



**ENSURING GENDER-EQUITY IN COMPENSATION AND RESETTLEMENT  
SCHEMES RELATED TO COMMERCIAL LAND INVESTMENTS IN  
TANZANIA AND MOZAMBIQUE**

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# Responsible Land Governance: Towards an Evidence Based Approach

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## **Abstract**

Large-scale land transfers have a disproportionate impact on women's land rights. Prior research has shown that women in many countries have limited participation in the decision-making process preceding alienation of land from their communities. This research extends this analysis into the context of compensation and resettlement processes, which are crucial to protecting the rights of local communities impacted by development projects. It does this by examining the relevant law and practice in Tanzania and Mozambique. Both countries have experienced periods of intense investor interest in land acquisition, and have developed some legal protections for the rights of communities to compensation and/or resettlement following land transfers. However, gender-blindness in these provisions permits the perpetuation of practices which negatively impact women's access to land and overall well-being.

The paper begins by surveying the relevant legal framework for each country, followed by a discussion of compensation and resettlement in practice, informed by a combination of a literature review and field research conducted by in-country partners. It then identifies key regulatory gaps, and proposes specific regulatory reforms to 1) improve women's participation and representation, 2) ensure women's inclusion in compensation, and 3) address loss of communal resources and infrastructure in a gender-sensitive manner.

**Key Words:** Gender, Land Acquisitions, Women, Compensation, Resettlement

## **Ensuring Gender-equity in Compensation and Resettlement Schemes Related to Commercial Land Investments in Tanzania and Mozambique**

### **I. Introduction**

The negative social and environmental impacts of large-scale commercial land investments in the global South is one of the key challenges confronting national governments and the international development community. Of concern are impacts such as increased poverty and food insecurity, landlessness and land concentration, environmental degradation, as well as conflict, particularly in sub-Saharan Africa where the majority of the commercial land investments are made (Anseeuw et.al, 2012; Deininger et.al., 2011).

A corollary concern that has subsequently emerged is the social differentiation within communities of investment impacts. A number of studies across different countries showed that women experience more acute disruptions and hardships as a result of commercial land investments (Behrman et.al., 2011). This can be largely attributed to women's general lack of land rights and secure tenure, and subordinate position in the household and community. Having little or no say in the decision-making processes involved in the land investment, women are unable to seek compensation and replacements for what will be lost, including access to land for household food production and to the commonage from which resources—such as water, fuel wood, fodder, wild fruits and medicinal plants, etc.—are collected for supplemental nutrition or livelihoods. When the community is relocated, as is often the case, in addition to physical and economic dislocation, women suffer from the erosion of community networks—friends, relatives, neighbors—that they rely upon for social support. Their generally restricted mobility and limited exposure outside their communities make it more difficult for them to adjust to new situations and surroundings.

If women are to restore their livelihoods and care of their families, they must be fully engaged in the decision-making processes related to the acquisition, including the discussions on compensation and the resettlement of the community. It is important that women get a share of the compensation payments and have continued access to land for housing and food production. However, practice on the ground show the opposite: women continue to be marginalized and bear most of the negative impacts of commercial land investments. This is notwithstanding the fact that many countries have enacted laws to govern commercial land investments, which often mandate consultation of the communities that are affected by the investment. These countries may also be signatories to international instruments or voluntary guidelines that set standards of behavior for the government and investors, protect community rights, and

promote gender equity (for example, the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests*).

Focusing on two countries, Tanzania and Mozambique, this paper will examine the extent to which women's perspectives and concerns are incorporated, both in law and in practice, into compensation and resettlement schemes. These two countries provide strong case studies for examining the gender aspects: over the last decade, both countries have been the subject of significant interest on the part of foreign investors, who have acquired rights to large tracts of land. Land disputes are common around such investment projects, including some lengthy and high-profile disputes over compensation and resettlement. A number of the projects have collapsed, after which the land is abandoned or acquired by other investors. This raises legacy land issues and presents particular problems in terms of compensation and resettlement programs which may fail as the project does. Many negotiations between communities and investors focus on social or economic development promised by the investor, sometimes at the expense of proper compensation programs.

Furthermore, Tanzania and Mozambique both enacted significant land reforms in the 1990s, including recognition of customary land rights, and requirements of community engagement in the land acquisition process. There are recent ongoing efforts to reform these laws to better address the impacts of large-scale land deals: Mozambique introduced detailed resettlement regulations in 2012, while Tanzania is currently in the process of revising its national land policy and aspects of the land laws. Both countries also created a statutory recognition of women's equal rights to land. Although ensuring de facto protection of these rights is an ongoing challenge, this was a key legal reform given discriminatory elements in customary land law. Nonetheless, a lingering question is to what extent the call for gender equity permeates other aspects of the land legislation and accompanying regulations. Unfortunately, in the context of land investments, research show that mere recognition of women's equal rights to land does not translate into equal participation or fair consideration of the needs of women (Salcedo-LaViña & Morarji, 2016). The lack of gender-sensitivity in the regulatory frameworks often defeat women's efforts to claim land rights.

This paper finds a similar lack of gender-sensitivity in regulations concerning compensation and resettlement. Without explicit provisions to protect women's interests, the compensation and resettlement process accordingly risks further marginalizing women. There is a pressing need to support women's engagement in the ongoing trend of land commercialization in the global South. If objectives of national development and poverty reduction are to be met—often the justification for pro-investor policies—the process of transferring land must be socially-inclusive and gender-equitable.

This introduction will be followed by a brief description of the research methodology, then the presentation of research findings for Tanzania and Mozambique, respectively. The discussion for each country will include brief country context, a review of the laws and associated regulations, and an examination of practice on the ground and the gender impacts. The paper concludes with a set of recommendations for more gender-equitable compensation and resettlement processes.

## **II. Methodology**

To examine the gender issues in compensation and resettlement, this paper first provides an overview of the regulatory frameworks governing compensation and resettlement in Tanzania and Mozambique. This includes a review of the formal legal framework, including the relevant land laws and associated regulations, as well as constitutional commitments regarding women's equal rights. It then assesses how compensation and resettlement processes unfold in practice. This is done by reviewing the existing literature on practice in Tanzania and Mozambique, as well as multi-country or global studies. Findings from field research conducted by the Mozambican partner, Centro Terra Viva, are also included.<sup>1</sup> The methodology for the field visit was determined the country partner, but incorporates interviews with women affected by large-scale land investment projects specifically in regards to compensation and/or resettlement processes. The legal analysis and literature review (and field research in Mozambique) are thereafter combined to identify major concerns in the current regulatory framework. Finally, recommendations for key regulatory reforms are made.

