

# Women's Leadership, Agency and Voice: Promoting Gender Justice within Community-Based Tenure Systems in Bolivia and Zambia

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*Synthesis Report*

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## Acronyms

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CBO	Community-based organization
CSO	Civil society organization
DNPW	Department of National Parks and Wildlife
FPIC	Free, Prior and Informed Consent
GMA	Game Management Area
GRZ	Government of the Republic of Zambia
INRA	National Institute of Land Reform
NTFP	Non-timber forest products
REDD+	Reducing Emissions from Deforestation and Degradation
TCO	Tierra Comunitaria de Origen/Native Community Land
TLHC	Traditional Land Holding Certificate
USAID	U.S. Agency for International Development
ZGF	Zambia Governance Foundation

## Introduction

Land tenure security has become a major focus of donors, policy-makers, and the media in the past ten years, as land and forest resources are under a series of socio-economic and environmental pressures and related demands (i.e., food security, fuel, carbon mitigation, and wildlife and biodiversity conservation). How women gain access to and maintain control over land and forest resources in this dynamic environment depends both on existing institutional frameworks and on efforts to promote gender justice within customary tenure systems.

This report synthesizes research findings on gender dynamics and the implications for gender justice in community-based tenure systems in Zambia's Eastern Province and two Bolivian TCOs (Tierra Comunitaria de Origen/Native Community Land).<sup>1</sup> It highlights how women's leadership and mobilization for access to resources differ, how access is conditioned by different levels of power and authority (family, community and state) as well as relationships with other local, regional and national actors. The report seeks to address the following questions:

- 1) In landscapes where statutory and customary tenure arrangements overlap, how do women maintain access to and control over land and forest resources?
- 2) In such landscapes, how do women participate in local and national land and forest resource governance, and what factors enable and constrain participation? What factors enhance or otherwise limit women's collective organizing around land rights and natural resources?
- 3) How do men and women engage in bargaining across differences of gender, household status, generation and ethnicity in order to establish access and participation?
- 4) To what extent is there a history of collective feminist and national level networking and organizing in Bolivia and Zambia around women's land rights?

### *Methods and Methodology*

This synthesis report draws on the two accompanying case studies, which were based on a review of the literature, secondary data and field work conducted in Zambia's capital and Eastern Province and in two TCOs in the Gran Chaco Province of the Department of Tarija, Bolivia. The researchers conducted interviews and focus group discussions with a range of stakeholders. Individual interviews were conducted with male and female members and leaders of the TCO Weenhayek and with mostly female leaders and members of the TCO Yaku Igua. Focus group discussions were conducted with women engaged in agriculture in three Zambian districts (Chipata, Petauke, and Nyimba). Interviews were conducted with state officials, researchers and informed NGO staff based in the Bolivian cities of La Paz and Tarija and in the Zambian capital, Lusaka. (See Appendix B for organizations consulted and Appendix C for interview protocols.)

### *Organization of the Report*

The report is organized in the following sections:

- Conceptual Framework
- Context – description of the study sites and land tenure systems in the two countries
- Results and Discussion

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<sup>1</sup> Tierra Comunitaria de Origen (native community lands) are indigenous communally-managed territories.

- Conclusions and Policy Recommendations
- Zambia Case Study
- Bolivia Case Study

## Conceptual Framework: Resource Access and Collective Action

In synthesizing the findings from the case studies in Bolivia and Zambia, we drew on concepts known as the ‘bundle of rights’ and ‘bundle of powers’ approaches.

A bundle of rights approach specifically places access to and use of given resources within the framework of property rights, whereas a bundle of powers approach focuses on the ability to control and maintain access to the benefits derived from those resources (Verdery 1999; Ribot and Peluso 2003).

For Ribot and Peluso, access refers to a bundle of powers represented by the “multiplicity of ways” through which people derive those benefits that land offers, other than through an externally sanctioned or recognized set of rights. As Bebbington (1999, 2022) notes, “*access* becomes perhaps the most critical resource of all if people are to build sustainable, poverty alleviating rural livelihoods.”

The range of pathways and mechanisms for gaining access to land and resources may vary over time and depend on changing political-economic and cultural contexts. Access may not only mean access in the sense of a “right” to a resource, as characterized by Schlager and Ostrom (1992), but also the capability to deploy technologies, sustain access over time, activate social relations as labor or support for using a resource, and make choices around how to use the resource. “Technology, capital, markets, knowledge, authority, social identities, and social relations can shape or influence access” under Ribot and Peluso’s analytical framework (2003, 165). In a given context, gender may affect women’s access to these elements, thus mediating women’s abilities to derive benefits from resources. Further, gendered social relations affect means of production, extraction, and consumption, in addition to statutory or customary property rights.

