



Responsible Land Governance: Towards an Evidence Based Approach

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BUILDING EVIDENCE ON RURAL WOMEN STRUGGLES FOR LAND RIGHTS IN TANZANIA: THE QUEST FOR KNOWLEDGE, RECOGNITION AND PARTICIPATION IN DECISION MAKING PROCESSES

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Abstract

Land is one of the terrains of struggle for most rural women in Africa because of its importance in sustaining rural livelihoods, and social-cultural and geopolitical factors that hinder women from enjoying land rights. Even when there are progressive land laws, as it is for Tanzania, women have not really enjoyed their rights. However, this has not stopped women to keep fighting for their land rights. They have sought their own approaches by leveraging opportunities within traditional, religious, and formal systems standing for their rights.

Using three examples of interventions implemented by civil society organizations in Tanzania, this paper shows how rural women have been helped to overcome their straggles over land. Through their agencies, the paper argues that women have used both formal and informal systems to negotiate and mediate their claims on land. Although to the great extent the interventions chosen in this paper have been shaped and influenced by the work of civil society organizations, they have equally been influenced by rural women movements and rural women themselves. The cases selected in this paper provide lessons on the security of women land rights in both privately and communally held property/land.

Key Words: Communal land, land rights, rural women, struggle, Tanzania.



1.0 INTRODUCTION

Women have fought many battles; they still are and will continue fighting in social, cultural, and economic spheres of life. Land is one of the terrains of struggle for most rural women because of its importance in sustaining rural livelihoods, and social-cultural and geopolitical factors that hinder women from enjoying land rights. For years, some civil society organizations have dedicated efforts toward helping rural women to enjoy land rights. However, little has been achieved in ensuring that women have secure access to land.

Women in Tanzania, like many other African countries, have been constrained from enjoying land rights by traditional systems, religious, and formal legal and institutional setups. Even when there are progressive land laws, as it is for Tanzania, women have not really enjoyed their rights (Knight, 2010). However, this has not stopped women to keep fighting for their land rights. They have developed their own approaches by leveraging opportunities within traditional, religious, and formal systems standing for their rights.

Women's struggles and claims on land are diverse and include ownership and control of land, recognition of rights and participation in decision making processes (Quisumbing, et al, 2014, Dancer and Tsikata 2015, Salcedo-La Vina and Morarji, 2016, and Kisambu, 2016). Women have systematically made use of different avenues to claim their rights as provided by the traditional, religious and formal systems. For instance, in cases of land dispute settlement, women have made use of both traditional and formal land dispute settlement organs (Pedersen, 2015). Both have at times, provided relief to women or in the event one system that constrained relief, women have resorted to other systems (Pedersen &Haule, 2013).

Similarly in cases of inheritance and probate, women have equally used traditional and formal systems. Both systems provide entry points for women to make their claims and to seek remedy. However, in most cases women have found strength in the rights and protection mechanisms provided under the formal system (Dancer, 2015). The rights and protection mechanisms provided under the formal system, in Tanzania, are not known by most rural women. Civil society organizations have and are still working in the area of raising awareness of women on such rights and protection mechanisms.

This paper intends to highlight examples of rural women struggles for land rights as documented by civil society organizations in the course of implementing land rights programs in Tanzania. The examples selected show the magnitude of violations of women rights in plural legal systems of Tanzania. The aim of this work is to share lessons from such struggles, which will help the government, land rights



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researchers, feminists, and civil society organizations to learn from the dynamics of such struggles and inform approaches that can better defend women rights in Tanzania.

The selected examples show dedication of women in seeking land rights literacy which is based in the current land law regime, efforts that prove that women want to have their rights recognized, and initiatives that support women's participation in decisions that affect their rights and that relate to the management of land and natural resources.

Examples are purposefully selected from the regions where there are large-scale agricultural investments and /or areas with land use conflicts. Data from this research is mainly from secondary sources including the reports of civil society organizations working in the land sector in Tanzania.

The study maintains the following positions; *One*, women have used both informal and formal systems to make their claims on land. *Two*, not all traditional practices within customary system are unfavorable to women- it is time to change approaches by looking at some of the practices that recognize and favor women's claims on land through the customary system. *Three*, issues around women rights must consider local contexts. Land rights researchers and organizations must take time to understand the context and identify some of the entry points that can be used by women to claim their rights. Entry points will then be used to raise women voice on matters that affect their claims on land. The second section below details the methodology used and justifications for cases selected, the third discusses cases at length, and the fourth section highlights the discussion and draws the conclusion.

