control of crops previously in a female domain once they realise the crops have risen in value.
- Women working longer hours to provide food and water for the household. As land becomes scarcer, women tend to have to work longer hours and walk longer distances to farm and collect water and wood. Since women tend to be the main food providers, this has a greater impact on them than it does on men and cuts their productivity.
- Further erosion of women's rights. Evidence indicates that as pressures on land increase, women's land rights become even weaker. In Uganda and Tanzania, studies have shown that increased competition for land can cause a breakdown in customary rules, especially those related to managing communal land resources. This results in a reinterpretation of those rules that further weakens women's access to, use of, and ownership of land.
- Men benefitting more than women from new employment opportunities. Although investments can result in new job opportunities for local communities, these jobs tend to benefit men disproportionately. In the Philippines, for example, the investor Vergara acquired land along coastlines for shrimp farms, which resulted in new seasonal employment opportunities for men but not for women.

Customary norms and practices often also greatly influence how investment projects impact a community. While contexts differ, customary norms and practices often undermine women's rights when land is commoditised or when outside interests are present:

- Women's customary land rights are more vulnerable. Even where customary tenure systems recognise women's land rights and both men and women report a relatively high degree of joint ownership, women's names are rarely on the documents, making them more vulnerable to losing their rights.

- Women have limited participation in decision-making processes. Customary practices often obstruct women's participation in decision-making processes over land governance and benefit-sharing from land investments.
- Women are often excluded from negotiations and benefit sharing. Women's exclusion from community discussions about land governance in turn limits their participation in community consultations with potential investors. This affects how land is valued, how and to whom compensation is paid, and how benefits from the investment are shared. Even if women participate in a contract farming scheme, they often do not control the profits they make as men typically control the allocation of household income.

Since customary norms reinforce gender inequalities when it comes to land, investments are likely to result in differentiated outcomes for men and women. These barriers can make it very difficult for investors to create better outcomes for women, since local issues around gendered land ownership are often highly complex.

### 2.3 LSLAs in the Tanzanian context

Tanzania has generated strong interest from foreign investors due to its vast tracts of fertile agricultural land, its stable political system, and its plentiful water resources. Following the enactment of the *National Investment (Promotion and Protection) Act* in 1990 and other subsequent government measures to promote investment, total foreign investment in Tanzania grew from 0.1 per cent of GDP in 1990 to 32.9 per cent in 2005.

Whilst agriculture has not previously been a leading sector for foreign direct investment, agricultural investment has become a top priority for the government since the late 2000s (see Chapter 6). Foreign investment in agriculture has been concentrated firstly on agrofuel production and secondly on food production; as of 2011, the main crops for which land was being sought by foreign investors were Jatropha, sugarcane and palm oil. There are some contradictions in the data on the scale of agricultural investment, but according to one estimate over four million ha of land has been requested by foreign investors, with 100,000 ha having been formally leased as of 2010 (Oakland Institute, 2011; Daley and Park, 2012). As regards the geographical distribution of investments, regions that have attracted LSLAs include Coast, Morogoro, Kilwa, Iringa, Mbeya, Rukwa, Tanga, Arusha and Kilimanjaro. In terms of business models adopted by investors, these have included large-scale plantations, smallholder outgrower schemes, and mixed models that combine both large- and small-scale production.

Although investment regulation is relatively strong regarding community consultation and consent (see Chapter 6), in practice investors frequently only partially follow the official process or by-pass it altogether. In particular, consultation with the Village Assembly and general community members is often by-passed; this is problematic given that village leaders often make decisions that reflect their own individual interests rather than those of the wider community, and reports of bribery and corruption have repeatedly surfaced. Moreover, investors typically fail to provide a balanced picture of the proposed investment to affected communities, focusing only on positive aspects. Given that villagers (both women and men) typically have very limited awareness and understanding of laws governing investments and their associated rights, investors can easily outmanoeuvre the villagers (field research findings; also Oakland Institute 2011). Official land valuation and compensation procedures are also poorly implemented in practice, with a lack of transparency on the part of the government and few villagers receiving compensation (field research findings; also USAID, 2011).

There are also important gaps in existing investment regulations which leave local communities in a weak negotiating position. In particular, the transferral of land rights from the community to the government, and the community's loss of rights to the land at this point, has significant implications (see Chapter 6). Firstly, it means that once compensation has been negotiated and paid, villagers do not have any legal right to receive on-going income or benefits resulting from the investment activities (USAID 2011). Secondly, it also implies that any social conditions agreed in community-investor negotiations are not legally enforceable once the land has been transferred, leaving villagers unable to hold investors to account (field research findings; also Oakland Institute, 2011).

Limited evidence was found concerning the specific gender impacts of LSLAs in Tanzania. Nevertheless, one detailed gender case study on a sugarcane investment in Morogoro Region (Dancer and Sulle, 2015), and a comparative gender analysis of three different businesses in Arusha Region covering five different types of business models in two different sectors, (biofuels and horticulture) (Daley and Park, 2012) were identified and reviewed. Given that gender impacts of LSLAs are context-specific, the conclusions drawn below are not necessarily representative of the gender impacts of investments in Tanzania as a whole. Nevertheless, they provide an indication of the types of gender issues that are emerging.

The main gender impacts highlighted by these studies related to women's unequal share of the benefits from contract farming and waged employment opportunities. As regards contract farming schemes, the studies found that – compared to their male counterparts – female contract farmers face greater barriers to entry, tend to be restricted to the production of lower value crops, are less able to expand their businesses and have less control over the income they earn. In relation to waged employment opportunities, the studies found that women workers tend to experience gender discrimination in pay and conditions as a result of both horizontal and vertical occupational segregation. Sexual harassment by male colleagues and managers was also identified as a risk (Daley and Park, 2012; Dancer and Sulle, 2015).

As regards the underlying governance constraints behind these observed gender impacts, the two studies highlighted in particular the influence of women's weak land rights and underlying patriarchal attitudes and practices. For example, Daley and Park (2012) highlight the fact that women's weaker access to land limits the scale of their production and also their participation in production of higher value crops; and Dancer and Sulle (2015) note that women's smaller landholdings are a key constraint in terms of their eligibility to compete for leadership positions in growers' associations. As regards patriarchal norms, Daley and Park underline the importance of unequal household power relations in restricting women to lower value crops and in limiting women's control over income from contract farming. Further, patriarchal gender stereotypes were identified as a key influence on the gender division of labour in waged work, and on women's weak representation in leadership positions in growers' associations (Daley and Park, 2012; Dancer and Sulle, 2015).

## 3. The status of women and gender equality in Tanzania: the broad policy context

### 3.1 Introduction

The status of women in Tanzanian society as a whole, and the extent to which the broad regulatory environment promotes gender equality across different spheres of life, provides an important backdrop for understanding and addressing gender equality in land and investment governance. This chapter therefore provides a brief overview of the national legal framework and the extent to which it promotes gender equality across society as a whole (Section 3.2). It then considers the extent to which progressive policy elements are implemented in practice, and in particular the extent to which existing measures have been effective at challenging underlying patriarchal attitudes and practices (Section 3.3).

### 3.2 The statutory legal framework

Tanzania has signed up to most of the international and regional instruments relevant to the promotion of gender equality, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003; and the SADC Protocol on Gender Equality, 2008 (Duncan, 2014; MCDGC, 2012).