## **III. Research Findings**

### **A. Tanzania**

Tanzania is among the countries in sub-Saharan Africa that has seen significant investor interest in land in the past decade, for investments including commercial agriculture, agro-forestry, and extractives (Anseeuw, et.al., 2012; Cotula, et.al., 2009; Deininger et al., 2011). There are various estimates on the extent of land that has been acquired by investors. The Land Matrix, which tracks land deals initiated since 2000 and covering 200 hectares (ha) or more, records 342,435 ha for Tanzania as of July 2016 (landmatrix.org). A 2014 study estimated that ongoing or concluded land deals by foreign investors stood at around 1,000,000 ha across 34 deals, with 10 deals with a total of 145,000 ha that could be considered as concluded deals (Locher & Sulle, 2014). By contrast, another 2014 study estimated that 203,347 ha of land was formally leased by foreign and domestic investors, while 896,742 hectares were under transaction (Cotula et al., 2014). While the estimates may vary, what is important is that these investments

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<sup>1</sup> The field research report for Tanzania is still in process.

are for the most part welcomed, indeed pursued, by the Tanzanian government as part of its development strategy.<sup>2</sup> The government has established favorable policies and financial incentives and created an investment promotion agency, the Tanzania Investment Center (TIC), to identify and set aside land for allocation to investors. The government itself has also compulsorily acquired large tracts of land for infrastructure projects, particularly in urban areas, and for conservation and protection.<sup>3</sup>

Most land identified and acquired for investment is used and occupied by local village communities under customary tenure. Tanzania's land laws, the 1999 Land Act and Village Land Act, consider all land as public land vested in the President but recognize land use rights, called a right of occupancy. Lands under customary right of occupancy are classified as village land and are recognized as such by law whether or not they are formally titled.<sup>4</sup> Village land comprises about 70% of land in Tanzania. It is managed by village councils, local governance bodies created under local government law,<sup>5</sup> with oversight by the village assembly—composed of all members of the village 18 years old and up—as well as by the District government and the Commissioner and Minister in charge of land.<sup>6</sup>

Under the Village Land Act, any acquisition or allocation of village land must be approved by the village council and village assembly.<sup>7</sup> In the case of foreign investors, since by definition village land is land under customary right of occupancy, land acquisition involves the reclassification of village land to “general land,” which is subject to state control and management.<sup>8</sup> The land laws empower the President to reclassify land from village land to general land for reasons of the public interest, including investments of national interest.<sup>9</sup> Upon being reclassified as general land, the government can either give the investor a right of occupancy, called a granted right of occupancy, or place the land under management of the TIC, which subsequently gives the investor use rights called a derivative right. Once reclassified, the land will remain general land even if the project fails or is terminated for whatever

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<sup>2</sup> See, among others, example the National Land Use Framework Policy 2013-2033 and Kilimo Kwanza (Agriculture First) Policy.

<sup>3</sup> Among the more recent cases is the compulsory acquisition for urban expansion in Dodoma in central Tanzania, which has caused social unrest. See: <http://journals.aru.ac.tz/index.php/JLAEA/article/view/30>.

<sup>4</sup> The two other categories of land are general land and reserved land, both under the control and management of the state directly. General land is defined as land that is not reserved land or village land. In the Land Act (but not the Village Land Act), general land includes unoccupied or unused village land. Reserved land refers to areas set aside for conservation and protection as well as reserved for public utilities, land where water resources for a natural drainage basin originate, and land declared by the State as hazardous land. The land laws also recognize private use rights in general land, called granted right of occupancy.

<sup>5</sup> Local Government (District Authorities) Act, 1982.

<sup>6</sup> Village Land Act, Sec 4, 8.

<sup>7</sup> Village Land Act, Sec 4 (6), 8 (5).

<sup>8</sup> Under the Land Act, general land includes unoccupied or unused village land.

<sup>9</sup> Land Act, Sec. 5; Village Land Act, Sec. 4-5. Note that villages may also choose to transfer village land to general land.

reason. The land will not be returned to the village even though the villagers have yet to be fully compensated or are still waiting for benefits promised made by the investor.<sup>10</sup>

The Village Land Act sets forth certain procedural requirements for the transfer of village land to general land. These include: formal notice given by the Minister to the village of the proposed acquisition for an investment; village meetings that include representatives of government and the investor to explain the project and its potential benefits; and opportunities to make representations to the Commissioner for any concerns which the village council and affected individuals or group customary rights holders may have. If the land is greater than 250 ha (as is usually the case), the village assembly makes a recommendation to the Minister, who has final approving authority. Importantly, the Village Land Act provides that no transfer shall be made until compensation, including type, amount, method and timing, has been agreed upon between the Commissioner and the village council and affected individual or group rights holders.<sup>11</sup>

Although the law envisions that the TIC will coordinate land acquisition for investors, in practice, many investors directly negotiate with the village, veering from the procedure laid out in the Village Land Act. Investors are typically helped by a local broker, a local politician, or TIC officials in identifying an area with suitable land, and then work with the District government to facilitate the acquisition by the village.

Aside from being reclassified, village land may be subject to expropriation or compulsory acquisition under the land laws. The Land Act provides for the identification and designation of land to the TIC for allocation of derivative rights to investors.<sup>12</sup> It also allows persons who are granted rights of occupancy to general land occupied by persons under customary law to relocate customary occupants if necessary for developing the land.<sup>13</sup> Under an old law still in force, the 1967 Land Acquisition Act, land may be compulsorily acquired for “public utility, public purpose, in the interest of the national economy, or for agricultural, industrial or commercial development.” Several sectoral laws permit compulsory acquisition, including the 2010 Public-Private Partnership Act, for purposes of development, including agriculture, infrastructure, mining, natural resources, tourism and energy; the 2013 Wildlife Act, for the creation of game reserves; and the 2010 Mining Act, for the operation of mining licenses.

### *Compensation and Resettlement*

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<sup>10</sup> Land Act, Sec 20 (5)

<sup>11</sup> If no agreement is made, the issue shall be brought to the Tanzanian High Court for final determination, pending which the Commissioner may direct payment of compensation in the amount deemed proper (Village Land Act, Sec 4 (8)).