2.0 CONTEXTUAL BACKGROUND AND METHODOLOGY

General barriers to women's land and resource rights can be grouped as; cultural or legal inability to acquire land rights through markets, inheritance, transfer, or gift; barriers to rights created by intra-household customs (marriage/divorce, bride price/dowry, and polygamy); discriminatory laws and policies at the central or local level; poorly drafted regulations and laws governing land and property rights; and lack of knowledge, information, and enforcement (Giovarelli, 2016).

Although barriers to women land rights are also common in individually held land/property, the barriers on communally held land where there are natural resources have far reaching consequential impacts on women and have often been the matter of struggle. Five key issues on gender and natural resource are pointed out by the World Bank in its 2009 publication titled "*Gender in Agriculture Source*" book.



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These are; *First*, rural women and men have different roles, responsibilities and knowledge in managing natural resources. *Second*, gender differences exist in rights and access to natural resources. *Third*, access to new technology, information, and training related to natural resource management remains highly gendered, with most of the related initiatives targeted to men. *Forth*, access to new technology, information, and training related to natural resource management remains highly gendered, with most of the related initiatives targeted to men. *Fifth*, women are still absent from the climate change and natural resource-related decision-making processes at all levels.

According to Giovarelli (Giovarelli, 2016) barriers to women's rights in relation to accessing collectively held property are; lack of clear legal rules on who is a member of the community or 'group'; customarily married-in women considered a "stranger" in their husbands' community; local officials deciding who is a member of the community with no oversight; legal rules not addressing intra-household rights; governance over common property being traditionally managed by males; and women lack familiarity, knowledge, and confidence, to fully participate in resource governance.

Allowing women to own and control productive assets, including land, increases their self-esteem and their level of empowerment; results in a lower risk of marital violence; provides women with a safety net in the case of divorce, abandonment, or death of their husbands, and can provide access to credit and rental income; is important for the well-being of families, because whether a woman is head of her household or lives in a household headed by a man she is likely to spend a larger portion of household income on food - an increase in female landholdings is associated with increases in household food expenditure and levels of child education; and children of mothers who own land are less likely to be severely underweight because women have control over household decisions. A secure land right for women is also critical to address climate change mitigation and adaptation (Giovarelli & Scalise, 2016).

The interventions selected in this paper are those that enhance the security of land tenure at the individual and community level. However, most of the cases presented in the subsequent part of this section are more about women's struggle in communally-held land. Although the work of civil society organizations has been used as an entry point to mobilize rural women, we argue that rural women have had experience in mediating their claims through both traditional and formal systems. The first case study was developed using primary data, with the following cases using secondary data only.



3.0 SELECTED CASES STUDIES

Three cases studies have been selected for this paper. The *first* case study focuses on the work of trained land rights volunteers. It brings on board struggles of rural women in both individually and communally-held land. The *second* case describes how a village bylaw that was developed through a wide-ranging consultative process and which mainstreamed gender in the decision making process at the village level. It is based on the lessons learned as the results of an undue process of acquisition of communally-held land by a multilateral company.

The *last* case study describes how rural women have developed their own agency to mediate claims on land using both formal and traditional systems. The choices in these cases were informed by two major factors; *one*, there is the involvement of a civil society organization in mobilizing rural women- this is what we call “mobilizing the movement from above;” and *two*, rural women have exuded a considerable tendency to mobilize themselves- this is what we call “mobilizing the movement from below”. The detailed description of each case study is highlighted below.

3.1 LAND RIGHTS MONITORS

Land Rights Monitors (LRMs) are volunteers democratically elected by members of their community. This was part of a communitywide capacity-building exercise supporting communities on a wide range of issues related to land governance and conflict. The role of LRMs ranges from carrying out community training on land rights and governance, to advising villagers and members of village-level land administration institutions on matters pertaining to land rights and administration. Such issues typically include land acquisition procedures, land use planning, contract negotiation with investors, and dispute settlement procedures (Massay, 2016).