Tanzania has also made significant strides in terms of mainstreaming gender in national legislation and policy, including the incorporation of key gender equality principles in cross-cutting laws (including the Constitution) and in sectoral policies (including those on education, health, and agriculture). The Government of Tanzania has also adopted a range of affirmative action measures to promote women's representation in decision-making positions in the public sector and in Parliament at both national and local levels (Duncan, 2014; MCDGC, 2012), and developed a National Strategy for Gender Development in 2005 (MCDGC, 2005).

The government has also adopted specific policy measures to address underlying patriarchal attitudes and practices. For example, the National Strategy for Gender Development (2005) includes specific provisions to address patriarchal cultural practices harmful to women such as the widespread disinheritance of widows, the disproportionate burden of reproductive work on women, and women's marginalisation in decision-making over income and resource allocation at household level (MCDGC, 2005). The government has also adopted progressive laws and plans addressing specific gender discriminatory "cultural practices" such as the well-articulated national plan for the eradication of violence against women (2005) (MCDGC, 2012).

On paper at least, there is also a relatively robust national machinery in place for the implementation of gender laws and policies. Tanzania has a fully-fledged ministry with a gender mandate – the Ministry of Community Development, Gender and Children (MCDGC). Moreover, Gender Focal Points (GFPs) have been established in government ministries, independent departments and agencies, regional secretariats and local authorities; and efforts have also been made to promote gender budgeting (MCDGC, 2012).

### **3.3 Implementation of gender laws and policies**

The government has made substantial progress in terms of increasing women's representation in decision-making positions in the public sector and in politics, including increasing the number of women in Parliament, increasing the number of women in senior public office positions at national level, and in strengthening women's representation in district level governance structures (discussed further in Chapter 5). Significant steps have also been made in the education sector, with female and male enrolment more or less on a par at primary level, and with only a small gender gap at secondary level. There is also evidence to suggest that some progress has been made in incorporating gender issues into the school curriculum and in teaching materials (MCDGC, 2012).

The implementation of gender laws and policies has on the whole been weak however, with the result that gender inequalities remain substantial in many spheres of life. For example, women remain disadvantaged in terms of employment, earning less than men across all educational and occupational scales, and with women being more likely than men to be unemployed. Overall, women still remain under-represented in senior public governance positions, and girls' secondary participation rates continue to lag behind that of boys (MCDGC, 2012).

Moreover, patriarchal attitudes and practices persist, particularly in rural areas, which means that women continue to be marginalised in terms of access to land and productive resources. Disinheritance of widows remains commonplace, women are still expected to shoulder the biggest burden of reproductive and childcare responsibilities, and women's participation in public meetings and decision-making remains marginalised. Gender-based violence remains a particular concern, with evidence that this is on the rise (MCDGC, 2012; see also Chapters 4 and 5).

Barriers to implementation of gender policies include: limited political will to prioritise gender issues, and limited resources to implement gender policies; low awareness of gender rights, laws and policies amongst the local leadership, local law enforcement bodies and local communities as a whole; lack of incorporation of gender priorities into implementation plans, especially at local government level; limited capacity of GFPs and the MCDGC, and inadequate and inappropriate

capacity building efforts to counter this; and limited ownership of gender equality goals and targets in government bodies beyond the GFPs (MCDGC, 2012). As regards specific barriers to tackling patriarchal attitudes and practices, there is a limited budget allocated to this particular area of activity. In addition, a perception among village leaders that the government's priority regarding gender is to increase the number of female representatives in governance bodies has meant that measures to challenge patriarchal cultural attitudes or support women to have a more active voice in decision-making have assumed secondary importance (MCDGC, 2012).

### **3.4 Key policy implications going forward**

Tanzania's regulatory framework for promoting gender quality is relatively strong. The country has signed up to most relevant international and regional instruments and has made substantial efforts to mainstream gender in national law and policy, including by adopting a range of affirmative action measures to promote women's representation in public governance structures and putting in place a relatively robust national machinery. However, whilst implementation has been strong in some areas, notably in strengthening female representation in decision-making, overall implementation of gender laws and policies has been weak. In particular, patriarchal norms and practices remain dominant, particularly in rural areas, meaning that rural women remain strongly disadvantaged in terms of access to land and other productive resources.

## 4. Women's access to land: the legal framework and its implementation

### 4.1 Introduction

Women's rights to access, use and control land under statutory and customary laws clearly have a direct influence on rural women's livelihood options. These rights also indirectly influence women's ability to benefit from LSLAs, as Chapter 2 has shown. They can also influence the extent to which women can participate effectively in land-related governance structures; for example, women's lack of recognition as "land owners" often leads to their marginalisation in community discussions and decision-making concerning land (see Chapter 5). This chapter therefore reviews relevant land laws and policies in Tanzania and their implementation. Section 4.2 reviews women's land rights under statutory law, including under general land laws, marriage laws and laws governing inheritance practices. Section 4.3 considers the challenges to the implementation of these laws, including the influence of patrilineal customary law. Finally, key policy implications are presented in Section 4.4.

### 4.2 Women's land rights under statutory law

#### 4.2.1 Women's land access rights under general land laws

The current legislative framework governing land in Tanzania has its roots in the extensive land law reforms of the 1990s. In 1995, the National Land Policy was developed following extensive consultation, and this was later enacted in the Land Act of 1999 and the Village Land Act of 1999 (Dancer and Sulle, 2015; Duncan, 2014).

Under these laws, the State holds the title to all land in the country (a legacy of the Socialist policies of the 1960s). Land is divided into three categories: General Land (controlled directly by the State, and representing approximately two per cent of the country's land and including most urban land); Reserve Land (designated by the State for various public uses, e.g. national parks); and Village Land (representing approximately 28 per cent of the country's land). Village Land includes: (a) Communal village land, which cannot be used for individual occupation or use; (b) Land occupied or used by an individual/family/group of persons under customary law; and (c) Land that can be allocated by the Village Council for communal or individual occupation (Duncan 2014). The Land Act refers to all categories of land, whereas the Village Land Act governs Village Land specifically.



These land laws are progressive in terms of the promotion of gender equality principles, largely due to the effective lobbying and active involvement of women's advocacy groups in the drafting of the laws during the 1990s (Duncan 2014; USAID 2011). Key gender protections provided under these legal instruments are listed below (gender-related provisions under the Village Land Act are clearly of particular relevance to this study):

- Women are guaranteed equal rights to men in the ownership, use and control of land. Thus, the Constitution (Article 24) guarantees every person the equal right to own property (Duncan, 2014); and the National Land Policy states: "In order to enhance and guarantee women's access to land and security of tenure, women will be entitled to acquire land in their own right not only through purchase but also through allocation" (Dancer and Sulle, 2015). Further, the Land Act provides that "The right of every adult woman to acquire, hold, use, and deal with land shall to the same extent and subject to the same restrictions be treated as a right of any man" (Land Act 1999).
- Whilst customary land laws are upheld in general, any such laws or practices that discriminate against women are considered unlawful. The Village Land Act (Section 20 (2)) states that any customary laws or resulting decisions that deny women lawful access to ownership, occupation or use of any customary land are deemed void and inoperative, and that customary laws must be in accordance with the National Land Policy and with any other written law including the Constitution (Duncan, 2014; Carpano, 2010; Village Land Act 1999).
- Women's applications for customary land must be treated equally to those of men. The Village Land Act stipulates that the Village Council must treat all applications for land equally, regardless of the gender of the applicant, and is forbidden from adopting any discriminatory practices or attitudes towards women applying for a certificate of customary right of occupancy (Duncan 2014).
- Resolution of disputes relating to customary land must treat women's rights as equal to those of men. The Village Land Act provides that the Village Adjudication Committee or officer must treat the rights of women equally to those of men (Duncan 2014).
- Women's interests and rights of occupancy must be taken into account when allocating village land or transferring land rights to others. The Village Act prohibits villagers from assigning their right of occupancy if it would interfere with the right of any woman to occupy land under a customary right of occupancy. The Act also states that, in determining whether to grant a derivative right to Village Land, a Village Council must also take into account "the need to ensure that the special needs of women for land within the village [are] and will continue to be adequately met" (Duncan 2014).