<sup>12</sup> Land Act, Sec 20 (2)

<sup>13</sup> Land Act Sec 34

The right to compensation is provided in the Tanzanian Constitution. Article 24 (2) guarantees “fair and adequate compensation” to any person who is deprived of lawfully held property. This guarantee is affirmed in the land laws; both the Land Act and Village Land Act aver as a fundamental principle the payment of “full, fair and prompt compensation to any person whose right of occupancy or recognized long-standing occupation or customary use of land is revoked or otherwise interfered with to their detriment.”<sup>14</sup>

What constitutes compensation and how it is determined and claimed is set forth in the land laws and their associated regulations. The land laws declare as a general principle that “an interest in land has value [which] shall be taken into consideration in any transaction affecting such interest.”<sup>15</sup> What this means for customary rights occupants is spelled out in the 2001 Village Land Regulations (VLR). Under the VLR, interest in land shall be valued at market value, to be determined using either the comparative method (i.e., based on recent sales of similar properties), income approach, or replacement cost method (if property is of special nature and not saleable).<sup>16</sup> Compensation will then be calculated for the unexhausted improvements on the land, defined as any quality permanently attached to the land resulting from the expenditure of labor and capital, including trees, standing crops and growing produce, but excluding the results of ordinary cultivation (for example, clearing the land).<sup>17</sup> Additionally, the occupier will be paid for loss of profits and given disturbance, transport, and accommodation allowance.<sup>18</sup> Interest will be paid if compensation is not paid within 6 months after the land is acquired.<sup>19</sup>

Compensation may be monetary or in-kind, or a combination of both. When paid in the form of replacement property, the regulations require land of comparable quality, extent and productive potential to the land lost, and/or buildings of comparable quality, extent and use to the building lost. Monetary compensation must be equal to the value of the unexhausted improvements, or the value of land that is lost or damaged or no longer usable for productive purposes, and/or reflect the cost of disturbance. Finally, in-kind compensation may be in the form of plants and seedlings, access to communal assets, regular supply of grain and other basic foodstuffs for a specified time, or other forms as the claimant and

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<sup>14</sup> Land Act Sec 3 (1)(g); Village Land Act Sec 3 (1)(h)

<sup>15</sup> Sec 3 (1)(f), Land Act; Sec 3 (1)(f), Village Land Act Sec 3 (1)(g)

<sup>16</sup> Village Land Regulations, Sec 9-11. Similar provisions appear in the 2001 Land (assessment of the Value of Land for Compensation) Regulations and Land (Compensations Claims) Regulations, which apply to acquisitions under the Land Act.

<sup>17</sup> Village Land Act Sec 2; Village Land Regulations Sec 13

<sup>18</sup> Village Land Regulations, Sec 13-17. Note that loss of profits, and transport and accommodation allowance will not be paid for unoccupied land. For graves, the Graves Removal Act provides for compensation for reasonable expenses incurred in removal, transportation, reinstatement and re-interment of the grave or dead body and any placatory or expiatory rites or other ceremony accompanying the removal (Sec 9 [1]).

<sup>19</sup> Village Land Regulations, Sec 19



the Commissioner may agree upon.<sup>20</sup> Other regulations, the 2001 Land (Compensation Claims) Regulations and 2001 Land (Forms) Regulations, also provide compensation for grazing land.

The Commissioner is required under the VLR to serve notice to the village council, the affected customary rights holders, and any derivative rights holders of the intention to transfer village land and the need for formally claiming compensation.<sup>21</sup> Claims for compensation shall be submitted to the Commissioner within 60 days from receipt of notice. The Village Council submits a compensation claim for communal land and the associated assets and benefits, which shall include the location of communal land subject to the claim, its approximate area or size and its current uses, losses caused by the land transfer, communal rights for which compensation is claimed, and the amount being claimed.<sup>22</sup> Affected villagers submit claims for their own land. The claim shall include the name, age, sex, address, marital status, and number of children living with claimant; location and size of the land; current use; losses caused by the transfer; land rights claimed and amount claimed for the value of the land and unexhausted improvements; costs of moving from the land; and other costs.<sup>23</sup> The Commissioner decides within 90 days whether or not to accept the claim and reports his decision to the Minister. If he accepts the claim, the Commissioner shall pay compensation within 21 days from receipt of report by the Minister. If he rejects the claim, the parties may agree to mediation or refer the issue to the courts.<sup>24</sup>

Under the Village Land Act, the President may direct that the compensation payable for the transfer of village land to general land be paid by the person or organization who is granted the right of occupancy to the transferred land.<sup>25</sup> However, the law and regulations do not directly address direct negotiations between the investor and the village. Typically, valuation is conducted by private agents hired by the investor and compensation negotiated on a case-by-case basis, which may or may not adhere to the requirements of the VLR.

When customary tenure holders occupying general land have to be resettled in order for the investor who has been given a granted right of occupancy to implement the project, the Land Act requires that customary occupants be given 180 days' notice of the need to move, the opportunity to reap crops already sown, and continued water use rights in addition to the compensation payable for loss of interest in land and other losses incurred.<sup>26</sup> With respect to public-private partnerships, particularly with development

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<sup>20</sup> Village Land Regulations, Sec 25

<sup>21</sup> Village Land Regulations Sec 20; Village Land Form No. 11; Village Land Form No. 14. Note that the required notices and claims shall be in accordance with the templates provided in the 2001 Land (Forms) Regulations.

<sup>22</sup> Village Land Form No. 12

<sup>23</sup> Village Land Form No. 15

<sup>24</sup> Village Land Regulations, Sec 21-24

<sup>25</sup> Village Land Act, Sec 4 (11)

<sup>26</sup> Land Act, Sec 34 (3)

banks such as the World Bank and other financial institutions, standards and procedures mandated by the partner are also applied. Specifically, these are the International Finance Corporation's (IFC) Performance Standard 5 (PS 5) on Land Acquisition and Involuntary Resettlement and World Bank (WB) Operational Policy 4.12 (OP 4.12) on Involuntary Resettlement (Note: revised in 2016, now Environmental and Social Standard 5 on Land Acquisition, Restrictions on Land Use, Involuntary Resettlement).

IFC PS 5 requires resettlement activities to be conducted with full disclosure, consultation, and informed participation of affected persons.<sup>27</sup> Land-based compensation is preferred, but any cash compensation should be paid at full replacement cost.<sup>28</sup> A Resettlement or Livelihood Restoration Framework must be created which shall guide the resettlement process.<sup>29</sup> The resettlement framework must include, where relevant, the provision of relocation assistance, new resettlement sites allowing for a restored standard of living, the restoration of economic and commercial activities, and a choice of options for adequate housing with secure tenure.<sup>30</sup> Before the investor takes possession of the land, compensation must be paid and any resettlement sites and moving allowances provided.<sup>31</sup> Importantly, where land acquisition and resettlement is a government responsibility, the private sector actors must still play an active role in resettlement planning, implementation, and monitoring.<sup>32</sup>

Similarly, WB OP 4.12 shows a preference for replacement of lost assets rather than cash compensation, requires grievance mechanisms and high levels of consultations and disclosure, and mandates the development and implementation of a resettlement action plan which meets a number of specified requirements.<sup>33</sup> The resettlement process should be conducted as a sustainable development program, enabling displaced persons to share in project benefits.<sup>34</sup> Resettlement plans should provide for housing and agricultural sites whose combination of productive potential, locational advantages, and other factors make them at least equivalent to the old site, in addition to relocation assistance, and where necessary transition support and development assistance.<sup>35</sup> Where monetary compensation is appropriate, compensation must be at full replacement cost for lost assets, and it must be paid before displacement occurs.<sup>36</sup> It may need to be supplemented with non-monetary forms of support.<sup>37</sup>