LRMs were first supported by Hakiardhi in 2008. Since 2015 the Tanzania Natural Resources Forum (TNRF) has also been supporting them. At the end of the training period, community members gather to vote for two LRMs, one man and one woman. Electing one man and one woman helps promote gender equality and makes it easier for LRMs to reach both men and women in their work. As of 2017, more than 700 LRMs are working in more than 350 villages in Tanzania where Hakiardhi had its projects. TNRF has supported 28 LRMs in 14 villages where its land rights and governance capacity building programs are running. Although the work of LRMs is diverse and there are many documented impacted



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assessments of their work, for the purpose of this paper, we shall only highlight cases where they have helped to promote women land rights.

To illustrate the impact of LRMs we look to Kilombero District where one woman LRM has been helping women who had their rights to matrimonial properties denied by their husbands, or their husbands' relatives, after divorce or the husband's death. In one case, a woman was on the verge of being evicted from her matrimonial home by her in-laws following the death of her husband. The LRM intervened after the woman sought her advice. The LRM called both parties and explained the legal provisions that underpin women's rights, as detailed in the Hakiardhi training manual. During the discussion, she highlighted appropriate legal remedies that would allow the woman to access them, and pointed out the consequences that the in-laws might face should the matter reach court. She stressed that judicial procedures are costly and time-consuming, and suggested throughout the discussion that the matter be resolved amicably. After several consultations, both parties agreed to resolve the matter without going to court. The LRM involved village leaders and facilitated the preparation of a written settlement agreement. This successful case raised her profile in her village, and she has since been asked to provide assistance in many other cases.

Women generally participate less actively than men in decision-making fora such as Village Assembly meetings, despite laws that guarantee them equal rights to participate. In practice, these bodies are dominated by men, and often make decisions that disproportionately affect women's land rights. Not many rural women have time to attend such meetings because of their household and family responsibilities. Often they take place in the evening, which makes it difficult for women to attend because of their family duties. Even when they do attend, they are rarely given an opportunity to make meaningful contributions.

To address these problems, women LRMs have encouraged women to attend Village Assembly meetings and to actively participate in other decision-making bodies, such as Village Councils and Village Land Councils. As a result, women in villages where LRMs are working effectively have been more forthcoming in engaging in decision-making processes.

In Kisarawe and Kilombero districts for example, women LRMs have successfully lobbied Village Councils to schedule meetings between 2 and 4pm. They have also asked Village Councils to share the agenda of Village Assembly meetings seven days before a meeting is to take place, as required by law.



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When the agenda is shared in advance, women LRMs are able to discuss it with women's groups beforehand and work out how best to air their views during the meeting. LRMs have also successfully lobbied Village Councils to allocate time for women to give their opinion on each agenda item during Village Assembly meetings. In Kilombero District, LRMs have helped women benefit from land titling and registration process by applying for titles themselves or jointly with their spouses.

In Hanang district, a woman LRM was part of women's movement that reclaimed the "Sinyarayda Plain", a grazing land that was grabbed by local investors from neighboring districts wanting to establish farms. The Plain is used by five villages for grazing but was first encroached by farmers in 2012. Despite several village meetings and interventions from district officials from 2012 to 2014, which included establishing a resolution to stop farmers from using the grazing land, farmers continued to use the land. In March 2015, all women villagers from the five villages gathered and made a decision to stop this encroachment and loss of grazing. They agreed to slash down all crops in the farms for three consecutive days. Women were singing "*sinyarayda our land, you provided us with milk and food, you fed our cattle and made them healthy, you can't be taken away from us*" as they slashed down the crops. Police intervened with the support from the investors and filed charges against the women in the High Court of Tanzania. The LRM reported the matter to Hakiardhi and sought their assistance in court. The women were represented by three lawyers in court but the lawyers for the investors decided to settle the matter out of court. After the matter was resolved, the land was secured for grazing by villagers from the five villages¹. Whereas the men of the village had failed to reach a solution to the problem, the women and their more direct approach to the problem succeeded.