Also noteworthy is the Strategic Plan for Implementation of Land Laws (SPILL), which was put in place to accelerate the implementation of the various land laws in 2006 and prioritises certain areas for implementation. "Removing discrimination of vulnerable groups through affirmative action" with respect to all categories of land is listed as a high priority (Hakikazi Catalyst, 2006).

#### 4.2.2 Women's rights to land through marriage

The previous pluralistic legal system governing marriage was unified under the 1971 Law of Marriage Act, bringing together customary, Christian, Islamic and Hindu laws relating to marriage. The Land Act and the Village Land Act are also relevant in terms of women's land rights through marriage. Note that polygamous marriages are permitted under law (Duncan 2014). The following statutory legal protections are provided to wives:

- Women retain their right to own and acquire property either jointly or in their own right during the course of their marriage. The Law of Marriage Act provides that women have the right to acquire, hold and dispose of property, including immovable property, during the course of the marriage (Duncan, 2014; Carpano, 2010).
- Wives have a legal right to land that is co-occupied and used by both husband and wife. Under the Land Act, it is assumed that all land that is co-occupied and under shared use is held by both spouses. This applies even where land is only registered in the husband's name (or belonged to the husband prior to marriage). Whilst in this latter case co-occupancy is not presumed, the wife is considered to acquire a legal interest (as an occupant in common, see below) if she contributes her labour to that land (Duncan, 2014; USAID, 2011).
- A husband cannot dispose of land without the consent of his wife/wives. Under the Village Land Act, a husband (or wife) cannot dispose of land without the prior written consent of any person with an interest in that land, which as explained above includes the spouse(s). In the case of land held under customary law, if a husband surrenders his right to land in which his wife has an interest, the Village Council must first offer that land to the wife before it is granted to somebody else (Duncan 2014).
- On separation or divorce, women have a right to a share of marital/joint property. These rights are provided for in the Law of Marriage Act (Duncan, 2014; Carpano, 2010).

However, one area where spousal rights are weak is that of a widow's rights to marital land. As stated above, under the Land Act a husband and wife are assumed to have shared tenure in land that they both use. However, the nature of this shared tenure is assumed to be "occupancy in common," rather than "joint occupancy"; joint occupancy status can only be attained through official registration. Critically, the inheritance rights of spouses are much weaker under "occupancy in common"

than in joint occupancy. Whereas joint occupants automatically inherit the land from the deceased spouse, under "occupancy in common" the deceased spouse's share of the property does not pass automatically to the surviving spouse but becomes part of the estate and passes to his or her heirs (Duncan 2014).

#### **4.2.3 Women's rights to inherit land (including inheritance under customary law)**

The legal framework governing inheritance is the weakest in terms of promoting gender equality principles, and continued pressure from advocates to strengthen this framework has yet to bear fruit. Unlike the marriage and land laws, inheritance laws have not been unified and hence remain pluralistic in nature. Moreover, the most widely applied laws (customary and Islamic law) remain strongly gender discriminatory; as such, they remain in conflict with the more gender equitable principles contained in the Constitution, land and marriage laws (Dancer and Sulle, 2015; Duncan, 2014).

Under this pluralistic legal system, there are four sets of laws that govern inheritance: (1) the Indian Succession Act 1865, which applies to Christians and Tanzanians of European origin; (2) The Hindu Wills Act 1870, which applies to Hindus; (3) Islamic Law; and (4) customary law, which regulates inheritance for "a person who is or was a member of a community in which rules of customary law relevant to the matter are established and accepted" (Duncan 2014). Whilst a large proportion of the population are either Christian (45 per cent) or Muslim (also 45 per cent), in practice customary law is applied most widely, regardless of religion. This is because the Probate and Administration of Estates Act of 2002 funnels all Tanzanians of African descent to customary law, requiring proof of intent if inheritance issues are to be addressed according to Islamic or Christian law (Duncan 2014).

The key elements of these inheritance laws governing women's rights to inherit land are summarised below: note that Hindu Law is not discussed because it is only applicable to a very small proportion of the population (20,000 people in 2002) (Duncan 2014):

- Administration of the deceased's estate. Across all relevant legal systems, there is a strong bias against women in the administration of a deceased's estate. The laws either explicitly call for a male relative to be the administrator (most customary laws, and general statutory law in the case of most properties valued under TSh 10,000 – about \$ 4.50); or the law is such that women tend to be excluded in practice (Islamic law). Further, in the case of customary law, the role of the administrator is often confused with that of a beneficiary, so that in practice the (male) administrator may take for himself a majority share of the estate (Duncan, 2014).

- Wife's share of the estate. In general, widows have weak and unequal rights to inherit land, with the exception of the Indian Succession Act under which husbands and wives have equal inheritance rights. Under *customary law*, a widow can only inherit land if there are no lineal descendants, and even then she is only considered to have "third degree" rights (see below), with brothers of the deceased taking priority. Moreover, a widow's rights only remain valid if she does not marry outside of her husband's family. Under *Islamic Law*, if the husband leaves children, his wives are collectively entitled to only one-eighth of the estate; if the husband leaves no children, the wife/wives are entitled to a total of one-fourth of the estate. Wives are therefore only generally entitled to a small fraction of the estate, bearing in mind that under Islamic law a man may take up to four wives and polygamy is the norm (Duncan 2014; USAID 2011; Carpano, 2010).
- Daughters' and other female relatives' share of the estate. Whilst the Indian Succession Act provides for female and male heirs to have equal entitlements, both customary and Islamic law strongly discriminates against female heirs. Customary law categorises all daughters as "third degree" heirs, who therefore receive a much smaller share of the estate than sons. Under Islamic law, male heirs are generally entitled to twice the share of equivalent female heirs (Duncan 2014; USAID 2011; Carpano, 2010).
- Security of land rights inherited by women. Under both the Indian Succession Act and Islamic Law, wives and female relatives inherit the share of the property to which they are entitled outright (Duncan 2014; USAID 2011; Carpano, 2010). Crucially, this is not the case under customary law: in general women only inherit lifetime use rights to land, and can only sell the property if there are no male relatives. Men, by contrast, inherit property outright (Duncan, 2014).

### 4.3 Challenges to the implementation of women's statutory land rights (including the influence of customary land laws)

#### 4.3.1 Women's access to land in practice

In practice, despite the protections offered by the statutory legal framework, women's access to land remains compromised. Firstly, women's ownership of land remains inferior to men's ownership: it is estimated that women hold only 20 per cent of land registered in Tanzania, with the percentage of women holding primary rights to land under customary law likely to be far lower (USAID 2011). The field research found that in two patrilineal communities studied, only 33 per cent and 14 per cent of those owning land were women, respectively.

