



EUROPEAN UNION

WOMEN LAND RIGHTS

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WANAWAKE

STAND UP
FOR WOMEN'S
LAND RIGHTS

DÉFENDRE
LES DROITS
DES FEMMES
À LA TERRE

DEFENDER OS
DIREITOS DAS
MULHERES Á
TERRA

IMPLEMENTATION OF AFRICAN UNION (AU) WOMEN'S LAND RIGHTS (WLR) FRAMEWORKS AND INSTRUMENTS IN MOZAMBIQUE

ACRONYMS

ACHPR	African Charter to Human and People's Rights
AU	African Union
CAADP	Comprehensive Africa Agriculture Development Programme
CBO	Community-based organization
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CSO	Civil Society Organizations
DNTF	Direcção Nacional de Terra e Floresta (National Directorate for Land and Forestry)
DUAT	Direito de uso e aproveitamento da terra (the right to use and benefit from land)
F&G	Framework and Guidelines on Land Policy in Africa
FAO	Food and Agriculture Organization
GDP	Gross Domestic Product
GoM	Government of Mozambique
ha	Hectare
INE	Instituto Nacional de estatística (National Institute of Statistics)
ITC	Iniciativa para Terras Comunitárias
LSLBI	Large Scale Land Based Investments
Maputo Protocol	Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa
MITADER	Ministry of Land, Environment and Rural Development (Ministério da Terra, Ambiente e Desenvolvimento Rural)
NGO	Non-government organization
PEDSA	Plano Estratégico de Desenvolvimento do Sector Agrário (Strategic Plan for the Development of the Agrarian Sector)
PLAAS	Institute for Poverty, Land and Agrarian Studies
PNISA	National Investment Plan for the Agrarian Sector (Plano Nacional de Investimento do Sector Agrário)
PROPAC	Plateforme Régionales des Organisations Paysannes d'Afrique Centrale (Regional Platform of Central Africa Female smallholder farmers Organizations)
RDUAT	Registo do Direito de Uso e Aproveitamento da Terra e regularização das ocupações de terra
UN	United Nations
UNDP	United Nations Development Program
USD	United States Dollar
VGGTS	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WLR	Women's Land Rights

Table of contents

ACRONYMS	i
Executive Summary	1
Structure of the shadow report	10
1. Introduction	11
1.1 Purpose of the shadow report	13
1.2 Methodology	14
2. African Union Framework and Guidelines on Land Policy in Africa	16
2.1 On domestication	17
2.2 On implementation	19
2.3 Recommendations:	23
3. African Union Guiding Principles on Large Scale Land Based Investments (GP-LSLBI)	24
3.1 On domestication	25
3.2 On implementation	26
3.3 Recommendations:	29
4. Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa	30
4.1 On domestication	31
4.2 On implementation	33
4.3 Recommendations:	34
5. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTS)	35
5.1 On domestication	37
5.2 On implementation	39
5.3 Recommendations:	41
6. Connecting the various dimensions in securing WLR	42
7. Conclusions	43
8. Annexes	45

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EXECUTIVE SUMMARY

It is estimated that women make up almost 50 percent of the agricultural labour force in sub-Saharan Africa, an increase from about 45 percent in 1980. The averages in Africa range from over 40 percent in Southern Africa to just over 50 percent in Eastern Africa. These sub-regional averages have remained fairly stable since 1980, with the exception of Northern Africa, where the female share appears to have risen from 30 percent to almost 45 percent (FAO 2011). In Africa, security of land tenure is not only considered a source of economic wealth and livelihood, but also and importantly so, a determinant of one's heritage and dignity.

According to the United Nations Development Program's human development index reports, Mozambique has a very low development index. It occupies the 180th position in a total of 188 countries and, the 135th position in a total of 155 countries, in the Gender Inequality Index. Patriarchal values are at the base of how the Mozambican society is organized, and these contribute to the perpetuation of gender inequalities and existing power imbalances in interpersonal and social relationships; undermine women's decision-making power and enjoyment of human rights in general; contribute to women's low access and control of assets such as land, to low representation of women in most positions of authority and to disparities between girls' and boys' access and control of educational opportunities.

However, the Mozambican Constitution approved in 2004 establishes the principle of equality between the sexes by stating in Article 36 that women and men are "equal by law in all domains of economic, social, political and cultural life". The Constitution also prohibits discrimination based on any characteristic, including sex, by establishing the principle of universality and equality (Article 35). Mozambique adopted in 2006 a National Gender Policy and Strategy of Implementation. The policy establishes the legal basis for the creation of institutional mechanisms that allow for gender mainstreaming in sectorial plans.

The current shadow report has a focus in Mozambique, and aims to evaluate progress in implementation over the last decade of African Union's (AU) Women's Land Rights (WLR) frameworks and instruments in Mozambique and to offer recommendations to improve the impacts of such instruments and frameworks. These instruments are:

- African Union Framework and Guidelines on Land Policy in Africa (F&G) 2010
- African Union Guiding Principles on Large Scale Land Based Investments (GP-LSLBI)
- Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTS),
- Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa.

KEY FINDINGS



1. In relation to the domestication of the African Union Framework and Guidelines on Land Policy in Africa

The Frameworks and Guidelines on Land Policy (F&G) defines a set of guiding principles aiming to inform member states on formulation, implementation and monitoring of Land policies with the purpose of involving all stakeholders involved in land issues that contribute to poverty reduction and ensure land is at the centre of measures to promote sustainable human development.

The main legislation regarding land rights in Mozambique precedes the adoption of the AU Frameworks and Guidelines on Land Policy. Specifically the Land Law 19/97 of 1 October 1997 and the National Land Policy of 17 October 1995.

Nevertheless, the Land Law is aligned with the F&G in relation to ensuring equality between men and women in access and control of land. In Mozambique, ownership of all land vests with the State and user rights are granted to Mozambican citizens (and investors) through a right title to use the land (DUAT in Portuguese). The Land Law also recognizes and accommodates customary systems of land allocation and conflict resolution. The National Land Policy approved in 1995 aims to “protect Mozambican people’s rights to land and natural resources, as well as promote investment and ensure sustainable and equitable use of natural resources”. It also recognises customary systems of land tenure and defines as one of its fundamental principles “Ensuring women’s access and use of land”. The policy includes community courts as actors in conflict resolution in relation to land allocation and tenure issues. Nevertheless, most judges in community courts are men, also traditional leaders, upholding customary systems that are often based on patriarchal values, under which women’s access to land is not on equal terms as for men, for instance through inheritance. In this systems men always

have privilege over women in access to and control of land. This creates conflicts over the interpretation and application of the Land law, making women’s rights to land insecure.

The Technical attachment to the Land Law Regulation approved in the year 2000, establishes the conditions for community participation in the delimitation of community land. This mechanism gives opportunities for communities to participate in the insurance and protection of their rights to use the land and thus, protecting their livelihoods. The document states that (Article 1) the process of community land delimitation should include men and women representing the different age and socio-economic groups in the communities. The community is also expected to create a group of 3-9 people to represent it and to sign the necessary forms and resulting minutes (Article 6 n. 3). Although the text mentions that this group should be composed of men and women from the communities, the document establishes no obligations to respect gender parity neither in participation in community meetings nor in the composition of the groups representing the communities.

The GoM developed various strategies and policies aimed at mainstreaming gender in the agrarian sector however, these policies are not reflected in the Strategic Plan for the Development of the Agrarian Sector 2011-2020 (PEDSA, in Portuguese) nor in the National Investment Plan for the Agrarian Sector 2013 (PNISA, in Portuguese). In both documents, gender aspects are barely developed, the PEDSA includes a paragraph with a brief statement of why women have limited access and control of resources and services such as land; gender is included in the mainstream pillar with the issues of HIV and disability, which in total received 2.4% of the global budget allocated to the PNISA. No clear strategies of how the PNISA will contribute to reduce gender inequalities or how gender will be mainstreamed into its respective strategies, were found.

Various accounts report evidence of increased awareness of formal laws and consequently changed attitudes towards equal rights of men and women. This occurs, partially due to awareness raising initiatives undertaken by government institutions as well as by Non-government organizations (NGO) among the population as well as among implementers of legislation. However, little knowledge of the relevant legislation by the general population is still prevalent in both urban and rural settings, although mainly in rural areas.

The GoM committed to reach the Comprehensive Africa Agriculture Development Goal's (adopted in 2003) target to allocate 10% of the government's budget to the agriculture sector (land issues fall under this sector). However, accounts the budget allocated to it by the GoM has been historically below the 10% target. It has varied between the lowest of 2% in 2001, and the highest of 8.2% of the State budget in 2005.

In 2015 the GoM launched the biggest land governance program in the history of the country, the Safe Land Program (Programa Terra Segura). This was a 5-year program, implemented by the Ministry of Land, Environment and Rural Development (MITADER) aiming at distributing 5 million DUATs to citizens who had acquired the land through customary norms and practices and through good faith occupations. In December 2015, 62.262 land titles had been issued by the National Land Registry, of which 96.6% were individual titles and 3.3 titles owned by legal or collective person. Of the individual titles, 12.029 (20%) were issued to women and 48.116 (80%) to men. This data demonstrates that in the legal arena, women's exercise of their land rights is still not very different from what occurs at customary context, where men own majority of the land.

1.1 Recommendations include:

For the government of Mozambique

1. The GoM should invest in changing social norms that are discriminatory towards women and develop instruments to guarantee that violation of constitutional rights for women are reported, addressed in a transparent and fair way, including at the

local level. The GoM could also ensure that examples of changed norms and attitudes vis à vis women's rights are rewarded and recognized.

2. It is necessary for the GoM to dedicate resources to protect women's land rights – by training more of its staff on interpretation of the law in respect of human and women's rights; increasing its implementation capacity; training judges and sensitizing community leaders on their limits in regard to the Mozambican statutory laws; organising periodic campaigns and create special tailored conditions to improve women's conditions to apply for their DUAT; and monitor and evaluate these interventions
3. The GoM should adopt a gender budgeting approach for all resources allocated to the agriculture and land sector so that they are distributed equitably and in order to align the budget with the policies and legislation approved regarding WLR.

For civil society organizations

4. Continue to monitor and evaluate the results the legal instruments adopted to protect WLR have produced and use these results to pressure the GoM to hold its duty regarding guaranteeing women and men's equal rights to land.
5. Enhance awareness of rights and responsibilities under the Land law and Regulation, particularly for women.
6. Strengthen organizations' capacity to develop and/or use gender aware community mobilization tools and train their facilitators, staff and service providers on gender equity offering them tools to be facilitators also of social change regarding unjust customary norms.

2. Regarding the domestication of the African Union Guiding Principles on Large Scale Land Based Investments (GP-LSLBI)

The AU Guiding Principles on Large Scale Land Based Investments in Africa (GP-LSLBI) reflect the intention of the AU member states to ensure that LSLBIs benefit member states and key stakeholders.

The existing Land related legislation in Mozambique protects communities' participation in decisions regarding their land and resources – it recognises and protects legitimate land rights and creates the provisions of investors to consult with the communities before beginning their economic activity (in mining, agriculture, forestry, tourism, etc.). However, the land legislation also establishes a hierarchy in allocating responsibilities to authorize requests for DUATs, being the competence of the Council of Ministers to authorize requests for DUATs corresponding to areas beyond 10,000 hectares. This leads often to investors applying for DUATs directly from the central government, without proper community consultation, which consequently threatens communities' land rights, including women's control of the areas used by them for food production, water, wood, forests and medicine.

However, both the land and investment legislation contain safeguards that enable the government to reverse land use rights of unviable projects that have been given the go-ahead, either in the conditions established for converting provisional DUATs to definitive titles or via the time limit established for initiating the implementation of an investment project. Nevertheless, "the capacity of the state to monitor investment projects and land title use is extremely weak, so this safeguard measure has, in most cases, failed to operate as a fall-back option".

On the other hand, the Mining Law no. 14/2002 establishes the precedence of mining activities over any other economic activity 'wherever economic and social benefits related to these operations are higher'. Hence, women's land rights are not secured in the context of LSLBI, as the government gives priority to the interests of investors, has

a low implementation rate of the instruments it adopts and gender issues are not central on LSLBI national instruments.

Various challenges are found in Investments based on land in Mozambique, also called partnership between privates and communities. These include:

From the investor's side

- Insecurity when the land use title remains in the hands of the community.
- Insecurity in case of conflict and dispute.

From the communities' side

- Benefit less from the partnership due to lower capacity to negotiate their interests.
- Investors more interested in negotiating social benefits instead of economic benefits.
- Low knowledge of the economic value of their land and resources.
- Incapacity to understand legal language in contracts.
- No economic resources to participate in some costs or for the investment.

From the governments' side

- Low technical capacity to facilitate the processes of community- private partnerships.
- Low technical capacity to offer legal assistance in conflict resolution.
- Inexistence of a mechanism to monitor the partnership contracts.
- Leadership in delimitation processes with NGOs and not the State.

2.1 Recommendations include:

For the government of Mozambique

1. Implementation of the AU Guiding principles on large-scale land-based investment, Tenure Guidelines on land, fisheries and forests. Implementation should be done through participatory, inclusive mechanisms to prioritize the rights of legitimate tenure users especially women.
2. Strengthen community and women's land rights in the context of LSLBI by reviewing instruments and legislation related to investment, as well as government implementing capacity so as to:
 - Mainstream gender equality principles in the economic partnerships between communities and investors;
 - Establish clear conflict resolution mechanisms, so that communities and individuals negatively affected by investments can have their issues fairly resolved;
 - Build capacity of government bodies and communities to assess the technical and financial capacities of projects by investors requesting large lands.
3. Facilitate a process to increase opportunities to register land occupied by good faith, so as to reduce the amount of 'invisible' land that is granted for use by investors. This register should be public and easily accessible to all citizens.

For civil society organizations

4. Strengthen communities negotiating skills as well as the ability to understand women's land rights and national laws protecting those rights, in collaboration with women's land rights movements and rural women's movements – including the right to have their land delimited and be consulted when investors seek to use their land – and the value of their land and natural resources and the benefits for which they can negotiate if they opt to partner with an investor.