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<sup>27</sup> IFC PS 5, objectives/ para 3

<sup>28</sup> IFC PS 5, objectives/ para 3; 21

<sup>29</sup> IFC PS 5, para 14-16; 19; 25

<sup>30</sup> IFC PS 5, para 22, 27-28

<sup>31</sup> IFC PS 5, para 9

<sup>32</sup> IFC PS 5, para 30

<sup>33</sup> OP 4.12 para 6, 11, 13(a)

<sup>34</sup> OP 4.12 policy objectives/ para 2

<sup>35</sup> OP 4.12 required measures/ para 6

<sup>36</sup> OP 4.12 para 10, 12

<sup>37</sup> OP 4.12 para 11

These standards are significantly more stringent than the domestic legislation, and the exact responsibility for paying higher amounts of compensation or implementing the resettlement requirements may not always be clear (Makwarimba & Ngowi, 2012). Tanzania's domestic legislation addressing public private partnerships does not directly address the question of aligning domestic law regarding compensation with partner requirements regarding compensation and resettlement.

### *In Practice*

Since the majority of land acquisitions involve direct negotiations between the investor and the village, facilitated by local authorities (Makwarimba & Ngowi, 2012), it is the investor rather than the government that pays compensation and finances and implements the resettlement process. Studies show that in many cases, compensation is neither full, fair nor promptly paid. There is a strong bias towards facilitating the investment at the expense of customary rights occupants.

A persistent complaint by villagers is the lack of clarity in the valuation of property and in the calculation of compensation (Kironde, 2009). Usually, the land itself is not compensated, particularly where it appears unoccupied and unused, even if it is simply the case that the valuation was conducted in between planting cycles (Oakland Institute, 2011; Haki Ardhi, 2013; Beyene et al., 2013). Villagers are generally paid only for unexhausted improvements on the land, such as houses or buildings, planted trees, standing crops and growing produce, most of the time at vastly underestimated prices (Sulle & Nelson, 2013; Purdon, 2012). The treatment of communal resources such as water, grazing land and woodland, which are vital for the subsistence and livelihoods of villagers, is inconsistent—in some instances they were compensated, in other they were not (German et al., 2011; Emel et al., 2012; Makene et al., 2012). The same goes for annual crops, which may not be compensated if not currently growing, even if there is no clear timeline for resettlement or the resettlement is delayed. Meanwhile, villagers may be barred from planting but are not paid for the disturbance. Similarly, especially in mining projects, disturbance allowance is not provided to those who are not resettled but will suffer economic displacement due to loss of productive capacity of the land caused by environmental degradation. Moreover, certain land uses, such as leasing of trees, are sometimes excluded from valuation, resulting in uncompensated loss of profits (Oakland Institute, 2011).

With such restrictive valuation practices, it is no surprise that the resulting compensation package is woefully inadequate. Where villagers are paid in cash and have to find replacement land themselves, the amount of compensation is typically insufficient to pay for equivalent land, especially if land prices increase or land becomes scarcer because of the investment project (Katundu et al., 2013). For example, one villager reported that the monetary compensation he was offered was too low to purchase

replacement land, so he accepted a three-acre replacement plot, even though he had owned eleven acres before (Oakland Institute, 2015). On the other hand, where replacement land is provided, villagers find that it is usually less fertile, too far away from their communities, or does not have infrastructure and services (Brüntrup et al, 2016). In many cases, the community agrees to low compensation because of the promise or expectation of jobs and badly needed social services (health clinic, schoolhouse, village road, etc.). In fact, these are the main reasons for their approval of the investment and the land acquisition. A common problem is that the promised or expected benefits fail to happen or the investment project becomes bankrupt or is terminated (Isaksson & Sigte, 2009).

Not only is compensation generally insufficient, villagers also usually suffer from delayed payment. Often, investors commence project activities and pressure villagers to vacate the land before compensation is fully paid. Without the means to acquire new accommodations or substitute land, villagers sometimes end up living like refugees (“Tanzanian Farmers,” 2013). In a number of biofuels investments, such as the high-profile Sun Biofuels project in Kisarawe District and the Bioshape project in Kilwa District, the district government was given a percentage of the compensation, even getting a bigger share than village itself, a practice that has no clear basis in law (Isaksson & Sigte, 2009; Kweka, 2012; Sulle & Hall, 2015; German et al., 2011).

Overall, while there are some positive examples of compensation and resettlement, mostly in projects involving public-private partnerships where WB and IFC standards are operative, village communities have generally ended up more food insecure and impoverished than before.

### *Impacts on Women*

While the entire village community shares the negative experiences from unfair compensation and improper resettlement practices, women bear additional burdens. A study of the relocation of customary communities for the creation of a protected area in the East Usambara mountains in northeastern Tanzania provides key insights on gender (Rantala et al., 2013). Notably, far fewer women than men received compensation despite the fact that similar proportions of men and women lost access to similar areas of land. This is because most farms cultivated by women were labeled as ‘household’ property and registered in the name of the household head, mainly the husband or other male relative (father, father-in-law, or son in the case of some widows), who then received the compensation payments. This has implications for the household. It is the women who usually produce for household food consumption; the loss of land without the means to acquire replacement land can impact family food security. The study also found that the most common use of compensation by the few women who received them was for school fees, whereas for the men it was consumption. Villagers interviewed for the study recounted how

men would go drinking after receipt of the money, sometimes disappearing in town for days. Not surprisingly, there were instances of families broken up following compensation payments, partly because of the men spending the money on alcohol and other women. The conclusion of the study is that women in the aggregate “clearly lost out . . . (t)hey were effectively blocked from accessing both land and compensation.” (Rantala et al., 2013, p.108).

In another study, women in villages affected by mining projects reported that communal resources, including water, grazing land and forests for firewood were not considered during the valuation process. They were not compensated for the loss of access to resources nor provided with alternatives to replace their old source (Makene et al., 2012). In a village affected by commercial agriculture investments, village women complained that they have been blocked access to fields where they had previously collected wild mushrooms and plants (Twomey et al., 2015).

Employment opportunities are not always open to women; hard labor jobs on plantations, such as sugar harvesting, are typically given to men. Some commercial enterprises may favor female labor, but poor wages and working conditions fail to make them empowering opportunities (Anseeuw et al., 2012). In the Bioshape case, while the company was still in operation, women increasingly engaged in paid wage labor as well as men, altering intra-household wage dynamics (LEAT, 2011). However, given that much of this labor was short-term, they did not off-set the significant food security and poverty risks encountered by women when they lost land use and access rights.