Moreover, there is evidence to suggest that where women do own land, they own smaller plots of land. In a study of two villages where women had relatively strong land rights due to historical Socialist influences and more recent economic factors, the average size of women's plots was still found to be smaller than that of men's plots (Dancer and Sulle 2015). Finally, as discussed further in Chapter 5, even

where women do own or control land, husbands often retain control of land use and income.

#### **4.3.2 Strong legal recognition and influence of patrilineal customary (land) laws and practices**

The main reason why women's access to land remains substantially inferior to that of men is the continued predominance of customary land tenure practices in rural areas (Duncan, 2014; USAID, 2011). Despite the existence of unified land and marriage laws, customary law and practice continues to exert a strong legal influence and enjoys widespread recognition in these areas. In particular, governmental notices which set out customary rules on land, marriage and inheritance for some patrilineal communities in Tanzania – known as Customary Law Declaration Orders, or CLDOs – hold significant legal sway in the districts that have adopted them (Duncan 2014). In addition to these notices, notably GN 279 and GN 436, locally observed customary rules also often receive other forms of legal recognition (Duncan, 2014).

Crucially, customary laws are also influential in the application of land law. The Village Land Act states that disputes regarding customary rights to occupancy shall be determined according to customary law (USAID, 2011; Duncan, 2014). Customary laws are also influential in the courts. Even unwritten, locally specific customary rules can be considered valid by a court of law provided that they can be proven (Duncan, 2014).

The legal status and lingering influence of patrilineal customary land laws and practices (which are applicable to approximately 80 per cent of the population) is problematic in that a number of key principles and practices common to most customary law is at odds with the gender equitable elements of statutory law (Carpano, 2010; Duncan, 2014)). Gender discriminatory aspects of customary inheritance rules have already been discussed. In addition, a fundamental tenet of patrilineal and patrilocal systems is that land and its ownership is vested in men, only giving women indirect rights to land. Married women obtain indirect rights through their husbands; unmarried women obtain indirect rights through male relatives (Duncan, 2014; Carpano, 2010?).

Moreover, these rights do not give women full control over that land. Women's rights to land tend to be only use rights, with husbands or male relatives retaining control over land use decisions, the income derived from the land and how that income is spent (see Chapter 5). Women are also not permitted to sell the land they are allocated (see Inheritance section above). In addition, women's land rights are insecure. If a marriage ends through divorce or the death of a husband, the wife's access to land becomes vulnerable (USAID, 2011; Duncan, 2014). The eviction of divorced women continues to be widely practised, in direct defiance of the Law of Marriage Act, which provides for the division of matrimonial assets upon divorce (Duncan, 2014). The eviction of widows and the seizure of their property and inheritances are reportedly also common (Duncan, 2014).

Matrilineal societies, which account for approximately 20 per cent of the Tanzanian population, generally give women stronger access to land than do patrilineal societies, particularly those communities which also practice matrilocal marriage (field research findings; also Duncan, 2014, and USAID, 2011). However, even though ownership of assets traditionally passes through a woman's lineage, male family members often control the assets, including land (USAID, 2011).

Finally, whilst statutory law deems any gender discriminatory aspects of customary land law to be legally invalid (see sub-Section 4.2.1), in practice this important caveat appears to be largely ignored, with customary laws being applied whether or not they violate statutory gender equality principles (Duncan, 2014).

### 4.3.3 Other implementation challenges

Another reason why patrilineal customary land practices continue to predominate is because traditional leaders retain a significant role and influence in land administration and dispute resolution at the community level (see also Section 5.4.1). For example, decisions around inheritance are mainly made within the family and clan, and when conflicts arise many villagers still prefer to go to family or clan leaders in the first instance rather than pursue formal dispute resolution procedures. As discussed further in Section 5.5, traditional leaders are likely to reinforce customary practices.

Statutory laws designed to promote gender equality are further undermined by a lack of awareness of their provisions among village council members, and rural women and men more generally. Finally, a lack of access to legal support among rural women hinders their ability to pursue justice when their rights are violated. The concentration of the vast majority of legal expertise and support in urban areas means that rural women may have very limited scope for appealing to the formal judicial system if they do not agree with decisions taken by the authorities in their communities (USAID, 2011).

## 4.4 Key policy implications

Tanzania's legal framework governing land certainly has notable strengths as regards protection of women's land rights. In particular, general statutory land laws and marriage laws contain relatively strong gender equality principles. Moreover, whilst customary law is still formally recognised, statutory law explicitly invalidates all customary law that discriminates against women, and statutory marriage law specifically addresses several key gender concerns associated with customary marriage law and practice (for example, protecting the property rights of divorcees).

However, the implementation of these laws, including key gender equality principles, has been weak, and gender inequality in access to land persists. This inequality endures primarily because of the continued dominance of (patrilineal) customary land laws and practice, the majority of which is inherently gender discriminatory and therefore conflicts with statutory laws. Most customary laws grant women only insecure and indirect rights to land, which tend to be limited to use rights only. In addition, village authorities and rural communities tend to have little awareness of statutory land laws, particularly their gender equality aspects.

Key policy gaps also remain. In particular, inheritance laws remain un-unified, and the most dominant legal systems governing inheritance (customary and Islamic laws) are strongly gender discriminatory, affording women very weak claims to inherit land. Moreover, despite the existence of unified land and marriage laws, there remains a *de jure* conflict with customary laws on these matters because the latter still enjoy formal legal recognition.

## **5. Women's representation and participation in land governance institutions and decision-making processes**

### **5.1 Introduction**

As well as the regulatory framework governing women's access to land, the extent of women's involvement in land governance structures clearly has an impact on women's ability to influence the outcomes of land allocation and investment decisions, and is also central to the overall aim of the Project. This chapter therefore reviews the extent of women's representation and participation in land governance institutions and decision-making. Section 5.2 describes the statutory legal framework governing women's involvement in formal land governance structures; and Section 5.3 assesses the extent to which this legal framework is implemented in practice and the impact on decision-making. Section 5.4 then briefly reviews the extent of the influence of customary governance structures and women's representation within these structures. Finally, Section 5.5 concludes with key policy implications.

### **5.2 Statutory legal framework governing women's involvement in formal land governance structures**

The Tanzanian legal framework is very progressive in terms of promoting women's representation in formal land governance institutions. The Land Acts of 1999, the Court (Land Disputes Settlements) Act of 2002, and the 2000 amendments to the Local Government (District Authorities) and Local Government (Urban Authorities) Acts of 1982 established a range of affirmative action measures to ensure substantial female representation at key levels of land administration and in related dispute resolution institutions (Duncan, 2014; Dancer and Sulle, 2015). These are described below.

#### **Community Level**

The Village Land Act devolves substantial authority to communities to govern village land, and vests this authority in the Village Councils and Village Assemblies and related institutions (Duncan, 2014). These governance bodies thus have considerable power over local land issues, at least on paper (Duncan 2014). Affirmative measures exist to promote women's representation in key community level land governance bodies, but with the exception of the Village Assemblies, as described below:



- In the Village Council, which is elected by the Village Assembly (see below), at least one quarter of council members must be female (Duncan, 2014; USAID, 2011).
- Village Adjudication Committees (VAC): The Village Land Act calls for a nine-member VAC to be set up whenever a Village Assembly decides there is a need for an adjudication process concerning land. At least four of the nine members must be women. A quorum requires five members, of which at least two must be women (Duncan, 2014; Village Land Act 1999).
- Village Land Councils (VLC): The Village Land Act also requires each village to set up a VLC to mediate disputes relating to village land. At least three of the seven VLC members must be women. A quorum requires four members, at least two of which must be women (Duncan 2014, USAID 2011).
- The Village Assembly is comprised of all villagers aged 18 and above, with women as well as men being equally eligible to participate (Duncan, 2014; USAID, 2011). However, there are currently no mandatory requirements to ensure female participation in the Assemblies or to ensure adequate female representation in their decision-making processes<sup>2</sup>.