For investors

5. Adopt responsible models of investment that are socially, economically and environmentally sustainable and that contribute

to reduce poverty and gender inequality. These models should include a recognition that unclear land tenure systems pose more risk than opportunities to their business and should ensure all legal and/or customary land rights holders (in the areas they wish to operate); Establishing land related grievance mechanisms to address communities' land related concerns; Ensuring the participation of community members (including women and all other groups that may lack the capacity and forum to adequately express their concerns and interests) in the decisions regarding the use of the land at stake; Establish internal accountability systems to ensure monitoring of such processes and their compliance with principles of transparency and sustainability.

3. In relation to the domestication of the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa.

The Protocol to the African Charter on Human and People's Rights on the Rights to Women in Africa (Maputo Protocol) urges member states to take measures to eliminate discrimination against women and to protect women's rights. It recommends member states to, on the one hand, adopt legislative, institutional and other measures to combat any form of discrimination against women. And, on the other hand, it urges member states to commit themselves to changing traditional and cultural practices and standards that are based on the idea of the superiority or inferiority of either sex.

The Mozambican Constitution of 2004 sets the basis for the general protection of women's rights, influencing women's access and control of land. However, other instruments are necessary to materialise the formal protection of women's rights in general and WLR in particular. After ratification of the Maputo Protocol, new laws were approved or reviewed to enhance protection of women's rights.

In 2019, a new Family Law (Law 22/2019 of 11 December 2019) was promulgated by the Mozambican parliament. The Family Law establishes

the conditions for the constitution of a family and seeks to eliminate gender inequalities prevalent in the previous legislation. For example, the law prohibits the need for conjugal consent to exercise any profession or gainful activity (article 102 - 2); and, acknowledges that both men and women can pass on their names to their descendants (article 104) and manage the couple's common assets (article 106). Article 107, prohibits (and sanctions – article 111) one of the spouses to transfer (sell, donate) common assets without the consent of the other spouse. And finally, articles 432 and 433 refer to the obligation of sponsorship of the surviving spouse with the incomes from the assets left by the deceased. This prerogative can be used as a tool to protect widows who are ousted from the family land when the husband dies, sometimes not being able to take the crops they planted before the death of the husband. The family law of 2019 is in alignment with articles 2, 6, 8, 13, 15 and 20 of the Maputo Protocol.

Inheritance law 23/2019, of 23 December 2019 was approved in a context where all the customary norms in the country give priority to men when it comes to inheritance rights, therefore, a legal instrument that protects women from such practises that violate the constitution and their rights was necessary. The law equals the rights of women and men to manage the family's assets while the inheritance is being liquidated or to inherit the spouse's assets. For instance, article 63, establishes the spouse as the 1st in a hierarchical order to manage the inheritance until it is settled and shared. It also protects the right of the surviving spouse to continue living in the family house (article 87). It is common, especially in the patrilineal societies of Mozambique, for the widow (and sometimes the descendants) to be chased out of the family house and land, because it is considered to belong to the family of the man. In terms of the order of inheritance, the law ensures that the surviving spouse always receives a portion of the assets left by the deceased. Article 118 for instance, determines that spouses and descendants are together the 1st in the succession line. The law regards the spouse of a formal marriage and of a certified union in the same category, for the benefit of the population cohabiting under this family model. The Inheritance Law is aligned with articles 13, 20 and 21 of the Protocol of Maputo and if implemented, should support the efforts to strengthen WLRs.

Nevertheless, the structural and conjunctural factors that limited the implementation of the previous family law and policies have not necessarily changed. Therefore, it is still to be seen what efforts will be made to ensure the new Family law and the Inheritance law are known and if enough resources will be allocated to enhance the capacity of the implementing agents. There is therefore need to look at the legal situation of WLRs beyond land laws, family laws or inheritance laws as in reality, these may not bring feasible outcomes in as far as WLRs issues are concerned due to poor implementation and enforcement of the laws”.

3.1 Recommendations include:

For the government of Mozambique

1. Urgently develop mechanism that allow for the effective materialisation of WLR, particularly in rural areas, combining the strengthening of the implementation capacity of the decentralized state organs; sensitizing and training community leaders on WLR and constitutional principles of equality between men and women; carrying out campaigns to change social norms that are discriminatory towards women and develop instruments to guarantee that violation of constitutional rights for women are reported, addressed in a transparent and fair way, at all levels.

For civil society organizations

2. Monitor GoM's implementation of the laws to protect WLR and of the mechanisms created to ensure violations of constitutional rights of women are reported and addressed in a transparent and fair manner.

4. Regarding the domestication of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTS)

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests VGGT was developed by FAO as a response to global pressure over natural resources and later adopted by the African Union for domestication by the member states. The instrument is gender sensitive, it uses an inclusive language and proposes actions in equitable and inclusive ways. The VGGT outlines principles that governments can refer to when making laws and administering land, fisheries, and forests rights. Its ultimate goal is to ensure food security and sustainable development by improving secure access to land, fisheries, and forests, as well as protecting the rights to land.

An important aspect of this instrument is that it recognizes the need to protect 'legitimate' tenure rights instead of only 'legal' tenure rights. In Mozambique for example, the majority of the population in the rural areas does not have a DUAT. Having adhered to the VGGT, the GoM commits itself to respect the legitimate tenure rights prevalent in the country and accessed through customary norms.

No legal instrument developed in the context of the VGGT after the year 2012 was identified during the preparation of this report. Some of the guidelines promoted in the VGGT are already integrated in legislation previously developed. Such as, the National Land Policy (1995) which recognises customary systems of land tenure and defines as one of its fundamental principles to ensure women's access and use of land". Or, the Technical attachment to the Land Law Regulation (2000) and the Diploma Ministerial n. 158/2011, which establish the conditions for community participation and consultation in the processes of delimitation of community land.

However the Diploma Ministerial 158/2011 falls short in terms of guaranteeing inclusion in the composition of the individuals representing

the community. It does not explicitly orientate for the representative group to be composed of men, women and youth for example, treating the communities as homogeneous groups. The Diploma Ministerial 158/2011 establishes two phases in the process of community consultation. The 1st phase, consists of a public meeting with the aim to inform the local community about the application for a DUAT and the identification of the limits of the plot. The 2nd phase consists of another meeting, which should take place in the next 30 days after the 1st meeting, in which the community should inform about its decision regarding the availability of the area for the investment or exploration plan. This instrument seems to have the assumption that every local community is informed about their land rights or that community members and representatives have sufficient knowledge and skills to negotiate with the representatives of private companies interested in investing in their land.

This is usually not the case, many citizens, especially in rural areas are not aware of their land rights, many of them are not aware of the complexities pertaining to the relationship between investors and local communities, many are not sufficiently gender aware to negotiate benefits not only for the community as a whole but particularly to women in order to reduce the gender gap in benefit of resources in the community, not to mention that many do not have the negotiation skills nor the knowledge to understand the legal contracts (sometimes written in English) they will sign.

Civil society organizations supporting community land delimitations or Access to individual land user titles have influenced an increase in women's participation in community land committees. However, women's participation risks being merely quantitative when communities are not supported in challenging discriminatory social norms that limit women's participation in such forums, and in enhancing women's empowerment to give them the tools to express and negotiate their priorities and interests. In 2014, a Guide to support the process of establishing partnerships between local communities and private investors was developed by the National Directorate of Rural Development. However, this is not a binding document such as a law, parties are free to use it according to their will. Besides, the Guide is gender blind and, in this sense, is not aligned with the principles of the VGGT.

Mozambique's formal court system has jurisdiction over land-related disputes. However, Mozambique also has a system of about 1600 community courts that function separately from the formal court system, and these handle civil and criminal matters, including land disputes. These forums are composed of some or all of the following: elders, traditional leaders, and neighbourhood heads. Besides, district officials and many NGOs also provide informal dispute-resolution services.

However, both systems face a number of challenges. Formal courts are seen as inefficient, slow, costly, corrupt and lacking necessary resources. Whilst community leaders or community courts are ill equipped, lack knowledge about conflict management and to interpret and apply the legal instruments regarding land rights and, most members of such committees are not formally educated. Independent, reliable and effective conflict-resolution mechanisms are key to ensuring justice and land tenure security of the poor, including for women. Most disputes are resolved in informal forums, particularly in rural areas where access to another forum would require significant travel and costs. In practice, cultural and traditional practices, even if formally outlawed, continue to be pervasive, which limit the implementation of gender equality legislation and instruments.

4.1 Recommendations include:

For the government

1. Strengthen understanding of gender implications of investments by establishing as a sine qua non requirement before investments are approved, the presentation of an analysis report that reflects how the initiative might affect negatively or strengthen gender equality and food security, as occurs with studies to assess the environmental impact of an investment.
2. Continue developing effective and politically independent mechanisms to resolve land disputes – including, linking the informal and the formal systems, establishing a hierarchy between the two systems in relation to protection of women's rights and developing effective programs to challenge discriminatory norms used by the informal systems.

For civil society organizations

3. Set up a multi-stakeholder platform to monitor VGGT implementation. The platform should also facilitate discussion and interaction among stakeholders on land governance and common agendas to better implement the VGGT.
4. Continue supporting the strengthening of the capacity of communities and women to participate in land tenure decision making processes, raise awareness of women's land rights among women, community in general, local leadership, in negotiation skills.

For investors

5. Assess (through third party experts), the impact of the proposed intervention/ partnership to ensure it does no social, economic or environmental harm to the communities in the interested areas. If negative impacts are likely to occur, investors should cancel the investment or restructure it to avoid all or most of the negative impacts considering alternative models that safeguard against the displacement of people and where applicable, fairly compensate affected people for their losses and ensures continued access to land and secure livelihoods.

STRUCTURE OF THE SHADOW REPORT

This report is organized in six chapters. Chapter one (1) of the introduction offers information on the context in which the report is commissioned, its purpose and the methodology used.

Chapter two (2), three (3), four (4) and five (5) analyse the main findings in relation to the implementation of the African Union's (AU) Women's Land Rights (WLR) frameworks and instruments in Mozambique and the recommendations to improve the impacts of such instruments and frameworks. These instruments are:

- African Union Framework and Guidelines on Land Policy in Africa (F&G) 2010
- African Union Guiding Principles on Large Scale Land Based Investments (GP-LSLBI)
- Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTS),
- Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa.

Chapter six (6) analyses the different factors according to the Kelleher-Aruna gender analysis matrix¹ that influences women's access and control of land, as well as a review of how the implementation or not of the African Union's WLR frameworks and instruments influence the personal, institutional and legal dimensions that inhibit or facilitate gender equality.

Chapter seven (7) offers a conclusion of the analysis process.

¹ Strengthen understanding of gender implications of investments by establishing as a sine qua non requirement before investments are approved, the presentation of an analysis report that reflects how the initiative might affect negatively or strengthen gender equality and food security, as occurs with studies to assess the environmental impact of an investment



1. INTRODUCTION

It is estimated that women make up almost 50 percent of the agricultural labour force in sub-Saharan Africa, an increase from about 45 percent in 1980. The averages in Africa range from over 40 percent in Southern Africa to just over 50 percent in Eastern Africa. These sub-regional averages have remained fairly stable since 1980, with the exception of Northern Africa, where the female share appears to have risen from 30 percent to almost 45 percent (FAO 2011).

In Africa, security of land tenure is not only considered a source of economic wealth and livelihood, but also and importantly so, a determinant of one's heritage and dignity. Evidence continues to show that economic, gender, ethnic, and class disparities as well as internal conflicts and forced migration have a major link to the differentiated levels of access and control of land and other productive resources among the people in Africa. To address these inequalities most African governments with influence from non-state actors have put in place progressive legal and institutional frameworks to improve land governance in the continent. However, the good land policies, laws and institutions have had very little impact on women and girls' land rights.

Noting the significance of community land law as the legal instrument of turning customary land access and use into lawful property rights of the pre-existing users, the direct access to land by women cannot continue to be mediated via male-only members of the community, for the economic and social well-being of women and their families. While the Act lays a foundation for securing community land rights, it has not established a full gender equality framework as encouraged and promoted by the Protocol on the Rights of Women (Maputo protocol), Sustainable Development Goals (SDG) number five (5) on Gender Equality, the gender agenda under Africa Union's Agenda 2063 (African Union Agenda 2063) and Malabo Declarative Commitment (The Malabo declaration) to put women at the fore in accelerating agricultural growth.

Africa is witnessing a second wave of land reforms following the reforms of the 1990s. Land reforms have recently taken place or are underway in Malawi, Kenya, Liberia, Ghana, and Tanzania. These reforms are happening at a time when the African Union has already adopted a Declaration on Land Issues and a Framework and Guidelines on Land Policy. These tools provide direction on ways to improve legislation governing land and inheritance issues across Africa.

Mozambique is a country in the eastern coast of the Southern African region, with an extension of approximately 786.000 square kilometres. It has a population of 28.8 million², of which 52.2 (15.0 million) % are women and 47.8% (13.8 million) are men³. 33.4% of the population lives in urban areas and 66.6 in rural areas. There are more women than men in both rural and urban areas, 52.0% and 51.1% respectively. In the whole country and across all ages, men head more than 70% of the households⁴.

The Gross Domestic Product (GDP) per capita is of 466.18 USD, mainly resulting from the following economic activities: agriculture, fishery, forestry (22.3%), extractive industry and mining (7.9%), manufacturing industry (5.25%) and commerce and services (6.6%)⁵. The majority of the population (75.2%) work in the agriculture, fishing, hunting, and forestry sectors; women make up the majority in these sectors, representing 86.7% of the work force in these economic activities⁶. Men make up most of the labour force in the extractive and mining activities⁷.

According to the United Nations Development Program (UNDP)

² INE, (2019), IV Recenseamento Geral da População e Habitação, 2017 - Resultados Definitivos - Moçambique

³ INE, Mulheres e homens de Moçambique, 2017:9.

⁴ INE, Mulheres e homens de Moçambique, 2017:15.

⁵ INE, Contas Nacionais - 3º trimestre, 2019:9.

⁶ INE, Mulheres e homens de Moçambique, 2011:30.

⁷ INE, Mulheres e homens de Moçambique, 2011:27.

Development Report, Mozambique has a very low development index. It occupies the 180th position in a total of 188 countries and, the 135th position in a total of 155 countries, in the Gender Inequality Index⁸.