3.2 MAINSTREAMING GENDER THROUGH VILLAGE BYLAWS.

In 2015 the World Resource Institute (WRI), Tanzania Women Lawyers Association (TAWLA) and Lawyers' Environmental Action Team (LEAT) conducted a scoping study in Kidugalo and Vilabwa villages in Kisaware District, one of the many districts in Tanzania with ongoing agribusiness investments. The study found shortcomings in women's participation in consultation processes linked to the investments. Research identified some of the root causes of women's limited participation, including, high levels of illiteracy amongst women, the timing of Village Assembly and Village Council meetings, the burden of domestic chores, including cooking and fetching water, and the weight of local customary

¹ Interview with LRM on 25th January 2017.



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practices restricting the ability of women to speak out (Kisambu, 2016). The project also reviewed the regulatory framework, highlighting the entries that national law offers to promote gender equality in land relations and implementation gaps. One of the challenges identified was law enforcement. The provisions in the land laws that promote women's rights are not implemented by the institutions mandated to manage and administer land. A strong recommendation was therefore made to develop gender-sensitive village by-laws to address the gaps in village-level governance bodies.

Instead of just allowing the Village Council to draft the bylaws, TAWLA, LEAT and WRI decided to provide the strategic guidance to the Council in order to make sure that the bylaws are gender sensitive. This approach was considered to be an effective way of developing a best practice case study for influencing a more gender sensitive approach in the law making process at the national level. It is also a less time-consuming approach, which can have a direct impact on the community as opposed to the national level advocacy for law reform. Thus, this is a bottom-up way of using the municipal bodies responsible for drafting legislations to fill the *lacuna* in the national laws.

Before developing the bylaws, key gender sensitive principles were drafted as a foundation of the bylaws to be developed by organizations. Consultations with women groups, village leaders, community paralegals, researchers and district council officials were then conducted, sensitizing the community on the key principles and gather their views on the same. A District Council is required under the law to approve or reject village bylaws so consulting them provided an opportunity to strengthen their 'buy-in' as well as an opportunity to share research findings, policy gaps, and the key principles.

The drafting of bylaws was done by the district level taskforce constituted by the legal officer, gender officer, community development officer, and the village chairpersons of the two villages selected during the research stage. After the draft bylaws were in place, more consultations with village councils, women groups, youth, men, and paralegals were conducted to gather inputs and to validate the bylaws. At this stage, the proposal for a gender rotational position of the village chairperson was criticized as it conflicts with the local government laws and is something that has to be determined by the political environment of the village. Then, the taskforce prepared the final bylaws accommodating the views of stakeholders consulted.

The model bylaws were then submitted to the Village Councils for further discussion and approval in which a few things were changed. The Village Council submitted the bylaws to the Village Assembly,



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which is the final approving authority at the village level. The Village Assembly approved the bylaws without any reservations. Then, the minutes of the Village Assembly were submitted to the District Council for approval and registration.

So far, two villages piloted under the project have approved and adopted bylaws. The efforts are ongoing to push the District Council to issue a circular² that can make the bylaws operational in all 64 villages of Kisarawe District Council. The same organizations that have pioneered the project have developed draft national level ‘model’ bylaws, which are now being discussed by stakeholders before submission to the responsible Minister for further administrative action. This is a major step toward scaling up this innovation throughout the country.

TAWLA has been supporting weekly informal discussions with women groups who meet every Saturday in the two villages on the importance of their participation in the decision making process. In almost every village women have their self-help groups where they discuss different issues that affect them and collectively make savings and decide on ways to help each other. It is expected that through these meetings women’s demand for a greater participation in land governance will increase.

Two more villages adopted the bylaws in September 2016 making a total of 4 villages. Other than the adoption of the bylaws and advocacy at the national level, the other outcome is the improved accountability and responsive governance which is attributed by the new knowledge and understanding among the community members who are now questioning the duty bearers on issues related to administration and management of village land.

Although one of the reasons for low turn-out and inadequate participation of women in village meetings is timing (i.e. when the meetings are convened), the bylaws could not specify a convenient time for consultations and meetings on land allocation and overall land governance decisions. Moreover, the bylaws could not put in place a requirement for a gender rotational system of leadership at the village level. All these were considered practically impossible to enforce as they depend on many other factors and might not conform to the spirit of the local government laws. These are critical areas however, which require interventions in terms of more awareness rising on the importance of women’s participation on land governance from other actors.