### Ward Level

The Court (Land Disputes Settlements) Act of 2002 provides that each Ward-level Land Tribunal, which is the court of first instance for local land disputes, shall consist of four to eight members elected by the Ward Committee, of whom a minimum of three members must be women. The Act also requires that every mediation includes three members of the Tribunal, of whom at least one must be a woman (Duncan, 2014).

### District Level

At the district level, affirmative measures for women's representation are in place for the overall District Council and also for the District Land and Housing Tribunal (the appellate body for the Ward Tribunals). As regards the District Councils, in addition to the standard council members who are elected from each constituent Ward, additional female Council members are appointed by the National Electoral Commission in proportion to the number of elected positions held on the council such that women constitute at least one third of total Council members (Duncan, 2014; USAID 2011). As regards the District Land and Housing Tribunal, the Court (Land Disputes Settlements) Act requires that three of the seven appointed assessors on the Tribunal must be women (Duncan, 2014).

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2. TAWLA is currently seeking to address this legal gap by working with specific districts and villages to develop village by-laws to ensure women's representation in Village Assemblies and Village Councils, with the intention that such requirements can eventually be scaled up and adopted at the national level.

## National level

There do not appear to be any specific gender quotas or affirmative measures for land governance bodies at the national level. However, for the National Land Advisory Council the Land Act requires that the responsible Minister must acknowledge the importance of ensuring a fair gender balance when appointing members to the Council (Duncan, 2014).

## 5.3 Implementation of legal framework and impact in terms of decision-making

### 5.3.1 Implementation of legal stipulations and women's numerical representation in governance bodies

From the available evidence, it appears that legal quotas for women's representation in relevant governance bodies are largely being met (field research findings; see also Dancer and Sulle, 2015, and Misafi, 2014). The evidence also suggests that numerically, women are reasonably well represented in Village Assemblies and other wider decision-making forums, although women's representation still tends to be lower than that of men (Dancer and Sulle, 2015). For example, a national survey conducted in 2013 found that 39 per cent of those who attended village council meetings were women, and 37 per cent of those involved in preparing village plans were women (Chaligha, 2014).

However, the evidence also indicates that women's representation tends to be limited to the minimum required by law, with few women successfully competing for additional seats. For example, in April 2014, besides the seven seats reserved for women and appointed by the NEC, only one of the 23 other (elected) members of the Kilombero District Council (Morogoro Region) were women. In one of the villages being studied, only seven of the 25 village council members were female, which equates to the minimum proportion (one quarter) required by law (Dancer and Sulle, 2015). Further, there is evidence that these quotas have had a detrimental effect in matrilineal societies, leading to lower female representation than is found in other local governance bodies where no such quotas are mandated (field research findings).

Finally, the evidence points to the fact that women remain seriously under-represented in senior leadership positions within these bodies (Landesa, 2016). For example, in the whole of Kilombero District in 2014 only two of the Village Councils had female chairpersons (Dancer and Sulle, 2015).

### 5.3.2 Quality of women's participation

Whilst the mandatory gender quotas have undoubtedly helped to ensure significant female representation in numerical terms, evidence shows that the quality of women's participation in relevant governance bodies remains weak overall. Women still tend to contribute much less actively than men in such forums, often simply listening to discussions (Misafi, 2014; Landesa, 2016). For example, in Kondo District (Dodoma Region), pastoral women were found to participate as listeners in election meetings and Village Assemblies, but tended not to actively contribute or question other speakers/campaigners. Even when women do speak out, women tend not to openly challenge the views of male representatives (Misafi, 2014).

### 5.3.3 Impact on decision-making/outcomes

Despite a widespread assumption that female representation would lead to the greater protection of women's interests, one detailed study (Misafi, 2014)<sup>3</sup> found that women's substantial *numerical* representation in key governance bodies in Kondo District has not been effective in ensuring more gender equitable decisions and outcomes. In particular, the study found that:

- Women have limited involvement in agenda-setting. The study found that even where women representatives theoretically had an opportunity to exert an influence, the agendas for meetings tend to be dominated by male-centric issues and feature only a limited number of items dealing specifically with women's concerns or priorities.
- Women's issues are de-prioritised. Even where governance bodies included substantial female representation, they did not consider women's priority issues to be as urgent as other matters. Instead, issues raised by the Government and supported by male representatives prevailed in discussions. As a result, women's representation was found to have had no impact on improving the delivery of services that are most used by women (such as water supplies and maternal health care).
- Female representatives do not necessarily promote gender equality issues. The study found that in Kondo, the few female representatives who did speak out in governance meetings tended to focus on defending their own individual positions rather than representing women's interests more broadly.
- Women are less able to influence outcomes of decisions. The study found that women's opinions tended to be ignored or not treated with equal importance to those of male representatives. This was found to be true across the broad spectrum of issues that were being discussed and agreed by the local governance bodies (Misafi, 2014).

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3. Note that this study explored the issue of women's representation and participation in local governance in general, rather than focusing specifically on land issues.

### 5.3.4 Barriers to more effective representation and participation

The evidence points to the continued dominance of patriarchal norms and customary practices as the primary cause of women's weak participation in governance bodies and their limited ability to influence decision-making (field research findings; also Misafi, 2014). The evidence indicates that men, in particular husbands, continue to directly control women's participation in governance structures. Firstly, husbands have considerable control over *whether* women can participate in governance bodies. For example, in Kondoa, pastoral women first have to seek permission from their spouses or male elders before they can participate in governance matters. Moreover, in the few cases where pastoral women did compete for leadership positions, they faced several restrictions from men and were unsuccessful as a result (Misafi, 2014). Secondly, husbands were also found to influence *how* women participate in these forums. For example, even where pastoral women were given permission to vote, men tended to control how women cast their ballot (Misafi, 2014).

Even where women are not subject to direct influence from their husbands, women's representation and participation in governance bodies continues to be constrained by patriarchal norms. For example, the field research found that few women participate in land governance because this continues to be perceived by both women and men as a male domain, although this does appear to vary substantially by location (field research findings). Women also feel unable to challenge men openly in public (Misafi, 2014). Finally, many women and men still believe that women are not capable of leadership. For example, Misafi (2014) found that in Kondoa, in contrast to their male counterparts, the majority of both pastoral and non-pastoral women did not compete for leadership positions. Of the non-pastoral women who did compete, the majority focused on competing for the reserved seats for women which are less competitive than other seats. The study points out that underlying this pattern of behaviour is the fact that women and men both continue to believe that women are the weaker sex and are unable to participate in certain public activities.

Other relevant barriers to women's effective representation and participation in land governance bodies include women's limited access to land (which for example limits women's eligibility to participate in the leadership of growers' associations, as indicated in Section 2.3), and the fact that statutory law dictates that customary law shall be used in determining decisions around rights/use of land under customary control (see Section 4.3.2). Thus, whilst the decision-making *structures* take account of women's representation, the *rules* governing decision-making continue to support customary land tenure practices which strongly favour men in most cases.