Finally, women face heightened risk of gender-based violence related to the loss of resource access, or to the design of resettlement sites. Evictions of pastoralists for the establishment of conservation areas in northern Tanzania have been marked by reports of sexual assaults of women by implementing agents (IWGIA, 2016). Similarly, a number of women in the North Mara gold mining area, also in northern Tanzania, reported that they were arrested and then sexually assaulted by security officers or Tanzanian police officers (York, 2013; Barrick Gold, 2011). Some cases of sexual abuse were reported by supervisors at investment sites (Brüntrup et al, 2016).

### *Examining the Gender Framework*

The Tanzanian Constitution enshrines gender equality before the law and prohibits discrimination against any person including on the basis of gender.<sup>38</sup> It further provides that “every citizen has the right to participate fully in the process leading to the decision on matters affecting him, his well-being or the

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<sup>38</sup> Art. 13 (1), (4), Constitution of Tanzania

nation.”<sup>39</sup> These principles are affirmed in the land laws. Both the Land Act and Village Land Act grant women equal rights to land and provide strong protections against discrimination of women and other vulnerable groups under customary laws.<sup>40</sup> The Village Land Act proscribes any assignment or surrender of individual customary rights of occupancy (called a certificate of customary right of occupancy) that will operate or likely to operate or can be reasonably deduced to have as its purpose to defeat a woman’s customary right of occupancy.<sup>41</sup> Tanzania has also adopted a quota system to promote gender-inclusive land administration.<sup>42</sup> At the village level, under the local government law women must constitute at least 25 percent of village council membership. The village assembly is composed of both men and women aged 18 and above. The land laws appear progressive in terms of gender.

However, the experience of women and their communities bares certain gaps in the legal and regulatory framework on compensation and resettlement. In general, a significant gap, previously alluded to above, is the lack of specific rules governing direct negotiations between the investor and the village. The compensation process outlined in the Village Land Act and the Regulations focuses on government actors without mention of third parties. For example, the Village Land Act requires that compensation is agreed upon between the Commissioner and the village council and customary rights occupants. The same requirement appears in the Village Land Regulations with respect to forms of compensation other than those listed in the regulations. But when a third party pays compensation, there is no regulation governing the negotiations and manner of payment. This raises questions, among others, as to the status of promises made by investors to provide infrastructure or social services, in cases where these promises are understood by villagers to be part of the compensation package.

Another gap is the absence of a regulatory framework on resettlement. The Village Land Act provides that village land taken by the government may be replaced with general or reserved land, while the Regulations provide that compensation may be in the form of replacement land of comparable quality. The Land Act provides some protection in cases of compulsory acquisition and involuntary resettlement, including 180 days’ notice of any requirement to move, the opportunity to reap crops already sown, and continued water use rights. But other than these conditions, there is no overall framework for managing the resettlement process—from its design and the identification of land, its implementation, including transfer of populations and rebuilding of livelihoods, to its monitoring for impacts. While IFC and WB resettlement standards and policies apply in some projects, the exact responsibility for implementing the

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<sup>39</sup> Art 21 (2), Constitution of Tanzania

<sup>40</sup> Land Act, Sec. 3; Village Land Act Sec. 3(2)

<sup>41</sup> Village Land Act Sec 30 (4), 35

<sup>42</sup> At the national level, the Constitution provides that women shall constitute not less than 30 percent of the members of the National Assembly, Tanzania’s parliament (Art.66).

more stringent international requirements may not always be clear (Makwarimba & Ngowi, 2012). Tanzania’s domestic legislation addressing public-private partnerships does not directly address the question of aligning domestic law regarding compensation with partner requirements regarding compensation and resettlement. Given a policy of encouraging land investments,<sup>43</sup> there is a need for a policy framework and clear guidelines on resettlement. The guidelines must particularly address how women and their communities are to be represented and participate in the decision-making processes involved, and, in light of women’s vulnerability to gender-based violence, standards of action and behavior for agents implementing the resettlement program.

With respect to existing regulations, the lack of treatment of those aspects affecting women has had considerable negative impacts on them. A critical gap is the absence of mechanisms for women to claim a share of the compensation payments made to households. The Village Land Regulations offer no guidance on how monetary compensation is to be distributed or to whom. While the required application (Village Land Form No. 15) for claiming compensation at the household level requests information on marital status, number of children, and current uses of the land,<sup>44</sup> this is not serve to guarantee that the wife is entitled to a share of the payments (with the exception of female-headed households). Indeed, the study of women affected by the creation of a conservation reserve in the East Usambara mountains proves this point. Another gap pertains to communal lands. Women rely more heavily on the commonage as part of their domestic responsibilities—i.e., to collect water, fuel wood, fodder, and wild plants and fruits for the household and to supplement livelihoods. But there is nothing in the Regulations to assure that these vital land uses are adequately replaced. The Regulations merely authorize village councils to claim compensation on behalf of the village for loss of communal land and the assets and benefits derived from it.<sup>45</sup>

In the same vein, the Regulations are silent regarding the status of benefits such as wage labor opportunities and social services and infrastructure for the community. There is mention of “other forms of compensation” in the Regulations<sup>46</sup> but this has not always been interpreted to include such benefits. If not deemed as compensation, even though it may be the primary reason for approving the land acquisition, villagers, including women, have no means of holding the investors to their promises.

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<sup>43</sup> See the National Land Use Framework Plan 2013-2033, at <http://nlupc.go.tz/index.php/content-category-2/93-the-national-land-use-framework-plan-2013-2033>.

<sup>44</sup> Village Land Regulations, Sec 8 (b), Village Land Form No. 15

<sup>45</sup> Village Land Regulations, Sec 8 (a)

<sup>46</sup> Village Land Regulations, Sec 25

## **B. Mozambique**

The 2000s saw increased investor interest in mega-projects requiring large tracts of land in Mozambique. (Aabø & Kring, 2012) One study estimates that the aggregate large land acquisition between January 2004 and March 2009 stood at 2.7 million hectares. (Deininger et al., 2011) Controversy over these large land allocations resulted in a government moratorium on land concessions over 1,000 ha in 2009; but their allocation resumed in 2011. Since then, leases for large amounts of land continue to be allocated, particularly in the rice, sugar, and forestry sectors (landmatrix.org).