² Administrative order



3.3 WOMEN LEADERSHIP FORUMS

Women's Leadership Forums (WLFs) was established by Maliasili Initiative, Pastoral Women Council (PWC) and Ujamaa Community Resource Team (UCRT) as part of the project 'Advancing pastoral women's land rights in northern Tanzania'. The project works with Maasai communities in Ngorongoro, Kiteto and Simanjiro Districts and builds on earlier initiatives aimed at strengthening community capacity to protect their rights to land.

In its current form, WLFs are a mechanism that empowers women through helping them to identify problems, find strategies to resolve problems, and coordinate and implement these strategies themselves. The approach is to facilitate women to identify women leaders who will be able to advocate for women's rights on their behalf. Members of the WLFs meet regularly with the women they represent and other women leaders including those from various economic development groups, the women's rights committees, the village and ward land rights committees and the joint leadership forums including women and customary men leaders.

The aim of WLFs is to strengthen the role of women in leadership, and to mobilise communities to address women's land rights. Pastoralist women face two levels of challenges in securing land rights; at the individual level their customary rights within the community are limited and at the community level, pastoralist land is being encroached and alienated for different purposes and at different scales and rates in different areas. Pastoralist communities have resisted alienation with some success, but without finding lasting solutions and without the broad participation of women. Threats of land alienation and encroachment seem to be increasing and communities are increasingly desperate to find solutions. Women recognise that they will be the first victims of dispossession and that they therefore need to be in the forefront of protecting their land (Sorensen, 2013).

In the past, women's ability to influence public decision making was limited, but now, in the areas where WLFs are active, women are speaking in public and have strategically increased their influence in their communities by obtaining seats in village government councils and by collaborating with the customary leadership. Through this engagement, women have been able to challenge leaders on issues of rights, and change how community matters are handled. Significantly the WLFs have gained legitimacy in the community, giving WLFs the foundation from which to develop and create a constituency within the community as a whole. This important achievement means that WLFs are creating the space for a women's customary leadership institution, something new and challenging to the traditional and customary leadership approach dominated by men.. Women are using their influence in both customary



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and local government leadership spheres, strengthening the capacity of these to recognize and protect women's rights. In recognizing the need to develop and demonstrate strong leadership aimed to protect community land, WLFs have succeeded in mobilizing the community to actively defend their land rights. Nurturing a popular movement to secure pastoralist land rights will be a future achievement for WLFs (Sorensen, 2013).

Livestock in a pastoralist setting are the main source of wealth for communities, however women tend to be denied rights to access this wealth, and currently the distribution of profits from the family herd is at the discretion of the male head of the herding unit. This means that women do not engage in making decisions about herd management, and even in wealthy households, marginalized women and children can be very poor. Women are also trying to ensure that women's and girls' rights to property and inheritance are protected in practice, and the WLFs are engaging in a debate about how to reconcile the locally variable and different prevailing norms and practices with the concept of universal rights. However, in order for women's rights to be truly and locally recognized and protected, they need to be embedded in a socially renegotiated reframing of cultural norms and practices. The constituency that the WLFs are developing, as a customary leadership institution, provides such an opportunity to review and revise 'cultural' norms and practices, driven by women's transformed awareness and desire for equality, and bringing the *status quo* more in line with current rights-based approaches to inheritance and property (Sorensen, 2013).

Across the three districts where WLFs have been introduced, women state that their confidence to engage in discussions and action for strengthening land rights for women has greatly increased, and they attribute this to the training on land rights provided through the WLF and the opening-up of space for women to engage in matters of concern to the whole community. Women have demonstrated their capacity to use this information to take action, as clearly shown in the way that women have mobilized communities on tackling land rights abuses more generally including the border conflict with Serengeti National Park, the land evictions in Loliondo through rejecting the decision by the government to alienate 1,500 km² of village land for a Game Controlled Area, in struggling for land rights in the Ngorongoro Conservation Area, by setting up land patrols in Kiteto, and in lobbying for customary deeds for plots for women in settlements. Competent and courageous leadership, particularly by women, has been demonstrated in creating and nurturing unity between the different elements of Maasai society (section, age-set, clan and family) and in mobilizing people to take action to protect and enhance their land rights. It is however recognized that considerable effort is still required to find effective ways of strengthening pastoralist land tenure in general (Sorensen, 2013).