## 5.4 Women's involvement in customary land governance and decision-making

### 5.4.1 Community/clan level structures

Control of customary land is formally vested in the Village Councils and Village Assemblies, and this has been the case since the traditional leadership (Clan Councils and Elders) were theoretically divested of these powers during the Socialist era (Duncan, 2014). However, these traditional authorities are still recognised by statutory law to a certain extent. Thus, the Courts (Land Disputes Settlements) Act of 2002, the Land Act 1999 and the Village Land Act 1999 all recognise the jurisdiction of informal elders' councils as well relevant formal institutions in dealing with land disputes (USAID, 2011). The evidence also suggests that traditional leaders remain influential regardless of their designated role under statutory law. For example, there are signs that inheritance decisions are still very much under the control of clan leaders, and clan or family leaders are still the first port of call for the resolution of land disputes (USAID, 2011; Duncan, 2014). If such cases end up in the official courts, parties may be asked to go back to their clans for a decision if they had not consulted the Clan Council in the first instance (Duncan, 2014).

Surprisingly little concrete evidence could be found about women's representation in traditional governance structures, but it appears that women are usually poorly represented if at all, and one study confirmed that one clan's 24-strong Committee of Elders was entirely male (Kelsall *et al.*, 2005). Perhaps unsurprisingly, decisions taken by these bodies tend to support the traditional dominance of men (USAID, 2011). Given the continued influence of such customary governance bodies, these patterns can clearly undermine moves to promote women's land rights.

### 5.4.2 Household level governance structures

As already noted, the evidence indicates that household level power relationships continue to be governed by patriarchal norms. This has a negative impact on women's livelihood options in two ways. Firstly, men tend to make decisions about how land is used, including which crop to grow and how labour is allocated (Duncan, 2014; Carpano, 2010). This is true even where men are much less involved in production than women (Duncan, 2014), and where women ostensibly have control over the land (see Section 4.3.1 above). Secondly, unequal household relations also lead to men having a high degree of control over women's income and/or how it is spent. Again, the evidence strongly indicates that this remains the case even where women own or control the land on which the cash crop is grown, and also where women are earning a wage income on their own account (Carpano, 2010).

## 5.5 Key policy implications going forward

The existing regulatory framework is strong in terms of promoting women's representation in formal land governance structures. Mandatory affirmative action measures are in place to ensure women's representation in most key types and levels of governance structures relevant to land administration, although such measures are notably absent for Village Assemblies and are also weaker at the national level. Moreover, mandatory gender quotas are substantial (ranging from one quarter to one third) and comprehensive (for example, specific quotas are set for quorums within each relevant type of governance body).

Implementation of existing affirmative action measures appears to be largely effective. The available evidence indicates that existing gender quotas for formal land governance structures are generally being met. However, in many instances the formal governance bodies in which women have guaranteed representation are being bypassed in favour of traditional leadership. The latter is typically male-dominated and prone to making decisions that support the traditional dominance of men in land matters.

Moreover, significant policy gaps remain, indicating the need to broaden the scope of the existing regulatory framework. The evidence points to the following policy gaps in particular:

- Female representation generally remains at the minimum required level, with few women competing for the non-reserved/open seats
- Women are still under-represented in senior leadership positions (such as chairpersons) within these governance structures
- The quality and impact of women's participation remains weak
- Gender unequal household relations and patriarchal norms still exert a strong influence and thus continue to limit whether women can participate and the quality and level of their participation
- The mandate of formal land governance structures is yet to apply customary law, which often conflicts with statutory gender equality measures.

## 6. The legal framework governing investments, and key gender implications

### 6.1 Introduction

Whilst underlying laws and policies governing gender equality practices, women's land rights and women's representation in land governance are paramount in determining gender outcomes of LSLAs, the specific regulatory framework governing agricultural investments can also influence these outcomes. This chapter therefore reviews these policies and their implementation in Tanzania. First, relevant investment promotion policies, key gender elements and their implementation are reviewed in Section 6.2; Section 6.3 then considers the regulation of land acquisition and investments and key gender implications. Finally, Section 6.4 concludes with key policy implications.

### 6.2 Investment promotion policies

#### 6.2.1 Inclusion of gender elements in investment promotion policies

Tanzania has a number of national policies and programmes to promote agricultural growth and intensification, and views increased foreign investment in the sector as a core driver. Whilst these policies are not directly gender discriminatory, overall they do little to address and prioritise gender issues or promote women's representation in relevant governance structures, certainly when compared to the legislative framework governing land (see Chapters 4 and 5) (Dancer and Sulle, 2015). Kilimo Kwanza, Southern Agricultural Growth Corridor of Tanzania (SAGCOT) and Big Results Now are cases in point.

Kilimo Kwanza (Agriculture First) was adopted in 2009 as Tanzania's "Green Revolution" to transform both small- and large-scale agriculture into a modern and commercial sector through various measures including foreign investment. Whilst it prioritises support for small-scale farmers, gender issues are given short shrift. Only one of the ten "pillars" of detailed proposals contained within the initiative's implementation framework mentions gender, and this is only a very brief reference to "gender-mainstreaming" and the strengthening of women's position in agriculture (Dancer and Sulle, 2015; Daley and Park, 2012).

Similarly, SAGCOT (2011) and Big Results Now (2013) give very limited attention to gender concerns. SAGCOT is a public-private partnership that aims to foster investment in agriculture in an area previously targeted for agricultural investment under Kilimo Kwanza, and covers one third of the southern central corridor of Tanzania. Big Results Now, a cross-ministry initiative adopted in 2013 to accelerate agricultural commercialisation and the development of priority crops, further emphasised the implementation of SAGCOT plans. However, whilst both these

policies refer to gender equity they are short on detail (Dancer and Sulle 2015). For example, the detailed SAGCOT Blueprint document includes a passing reference to women in the background section, but does not include any specific mention of women or gender issues in its proposed implementation framework and activities going forward (SAGCOT, 2011).

Nevertheless, three key agricultural development and investment frameworks address gender issues more specifically. The 2006 Ten Year Agricultural Sector Development Programme (ASDP), launched as the joint implementation tool of three agricultural development and broader poverty reduction strategies, identifies gender as specific cross-cutting and cross-sectoral issue and addresses gender in certain areas of implementation. For example, evidence that local investments meet social and gender standards is required as part of the programme's annual performance assessment at district level (Daley and Park, 2012). Likewise, the more recent National Agricultural Policy 2013 includes gender as one of six cross-cutting issues that must be addressed while implementing the policy, and identifies the following overall objective: "Equitable participation of men and women in the production of goods and services in agriculture [is] promoted while ensuring that benefits are equitably shared" (p. 30). Furthermore, specific objectives are outlined to help achieve this, including that the Government should facilitate equal access to land for women and men (MAFSC, 2013; Daley and Park, 2012).

In addition, the Tanzania Agriculture and Food Security and Investment Plan (TAFSIP) of 2011, which was developed to provide a framework for co-ordinating investments to deliver on strategic priorities set out in the Comprehensive Africa Agriculture Development Programme (CAADP) Compact, identified gender as one of several cross-cutting themes that needs to be addressed in all TAFSIP's thematic areas. Moreover, it specifically highlights the need for agribusiness investment policy "to enable all groups to be involved at the high-value end of the market chain" (URT 2011, p.14) and for agro-processing investments to ensure gender equity in employment opportunities (URT 2011, p.25).