Since ownership of land in Mozambique is vested in the state, rights to the land are the right to use and enjoy the land (a DUAT<sup>47</sup>, by the Portuguese acronym). Local communities can acquire a DUAT by occupying land in accordance with customary norms. The primary legal avenue by which investors may acquire a DUAT is by application to the Government. The application must include an opinion issued by the District Administrator, after consultations have been conducted with the local community.<sup>48</sup> However, the DUAT is ultimately approved by the provincial Governor (if under 1,000 ha), the Minister of Agriculture and Fisheries (if between 1,000 and 10,000 ha), or the Council of Ministers (if exceeding 10,000 ha).<sup>49</sup> If approved, the investor obtains a provisional DUAT not exceeding two years; after this, a DUAT may be granted for a 50 year term, which may be renewed for a second 50 year term.<sup>50</sup>

The required community consultations must consist of an initial public informational meeting and a second in which the community pronounces on the availability of land for the project.<sup>51</sup> The outcome of these consultations must be documented via the meeting minutes (the “acta”) signed by members of the Advisory Councils for Villages and Towns.<sup>52</sup> A copy of the acta must be provided to the community once the District Administrator’s opinion is given.<sup>53</sup> The consultations are financed by the investor via a deposit made at the beginning of the process.<sup>54</sup> Community input must also be sought in relation to the identification of land: the investor’s application must also include a sketch and a descriptive report of the relevant land, identified with the involvement of local communities and administrative authorities.<sup>55</sup>

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<sup>47</sup> Stands for *Direito de Uso e Aproveitamento da Terra*

<sup>48</sup> Art. 24(1)(e), Land Law Regulations

<sup>49</sup> Art. 22, Land Law; Art. 28, Land Law Regulations

<sup>50</sup> Art. 25, Land Law

<sup>51</sup> Art. 1, Diploma Ministerial 158/2011

<sup>52</sup> Art. 27(2), Land Law Regulations, as amended by Decreto 43/2010

<sup>53</sup> Art. 2(3), Diploma Ministerial 158/2011

<sup>54</sup> Art. 4, Diploma Ministerial 158/2011

<sup>55</sup> Art. 25, Land Law Regulations



The payment of compensation is not regulated by a comprehensive legal framework. It is briefly addressed in regulations governing resettlement (described below), which require that a compensation plan, compensation criteria, and compensation costs are addressed during resettlement planning.<sup>56</sup> No specific requirements govern the compensation procedure or valuation, however. In the mining context, a memorandum of understanding which fixes the compensation value must be agreed to between the Government, the community, and the mining company.<sup>57</sup>

However, in the context of expropriation, the Constitution requires the payment of fair compensation,<sup>58</sup> and accordingly detailed regulatory requirements are in place. Any intended expropriation must be preceded by a notice delivered to the affected persons. When this notice is delivered, it must include proposed terms for calculating compensation. The affected person then has 30 days to submit a written counterproposal for the value of the compensation, including a value prepared by an expert of his choice.<sup>59</sup>

The value of the compensation must also follow established guidelines in order to constitute “fair compensation.” The compensation must include the loss of tangible assets (defined as crops, buildings, and improvements), intangible assets (communication routes, transportation access), the breakdown in social cohesion (increased distances to social and family structures, family cemeteries, and medicinal plants), and a loss of the production of goods.<sup>60</sup> Fair compensation includes the current and actual value of the property on the date of payment, as well as damages and lost profits arising from the expropriation.<sup>61</sup> To determine the value of intangible assets and the breakdown in social cohesion, a factor of between 0 and 20% of the property value is fixed via negotiations between the parties.<sup>62</sup> Detailed terms for the calculation of tangible goods (particularly crops and infrastructures) are included in the Expropriation Directive (181/2010).<sup>63</sup> Note that no valuation of the land itself is provided for.

In contrast to the compensation regulations, regulations governing resettlement apply to economic projects more generally. The 2012 Resettlement Regulations and associated ministerial diplomas impose obligations to prepare and implement a resettlement plan on economic activities as part of the

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<sup>56</sup> Art. 22, Resettlement Regulations Art 22; ¶¶ 3.1.2; 3.2; 6, Diploma Ministerial 156/2014

<sup>57</sup> Art. 30, Mining Law

<sup>58</sup> Art. 82(2), Constitution of Mozambique

<sup>59</sup> ¶¶ 3, 4.1, Diploma Ministerial 181/2010

<sup>60</sup> Art. 1, 20, Territorial Planning Law; Art. 1, Territorial Planning Law Regulations

<sup>61</sup> Art. 70(3), Territorial Planning Law Regulations

<sup>62</sup> ¶ 4(b)(i), Diploma Ministerial 181/2010

<sup>63</sup> Diploma Ministerial 181/2010

environmental licensing process.<sup>64</sup> The investor must prepare a resettlement plan in three stages: 1) an initial data collection, 2) the preparation of the Resettlement Plan itself, and 3) preparation of a Resettlement Implementation Action Plan. Specific data and plans are required under each stage.<sup>65</sup> The completed Resettlement Plan must be approved by the District Government, following an opinion from the Technical Resettlement Monitoring and Supervision Committee.<sup>66</sup> The Technical Committee is an entity created by the Resettlement Regulations with oversight responsibilities over the entire resettlement process. It is supported by District and Provincial level Resettlement Committees.<sup>67</sup>

The Resettlement Regulations require public participation in the form of public consultations and public hearings. At least four public consultations, consisting of public meetings with all affected parties, must be advertised and organized. During the meetings, participants must be given a chance to express concerns and raise questions, which must be recorded, and the investor must give a response at the meeting or within 15 days. The meeting minutes must be signed by members of the Technical Commission and representatives of the affected population and investors. A report of each public consultation must be written and signed by the members of the Technical Commission, five representatives of the affected population, the civil society representative, the community leaders, and the private sector representatives. An annex must also be included which lists the participants and their signature.<sup>68</sup> The significance of these signatures (or participants' refusal to sign) is ambiguous; the regulations use the language of participation instead of clearly establishing the community's right to refuse a proposed resettlement.

During resettlement, the affected population has the right to have their income and standard of living re-established at an equal or higher level, to be transported with their goods to the new residence, to have infrastructures and social facilities, to have space for subsistence activities, and to give their opinion about the resettlement process.<sup>69</sup> The regulations specify minimum housing standards, require certain community and social structures, and require space for agriculture and livestock activities. Identical or

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<sup>64</sup> Resettlement Regulations, Decreto 31/2012; Internal Regulations for the Functioning of the Technical Commission on the Monitoring and Supervision of Resettlement, Diploma Ministerial 155/2014; Technical Directive on the Process of Preparing and Implementing Resettlement Plans, Diploma Ministerial 156/2014

<sup>65</sup> Art. 19-22, Resettlement Regulations; ¶¶ 3.1-3.2.4, Diploma Ministerial 156/2014

<sup>66</sup> Art. 9, Resettlement Regulations 9; ¶ 2.1, Diploma Ministerial 156/2014

<sup>67</sup> Art. 6(1), Resettlement Regulations Art 6(1); Art. 16, Diploma Ministerial 155/2014

<sup>68</sup> Art. 23, Resettlement Regulations; ¶¶ 4.1-4.2, Ministerial Diploma 156/2014

<sup>69</sup> Art. 19(1), Resettlement Regulations

superior conditions to that of the place of origin must be provided at resettlement sites to compensate for lost access to communal resources.<sup>70</sup>