Patriarchal values are at the base of how the Mozambican society is organized, and these contribute to the perpetuation of gender inequalities and existing power imbalances in interpersonal and social relationships; undermine women's decision-making power and enjoyment of human rights in general; contribute to women's low access and control of assets such as land, to low representation of women in most positions of authority and to disparities between girls' and boys' access and control of educational opportunities.

The Mozambican Constitution approved in 2004⁹ establishes the principle of equality between the sexes by stating in Article 36 that women and men are "equal by law in all domains of economic, social, political and cultural life". The Constitution also prohibits in Article 35, discrimination based on any characteristic, including sex, by establishing the principle of universality and equality.

Mozambique adopted in 2006 a national Gender Policy and Strategy of implementation¹⁰. The policy establishes the legal basis for the creation of institutional mechanisms that allow for gender mainstreaming in sectorial plans. Its main aim is to "develop the main action lines, in an integrated way, with the aim to promote gender equality, overlook human rights and strengthen women's participation in the development of the country". For its part, the Strategy of Implementation focuses on the areas identified as critical through which the Gender Policy will be operationalized, namely, economic empowerment, education, food security, women's

participation in public life and decision-making processes, reduction of maternal mortality and protection of the rights of women and girls.



⁸ GoM, Perfil de Género de Moçambique, 2016:1

⁹ For further reading: <http://www.wlsa.org.mz/wp-content/uploads/2014/11/Constituicao.pdf>

¹⁰ For further reading: <http://forumulher.org.mz/wp-content/uploads/2018/09/POLITICA-DE-GENERO-e-Es-trategia-Implementacao-APROVADA-CM-11.09.2018ooo.pdf>



Mozambique ratified the main international and regional instruments to protect women's rights, such as the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW)¹¹ and the Southern African Development Community's Protocol on Gender and Development¹².

As a member of the African Union (AU) Mozambique is party to a number of AU instruments including

Framework and Guidelines on Land Policy on Africa (F&G)¹³, African Union Declaration on Land Issues and Challenges in Africa¹⁴, African Union Guiding Principles on Large Scale Land Based Investments (LSLBI) in Africa¹⁵ and the Nairobi Action Plan on Large Scale Land Based Investments in Africa¹⁶ (NAP).

Mozambique also adopted Food and Agriculture Organization of the United Nations (FAO)'

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security¹⁷ in 2012.

Mozambique presented a State Report to the United Nations (UN) on the implementation of CEDAW in 2005. However, at the time of compiling this report, no record was found of the Government having prepared any report on implementation of any particular AU instrument.

According to Forum Mulher, in the last years, the government of Mozambican (GoM) signed over 50 agreements with big multinational

corporations in the context of public-private partnerships for the use and control of communities' land and natural resources. These in 2013 accounted to US\$ 5.9 million in Direct Foreign Investment, converting Mozambique into the 3rd highest receiver of Direct Foreign Investment in Africa. The majority of this capital is canalized to mining, exploration of hydrocarbons, energy and construction sectors¹⁸.

1.1 Purpose of the shadow report

Shadow reports are a civil society critique of the government reports, highlighting issues that may have been neglected or misrepresented in the government reports in addition, it helps in monitoring bodies on international human rights treaties, such as Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Maputo protocol etc. In cases where a government fails to submit a report or does not make its report available to NGOs in time for a critique, alternative reports may be submitted (by NGOs) as a key source of information on the issues that are important to the cause.

The current shadow report has a focus on Mozambique, and aims to evaluate progress in implementation over the last decade of African Union's (AU) Women's Land Rights (WLR) frameworks and instruments in Mozambique and to offer recommendations to improve the impacts of such instruments and frameworks. These instruments are:

- African Union Framework and Guidelines on Land Policy in Africa (F&G) 2010
- African Union Guiding Principles on Large Scale Land Based Investments (GP-LSLBI)
- Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTS),
- Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa.

¹¹ For further reading: <https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>

¹² For further reading: https://www.sadc.int/documents-publications/show/Protocol_on_Gender_and_Development_2008.pdf

¹³ For further reading: https://www.uneca.org/sites/default/files/PublicationFiles/fg_on_land_policy_eng.pdf

¹⁴ For further reading: https://www.uneca.org/sites/default/files/uploaded-documents/LPI/au_declaration_on_land_issues_eng.pdf

¹⁵ For further reading: https://www.uneca.org/sites/default/files/PublicationFiles/guiding_principles_eng_rev_era_size.pdf

¹⁶ For further reading: <http://www.focusonland.com/download/51fa1f8db503d/>

¹⁷ For further reading: <http://www.fao.org/3/a-i2801e.pdf>

¹⁸ Fórum Mulher, 2018:13

The reflections from the shadow report will enable civil society organizations (CSOs) to engage at different levels on advocacy and put pressure on duty bearers to implement progressive legislative and policy frameworks that facilitate ownership of land for women. This report is part of a set of shadow reports elaborated in 8 African countries in the context of a three (3) year project on Women Land Rights for Inclusive Development and Growth in Africa implemented in partnership by Oxfam, PROPAC¹⁹ and PLAAS²⁰. The reports will be disseminated at national, regional and continental spaces as part of an advocacy campaign.

1.2 Methodology

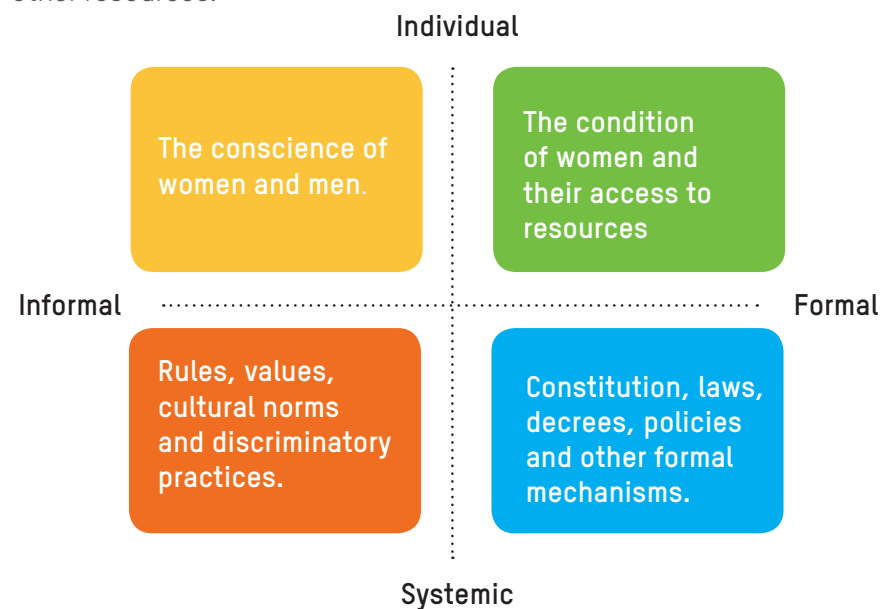
The main method used to develop the shadow report was an extensive documentary review to assess the level of adoption, domestication and implementation of the AU and related international frameworks and instruments based on national policies and laws and other studies and reports on WLRs.

Six (6) people working on land issues were interviewed (A list of people interviewed can be found in Annex), among them were people representing grass roots women's organizations, government institutions, national CSOs and international development organizations. These served to triangulate the information obtained during the documentary review and to construct the recommendations.

The study was organized in three (3) phases. The first phase intended to analyse national progress reports and their respective recommendations made to individual member states. However, since no record of national reports on implementation of the AU instruments were found during the preparation of this report, this phase consisted in mapping and analysing national laws, policies, initiatives and programmes that are aligned with the principles adopted in the AU instruments listed in chapter 1.1 above. The second phase of the study reviewed studies and utilized

semi-structured interviews to identify, the key issues of concerns for rural women regarding their human rights in general, and land rights in particular. The third phase comprised of contrasting the goals of the AU instruments regarding WLR, the progress made by the GoM in domesticating and implementing these instruments and how they are responding to the main concerns regarding the protection of WLR.

The analysis of the document review was aided by the **Kelleher-Aruna gender analysis matrix**²¹, which makes it possible to articulate different dimensions affected by the implementation of laws and other instruments. It articulates the personal, institutional and legal dimensions that inhibit or facilitate gender equality. The matrix offers a holistic vision of the implications of the implementation or not of the regional frameworks promoting women's land rights, including if, they are challenging limiting beliefs and attitudes towards women's access and control of land and other resources.



Source: <https://genderatwork.org/analytical-framework/>

²¹ <https://genderatwork.org/analytical-framework/>

¹⁹ Plateforme Régionale des Organisations Paysannes d'Afrique Centrale

²⁰ Institute for Poverty, Land and Agrarian Studies



2. AFRICAN UNION FRAMEWORK AND GUIDELINES ON LAND POLICY IN AFRICA

Approved by the Assembly of Heads of State and Government in July 2009.
Adopted by the government of Mozambique on July 2009.

The Frameworks and Guidelines on Land Policy (F&G) is not a normative document intended to be binding to all AU member states. Rather, it defines a set of guiding principles aiming to inform member states on formulation, implementation and monitoring of Land policies with the purpose of involving all stakeholders involved in land issues that contribute to poverty reduction and ensure Land is at the centre of measures to promote sustainable human development.

The Framework and Guidelines seeks to:

- a. Offer a basis for commitment* by African member states to the formulation and operationalisation of sound land policies as a basis for sustainable human development that includes assuring social stability, maintaining economic growth and alleviating poverty and protecting natural resources from degradation and pollution.
- b. Promote consensus for shared principles* as the basis for securing access to land for all users, enhancing agricultural productivity and sustaining livelihoods.
- c. Underscore the need for popular participation* in land policy formulation and implementation so as to facilitate improved governance of land resources.
- d. Suggest standards for best practices* for land policy reforms and benchmarks for the performance of land institutions that member states can adopt in keeping with their respective contexts.
- e. Articulate a policy framework for addressing emerging issues* and anticipating future trends relating to land resources.

f. Provide a basis for more coherent partnership between states, citizens and development partners in land policy formulation and implementation on the continent.

g. Establish general principles for engaging development partners for the purposes of mobilising resources for building capacities for transformative land policy reform processes, and

h. Develop guidelines for regional convergence on the sustainable management and utilization of land and associated resources shared by two or more member states in various parts of Africa.

“The Framework and Guidelines on Land Policy is a joint product of the partnership and collaborative effort of the African Union Commission (AUC), the UN Economic Commission for Africa (ECA) and the African Development Bank (AfDB) to promote Africa’s socioeconomic development, through inter alia, agricultural transformation and modernisation. The Framework and Guidelines (...) elaborates on the role of land as a valuable natural resource endowment in attaining economic development and poverty reduction. (...) it outlines how the land sector should perform its proper role in the development process. (...) It urges African governments to pay attention to the status of land administration systems, including land rights delivery systems and land governance structures and institutions, and to ensure adequate budgetary provision to land policy development and implementation.”

The F&G and women land rights

The F&G acknowledges that, “the system of patriarchy which dominates social organization has tended to discriminate against women when it comes to ownership and control of land resources”. It recommends that,

“If law and policy are to redress gender imbalances in land holding and use, it is necessary to deconstruct, reconstruct and reconceptualise existing rules of property in land under both customary and statutory law in ways that strengthen women’s access and control of land while respecting family and other social networks”.

To strengthen the land rights of women, Guideline 3.1.4, calls for:

- The enactment of legislation that allows women to enforce documented claims to land within and outside marriage.
- The enactment of legislation that ensures equal rights for women to inherit and bequeath land and co-ownership of registered land by spouses.
- The promotion of women’s participation in land administration structures.
- Adoption of an ideology that removes issues regarding the land rights of women from the private sphere of marriage and family, and places them in the public domain of human rights.

2.1 On domestication

The main legislation regarding land rights in Mozambique precedes the adoption of the AU Guidelines and Frameworks on Land Policy. Specifically the Land Law 19/97 of 1 October 1997 and the National Land Policy of 17 October 1995.

Nevertheless, the **Land Law** is aligned with the F&G in relation to ensuring equality between men and women in access and control of land. In Mozambique, ownership of all land vests with the State and user rights are granted to Mozambican citizens (and investors) through a title deed to use the land (DUAT in Portuguese). Article 10 of the Land Law confers equal rights to men, women and local communities, to the title deed, the DUAT. Article 13 (5) grants women and men equal rights to “apply for individualized titles after dismemberment of the respective land from the community areas”. The Land Law also ensures, in Article 15 (4), access by

people of both sexes to land, by inheritance. This offers better conditions for women over customary norms that tend to prioritize the distribution of inheritance to men.

The Land Law also recognizes and accommodates customary systems of land allocation and conflict resolution, which is an important strategy to accommodate pre-colonial land tenure systems and practices by the majority of the rural population. Nevertheless, the customary systems are based on patriarchal values, under which women’s access to land is not on equal terms as for men, for instance by inheritance. In these systems men always have privilege over women in access to and control of land. This creates conflicts over the interpretation and application of the Land law, making women’s rights to land insecure.

The National Land Policy (1995) aims to “protect Mozambican people’s rights to land and natural resources, as well as promote investment and ensure sustainable and equitable use of natural resources”. It also recognises customary systems of land tenure and defines as one of its fundamental principles “Ensuring women’s access and use of land”.

The strategy includes community courts as actors in conflict resolution in relation to land allocation and tenure issues. Although this strategy reduces costs for the central state, most judges in community courts are men, also traditional leaders, upholding customary values that often prioritise men’s interests in detriment of women’s. In the majority of the Mozambican customary practices, women have access to land through kinship or marriage and always through a male figure (father, husband, brother) and they rarely have control of it, even when they have access to it. This means that, the women can use the land attributed to them as long as they maintain certain conditions, such as remaining married for example, but cannot make decisions over the piece of land they use such as to transfer it to another person, or to keep it in the case of widowhood or divorce. The customary norms dictating the allocation and distribution of land, are not based on the principle of equality between women and men, frequently granting more privileges to men.

The Technical attachment to the Land Law Regulation (2000), establishes the conditions for community participation in the delimitation of community land. This mechanism gives opportunities for communities to participate in the insurance and protection of their rights to use the land and thus, protecting their livelihoods. The Technical Attachment defines 2 phases in the process of community land delimitation, in which different stakeholders are involved (Article 1). The same article states that the process of community land delimitation should include men and women representing the different age and socio-economic groups in the communities. The community is also expected to create a group of 3-9 people to represent it and to sign the necessary forms and resulting minutes (Article 6 n. 3). Although the text mentions that this group should be composed of men and women from the communities, the document establishes no obligations to respect gender parity both in participation in community meetings as well as in the composition of the groups representing the communities.