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For example, in 2009, the WLFs had a strong role to play in mobilizing the communities to resist the Loliondo evictions, which further strengthened their legitimacy and usefulness within their communities. Early in 2013 the Minister for Natural Resources and Tourism (MNRT) declared that 1,500km² of village land in Loliondo Division, Ngorongoro District would be expropriated for conservation as a ‘wildlife corridor’. However, following strong resistance led by pastoralist women, in September 2013 during a visit to Loliondo Division, the Prime Minister (PM) declared that the contested land should remain village land under their control (ibid).

4.0 DISCUSSION AND CONCLUSION

The cases described above have some four common characteristics. *Firstly*, there is the knowledge/capacity building aspect, which has been undertaken effectively by the intervention of civil society organizations. The knowledge aspect was not imposed, but leveraged on land rights as provided under the existing legal system in strengthening the traditional systems and practices. Rural women have used such knowledge to mediate and negotiate their claims on land rights. The knowledge was used in drafting and negotiating for a gender sensitive village bylaw, in using the court system and in organizing effective resistance through the agency.

Secondly, all cases have demonstrated that rural women want to be recognized and to participate in decision making processes including through legally and socially legitimate processes such as the bylaws in Kisarawe. They also want to speak through their agencies such as LRMs, and WLFs. Women in Hanang district having realized that men, could not solve their land access problems,, mobilized themselves and took action. Similarly, the WLFs in Loliondo resisted the taking of land for a GCA to a point where the Prime Minister finally intervened.

Thirdly, land claims are negotiated through both formal and traditional systems. In Kisarawe district, bylaws drafting involved the Village Assembly and the Village Council on one side and the District Council on the other side. Efforts are now underway to include the national government. In Hanang, rural women used village meetings through a traditional system and the office of District Commissioner and the High Court in Arusha. In Loliondo, WLFs used traditional leaders such as “laygwanans” as well as the formal administrative leadership structure to the office of the Prime Minister.

Lastly, rural women’s interventions on land issues have effectively become a ‘women’s movement’. Women have managed to take action, resist forces that socially exclude them and take back land as a movement from below. This movement has been shaped by the support received from civil society



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organizations (movement from above). Such a complimentary approach is at the core of their success. Losing their community land to a biofuel company through a less consultative process and being denied access to water sources, herbs, and firewood by the company, socially and economically excluded women in Kisarawe. The bylaw process was a way to regain their voice and to re-claim their space. Although the women here were not so strong an agency compared to WLFs, women in Hanang successfully reclaimed their land. Gendered differences on how women and men view land and natural resources are expressed in different ways. In Hanang, women in their song, see the land as a source of milk, food, and health for their cattle- they depend on it entirely and are willing to do anything to protect it. To the contrary, men tend to see the business interests – they cultivated the land and couldn't fix the problem even after spending three years holding meetings discussing the issue.

Securing women rights in communally-held land is a critical area that the Government of Tanzania and civil society organizations working in land sector need to consider. Some civil society organizations such as the Tanzania Natural Resource Forum (TNRF), Ujamaa Community Resource Team (UCRT), and CARE Tanzania have attempted to implement projects that aim to protect communally-held lands. However, often these interventions do not pay enough attention to how women's rights can be best secured and/or face challenges as yet unresolved. Future projects such as the next phase of the Sustainable Rangelands Management Project, led by the Ministry of Agriculture, Livestock and Fisheries and International Livestock Research Institute (ILRI) need to pay more attention to women's land rights and how best they can secure rights to land and resources including within collective and communal landholding systems. The example case studies discussed here provide good guidance in this regard.

In conclusion, we believe that the cases discussed in this paper provide lessons on how rural women struggle to protect their land, develop their agency including through the development of "women's" movements, and the gendered aspect of the struggle for land rights more generally. Such examples require up-scaling and replication (recognizing there might be need for adaptation to local contexts). Success stories require documentation. Now, the Global Goals (also called the Sustainable Development Goals or SDGs) present an excellent opportunity for development aid to make a difference by strengthening women's land tenure security and ensuring that women have rights to and control over the critical economic asset land. Several of the goals that touch on land and property, Goal 1 (Eliminating Poverty); Goal 2 (Food Security); Goal 5, (Gender Equality and Empowering Women and Girls); Goal 11 (Sustainable Cities); Goal 15 (Terrestrial Ecosystems); and Goal 16 (Peace and Justice), also have land indicators attached to them to measure progress.



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