### *In Practice*

Despite the above-described regulations, there have been ongoing issues with the compensation and resettlement process. Much of this occurs at the community consultations stage: consultations are generally a “token gesture,” proper procedures are not followed, insufficient information is given, and meetings are not representative. (German et al., 2011) In practice, the decisions are often made by local elites or traditional leaders (Fairbairn, 2013) Furthermore, the quality of benefits obtained from a project is highly dependent on community negotiating capacity. (German et al., 2016) Investor commitments contained in the *acta* often consist of generic formulations, such as statements that “communities would benefit” or the “company must create jobs.” (Nhantumbo & Salamao, 2010)

Practical realization of the Resettlement Regulations remains a challenge. Identifying land for resettlement has proven difficult, proper community consultation seldom occurs, and there have been several high-profile investor-community conflicts. (Symons, 2016; Vines et al., 2015) Many investors lack the capacity to guarantee a full rehabilitation of displaced persons, and few provide replacement land for displaced persons: one study finding only 3% of investors granted new DUATs had done so. (Di Matteo & Schoneveld, 2016) By contrast, compensation is more commonly paid, despite the lack of a governing legal framework. However, there have also been reports of promised compensation going unpaid, and when compensation is paid, amounts are usually very low. (Di Matteo & Schoneveld, 2016; Fairbairn, 2013)

When investment projects fail to adequately address the needs of displaced communities, women are particularly impacted, and control over land and other resources may shift to male elites. (Bleyer et al., 2016; Otsuki et al, 2016, *Large Scale*; Verma, 2014) Throughout the resettlement process in Mozambique, there is an absence or merely cursory consideration of women’s activities and concerns. (Lillywhite et al., 2015; Waterhouse et al., 2010) Research partner CTV’s report found that authorities at the national, provincial, district, and municipal levels focus on the technical aspects of land-planning and were generally ignorant about gender impacts. (Kiambo, 2017) Without mandated provisions for women’s participation, women are likely to go unheard: even in communities where women attend consultative meetings on land matters, they rarely participate and almost never sign the resultant

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<sup>70</sup> ¶ 2.2, Diploma Ministerial 156/2014

documents. (Nhantumbo & Salomão, 2010; Salcedo-La Viña & Morarji, 2016) Insufficient planning or imprecise regulatory guidance may result in improvisations with gendered impacts. One meeting facilitator for a Maputo Sul infrastructure project said too many people were speaking and asked each block to elect an individual representative, which may not have ensured women's participation. (Kiambo, 2017; W. Kiambo, personal communication, January 19, 2017)

One specific issue resulting from this lack of gender awareness is in regards to women's ability to access and contest compensation. Overall, compensation payments are quite low, and elite capture of compensation benefits is a recurring problem, with gendered impacts. (Cabral & Norfolk, 2016; Di Matteo & Schoneveld, 2016; Fairbairn, 2013) In this context, women face specific difficulties claiming compensation: CTV's fieldwork found although that female heads of households directly received compensation checks, problems arose for women with estranged or absent husbands. For example, one widow's son collected the payment as head of household and failed to share it with his mother. Another woman was not allowed to collect the compensation check on behalf of her husband who was working in a distant city. Women in polygamous marriages also face challenges, such as the woman who reported that the one compensation check given to the husband was inadequate to build houses for each wife. (Kiambo, 2017) Similarly, if there are problems with the compensation, women face greater difficulties contesting compensation payments, and have heightened barriers to engagement with formal processes: rural women's illiteracy rates are twice that of men, and less than a quarter of women speak Portuguese. (Otsuki et al, 2016, *Large Scale*; Terra Firma, 2013)

The compensation and resettlement process also inadequately addresses access and use of community resources, disproportionately affecting women, who are usually responsible for fuel and water collection. Compensation is seldom given for common pool resources: one study found it was only compensated 12.5% of the time. (Di Matteo & Schoneveld 2016) The intangible benefits derived from resources, such as social benefits linked to women's traditional uses of forest resources, are seldom compensated even where integral to the life of the community. (Witter & Satterfield, 2013) Investor disregard for common resources has resulted in the fencing of areas reserved for women's firewood collection, or the use of community water sources without paying compensation. (Justiça Ambiental & UNAC, 2011; Waterhouse et al., 2010) This has serious consequences for women: after one investor fenced former community land, women faced regular harassment from the guards during daily activities, such as checking their bags, confiscating firewood, and one instance of a reported assault. (Kiambo, 2017)

There is also improper planning for resource access at many resettlement sites. Women have primary responsibility for water collection, but at some resettlement sites must wait in long lines, travel long distances, or are targeted at the water source for being members of the resettled community. (Kiambo, 2017; Milgroom 2014; Waterhouse et al., 2010) Elsewhere, women’s fuel collection became a source of conflict with the host community. (Kiambo, 2017) Resettlement sites may promise electricity and tap water which are never delivered or break down, but new land pressures make it impossible for women to return to old water and fuel collection patterns. (Otsuki et al., *After*, 2016) A failure to plan for these new resource pressures is a recurring problem which disproportionately impacts women.

### *The Gender Framework*

The Constitution guarantees equality of men and women before the law,<sup>71</sup> and the 1997 Land Law affirms women’s right to hold title in land.<sup>72</sup> However, women’s access to land is still disadvantaged in practice, particularly during the compensation and resettlement process. The relevant regulatory framework fails to redress this by adopting an essentially gender-blind approach. This leaves several problematic gaps in the law.

First, women’s representation and participation is not guaranteed either at the institutional or the community level. The primary institution responsible for oversight of the resettlement process is the Technical Committee established by the Resettlement Regulations. However, the regulations do not require that women are included on the Technical Committee, or on the supporting district and provincial committees. Similarly, a representative from the ministry which handles gender issues is only included at the district level committee.<sup>73</sup> There are also no general requirements that technical or governmental expertise on gender matters is included in the resettlement process.

Women’s participation is also not adequately addressed at the community level. The regulations make a generic reference to ensuring diverse social strata are heard, and allow for the discretionary creation of specific working groups.<sup>74</sup> However, there is no provision mandating women’s participation in the public consultations. Although the *acta* resulting from the public consultations must be signed by select stakeholders, and an annex must contain the signatures of participants, this could conceivably occur without the participation of any women.<sup>75</sup> None of the “select stakeholders” are required to be women or

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<sup>71</sup> Art. 36, Constitution of Mozambique

<sup>72</sup> Art. 10, 13, Land Law

<sup>73</sup> Art. 16, Diploma Ministerial 155/2014

<sup>74</sup> ¶ 4.1, Diploma Ministerial 156/2014

<sup>75</sup> Art. 23, Resettlement Regulations; ¶¶ 4.1-4.2, Diploma Ministerial 156/2014

a representative of women's groups. The annex with the signatures of participants requires information on their contact information, home institution, and profession, but does not require that their sex is listed.<sup>76</sup>

Second, there are no regulations which ensure that compensation distribution procedures are gender-equitable. Neither the resettlement regulations nor the expropriation technical directive provide guidance as to how compensation should be distributed, or who can claim it. Women may also experience barriers to contesting unfair or improper compensation. The expropriation directive allows for the contestation of compensation values, but the associated procedure references a written, well-reasoned counterproposal; a value prepared by an expert; and relies on procedures in the Investment Act.<sup>77</sup> This language assumes literacy and technical capacity on the part of the person whose property is expropriated, a problem given lower female literacy rates.