Between the adoption of the F&G (2009) and 2019, the government of Mozambique developed a set of instruments to mainstream gender in the development sectors directly related to WLR. These include:

- **The Gender, Environment and Climate Change Strategy and Action Plan** (2010). Aimed at mainstreaming gender in the environment sector in order to mitigate the adaptation to climate change and ensure sustainable use of natural resources.
- **The National Plan for Advancement of Women** 2010 – 2014. The Plan is coordinated by the National Council for Advancement of Women, responsible for coordinating and overlooking the implementation of the policies and programmes approved by the government to achieve gender equity. It does not include access and/or control of land as a strategic area, although the themes of agriculture, environment, poverty and human's right could touch on land rights issues.
- **The gender strategy of the agriculture sector** 2016-2020 (2015). Its strategic actions include (i) Disseminate the Land Law and women's rights to access and control land, gradually reducing the discriminatory effects of customary norms; (ii) Provide micro

credit to farmers so they can buy inputs; (iii) Develop technologies appropriate for women in user-friendly packages, harmonizing traditional technologies with modern ones.

- **The Gender Strategy of the Ministry of Land, environment and rural development** (2018). It constitutes a guiding instrument for the development of agricultural sector policies, as well as for planning, budgeting, implementing, monitoring and evaluating the activities of the Agrarian Sector with gender equality lenses.

However, according to Forum Mulher (2018:21), these policies are not reflected in the Strategic Plan for the Development of the Agrarian Sector 2011-2020 (PEDSA, in Portuguese) nor in the National Investment Plan for the Agrarian Sector 2013 (PNISA, in Portuguese). The PEDSA synthesises the intervention strategies in different sector development strategies such as the Green Revolution Strategy, the Action Plan for Food Production, the Reforestation Strategy and the Strategy and Action Plan for Food Security and Nutrition. Whilst the PNISA is the operational branch of the PEDSA, where specific projects and programs are defined .

In both documents, gender aspects are barely developed, the PEDSA includes a paragraph with a brief statement of why women have limited access and control of resources and services such as land, inputs, credit, production of cash crops, information, livestock, extension services, capacity building, technology and employment. Gender is included

in the mainstream pillar with the issues of HIV and disability, which in total received 2.4% of the global budget allocated to the PNISA. No clear strategies of how the PNISA will contribute to reduce gender inequalities or how gender will be mainstreamed into its respective strategies, are found in the document.

The F&G recommend the member States to make the land issue a central point in policy making, equivalent to mainstreaming land issues into other development policies. No evidence was found of the land issue being mainstreamed into the national policies developed after the adoption of the F&G, although they have been more explicitly included in sector gender strategies as mentioned above.

2.2 On implementation

Various accounts report evidence of increased awareness of formal laws and consequently changed attitudes towards equal rights of men and women. This occurs, partially due to awareness raising initiatives undertaken by government institutions as well as by Non-government organizations (NGO) among the population as well as among implementers of legislation. "Such paradigm shifts are necessary to ensure that the social and cultural mores of the implementers of legislation do not stand in the way of inclusivity." However, little knowledge of the relevant legislation by the general population is still prevalent in both urban and rural settings, although mainly in rural areas. As an informant noted:

"Women near the urban center in Maputo, want to register their land, they know their rights and go after them. They have more access to information and are more empowered – use their voice and live independent lives. There is improvement in terms of exercise of women land rights, especially among the non-married women such as widows or single women. The same does not happen in rural areas where most of the women are not aware of their rights"

The customary systems of land allocation recognised in the Land law 19/97 frequently contradict the formal law in respect to guaranteeing equal rights of men and women. Little evidence has been found that gender discriminatory cultural and social norms and practices changed despite awareness on constitutional and statutory rights. In many rural communities, women have access to land through customary systems and land conflicts are also resolved through these systems, which have their bedrock in patriarchy. *"But in the patrilineal centre and south of the country, formal rights "are far outweighed by traditional mores and social pressures" (Norfolk & Bechtel, 2013: 18) and widows' and divorced women's inheritance rights are not protected in practice".* As observed in Forum Mulher (2019), traditional power is held by men and, in relation to land, even inherited land, women cannot decide about the selling and renting of lots, although they can make decisions about what to produce in the land. It is believed that customary land management, being legally recognized by the statutory law, accounted for over 90% of land access and use in the country. This factor, combined with challenges in the implementation of the law is a constraint for the protection of WLR. Implementation of the law and other legal instruments in general is a challenge in Mozambique due partially to limitations in institutional and community capacity.

Despite community participation in land delimitation, unintended consequences have been reported that may limit women's benefit of their collective land rights. For example, *"Delimitations may also exclude communities from communal land required for grazing, timber, water, etc."* Frequently, land required for the mentioned purposes are related to women's gendered roles, and inability to use them may affect the well-being, nutrition and livelihoods of families.

In 2015 the GoM launched the biggest land governance program in the history of the country, the **Safe Land Program (Programa Terra Segura)**. This was a 5-year program, implemented by the Ministry of Land, Environment and Rural Development (MITADER) aiming at distributing 5 million DUATs to citizens who had acquired the land through customary norms and practices and through good faith occupations. An ambitious program,

since in 2015, merely 62.160 DUATS had been attributed nationally . The geographical aim of the program were areas with the potential (or existing) for land related conflicts, such as areas of high economic interests, like development corridors (Nacala, Beira, Limpopo, Libombo), areas of large ditches (Maputo, Limpopo, Búzi, Púngue, Zambeze, Licungo, Lúrio and Messalo), border areas, resettlement or climate vulnerability areas and areas of high population density .

The program document is gender blind, not only does it not mention, “the word gender nor a gender approach” , nor includes indicators that aim to tackle gender inequalities. However the program collected sex-disaggregated data, reporting in the first year (2015) that approximately 338.074 people had benefited from it of which, 166.700 (50%) were women . New staff were hired and trained for the program, of the 34, 12 (34%) were women . Awareness raising activities were undertaken in the project areas related to statutory laws, particularly the Land law and the Family law. Furthermore, information related to the budget allocated to this program was not made public , to assess if it reached women and men’s needs and interests equitably. Forum Mulher (2018) concluded that, “in communities where specific government or NGO programs for land regulation were not implemented, the families do not own DUATs”. Thus, making programs such as the Terra Segura important and necessary, especially in rural areas.

“Through the Safe Land Campaign to distribute DUATs, initiated in 2015, more women are aware of their land rights, they know the importance of having a DUAT. But where the campaign dd not reach, women are still unaware of their rights. For example the women living in Manhica [a district in the province of Maputo] know their land rights, but the women living in Calanga [a locality in the district of Manhica] do not.”



BUDGET ALLOCATED TO IMPLEMENTATION OF LAND POLICIES

In 2003, in Maputo, Mozambique, the African Union Summit made the first declaration on the Comprehensive Africa Agriculture Development Goal (CAADP) as an integral part of the New Partnership for Africa's Development (NEPAD). The Comprehensive Africa Agriculture Development Programme (CAADP) is Africa's policy framework for agricultural transformation, wealth creation, food security and nutrition, economic growth and prosperity for all. The GoM committed to reach the CAADP's target to allocate 10% of the government's budget to the agriculture sector. However, accounts of GoM's spending in the agricultural sector demonstrate that the budget allocated to it is historically below the 10% target.

In terms of the resources dedicated to human resources, the sector has a higher number of male personnel. In 2013 the then Ministry of Agriculture had a staff of approximately 4.478 employees and agents (excluding the staff of the Zonal Centres of the Institute of Agricultural Research of Mozambique), of which 578 are assigned to the National Directorates (40.5% women), 691 are assigned to Subordinate Institutions (40% are women) and about 3.209 are assigned to the Provincial Directorates of Agriculture, including SDAE's (18.5% are women). The provincial and district level, where direct contact with local communities frequently occurs, has the lowest presence of women. This constitutes a limitation

Table 1. Percentage of budgeted expenses (MASA and MITADER) over the total State budget (budgeted expenses and financial operations), at current prices

2010	2011	2012	2013	2014	2015	2016	2016 Rev.	2017	2018	2019
3,5%	2,9%	2,5%	4,1%	3,8%	4,0%	4,2%	3,8%	4,8%	3,8%	6,4%

Source: Adapted from Observatorio do Meio Rural (2018)

A report by the Observatory of the Rural Environment (Observatório do Meio Rural) illustrates that between 2001 and 2011, the expenditure on agriculture varied between the lowest of 2% (in 2001) and the highest of 8.2% of the State budget (in 2005). More recent data indicates that the pattern observed from 2001 to 2011 maintains, as can be observed in table 1. In Mozambique, land issues fall under the agriculture sector and, the amount allocated to the land sector is frequently a small portion of the agricultural sector's budget.

to the initiatives to increase women's access and control of land since institutions mainly represented by men may discourage women to seek the services they may offer.



República de Moçambique

TÍTULO DE USO E APROVEITAMENTO DA TERRA

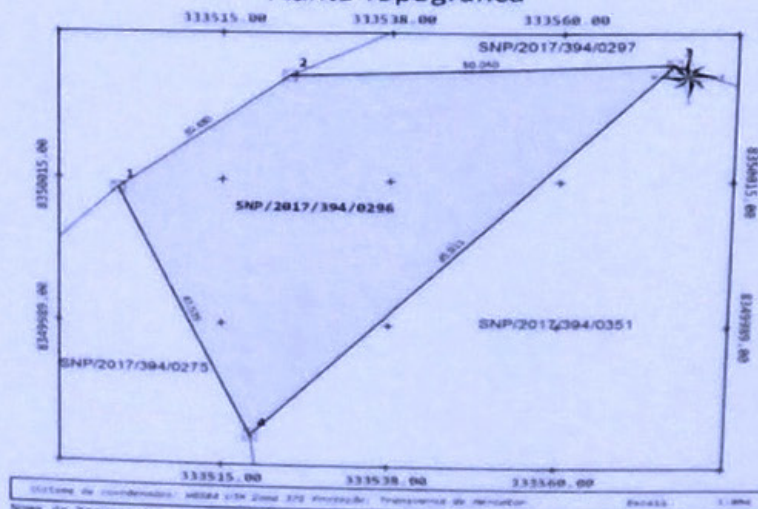
N.º do Título: /024/SNP/2017/002236/1
 Nome do Titular: Genito Sérgio Bacilio
 Documento de Identificação: Cedula, N.º Serie N
 Nacionalidade: Mocambicana
 Data do Despacho: 2/10/2017
 Parcela n.º: SNP/2017/394/0296 [A039, BLOCO: 01]
 Com área (ha) de: 0,228
 Processo n.º: SNP/2017/002236
 Localizada na Província de: NAMPULA
 Distrito de: MALEMA
 Posto Administrativo de: MALEMA
 Fins de Uso e Aproveitamento: AGRICULTURA ANUAL/EXPLORAÇÃO FAMILIAR
 Prazo: Não sujeito a prazo, c/o n.º 2 do artigo 17 da Lei n.º 19/97, de 1 de Outubro

Serviço Emissor do Presente Título: SPGC de Nampula
 Nampula: 02/10/2017

O Chefe dos Serviços
 CRISTÓFARO DOS SANTOS MACARIO



Planta Topográfica



Nome do Requerente: Genito Sérgio Bacilio
 Parcela: SNP/2017/394/0296
 Província: NAMPULA
 Distrito: MALEMA
 Localidade: NATALEIA
 Finalidade: AGRICULTURA ANUAL
 Área (ha): 0,2281

Lista de Coordenadas - Identificação da Parcela

Pontos	Coordenadas U.T.M.		Marcas
	X	Y	
1	333501,00	8350013,00	Vegetação de vegetação
2	333524,00	8350013,00	Vegetação de vegetação
3	333574,00	8350015,00	Vegetação de vegetação
4	333519,00	8349969,00	Vegetação de vegetação

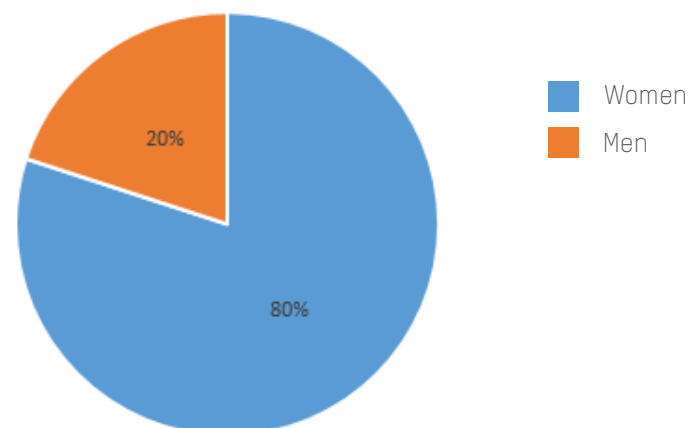
CONFLICT RESOLUTION

In rural areas, the community leaders or traditional authorities play an important role concerning land distribution (for example to a new family or widow) as well as concerning resolution of conflicts related to the land rights or land use. In the majority of cases men are the holders of local power. “Even in situations where some women are in this decision-making body, they do not oppose the decisions of men, on the contrary, they legitimize the decisions made by men for fear of retaliation or loss of office. If a woman loses her land, she rarely denounces it because there are only men where she is going to report or because she thinks that the local authorities have the right to take the land away from her because, presumably, it is written in the land law that the land belongs to the State”. Besides, statutory law is not frequently the main guide in conflict resolution processes at community level, but the customary norm, which gives privileges to men’s rights in detriment of women’s. Even when there are women in committees to resolve a conflict, it is unlikely that many would dare to oppose the opinion of the men or some men, in a culture where it is believed that men have the last word.