### **6.2.2 Implementation of gender elements (including barriers)**

However, even where the policy frameworks include specific gender aims, it appears that implementation has been weak. An evaluation of the ASDP conducted in 2011 concluded that gender had in practice received little emphasis in programme implementation; for example, the evaluation showed that only 22 per cent of extension staff across the country were female, and district level agricultural plans were weak in terms of their gender focus. A separate review carried out by ActionAid in the same year criticised both the ASDP and TAFSIP for a lack of specific analysis of women as the main contributors to cultivation (Daley and Park, 2012).

Overall therefore, policies and programmes promoting agricultural growth and investment in Tanzania have been weak in terms of promoting women's interests and promoting women's participation in decision-making.



## 6.3 Regulation of land acquisition and investment

### 6.3.1 Overview of the formal land acquisition process for foreign investors

Compared to other countries in Africa, Tanzania arguably has some of the most progressive legislation for land acquisition in terms of community consultation and consent (Oakland Institute, 2011). No single comprehensive description of the acquisition process could be identified. However, based on a compilation of multiple sources, with each providing a partial descriptions of the process, it appears that the formal process for acquiring Village Land involves six key stages, as described in Box 1 below.

One special case that should be noted is that of land being acquired for the production of liquid biofuels. In response to growing public concern about the specific negative social and environmental impacts of biofuel investments, in 2009 the *Guidelines for Sustainable Liquid Biofuels Development in Tanzania* were developed and approved to promote socially and environmentally responsible practices (MEM, 2010; Oakland Institute, 2011). Where the land acquisition process for liquid biofuels (as stipulated in the Guidelines) diverges from the standard acquisition process, this is indicated in the text below. It should be noted, however, that at present these guidelines do not have the force of law and are therefore not legally enforceable (Oakland Institute, 2011).

#### Box 1. Key stages of formal land acquisition process for foreign investors

##### Step 1: Community consultation and consent

After having identified potential land for investment, the first step the investor should take is to consult with the communities involved and obtain their consent for the land to be acquired and used for the proposed investment. Consultation and consent is required at three levels: first the Village Council, then the District Council Land Committee, and finally the Village Assembly (Oakland Institute, 2011). In the case of liquid biofuels, the Guidelines also specify that there should be a memorandum of understanding agreed by the investor with relevant village authorities setting out terms of land use (MEM 2010).

##### Step 2: Environmental impact assessment (EIA)

An independent EIA must also be conducted of the investment's proposed production activities. From the literature reviewed, it was unclear who is responsible for commissioning the assessment (investor or government) and whether the EIA should take place after or concurrently with Step 1. However, it is clear that the EIA must be completed and a certificate granted before the investor can proceed to Step 3 (Oakland Institute 2011). In the case of liquid biofuels, the Guidelines specify that the assessment should include a social element and should consider the extent to which proposed activities will benefit local communities (MEM 2010).

**Step 3: Valuation of land for compensation purposes**

once community consent has been received and the EIA passed, the investor must then pay for a valuation of the land targeted for investment, the purpose of which is to identify appropriate compensation to be paid to affected households. The valuation must be done in accordance with government guidelines which set out how compensation is calculated. The valuation process as set out by these guidelines involves the surveyors visiting the land on a specific date or time period, and valuing the land based on the estimated economic value of visible productive activities being undertaken on that land during this time period. Calculated compensation sums are then designated for payment to affected households (Oakland Institute 2011; field research findings).

**Step 4: Community consent and payment of compensation**

The law requires community consent to the compensation amounts to be paid (Oakland Institute, 2011). Available sources did not specify at what stage this occurs, but logic would suggest that this must happen after the official valuation has taken place and that the compensation plan should be reviewed and approved by villagers before the acquisition can proceed. Once approved, the compensation is then paid out to listed beneficiaries.

**Step 5: "Village land" converted to "general land"**

The law requires that Village Land must be transferred to General Land before it can be released to investors. Thus, once compensation is paid, an application must be made to the President to approve transfer of the targeted land to General Land (Oakland Institute, 2011). An important point to note is that once compensation has been paid to listed beneficiaries and the land has been designated to General Land, rights to the affected land are transferred in full from the village to the Government, and hence villagers lose all legal rights to that land (field research findings; also USAID, 2011).

**Step 6: Tanzania investment centre (tic) grants derivative rights to investor**

Once the land has been converted to General Land, the investor can then apply to the TIC<sup>4</sup> to be granted rights to the land. These are derivative not absolute rights: the law prevents foreigners from owning land in Tanzania, they can only lease it. Derivative rights are thus granted in the form of a lease of up to a maximum of 99 years (Oakland Institute 2011). However, under the Biofuel Guidelines, liquid biofuel investors are only to be granted a probationary five-year lease in the first instance. Further, this lease can only be extended to a maximum of 25 years and only if the investment conforms to expectations (Oakland Institute, 2011).

4. The TIC was established in 1997 by the Tanzania Investment Act to be "the Primary Agency of the Government to coordinate, encourage, promote and facilitate investment in Tanzania and to advise the Government on investment policy and related matters." (<http://www.tic.co.tz>)

### 6.3.2 Gender implications of the land acquisition process

Based on the literature reviewed, there do not appear to be any specific gender stipulations included in any of the regulatory requirements associated with the acquisition process described above. However, there are a number of significant indirect gender implications. On the plus side, the emphasis on, and mechanisms stipulated for, community consultation and consent may help ensure that women's interests are represented, since the Village Council and District Council<sup>5</sup> are both subject to mandatory gender quotas (one quarter and one third, respectively) (see Section 5.2).

The regulations governing land acquisition are also associated with a number of negative gender implications, however. In the first place, the procedure/guidelines used for calculating compensation would appear to have negative implications for female users of affected land. For example, compensation appears to be calculated and paid out by household, not at the individual level, which means compensation is paid to the "head of household" who is typically male (Oakland Institute, 2011). Moreover, the official method used for identifying and valuing productive uses of land is likely to exclude many of the less visible economic uses (and users) of agricultural land that are often of importance to women, such as the collection of non-timber forest products (NTFPs) from trees and bushes bordering agricultural land, as is the case with *Jatropha* for example (Daley and Park, 2012). It also appears that in general, the compensation system does not recognise or pay secondary users of land (USAID 2011; Oakland Institute, 2011), which obviously has clear negative implications for women.

An underlying concern here is the conflict in existing laws around how compensation should be calculated, and to whom it should be paid, in cases of land acquisition. On the one hand, the 1999 Land Act provides for compensation to be paid to any person who is recognised as having "long-standing occupation or customary use" of the land, and therefore allows for compensation for women who tend only have derivative/secondary rights to the land. On the other hand, the 1967 Land Acquisition Act uses a narrower definition of eligibility for compensation based only on the value of "unexhausted improvements" to the land (Duncan 2014). It is not clear which definition of compensation currently holds greatest sway; however recent case law, and the practices documented above, would indicate that the narrower definition prevails (Duncan 2014; Oakland Institute 2011).

A further concern is that mandatory impact assessments do not appear to include any gender considerations. From the literature reviewed, there does not appear to be any mandatory requirement to do a *social* impact assessment, only an environmental assessment. There is also no mention of the EIA process requiring any specific gender considerations. Moreover, whilst the Biofuel Guidelines do specify the consideration of a range of social issues as part of the impact

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5. The quota applies to the District Council as a whole; from the literature reviewed, it was unclear whether the District Council Land Committee was subject to specific gender quotas

assessment, there is no specific mention of gender. Thus all in all, the investment screening process does not appear to give any specific consideration either to women's participation in the assessment, or to ensuring gender equitable outcomes from the investment (Oakland Institute, 2011; MEM 2010).