Third, the regulations inadequately address women's use of communal resources. Positively, the regulations do require that the resettlement plan includes a study on communal property needed for subsistence, including untitled usufructuary systems. In addition, resettlement sites must provide conditions identical or superior to the original sites to compensate for the loss of access to communal resources.<sup>78</sup> The process must be accompanied by the establishment of roads, a water supply system, electrification, a health post, school, markets, and other specified social structures.<sup>79</sup> These are ambitious requirements, and although generally positive provisions, raise concerns over the feasibility of implementation and enforcement in practice.

In particular, there is a concern that these will not be implemented in ways that benefit women, given the gender blindness of these requirements. During the data collection and planning stages, there is no requirement that data be sex disaggregated, that the gendered uses of these resources be assessed, or that women specifically be consulted about their preferences. Oversight and monitoring requirements in the regulations focus on the quality of constructions and other technical concerns. A reference is made to monitoring the construction of social infrastructure, but a more holistic assessment of access to resources or community livelihoods is not required.<sup>80</sup>

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<sup>76</sup> ¶ 4.3(8), Diploma Ministerial 156/2014

<sup>77</sup> ¶¶ 3, 4.1, Diploma Ministerial 181/2010

<sup>78</sup> ¶¶ 2.1-2.2, Diploma Ministerial 156/2014

<sup>79</sup> Art. 16(6), Resettlement Regulations

<sup>80</sup> ¶¶ 6-7, Diploma Ministerial 156/2014

#### **IV. Recommendations**

The recommendations fall into three major aspects in the regulations that impact women. These are:

##### **A. Tanzania**

Improve participation and representation

- Adopt guidelines for direct negotiations of land acquisitions between investors and villages as well as payment of compensation by investors. The guidelines should include requirements for women's participation in decision-making processes at the village level. Given women's low participation in public life, mechanisms such as focus group discussions for women should form part of the guidelines.
- Adopt a policy framework and guidelines on resettlement that have standards that are at least equal to IFC Performance Standard 5 and WB Operational Policy 4.12. In particular, the framework and guidelines should address how women and their communities are to be represented and participate in the decision-making processes involved, and include standards of action and behavior for agents implementing the resettlement program.

Ensure women's inclusion in Compensation

- Include in the regulations mechanisms for women to claim a share of compensation payments given to male-headed households. There should be an explicit provision on gender-equity and women's entitlement to a share of the compensation payments. The application form for claiming compensation (Village Land Form No. 15) may then be revised to include not just the marital status of the claimant but the name of the spouse as well. Information on the current land uses may be broken down to the separate uses of different household members which may thereafter be the basis for distributing compensation payments.
- Clarify in the regulations the status and treatment of social services, village infrastructure, and employment promises. If they constitute the main reason for project approval, the means for holding the investor to account must be provided.

Address loss of communal resources and infrastructure in a gender-sensitive manner:

- Prioritize continued access to communal resources by the community, particularly women's access. If not feasible, ensure adequate replacement of these resources.

##### **B. Mozambique**

Improve participation and representation:

- Require that women and/ or a representative from the ministry responsible for gender issues sits on the Technical Committee and the supporting district and provincial committees. Alternatively,

mandate a technical expert on gender issues is present on the Committee (as is currently a requirement for the Committee on Evaluation of Environmental Impacts).<sup>81</sup>

- Require that the “select stakeholders” which must sign the *acta* resulting from the community consultations include either a women’s representative, or a gender quota.
- Mandate that the annex listing community consultation participants also includes information as to the sex of participants. Consider additional measures to ensure women’s participation in the meetings, such as requiring investors to account for large gender imbalances in the signature list.
- Mandate specific outreach to women during the consultative process, either through focus groups or another appropriate procedure designed to incorporate women’s participation in an equitable manner.<sup>82</sup>

Ensure women’s inclusion in compensation distribution:

- Revise the resettlement regulations and the expropriation technical directive to clearly state that compensation must be distributed in a gender equitable manner. Specifically, require that a plan is in place for distributing compensation to female-headed households, polygamous households, and as between spouses.
- Clarify and simplify the procedures for contesting compensation provided in the expropriation directive to ensure those with limited technical capacity or literacy may participate in the process.

Address loss of communal resources and infrastructure in a gender-sensitive manner:

- Require that the study of communal resources incorporates evaluations of women’s use of those resources.
- Require that data collected for resettlement planning purposes is sex disaggregated.
- Incorporate evaluations of community access to fuel, water, and other resources into the monitoring and evaluation requirements.
- Assess the feasibility of the requirements for social infrastructure for all projects, and evaluate whether alternative arrangements for smaller or more isolated projects may aid in implementation. For example, in rural areas, it may be practical to provide that guaranteed access rights to water and fuel sources may serve as a replacement for the requirements of electrification and providing a water supply system.

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<sup>81</sup> Art. 16(1)(e), Environmental Impact Regulations

<sup>82</sup> Focus groups may occasionally prove challenging due to local community dynamics. For example, during CTV’s research, one community refused focus groups because an investment project had engendered suspicions that separate groups would be promised special incentives. (W. Kiambo, personal communication, January 19, 2017)



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## **LAWS/ POLICIES**

### ***Tanzania***

Constitution of Tanzania  
1967 Land Acquisition Act  
1982 Local Government (District Authorities) Act  
1999 Land Act  
1999 Village Land Act  
2001 Land (Assessment of the Value for Compensation) Regulations  
2001 Land (Forms) Regulations  
2001 Land (Compensation Claims) Regulations  
2001 Village Land Regulations (including the Village Land Forms)

### ***Mozambique***

Constitution of Mozambique  
1997 Land Law  
2007 Territorial Planning Law  
Decree No. 66/1998, Land Law Regulations  
Decree No. 23/2008, Territorial Planning Law Regulations  
Decree No. 43/2010, "Amending Art. 27(2) of the Land Law Regulations"

**DRAFT\_DO NOT CITE**

Decree No. 31/2012, Resettlement Regulations

Decree No. 54/2014, Environmental Impact Regulations

Diploma Ministerial 181/2010, Directive on the Expropriation Process for Territorial Planning Purposes

Diploma Ministerial 158/2011, establishing specific procedures for community consultations

Diploma Ministerial 155/2014, Internal Regulations for the Functioning of the Technical Commission on  
the Monitoring and Supervision of Resettlement

Diploma Ministerial 156/2014, Technical Directive on the Process of Preparing and Implementing  
Resettlement Plans