WOMEN AND MEN WITH DUAT

The combination of action from the GoM and the CSOs to facilitate processes of land delimitation, land demarcation and acquisition of land use titles has contributed to an increase in the number of issued DUATS at the national level. For example according to Forum Mulher (2018:23), in December 2015, 62.262 land titles had been issued by the National Land Registry, of which 96.6% were individual titles and 3.3 titles owned by legal or collective persons (corresponding to 102 titles issued to communities). Of these titles, 12.029 (20%) were issued to women and 48.116 (80%) were issued to men. This data demonstrates that in the legal arena, women’s exercise of their land rights is still not very different from what occurs at customary context, where men own majority of the land. This can be attributed to the gender blindness of the programs aiming to protect land rights, where women are expected to benefit automatically from them. Or it is possible that the majority of the 20% of titles attributed to women are found in urban or suburban areas where a cultural shift is observed in terms of women holding land user titles. However, the data was not disaggregated by provinces or areas, making it impossible to determine whether the titles issued to women are in rural or urban areas.

Graph 1 Women and Men holders of DUAT





2.3 Recommendations:

For the government of Mozambique

1. The land law states that customary systems of land tenure are valid as long as they do not violate the constitution. The overlapping between customary and formal laws is a hindering factor for women's enjoyment of their rights, because women's equal constitutional rights to access and control of land are often violated when applying customary norms of access and control of land. The GoM should invest in changing social norms that are discriminatory towards women and develop instruments to guarantee that violation of constitutional rights for women are reported, addressed in a transparent and fair way, including at the local level. The GoM could also ensure that examples of changed norms and attitudes vis à vis women's rights are rewarded and recognized.
2. It is necessary for the GoM to dedicate more resources to protect women's land rights – for example (i) by training more of its staff on interpretation of the law in respect of human and women's rights; (ii) increasing its implementation capacity; (iii) training judges and sensitizing community leaders on their limits in regard to the Mozambican statutory laws; (iv) increasing resources in general to the implementation role of judicial institutions; (v) organising periodic campaigns and create special tailored conditions to improve women's conditions to apply for their DUAT (these may include mobile offices to issue birth certificates and/or personal identification documents – necessary to apply for a DUAT, hire more female staff, especially for the field work, offer special services for illiterate women and who do not speak Portuguese, etc.); (vi) A monitor and evaluate these interventions.
3. The GoM should adopt a gender budgeting approach for all resources allocated to the agriculture and land sector so that they are distributed equitably and in order to align the budget with the policies and legislation approved regarding WLR.

For civil society organizations

4. Continue to monitor and evaluate the results the legal instruments adopted to protect WLR have produced and use the results to pressure the GoM to hold its duty regarding guaranteeing women and men's equal rights to land.
5. Enhance awareness of rights and responsibilities under the Land law and Regulation, particularly for women.
6. Strengthen organizations' capacity to develop and/or use gender aware community mobilization tools and train their facilitators, staff and service providers on gender equity offering them tools to be facilitators also of social change regarding unjust customary norms. These actors should have the tools to ensure women participate in quantity and quality in community decision-making processes or to make gender analysis that will avoid increasing existing discrimination towards women regarding land rights.



3. AFRICAN UNION GUIDING PRINCIPLES ON LARGE SCALE LAND BASED INVESTMENTS (GP-LSLBI)

Developed in the context of the AU Declaration on Land, to improve the governance of large-scale land based investment.

Endorsed by the tripartite consortium of the African Union, the UN's Economic Commission for Africa and the African Development Bank in 2014.

The AU Guiding Principles on Large Scale Land Based Investments in Africa (GP-LSLBI) reflect the intention of the AU member states to ensure that LSLBIs benefit member states and key stakeholders. It outlines a set of guiding principles, organized around a number of fundamental principles that should ensure investments in agricultural land to promote inclusive and sustainable development.

Fundamental principle 4 stands out as the one that explicitly seeks to protect WLRs.

LSLBIs respect the land rights of women, recognize their voice, generate meaningful opportunities for women alongside men, and do not exacerbate the marginalization of women.

This fundamental principle is supported by five principles for its realization, namely:

Principle 1: LSLBI respect the existing, customarily-defined rights of local people and communities to land and land related resource.

Principle 10: Developing the capacity of communities, in particular women to negotiate benefits, compensation and other terms of agreement, with state agencies and investors is a prerequisite for good governance of LSLBI.

Principle 11: Promoting gender equality in land governance in national laws is a prerequisite to ensuring that LSLBI promote sustainable development.

Principle 12: LSLBI observe and respect women's equal right to own, access, control and use land as the case may be under different tenure regimes.

Principle 13: LSLBI contribute to sustainable development through gender sensitive employment creation and broad-based wealth creation, which benefits women.

Large-scale land based investments are an important issue in Mozambique since the government expects to attract national and foreign investment related to the use of land (agriculture, aquaculture, mining, tourism, industry, etc.), due to its low capacity to boost the economic development in this sector. However, with the low capacity of the government to be present and implement statutory laws in remote areas including where the LSLBI are expected to take place, the risk of community and women's rights not being respected is high. The Tirana Declaration of the International Land Coalition notes that large scale land acquisitions or concessions risk being regarded as 'land grabs' if they are one or more of the following: *"violations of human rights, particularly the equal rights of women; not based on free, prior and informed consent of the affected land users; not based on a thorough assessment or are in disregard of social, economic and environmental impacts including the way that they are gendered; and, not based on effective democratic planning, independent oversight or meaningful participation"*.

Development policies in conjunction with Land policies in Mozambique, seek to balance two objectives, namely: (i) securing the land tenure rights of small-scale farmers and rural occupants, and (ii) encouraging outside investment into rural areas by allocating land for economic development purposes. These goals are in general aligned with the principles of GP-LSLBI.

3.1 On domestication

The existing Land related legislation in Mozambique protects communities' participation in decisions regarding their land and resources. Article 27 (3) of the Technical attachment to the Land Law Regulation establishes the requirement of a community consultation every time over an area required for use by a private agent, there are other rights and interests by a local community or a member of a local community. The Land law 97/97 also contains mechanisms that allow local communities to register their land rights, *"within this law, the DUAT recognises and protects existing, legitimate land rights for all Mozambicans and makes provision for outside investors to consult with communities before beginning their mining, agriculture, tourism, or forestry activities"*.

The land law also states that it is the responsibility of the provincial governors to authorize requests for DUATs corresponding to areas up to a maximum limit of 1000 hectares (ha); of the Minister of agriculture to authorize requests for DUATs for areas between 1000 - 10,000 ha and; of the Council of Ministers to authorize requests for DUATs corresponding to areas beyond the competence of the Minister of agriculture. This leads often to investors getting DUATs without proper community consultation and, consequently threatens communities' land rights, including women's control of the areas used by them for food production, water, wood, forests and medicine. According to Forum Mulher *"the abusive or inattentive use of such powers is at the root cause of most land conflicts between investors and communities"*.

Under a project named 'ProParcerias', a guide was developed to support in the process of establishing partnership between local communities and

private investors. ProParcerias is an attempt to identify and pilot some approaches and legal instruments that will permit the establishment of sustainable community/investor partnerships in rural areas, in which communities contribute unused land as a legally constituted group that holds the use rights to the land. The guide defines roles for the three main actors, the local communities, the private investors and the state, offering as well samples of the documents required to be prepared and signed at the end of each negotiation phase. However, the document is gender-blind. It makes no specific account to ensure presence and participation of women both, in representation of different actors and in the different phases of the process. It does not include any provisions to ensure women in the same conditions, as men will be included as beneficiaries or contract farmers in the investment projects at stake. The guide also lacks guidance for government and communities to assess the technical and financial capacity of the investor's project, nor to assess the monetary value, in case of a community-investor partnership, of the communities' contribution to the project.

However, both the land and investment legislation contain safeguards that enable the government to reverse land use rights of unviable projects that have been given the go-ahead, either in the conditions established for converting provisional DUATs to definitive titles or via the time limit established for initiating the implementation of an investment project. Nevertheless, *"the capacity of the state to monitor investment projects and land title use is extremely weak, so this safeguard measure has, in most cases, failed to operate as a fall-back option"*.

LAND LAW VS MINING LAW

According to the Mozambican legislation, similar to what occurs with land, property of all mineral resources are vested in the State. No 2 of article. 43 of Mining Law no. 14/2002, establishes the precedence of mining activities over any other economic activity 'wherever economic and social benefits related to these operations are higher'. This means that mining operations have priority over other land uses whenever the economic and social benefits of the operations are higher. However, as Mosca & Selemene (2012) reported, "in the case of provinces such as Tete, this has resulted in the resettlement of large numbers of people who have been displaced from their original land holdings, often in areas with less productive soils and poor access to infrastructure and markets". As a consequence, according to Locke (2014) in 2012 violent protests against previous resettlements, which threatened to derail mining investments, occurred. This led the government to issuing a regulation whereby companies need to prove that their resettlement areas provide the necessary infrastructure and give people proper and sufficient space to pursue economic activities such as farming. Effectively, land right-holders must be compensated for loss of land use rights and any damage caused to their land or improvements as a result of the mining operation although, the law does not specify the criteria for establishing fair compensations.

Hence, women's land rights are not secured in the context of LSLBI, as the government gives priority to the interests of investors, has a low implementation rate of the instruments it adopts and gender issues are not central on LSLBI national instruments.

3.2 On implementation

The case of Mozambique proves that having the right legislation is not a guarantee of protection of the rights at stake. Various challenges are found in Investments based on land in Mozambique, also called partnership between privates and communities. These include:

From the investor's side

- Insecurity when the land use title remains in the hands of the community.
- Insecurity in case of conflict and dispute.

From the communities' side

- Benefit less from the partnership due to lower capacity to negotiate their interests.
- Investors more interested in negotiating social benefits instead of economic benefits.
- Low knowledge of the economic value of their land and resources.
- Incapacity to understand legal language in contracts.
- No economic resources to participate in some costs or for the investment.

From the governments' side

- Low technical capacity to facilitate the processes of community-private partnerships.
- Low technical capacity to offer legal assistance in conflict resolution.
- Inexistence of a mechanism to monitor the partnership contracts.
- Leadership in delimitation processes with NGOs and not the State.



And one of the results thereof is that *“most private investment to date begins with investors applying directly to the state for a land use right, which is then granted with little real consultation with the local community, despite this being a legal requirement. The result has been a combination of weak arrangements, with limited benefits to the communities, conflicts over land and rent-seeking behaviour, which together have often sabotaged the economic viability of the commercial ventures”*. Furthermore, as stated in (Norfolk & Bechtel, 2013), customary and good faith DUATs do not have to be registered, leaving them invisible to investors, which is a risk of future conflict if both communities and investors are not aware of existing rights in the area. “This is especially true in situations of transient and communal land rights, such as grazing, water, and farming rights (Tanner, 2002)” . Delimitation of community land and recording of the DUAT gives notice of rights obtained through occupancy.

“The requirement that investors consult with communities before obtaining a DUAT is a legislative effort to protect customary rights to land and encourage local participation in rural development. In practice, investor consultations with communities have tended to be substantively limited and have had little positive impact on planning for development. Challenges to local participation include community lack of knowledge regarding their land rights and the investor’s obligations, low participation in decision-making of some community members, including women and marginalized members, and lack of capacity among local government officials charged with managing the process”.

According to a study undertaken by the organizations GRAIN and UNAC in 2015, “the pressure on land and water for the development of agribusiness in the Nacala Corridor over the past 5 years has led to the granting of 1.5 million ha of land for more than 50 investments, many of which violate the rights of communities” . The study attributes the main causes of conflicts between investors and communities to the conflict of interest and corruption by the holders of powers who should enforce the law . If top officials and community leaders have a stake of the investment or

community leaders accept bribery, the community consultation clause is not taken into consideration during the process of DUAT issuing.

Furthermore, no standardized mechanism for land conflict resolution at national level was found. Various actors play parallel roles at conflict resolution, which can create confusion and insecurity in terms of the institutions capacity to implement its decisions/resolutions. For example, at the level of government authorities, conflicts are resolved in an administrative manner by the technicians involved in land administration, and sometimes politically by administrators and heads of posts and locations. At the community level, there are local forums coordinated by local leaders and elders or influential figures. As has been mentioned before, most of the technicians involved in land administration are men and so are most of the local leaders, the majority of which are not gender sensitive.

On the other hand, the delimitation of community land, which could offer wider guarantees for communities, specially when investors intend to use part of the land and resources is not happening systematically at all communities. For example in December 2015, of the 62.262 land titles issued, merely 102 corresponded to community titles . De Magalhaes identifies a few causes for such limitations in the process of community land delimitation:

- *Identification of contradiction laws, which paralyse the delimitation process. For example Land law versus Forestry law, Mining law, Water law or Environment law. [For example, Mining Law establishing that mining operations have priority over other land uses whenever the economic and social benefits of the operations are higher.]*
- *Delimitation processes not ending with the emission of the certificate of community land, as they should [due to burocratic delays, lack of material for example to print the certificates, etc.]*
- *Delays in the processing due to uncertainties – the National Directorate of Land and Forestry (DNTE) in its role of national coordinator is not working together with the provincial services to clarify due process doubts, resulting in administrative delays.*



- *The efficiency and quality of delimitation processes depending on the [quality of the] relationship between the provincial services and the NGO supporting the community.*
- *The delimitation processes are in general led by the demand of the NGOs, in their role as service providers. The provinces with NGOs active in this work made significant progresses in community land delimitation (such as Nampula and Zambézia).*
- *Some provincial governments do not support community land demarcation and create administrative and bureaucratic obstacles.*
- *The delimitating costs are high for [the majority of] communities, although cheaper than the costs of the individual land title process. They vary between US\$2.000 – US\$8.000, for extensions between 1.000 – 20.000 hectares.*
- *The legal provisions regarding the payment for community land delimitations are not applied in practise. (In cases of a delimitation related to a conflict, the process should be financed by the State, in the cases where the delimitation occurs because of a new economic activity, the investors should cover the costs).*

Forum Mulher concludes that government land rights' programs mainly promote individual DUATs, while civil society organizations mainly promote community DUATs, although both lack a structured gender approach. In general, the Mozambican land administration entities lack the necessary capacity and resources to perform their duties effectively. As a result, many community land delimitations have been initiated in the context of potential investors interested in the areas, which has contributed to situations where *"in some cases, land administration personnel have maintained a top-down or investor-focused approach and have failed to accept the participation of local communities in land management and development decision-making. In some areas cadastral authorities at provincial and district levels appear to believe that they are primarily responsible for serving the interests of investors. In other cases -- and particularly in local offices -- personnel have not received adequate training and support. Most public resources allocated to land administration are devoted to supporting outside investment in urban and rural areas; relatively few resources are available to help communities delimit land and prepare for and conduct consultations with investors"*.