Moreover, it would appear from the available evidence that there is no scrutiny or regulation to ensure that intended business models involve or benefit women. The liquid biofuels sector aside, the overall regulatory framework does not require that business models are inclusive of local communities, with the exception of a few very specific areas, such as the requirement under the Investment Act 1997 to ensure the employment of local people (a foreign investor cannot employ more than five foreigners unless specific reasons are given) (field research findings). There are no specific gender stipulations. The Biofuel Guidelines are stronger than the general regulatory framework in terms of ensuring community participation. For example, they stipulate that locals should have shareholdings in the business, that outgrower-based business models should be prioritised, and that at least two per cent of revenues should be directed to local community support. However, the Guidelines are virtually silent on gender. Whilst there is one brief mention of the need to consider gender as a cross-cutting issue, the Guidelines do not have any specific criteria to ensure that business models adopted by biofuel investments are inclusive of women or generate gender equitable outcomes (MEM 2010).

Finally, in practice investors often deviate from the official land acquisition process (see Chapter 2), and some aspects of actual investment practice can have negative gender implications. For example, the tendency of some investors to bypass formal village governance bodies and negotiate directly with traditional village authorities is likely to have negative implications for women. As discussed in sub-Section 5.4.1, the evidence suggests that traditional leadership remains strongly male biased, and that such leaders tend to make land allocation decisions that reinforce gender discriminatory customary practices.

## **6.4 Key policy implications going forward**

Overall, the policy framework for investment promotion and regulation is weak in terms of addressing gender concerns. Nevertheless, there are some notable strengths. In particular, the regulatory framework for land acquisition requires consultation with – and the consent of – the Village Council and the District Council, both of which are subject to mandatory gender quotas. Moreover, some relevant investment promotion policies include specific gender objectives.

However, there are significant implementation gaps that limit the actual benefits for women of such measures. When it comes to community consultations, official authorities are often by-passed in favour of traditional leaders, who tend to reinforce customary male dominance over land rights. Moreover, even when women are consulted via the official governance bodies (e.g., Village Council), their ability to assert their rights is constrained by a poor understanding of the legal process for

investments. Gender elements of relevant investment promotion policies have also been poorly addressed in practice

Moreover, there are a number of key policy gaps that would need to be addressed to ensure women's effective representation, participation and protection in the case of LSLAs. Firstly,

all existing investment regulations, including the Biofuel Guidelines, are gender blind and do not include any specific gender considerations or affirmative measures to ensure gender equitable representation and outcomes from investments. Secondly, the legal framework and official procedures for calculating compensation are such that women are less likely than men to be adequately and directly compensated for losses of earnings and livelihoods resulting from land acquisition. Finally, at present there are no measures in place to ensure that women are consulted as part of the impact assessment, or that women will benefit from the proposed business models and production activities.

## 7. Conclusions and recommendations

Over the last decade, the Tanzanian government has prioritised agricultural investment through a number of policies and special initiatives. These initiatives, combined with a favourable natural environment, have spurred substantial foreign investor interest, particularly in the agrofuel and food sectors. However, despite strong regulations on community consultation and consent, in many cases local communities have not been able to effectively defend their interests or ensure that LSLAs deliver adequate benefits. There is limited evidence on the specific gender impacts of LSLAs, but detailed case studies of several investments indicate that women were not able to benefit as much as men from income earning opportunities generated by the investments. These case studies point to women's weak access to land and underlying patriarchal attitudes and practices as key drivers behind these gender unequal impacts.

Statutory laws governing general land tenure and marriage are relatively progressive as regards the protection and promotion of women's land rights. The legal framework governing women's representation in key land governance structures is also strong, with a range of mandatory affirmative action measures in place. However, implementation of gender equality principles within general land and marriage laws has remained weak, and has not effectively challenged the continued dominance of customary land laws and practices which remain largely gender discriminatory. The implementation of existing measures to support women's representation appears to have been effective, but women are still seriously under-represented in senior and influential governance positions, and the quality of female participation and the impact of female representation on decision-making remains a concern.

The legal framework governing investments (both investment promotion policies as well as the regulation of investments) remains very weak as regards the promotion of gender equality principles. The legal framework governing inheritance also remains strongly gender discriminatory. These are clear policy gaps that need to be addressed.

Based on the above analysis, the following general recommendations can be made.

Firstly, much more effort is needed to challenge underlying patriarchal norms and attitudes across all social and economic spheres, in particular in rural areas. This should include awareness raising with village leadership and women and men in rural communities about the importance and benefits of more gender equitable decision-making at household and community level. Consideration should also be given to how the education system can help promote such gender-equitable attitudes and practices with school children.

As regards the legal framework governing access to land, the central need is to resolve the existing conflict between customary land laws and statutory law, in particular where the former conflicts with statutory gender equality principles. Given that patrilineal-based customary law predominates and patrilineal/patrilocal systems inherently discriminate against women in land ownership, it is difficult to see how this conflict can be resolved without fundamentally challenging the authority of patrilineal land tenure systems. Unified statutory inheritance law, which establishes equal inheritance rights for women and men, is also needed. Finally, there is a need for comprehensive awareness-raising amongst village authorities and rural communities as a whole as regards gender equality provisions upheld by statutory land laws.

In terms of promoting women's representation and participation in land governance structures, the key emphasis should be on broadening the scope of the legal/policy framework to include measures to strengthen the quality of women's participation and to ensure decision-making supports more gender equitable outcomes. In particular, this would require education and awareness-raising about the importance and benefits of supporting women's full participation in decision-making, and of promoting more gender equal land rights and access. The efforts should target both male and female representatives in relevant governance structures, and rural men and women in general. There is also a need to address existing gaps in affirmative action measures, notably at Village Assembly level.

Finally, the regulatory framework governing the land acquisition process, including the Biofuel Guidelines, needs to be comprehensively reviewed to ensure that necessary measures to promote gender equality are included. This includes adding requirements for women to be effectively consulted in impact assessments (including through women's groups such as credit unions) and for assessments to specifically assess key gender issues/impacts; for compensation procedures to be gender sensitive; and for business models to be inclusive of women as well as men. The regulatory framework also needs to be revised to ensure that local communities retain some residual rights to acquired land, and that social conditions negotiated between communities and investors are legally recognised and enforceable. Implementation of this regulatory framework also needs to be strengthened, in particular to ensure that the stipulated community consultation process is followed in full, and community level authorities are educated about relevant legal rights, in particular those protecting women.

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# Strengthening women's voices in the context of agricultural investments: Lessons from Tanzania

This report constitutes one of four countrywide assessments produced under the International Institute for Environment and Development's (IIED) 'Gender, land and accountability in the context of agricultural and other natural resource investments' initiative. The goal of the initiative is to strengthen rural women's livelihood opportunities by empowering them in relation to community land stewardship and increasing their ability to hold agricultural investors in East and West Africa to account.

Drawing on a literature review conducted by the Tanzania Women Lawyers Association (TAWLA) and IIED, as well as on primary field research conducted by TAWLA in 2015, this report provides a backdrop of relevant policies and practice; a gender analysis of the policy framework governing land and investments; and recommendations on how to work towards land rights securing and better inclusion in land governance processes for women in Tanzania.

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