3.3 Recommendations:

For the government of Mozambique

1. Implementation of the AU Guiding principles on large-scale land-based investment, Tenure Guidelines on land, fisheries and forests. Implementation should be done through participatory, inclusive mechanisms to prioritize the rights of legitimate tenure users especially women.
2. Strengthen community and women's land rights in the context of LSLBI by reviewing instruments and legislation related to investment, as well as government implementing capacity so as to:
 - Mainstream gender equality principles in the economic partnerships between communities and investors (for instance by defining clear quotas or parity in selection of women as beneficiaries of investment such as contract farmers, of women's participation as members of the committees representing and negotiating for the community, in order to be able to exercise their right to withhold their consent on investments);
 - Establish clear conflict resolution mechanisms, so that communities and individuals negatively affected by investments can have their issues fairly resolved;
 - Build capacity of government bodies and communities to assess the technical and financial capacities of projects by investors requesting large lands.
3. Clarify the role of the government institutions in the processes of establishing investor-community partnerships and build the necessary capacity to ensure they support the efforts to protect women and communities' land rights and act as an interested stakeholder, not as a representative of the interests of the investors in detriment of the communities'.
4. Facilitate a process to increase opportunities to register land occupied by good faith, so as to reduce the amount of 'invisible' land that is granted for use by investors. This register should be public and easily accessible to all citizens.

For civil society organizations

1. Strengthen communities negotiating skills as well as the ability to understand women's land rights and national laws protecting those rights, in collaboration with women's land rights movements and rural women's movements – including the right to have their land delimited and be consulted when investors seek to use their land – and the value of their land and natural resources and the benefits for which they can negotiate if they opt to partner with an investor.

For investors

2. Adopt responsible models of investment that are socially, economically and environmentally sustainable and that contribute to reduce poverty and gender inequality. These models should include a recognition that unclear land tenure systems pose more risks than opportunities to their business and should ensure all legal and/or customary land rights holders (in the areas they wish to operate); Establishing land related grievance mechanisms to address communities' land related concerns; Ensuring the participation of community members (including women and all other groups that may lack the capacity and forum to adequately express their concerns and interests) in the decisions regarding the use of the land at stake; Establish internal accountability systems to ensure monitoring of such processes and their compliance with principles of transparency and sustainability.
3. Assess (through third party experts), the impact of the proposed intervention/ partnership to ensure it does no social, economic or environmental harm to the communities in the interested areas. If negative impacts are likely to occur, investors should cancel the investment or restructure it to avoid all or most of the negative impacts considering alternative models that safeguard against the displacement of people and where applicable, fairly compensate affected people for their losses and ensures continued access to land and secure livelihoods.



4. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA

Approved/ adopted by the African Heads of State in July 2003 in Maputo, Mozambique

Ratified by the Mozambican parliament in December 2005

The Protocol to the African Charter on Human and People's Rights on the Rights to Women in Africa (Maputo Protocol) urges member states to take measures to eliminate discrimination against women and to protect women's rights. It recommends member states to; on the one hand, adopt legislative, institutional and other measures to combat any form of discrimination against women, including the review of existing legislation and the adoption of new ones. And, on the other hand, it urges member states to commit themselves to changing traditional and cultural practices and standards that are based on the idea of the superiority or inferiority of either sex.

The Protocol outlines gender justice principles in relation to aspects such as the right to dignity, marriage, security and the right to life, political participation, the right to education and training, reproductive rights, economic and social well-being, food security, sustainable development, protection of widows and other areas where gender discrimination has traditionally taken place and where women are most affected.

The F&G refer to its' alignment with "commitments made by African states as evidenced in the AU's 2003 Maputo protocol to the ACHPR on the Rights of Women in Africa and the 2004 Solemn Declaration on Gender Equality in Africa both of which call for action to address gender inequalities including women's unequal access to land. This is all the more important as women remain the primary users of agricultural land in most African communities".

This chapter focuses on the Articles of the Maputo Protocol that have a direct influence on access and control of woman land rights such as:

Article 2	Elimination of discrimination against women. States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures.
Article 6	Marriage (and control of property within the marriage). States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage.
Article 7	Separation, Divorce and Annulment of Marriage, (d) right to an equitable sharing of the joint property deriving from the marriage. States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage.
Article 8	Access to Justice and Equal Protection before the Law. Women and men are equal before the law and shall have the right to equal protection and benefit of the law.
Article 9	Right to participate in the political and decision making process. States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures.
Article 15	Right to Food Security. States Parties shall ensure that women have the right to nutritious and adequate food, including access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food.
Article 18	Right to a healthy and sustainable environment. Women shall have the right to live in a healthy and sustainable environment and State Parties shall ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels.
Article 20	Widow's rights. States Parties shall take appropriate legal measures to ensure that widows enjoy all human rights including not being subjected to inhuman, humiliating or degrading treatment.
Article 21	Right to Inheritance. State Parties shall take appropriate measures to ensure that women and men inherit in equitable shares their parents' properties and to ensure that a widow shall have the right to an equitable share in the inheritance of the property of her husband, to continue to live in the matrimonial house and to retain this right if the house belongs to her or she has inherited it.

4.1 On domestication

The Mozambican Constitution of 2004 sets the basis for the general protection of women's rights, influencing women's access and control of land, for example through Article 36 where it establishes the principle of equality between the sexes before the law. Or, article 35 that prohibits discrimination based on any characteristic, including sex, by establishing the principle of universality and equality. However, other instruments are necessary to materialise the formal protection of women's rights in general and WLR in particular. After ratification of the Maputo Protocol, new laws were approved or reviewed as explained below.

In 2019, a new **Family Law** (Law 22/2019 of 11 December 2019) was promulgated by the Mozambican parliament. The Family Law establishes the conditions for the constitution of a family and seeks to eliminate gender inequalities prevalent in the previous legislation. The law confers civil, religious and traditional marriages the same value (article 17), broadening women and men's protection in marriage regarding property rights and inheritance. The majority of the population, especially in the rural areas celebrate traditional marriages or cohabit in a 'certified union'. The new law legislates about this type of union, giving it legal value when existent for a minimum of 3 years (article 207). The Family law establishes the minimum legal age for marriage for both sexes at 18 years old (article 32 - a); and, acknowledges that both men and women can represent the family (article 103), pass on their names to their descendants (article 104) and manage the couple's common assets (article 106). It prohibits the need for conjugal consent to exercise any profession or gainful activity (article 102 - 2) and article 107, prohibits (and sanctions - article 111) one of the spouses to transfer (sell, donate) common assets without the consent of the other spouse. This is an important aid for women's control of the family or own land they use to farm and/or practise their commercial activities. And finally, articles 432 and 433, refer to the obligation of sponsorship of the surviving spouse with the incomes from the assets left by the deceased. This prerogative can be used as a tool to protect widows who are ousted from the family land when the husband dies, sometimes not being able to take the crops they planted before the death of the husband.

The family law of 2019, through the articles mentioned above are in alignment with articles 2, 6, 8, 13, 15 and 20 of the Maputo Protocol.

Inheritance law 23/2019, of 23 December 2019. This was an anxiously expected law in the Mozambican society, for many years, civil society organizations had pressured for approval of a law of succession that was aligned with national legislation and international instruments on equality between women and men. On the other hand, all the customary norms in the country give priority to men when it comes to inheritance rights, therefore, a legal instrument that protects women from such practises that violate the constitution and their rights was necessary.

The law equals the rights of women and men to manage the family's assets while the inheritance is being liquidated or to inherit the spouse's assets. For instance, article 63, establishes the spouse as the 1st in a hierarchical order to manage the inheritance until it is settled and shared. It also protects the right of the surviving spouse to continue living in the family house (article 87). It is common, especially in the patrilineal societies of Mozambique, for the widow (and sometimes the descendants) to be chased out of the family house and land, because it is considered to belong to the family of the man. Although the family law does not recognize polygamous marriages, the Inheritance law protects widowed women in a polygamous relationship by stating in article 88 that they have the right to be supported from the incomes of the resources left by the deceased, if they had been living with him for more than five years before his death. In terms of the order of inheritance, the law ensures that the surviving spouse always receives a portion of the assets left by the deceased. Article 118 for instance, determines that spouses and descendants are together the 1st in the succession line. In this case, each person receives an equal portion of the estate (article 124). The law regards the spouse of a formal marriage and of a certified union in the same category, for the benefit of the population cohabiting under this family model. The Inheritance Law is aligned with articles 13, 20 and 21 of the Protocol of Maputo and if implemented, should support the efforts to strengthen WLRs.

The national **Strategy on Nutrition and Food Security** (2007 – 2015) , defines Food and Nutritional Security as “the realization of the right of all people to physical and economic access, sustainable and at all times, to a sufficient amount of adequate, harmless, nutritious and acceptable food in a given cultural context, to satisfy food needs and preferences, in order to lead an active and healthy life” . It classifies the cost of food and nutritional insecurity as high in Mozambique, as it disproportionately raises health costs, lowers productivity and affects the most vulnerable, namely women and children. “The main expenditure of households is related to food (48%). Chronic malnutrition reduces productivity by 2-3% of GDP. For Mozambique this amounts to US \$ 71.4-107 million per year, using the 2002 GDP” . The strategy acknowledges the role of gender inequality in food insecurity and establishes the need to implement it with a gender equity perspective . One of the challenges of the strategy is to “deepen the gender issue and the intra and inter household relationships and responsibilities”. And, it prioritises “activities that benefit the balanced development of gender and participate in the fight against HIV/AIDS”.

The strategy defines roles for various actors such as the government, civil society organizations or the United Nations, which is important to avoid duplication of efforts. However, it confers the role of supporting with “participatory planning and gender equality – promoting policies and strategies that aim at participation and engagement of gender issues in the socio-economic lives of the communities” to the civil society. This approach seems to leave the integration of gender in the nutritional and food security strategy ‘hanging’ for some NGO to pick it up if it falls into their agenda. The duty bearer is the GoM and it should be the one responsible for mainstreaming gender in its policies, strategies and legislation and, NGOs can support in developing approaches that are gender aware and promote equality between the sexes complementing the government’s agenda to implement a food security and nutrition strategy with a gender equality approach.

There is no evidence in the strategy that it will tackle gendered power relations regarding control of nutrition and food security, issues of

decision making and unequal distribution of food, water and other resources in the households, normally in detriment of women and children. A larger emphasis is placed on production, commercialization and storage aspects, which are important, however, they do not challenge nor change the power relations that also influence food insecurity and malnutrition in Mozambique. Furthermore, the chapter dedicated to monitoring and evaluation, doesn’t offer any guidance to develop indicators that offer quantitative and qualitative data on gender aspects related to nutrition and food security.

4.2 On implementation

The structural and conjunctural factors that limited the implementation of the previous family law and policies have not necessarily changed. Therefore, it is still to be seen what efforts will be made to ensure the new Family law and the Inheritance law are known and if enough resources will be allocated to enhance the capacity of the implementing agents.

According to customary norms, men decide if a woman can inherit land from her husband or family as well as which land she inherits. *“Often, the inherited land is marginal, not very productive and of small dimensions compared to those held by men”* . Furthermore, customary norms, especially in the patrilineal regions of Mozambique prevent women from owning land. It is believed that women are not entitled to land at their parents’ household because one day they will marry and leave the land; and if/when she gets married, she is not entitled to own land because the land is considered to belong to the husband as the ‘head of the family’ and if the husband dies his family takes the land as theirs . *“This woman starts the new cycle again and goes to the traditional leader, where a piece of land is given as a loan. Women’s insecurity regarding access to and ownership of land is continuous; it is a cycle of insecurity. The man never loses the right to land, he can inherit it from his parents and keep it in his custody, which is then transferred to his son”*.

If we are unable to change the mentality ... in the communities, it is noted that men are still privileged, first come the men and then the women and the children. Customary norms do not make things happen in term of implementation of statutory laws; they do not allow women to enjoy their rights. But we can, in particular government programs target a certain percentage of women in order to go around these customary barriers

As mentioned in Locke (2014), “customary tenure systems have traditionally ensured that women obtain access to land, even if they lack control over it, and retain their rights in the event of widowhood, customary law and practices give men primary rights over land and favour male inheritance. Moreover, women’s access to land has become increasingly insecure, as young widows of the HIV/AIDS pandemic are vulnerable to eviction from their marital homes by relatives claiming their land, particularly if their children are not old enough to inherit.”

“We still have cases of women who loose their right to land because they divorced or became widows. However, nowadays it is permitted for the DUAT to be registered in the names of both the wife and the husband, and these cases prevent the families from taking away the reight to land. Access to information is found mainly in urban and sub-urban areas.

Therefore, the approval of formal laws alone is insufficient to encourage the role of women in decision-making processes since “cultural practices normally overtake the rules in the constitution and relevant legislation. There is therefore need to look at legal situation of WLRs beyond land laws, family laws or inheritance laws as in reality, these may not bring feasible outcomes in as far as WLRs issues are concerned due to poor implementation and enforcement of the laws” . Another strategy recommended to strengthen women’s land rights is to create mechanisms that ensure women’s right to land within the community lands delimited . Since women’s participation in community leadership in the majority of the country is scarce, their interests, needs and priorities may not be accounted for and they may end up being more marginalised.

There is greater openness in society regarding women’s rights in general, but the legislation needs to be a little more widespread so that it is not simply on paper. It is necessary to raise more awareness, make it known that these instruments exist; disseminate them at a larger scale. Conditions need to be created to reach the places where women need the most support, in the districts.



4.3 Recommendations:

For the government of Mozambique

1. Urgently develop mechanism that allow for the effective materialisation of WLR, particularly in rural areas, combining the strengthening of the implementation capacity of the decentralized state organs; sensitizing and training community leaders on WLR and constitutional principles of equality between men and women; campaigns to change social norms that are discriminatory towards women and develop instruments to guarantee that violation of constitutional rights for women are reported, addressed in a transparent and fair way, at all levels.
2. Adopt strategies to sensitize the population about the laws promoting equality between the sexes, including the ones to ensure WLR in a cost-effective, constant and sustainable way. For example, the GoM could mainstream the basic information of the statutory laws in school textbooks, using language and detail relevant to the different stages of the education system.

For civil society organizations

3. Monitor GoM’s implementation of the laws to protect WLR and of the mechanisms created to ensure violations of constitutional rights of women are reported and addressed in a transparent and fair manner.
4. Raise awareness on WLR and disseminate the relevant legislation protecting WLR, helping communities understand that all women have the right to land guaranteed by the Mozambican State independently of kinship or marriage, targeting particularly remote communities.
- 5.



5. VOLUNTARY GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF TENURE OF LAND, FISHERIES AND FORESTS IN THE CONTEXT OF NATIONAL FOOD SECURITY (VGGTS)

Developed by FAO and negotiated and endorsed at an inter-governmental level at the Committee on Food Security on 11 May, 2012

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) was developed by FAO as a response to global pressure over natural resources and later adopted by the African Union for domestication by the member states. The instrument is gender sensitive, it uses an inclusive language and proposes actions in equitable and inclusive ways. The VGGT outlines principles that governments can refer to when making laws and administering land, fisheries, and forests rights. Its ultimate goal is to ensure food security and sustainable development by improving secure access to land, fisheries, and forests, as well as protecting the rights to land.

An important aspect of this instrument is that it recognizes the need to protect 'legitimate' tenure rights instead of only 'legal' tenure rights. In Mozambique for example, the majority of the population in the rural areas

does not have a DUAT. Having adhered to the VGGT, the GoM compromises itself to respect the legitimate tenure rights prevalent in the country and accessed through customary norms. Land might be the most important asset for many rural families; therefore improving tenure security for both women and men may have an impact on food security, sustained livelihoods and gender equity.

"The VGGT provide an accountability mechanism through which local communities can hold both the State and private actors to account in development planning and decision-making around large-scale land investments. They also provide communities and civil society actors with a framework in which to advocate for more robust national policies on land tenure, and stronger implementation of those policies."

The following principles and guidelines are relevant for this report:

Principle 4 on gender equality	"Ensure the equal right of women and men to the enjoyment of all human rights while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary. States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status".
On Rights and Responsibilities related to tenure	
Guideline 4.4	"...based on an examination of tenure rights in line with national law, States should provide legal recognition for legitimate tenure rights not currently protected by law. Policies and laws that ensure tenure rights should be non-discriminatory and gender sensitive".
Guideline 4.6	"States should remove and prohibit all forms of discrimination related to tenure rights, including those resulting from change of marital status, lack of legal capacity, and lack of access to economic resources. In particular, States should ensure equal tenure rights for women and men, including the right to inherit and bequeath these rights. Such State actions should be consistent with their existing obligations under relevant national law and legislation and international law, and with due regard to voluntary commitments under applicable regional and international instruments".
Guideline 4.7	"States should consider providing non-discriminatory and gender sensitive assistance where people are unable, through their own actions, to acquire tenure rights to sustain themselves, to gain access to the services of implementing agencies and judicial authorities, or to participate in processes that could affect their tenure rights"
On policy, legal and organizational frameworks related to tenure	
Guideline 5.4	"States should consider particular obstacles faced by women and girls with regard to tenure and associated tenure rights, and take measures that ensure legal and policy frameworks provide adequate protection for women and that laws that recognize women's tenure rights are implemented and enforced. States should ensure that women can legally enter into contracts concerning tenure rights on the basis of equality with men and should strive to provide legal services and other assistance to enable women to defend their tenure interests".
Guideline 5.5,	"States should develop relevant policies, laws and procedures through participatory processes involving all affected parties, ensuring that both men and women are included from the outset. Policies, laws and procedures should consider the capacity to implement. They should incorporate gender-sensitive approaches, be clearly expressed in applicable languages and widely publicized".
On principles of Implementation (3B)	

Guideline 6.1	“To the extent that resources permit, States should ensure that implementing agencies and judicial authorities have the human, physical, financial and other forms of capacity to implement policies and laws in a timely, effective and gender-sensitive manner. Staff at all organizational levels should receive continuous training, and be recruited with due regard to ensuring gender and social equality”.
On safeguards	
Guideline 7.1	“When States recognize or allocate tenure rights to land, fisheries and forests, they should establish, in accordance with national laws, safeguards to avoid infringing on or extinguishing tenure rights of others, including legitimate tenure rights that are not currently protected by law. In particular, safeguards should protect women and the vulnerable who hold subsidiary tenure rights, such as gathering rights”.
On indigenous peoples and other communities with customary tenure systems	
Guideline 9.2	“Indigenous peoples and other communities with customary tenure systems that exercise self-governance of land, fisheries and forests should promote and provide equitable, secure and sustainable rights to those resources, with special attention to the provision of equitable access for women. Effective participation of all members, men, women and youth, in decisions regarding their tenure systems should be promoted through their local or traditional institutions, including in the case of collective tenure systems. Where necessary, communities should be assisted to increase the capacity of their members to participate fully in decision-making and governance of their tenure systems”.
On Investments	
Guideline 12.10	“When investments involving large-scale transactions of tenure rights, including acquisitions and partnership agreements, are being considered, States should strive to make provisions for different parties to conduct prior independent assessments on the potential positive and negative impacts that those investments could have on tenure rights, food security and the progressive realization of the right to adequate food, livelihoods and the environment. States should ensure that existing legitimate tenure rights and claims, including those of customary and informal tenure, are systematically and impartially identified, as well as the rights and livelihoods of other people also affected by the investment, such as small-scale producers”.
On records of tenure rights	
Guideline 17.3	“States should strive to ensure that everyone is able to record their tenure rights and obtain information without discrimination on any basis. Where appropriate, implementing agencies, such as land registries, should establish service centres or mobile offices, having regard to accessibility by women, the poor and vulnerable groups”.

5.1 On domestication

No legal instrument developed in the context of the VGGT after the year 2012 was identified during the preparation of this report. Some of the guidelines promoted in the VGGT are already integrated in legislation previously developed. Such as, the **National Land Policy** (1995) which recognises customary systems of land tenure and defines as one of its fundamental principles to ensure women's access and use of land". Or, the **Technical attachment to the Land Law Regulation** (2000) and the **Diploma Ministerial n. 158/2011**, which establish the conditions for community participation and consultation in the processes of delimitation of community land.

However the **Diploma Ministerial 158/2011** falls short in terms of guaranteeing inclusion in the composition of the individuals representing the community. It does not explicitly orientate for the representative group to be composed of men, women and youth for example, treating the communities as homogeneous groups. This does not allow the government to, through this instrument influence changes in the social norms that discriminate woman and girls in access and control of land and their participation in decision-making processes.

Civil society organizations supporting community land delimitations or Access to individual land user titles have influenced an increase in women's participation in community land committees. However, women's participation risks being merely quantitative when communities are not supported in challenging discriminatory social norms that limit women's participation in such forums, and in enhancing women's empowerment to give them the tools to express and negotiate their priorities and interests.

In the áreas where there are partnerships between investors and communities, we encourage women's presence and participation in community committees and sometimes they give their opinion and show their needs. But often women are shy in meetings, especially the ones carried out in the presence of both women and men. They have dominion over the land and know what they want with the land, but sometimes they do not speak in these meeting .

When we began our intervention we had the goal of having 30% participation of women. Initially we focused on the number of women present in associations and natural resources management committees for land delimitation. Then we trained ITC staff and service providers on gender issues, we hired a gender focal point and developed an approach to social preparation that allows the community to know their rights and what the DUAT is for. This approach allowed us to raise awareness about women's land rights but also to address issues of accountability and representativity within the community institutions. For example did they have women, young people, what posts did they occupy and did they really take decisions? In 2018 we ended our projects with 50-55% of women's participation. This was both due to our intervention approach as well as to the fact that in the southern provinces most men are absent and the women are the ones exploring the land. For us the problem is that the work of preparing the communities does not last 8 months. As long as we are in the community, everything is fine, but when the project ends, the catalytic factor does not continue.

The Diploma Ministerial 158/2011 establishes two phases in the process of community consultation. The 1st phase, consists of a public meeting with the aim to inform the local community about the application for a DUAT and the identification of the limits of the plot. The 2nd phase consists of another meeting, which should take place in the next 30 days after the 1st meeting, in which the community should inform about its decision regarding the availability of the area for the investment or exploration plan. This instrument seems to have the assumption that every local community is informed about their land rights or that community members and representatives have sufficient knowledge and skills to negotiate with the representatives of private companies interested in investing in their land.

This is usually not the case, many citizens, especially in rural areas are not aware of their land rights, many of them are not aware of the complexities pertaining to the relationship between investors and local communities,

many are not sufficiently gender aware to negotiate benefits not only for the community as a whole but particularly to women in order to reduce the gender gap in benefit of resources in the community, not to mention that many do not have the negotiation skills nor the knowledge to understand the legal contracts (sometimes written in English) they will sign. On the other hand, no evidence of a government program to raise awareness at a massive scale on land rights, community land titles and relationship with investors, was found. In some cases, communities have benefited from the support of civil society organizations working in their area. However, it should be the responsibility of the GoM to ensure that before the communities are asked to decide about an investor's interest in their land, they are well informed and equipped to make conscious decisions and negotiate the best deal for all men, women and youth in the communities.

In 2014, a Guide to support the process of establishing partnerships between local communities and private investors was developed by the National Directorate of Rural Development. However, this is not a binding document such as a law, parties are free to use it according to their will. Besides, the Guide is gender blind and, in this sense, is not aligned with the principles of the VGGT. No evidence was found that Guidelines 9.3 and 12.10 of the VGGT were domesticated.

5.2 On implementation

In 2015 the GoM began implementing the program Safe Land (Terra segura) aiming at issuing 5 million DUATs to Mozambican citizens. As mentioned above, in 2015 very few community DUATS had been issued, compared to individual ones and in relation to the percentage of the population living in rural areas. No external evaluation of the project was found, and thus not enough data is available to assess if and how it has contributed to reduce gender inequalities in the land sector. However, these types of projects usually include awareness raising activities, dissemination of existing land rights legislation and mobile services to register land in remote areas, in alignment with guideline 17.3 of the VGGT. Mobile offices are an important opportunity to allow women and communities in remote

communities with little mobility and resources to register their land and increase their chances of protection in face of private investors interest in their land.

However, women continue to experience precarious land rights as their access to land is through customary norms and practices, making them more vulnerable as they can lose their property or tenure rights following migration, widowhood, divorce or desertion. Women also risk losing their land when private interests are at stake. For instance, as quoted by one informant:

'Our organization is implementing a project that aims to issue land user titles to 600 widows by the year 2021. So far 461 women already have their titles. The area of this project has coal and the goal was to protect these women in the context of investments in the coal-mining sector. We had three cases where the government had issued a DUAT to a reforestation company that included areas that legitimately belonged to 3 beneficiaries of our project, individually. Fortunately we successfully mediated for the company to return those pieces of land. However, it showed that a land user title was issued without the required community consultation and those women were negatively affected.'

In some cases, the lack of perception, especially by urban-based decision makers, on how farmers and communities use land may be detrimental for WLR. Land that is left to rest or is used as a forest for collection of wood, herbal medicines or as pathways to other resources such as water is sometimes classified as unutilised land. Land that is not used is according to the law, subject to being re-appropriated by the State. However, limited access to grazing lands compromises food security. In areas where the pressure for land and natural resources is higher, the vulnerability of communities' land rights is also higher, since a more limited concept of land utilization can be used and limit the right to use land for purposes that might not be considered 'visible' by decision makers unfamiliar with local practices of land use. It is crucial that government officials understand that "the area over which the community has a land-

use right is much larger than that under cultivation and used for housing, and the difference between the limits of the communities and those of the territorial units of public administration”.

The land law says that if someone has land and is unable to use that land, the land can be taken away from them. Where do we integrate the small farmer with the financial capacity to only explore about a hectare of land with agricultural production, but who is also using the land for other activities, such as to collect firewood, to raise animals, to search for medicinal plants. The law states that the land should be used, but who defines that use - what is land use? It constantly means that all the land is plowed and producing but the community has other forms of use, for example the time of resting farmland. While, when talking of agribusinesses most voices do not contemplate the practise of letting land rest – there is the idea that it must always be plowed and when it is not, it might be considered abandoned or unutilised.

Mozambique’s formal court system has jurisdiction over land-related disputes. The country’s system includes an administrative court to hear challenges to state administrative actions, and district courts, provincial courts and a supreme court. Particularly at the higher levels, the formal court system suffers from lack of skilled administrative personnel, lack of qualified judges, and inadequate facilities and equipment. The litigation process is lengthy (the average contract enforcement action consumes more than 1000 days), requires parties to be represented by lawyers and includes high fees (10% of the estimated value of the claim). The Judicial Patronage and Assistance Institute (IPAJ) is a state institution created in 1994 to provide pro bono legal assistance to the poor. IPAJ has offices in the provincial capitals but lacks the necessary financial support to ensure adequate staffing and skill (Alfai 2007).

However, Mozambique also has a system of about 1600 community courts that function separately from the formal court system, and these handle civil and criminal matters, including land disputes. Community courts are staffed by elected community members. “No training is required,

and community courts apply a local and often highly individual and inconsistent blend of formal law, customary law and other principles. There is no established link between community courts and the formal judicial system; parties to disputes are free to initiate an action at the district court without exhausting remedies available in community court. These forums are composed of some or all of the following: elders, traditional leaders, and neighborhood heads. Besides, district officials and many NGOs also provide informal dispute-resolution services.

In general, both formal (courts) and informal (community leaders) conflict resolution systems are used, although “there is no established link between community courts and the formal judiciary system”.

However, both systems face a number of challenges. Formal courts are seen as inefficient, slow, costly, corrupt and lacking necessary resources. Whilst community leaders or community courts are ill equipped, lack knowledge about conflict management and to interpret and apply the legal instruments regarding land rights and, most members of such committees are not formally educated. Independent, reliable and effective conflict-resolution mechanisms are key to ensuring justice and land tenure security of the poor, including for women. “Corruption, inefficiency and high costs plague the formal court systems in many poor countries, preventing the rule of law, and impeding the accessibility and transparency of conflict-resolution mechanisms. These factors discourage the use of formal dispute resolution and cause many aggrieved parties to turn to informal mechanisms, some of which are based on customary practices in local communities”, not based on principles of equality between women and men.

Most disputes are resolved in informal forums, particularly in rural areas where access to another forum would require significant travel and costs. In practice, cultural and traditional practices, even if formally outlawed, continue to be pervasive, which limit the implementation of gender equality legislation and instruments.



5.3 Recommendations:

For the government

1. Strengthen understanding of gender implications of investments by establish as a sine qua non requirement before investments are approved, the presentation of an analysis report that reflects how the initiative might affect negatively or strengthen gender equality and food security, as occurs with studies to assess the environmental impact of an investment.
2. Strengthen the requirements to ensure women, youth and other groups that might be marginalised effectively participate in decision-making processes regarding community land delimitations and partnerships with investors, including ensuring gender equity is mainstreamed in all operational documents related to land tenure and in the training of the technician and other staff responsible for implementing the land legislation.
3. Continue developing effective and politically independent mechanisms to resolve land disputes – including, linking the informal and the formal systems, establishing a hierarchy between the two systems in relation to protection of women's rights and developing effective programs to challenge discriminatory norms used by the informal systems.

For civil society organizations

4. 9. Set up a multi-stakeholder platform to monitor VGGT implementation. The platform should also facilitate discussion and interaction among stakeholders (including civil society, farmers' organisations, women's organisations, state actors, the private sector, communal authorities and research organisations) on land governance and common agendas to better implement the VGGT.
5. 10. Support the strengthening of the capacity of communities and women to participate in land tenure decision making processes, raise awareness of women's land rights among women, community in general, local leadership, in negotiation skills.
6. 11. Design and implement programs that contribute to reducing the gender gap in access and control of land in Mozambique and that include women as equal participants.

For investors

7. 12. Please see recommendations 6 and 7 in chapter 3.3 above.



6. CONNECTING THE VARIOUS DIMENSIONS IN SECURING WLR

Ensuring women's rights are enacted requires efforts at various dimensions of society at both formal and informal spheres as well as personal and systemic ones. In this report we have used the Kelleher-Aruna gender analysis matrix to highlight how the combination of factors occurring at the 4 mentioned dimensions influence how WLR are being either inhibited or facilitated. The gender analysis matrix looks at a given situation at 4 dimensions or quadrants, which are interrelated:

Quadrant 1: the informal and individual conditions of the women, such as their conscience regarding WLR.

Quadrant 2: the formal and individual conditions, such as the individual conditions of women and their access to resources.

Quadrant 3: the informal/tacit and systemic conditions, such as the existing rules, cultural norms and values.

Quadrant 4: the formal and systemic dimensions, such as existing laws, policies and other formal mechanisms.

The table below summarises how domestication and implementation of AU WLR instruments, as analysed in chapters 2-5 above are affecting WLRs at the 4 dimensions.

INDIVIDUAL

1. The conscience of women

Opportunities

- Growing number of women and girls aware of their rights.
- Women near urban settings more aware of their land rights.

Challenges

- Many women, mainly in rural areas not aware of their land rights.
- Many women not aware that they have equal rights with men before the law.

2. The condition of women and their access to resources

Opportunities

- Single and divorced women with more decision power over their land.
- Widowed women, sometimes with decision power over inherited land.

Challenges

- Low mobility and financial resources limits women's options to applying for a DUAT.
- Lack of information of land rights limits women's exercise of their rights.
- Low participation in decision-making bodies limits women's say regarding the use of community land.
- Low formal education/ literacy and lack of identification documents limits women's access to information and to apply for a DUAT.

INFORMAL/ TACIT

3. Rules, values, cultural norms and discriminatory practices

Opportunities

- Existing experiences of DUATs registered under the name of the husband and the wife.
- Women inheriting land (although marginal land).
- Existence of community land management related forums with of women.
- Awareness raising activities on WLR may help challenge discriminatory social norms.

Challenges

- Customary norms prioritising men in access and control of land still prevalent
- Community power held mostly by men.
- Low participation of women in decision-making forums.
- Low transparency and corruption practices in land tenure management reduce women's trust in the formal mechanisms of land title acquisition.

4. Constitution, laws, decrees, policies and other formal mechanisms

Opportunities

- Adoption of inclusive legislation, National policies and sectorial gender strategies.
- Approval of new Family law and Inheritance law increases the opportunities to materialise WLR.
- Legislation protects community consultations regarding the use of their land by external agents.

Challenges

- Low monitoring/ evaluation of impact of instruments to promote gender equality and women's access to land.
- No compliance to obligation to report on achievement of AU instruments, makes process of implementation longer
- Low implement capacity of the legal instruments by the State, limits women's access to their land rights
- No standardized land conflict management systems to ensure women and communities can fairly resolve their issues especially with investors.
- Policies related to land rights gender blind.
- Lack of mechanisms to ensure violation of statutory laws are fairly and transparently addressed and monitored.

FORMAL

SYSTEMIC

Enacting laws and approving inclusive policies is an important step in protecting women's land rights. However, it is not enough to ensure those rights are materialised. If women are not aware of their rights or if they are aware and do not have the resources and conditions to use their knowledge, their land rights are rarely materialised. On the other hand, if the capacity to implement the existing laws and policies protecting women's land right is scarce, or if the political will to implement them is limited, women's land rights cannot be protected. Low implementing capacity allows for customary norms that are discriminatory towards women regarding land rights to maintain its' grip in the organization of the society, thus reducing the gains obtained with enactment of the relevant statutory laws.

The matrix offers a holistic vision of the implications of the implementation or not of the regional frameworks promoting women land rights, including if, they are challenging limiting beliefs and attitudes towards women's access and control of land and other resources.



7. CONCLUSIONS



The Government of Mozambique has successfully developed a legal framework, which for most part are in alignment with the AU and other international frameworks and instruments on WLRs including the F&G, GP-LSLBs, The Maputo Protocol and the VGGTS. The enactment of the Diploma Ministerial 158/2011 regarding community consultations by potential investors in the land, of the Family law and of the Inheritance law and previously existing (pre-AU instruments analysed in this report) Land law and other regulations set an important precedence towards achieving equality between women and men and, tenure security for women. National laws respect equality between men and women, but illiteracy, lack of information and finances and cultural barriers constrain the realisation of women's land rights. Besides that, the existence of a dual or plural legal systems hampers the implementation of constitutional gender equality clauses and specific legislation aiming at materialising WLR.

The GoM is also commendable for the legal measures taken to ensure customary land tenure systems are protected, that local communities participate in decisions regarding the use of their land for investments or exploration of natural resources, to ensure community land delimitations and to ensure both legal and legitimate land rights are protected. Secure land and resource rights are particularly important for groups who are socially and/or economically marginalised. However, no safeguards have been established to prevent discriminatory customary norms outweigh formal laws. Men mainly hold local leadership positions and often community decision-making forums are composed mostly of men. In rural areas where customary law particularly does not favour women's land rights, women are not well positioned to access and control land equally with men.

The government, civil society organizations and donors have made efforts to raise awareness of the constitution, the land law, family law and other legal instruments approved to materialise gender equality in the Mozambican society, through their programs. However, much more effort is still needed in awareness raising and in challenging and deconstructing discriminatory social norms. Women are the main users of land, however in 2015, only 20% of land user titles were issued to women. Other barriers also negatively affect women's land rights in Mozambique. In general, women have lower literacy and lower levels of formal education than men, and are less likely to be aware of their rights. Women are often excluded from or poorly represented in local governance bodies and thus have more limited access to information. Women tend to have less experience with administrative procedures and are less likely to invoke the legal system to support their rights.

Failure by the Government to fully implement the national and regional instruments to protect women's land rights will mean that the rights shall remain on paper without the communities including women fully realizing their land rights. There is therefore need for more reforms to ensure that WLR are materialised and that gender equity is achieved at all levels. These include measures to further implement AU instruments on WLRs, to ensure gender equity at all policies and government programs, to mainstream a gender approach in existing strategies and programs to improve access to land rights, to increase resources to build capacity of state agents and local communities in implementation of AU and international instruments on WLRs and to systematically collect data disaggregated by sex.

Finally, it is necessary that the Government of Mozambique challenge cultural norms that contradict the principles of non-discrimination and of equality between women and men. The limit of the customary norms should be the law; therefore the GoM should adopt mechanisms to ensure that customary norms that violate women's rights are prohibited and the institutions that apply it monitored and guided to alignment with constitutional rights when necessary and that changes in norms and values favouring women are recognized and rewarded.

8. ANNEXES

References

1. Actionaid. November 2017. Assessing implementation of the Voluntary Tenure Guidelines and the AU Framework and Guidelines for Land Policy- A toolkit approach.
2. Aiuba, Rabia & Mosca, João. 2018. Orçamento Geral do Estado para o Sector Agrário e Desenvolvimento Rural. Destaque Rural nº46. Observatório do Meio Rural.
3. AUC-ECA-AfDB Consortium. 2010. Framework and guidelines on land policy in Africa - Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods, Addis Ababa, Ethiopia.
4. De Magalhães, F. A. 2014. Delimitação de Terras Comunitárias (DTC). Sua contribuição na segurança de posse de terras e no rendimento agrícola “per capita” das famílias rurais em Nicoadala – Zambézia. Dissertação de Mestrado em Desenvolvimento Rural. Universidade Eduardo Mondlane.
5. EnvironmentandLandManagementConsultants.2018.Implementation of African Union (AU) women’s land rights (WLR) frameworks and instruments and other relevant WRL laws and policies in Malawi - Shadow report. Oxfam. Lilongwe. November 2018.
6. Fórum Mulher. Novembro 2018. Direitos Das Mulheres À Terra No Contexto Da Pluralidade De Direitos: O Caso De Moçambique. Maputo.
7. Forsythe, J. 2015. Gender and equality review of the Community Land Initiative (iTC). Natural Resources Institute, University of Greenwich, Chatham, UK.
8. INE. 2019. IV Recenseamento Geral da População e Habitação, 2017 - Resultados Definitivos. Mozambique.
9. INE. 2017. Mulheres e homens de Moçambique. Maputo.
10. INE. Novembro, 2019. Contas nacionais (Ano base 2014 = 100) - 3º Trimestre 2019. Maputo.
11. Government of Mozambique. 1995. A Política Nacional de Terras e Estrategia para a sua Implementação. Maputo, Mozambique: Council of Ministers.
12. Government of Mozambique. 1997. Lei de terras. Mozambique.
13. Government of Mozambique. 2000. Anexo Técnico ao Regulamento da Lei de Terras. Diploma Ministerial no. 29-A/2000.
14. Government of Mozambique. 2002. Lei de Minas no. 14/2002.
15. Government of Mozambique. 2007. Estratégia da Segurança Alimentar e Nutricional. Secretariado técnico de segurança alimentar e nutricional. Julho 2007. Mozambique.
16. Government of Mozambique. 2011. Diploma Ministerial n.º 158/2011, de 15 de Junho. Maputo.
17. Government of Mozambique. 2019. Lei da Família. Lei nº 22/2019 de 11 de Dezembro de 2019. Mozambique
18. Government of Mozambique. 2004. Lei da Família. Lei nº 12/2004 de 25 de Agosto de 2004. Mozambique
19. Government of Mozambique. 2007. Constitution of Mozambique. Mozambique
20. Government of Mozambique. 2006. Política de género e Estratégia de implementação.
21. Government of Mozambique. 2016. Perfil de género de Moçambique. Mozambique.
22. Government of Mozambique. 2018. Estratégia de Género do Ministério da terra, ambiente e desenvolvimento rural (Draft). Ministério da Terra, Ambiente e Desenvolvimento Rural. Novembro 2018.
23. Government of Mozambique. 2016. Estratégia de Género e Plano de Acção do Sector Agrário 2016-2025. Ministério da agricultura e segurança alimentar.
24. Government of Mozambique. 2010. Estratégia e Plano de Acção

e Género, Ambiente e Mudanças Climáticas. Ministério para a Coordenação da Acção Ambiental.

25. Government of Mozambique. 2009. Project Document – Community-Investors Partnership Project. National Directorate for Promoting Rural Development. Ministry of Planning and Development. Land and Natural Resources Programme. November 2009. Mozambique.
26. Government of Mozambique. Regulamento sobre o processo de reassentamento resultante de actividade económica. Aprovado pelo Decreto no. 31/2012 de 8 de Agosto. Mozambique.
27. Government of Mozambique. 2013. Estabelecimento de Parcerias Comunidades e Privados (PCP) – GUIÃO PRÁTICO. Ministério da Administração Estatal/ Direcção Nacional de Promoção do Desenvolvimento Rural. Dezembro 2013. Mozambique.
28. Hull, S. & Whittal, J. 2018. Filling the Gap: Customary Land Tenure Reform in Mozambique and South Africa. South African Journal of Geomatics, Vol. 7. No. 2, AfricaGEO 2018 Special Edition, September 2018.
29. International Land Coalition. 11 May 2011. Tirana Declaration “Securing land access to the poor in times of intensified natural resources competition”. Internatinal Land Coalition Global Assenbly. Tirana, Albania.
30. Locke, A. March 2014. Mozambique Land Policy Development Case Study. Evidence on Demand/ Overseas Institute Development (ODI).
31. Milgrom, J. 2013. Policy processes of a land grab: Enactment, context and misalignment in Massingir, Mozambique. LDPI, Working Paper 34. The Land Deal Politics Initiative.
32. Sigsworth, R. & Kumalo, L. 2016. Women, peace and security – Implementing the Maputo Protocol in Africa. ISS Paper 295. Institute for Security Studies, July 2016.
33. USAID. undated. USAID Country Profile – Property Rights and Resource Governance Mozambique.

Online sources:

1. <https://www.endvawnow.org/en/articles/1302-alternative-and-shadow-reporting-as-a-campaign-element.html> (viewed on 23 December, 2019)
2. <https://www.right-to-education.org/monitoring/content/glossary-shadow-reports> (viewed on 23 December 2019)
3. <https://www.un.org/en/africa/osaa/peace/caadp.shtml> (viewed on 24 February 2020)
4. <https://omrmz.org/omrweb/wp-content/uploads/cnf-Orcamento-do-Estado-para-a-Agricultura-2001-a-2010.pdf> (last viewed on 22.01.2020)
5. @Verdade at <http://www.verdade.co.mz/newsflash/62149-banco-mundial-revela-ineficacia-do-ministerio-da-agricultura-e-que-despesa-neste-sector-considerado-prioritario-em-mocambique-reduziu-31> (last viewed on 22.01.2020)

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