Using the bundle of powers approach, and specifically drawing on Ribot and Peluso’s access framework, provides for a nuanced political-economic and socio-cultural analysis of gendered access to land in community-based tenure systems. This report traces the different bundles of powers that women living under customary tenure the Bolivian Chaco and Eastern Zambia draw on in order to initiate and sustain this access. Women in these regions employ various “mechanisms of access” (Scholtens 2016) through which they cultivate the ability to access land, leveraging a variety of social and institutional relationships to pursue livelihood goals and greater independence. Maintenance of relations with those who have a relatively greater bundle of powers may in and of itself be an important element of a woman’s access, as the pursuit of claims potentially could damage a social or livelihood network (Clever 2009).

Finally, the intersection of customary and statutory law may enable or constrain women’s ability to act individually or collectively (see Appendix A: Bolivian and Zambian Legal Frameworks). While statutory law typically focuses on individual rights and is enforced by the state, customary law is most commonly enforced by traditional leaders. The constitutions of both Bolivia and Zambia recognize customary laws, yet these laws do not emanate from the state. Rather, they are based on community-level norms, values and expectations. Traditional practice affects women’s ability to influence mechanisms of access via “collective action geared at contesting power structures” (Scholtens 2016, 3). The familial, community and state power structures that Bolivian and Zambian women must contest to access land and natural resources are discussed in the section on Results and Discussion.

## The Research Context

The research focused on three districts: the Eastern Province of Zambia and the Guarani and Weenhayek communities in Bolivia.

Given the importance of agricultural livelihoods in Zambia, research focused first on women's individual and collective access to agricultural land within their respective chiefdoms, followed by their collective access to forest products in GMAs that are also designated for wildlife protection.

In Bolivia, the native community lands (TCOs) studied are non-contiguous territories characterized by the significant presence of non-indigenous ranchers, peasants and landless migrants as well as oil and gas drilling operations. Research focused on women's struggles to access land and territory within the TCO Yaku Igua, and women's access to diverse livelihoods within the TCO Weenhayek, which is characterized by resistance to expanding oil and natural gas operations.

### *Zambia*

Zambia is a southern African country that won independence from Britain in 1964. The country's population is slightly over 13 million with approximately 60 percent of the population living in rural areas (GRZ 2012). Approximately 7 percent of the country's population lives in the Eastern Province, where more than 87 percent of people reside in rural areas (USAID 2014). Agriculture supports livelihoods of over 70 percent of the Province's population, with 78 percent of women engaged in agriculture (Sitko et al. 2011). The main crops cultivated by women include groundnut, sweet potato, and beans. The Eastern Province contains less than 10 percent of the country's above-ground forest biomass, ranking fifth among Zambia's nine provinces (Kalinda et al. 2013). Women collect non-timber forest products (NTFP) from customary land including open-access forests that surround villages and Game Management Areas (GMAs).<sup>2</sup> Land and forest resources are essential to the rural household economy, but also form the basis of the national economy with its expanding tourism sector and national park network, a new national strategy for Reducing Emissions from Deforestation and Degradation (REDD+), gem and industrial mineral mining, and commercial agriculture (Republic of Zambia 2006).

### *Bolivia*

Bolivia is a country of nearly 11 million people with seven out of ten Bolivians identifying as indigenous. The Bolivian Chaco is part of the Gran Chaco Americano, the second-most extensive forest left in South America. The Bolivian Chaco covers an area of 60,000 square miles, and is home to some 30 lowland indigenous groups and thousands of species of plants, birds, mammals, reptile and amphibians (Alcorn, Zarzycki, and Cruz 2010). The ethnic groups, the Guarani and the Weenhayek, reside in adjacent TCOs in the southernmost part of the Department of Tarija, a lowland, semi-arid region, bounded by the Serranía de Aguaragüe National Park and the international borders of Argentina and Paraguay. Fishing, hunting, gathering and to a lesser extent small-scale agriculture constitute the livelihoods of Weenhayek families. Eighty percent of Weenhayek communities have access to the dry Chaco forest and a range of forest products. Guarani livelihoods are characterized by small-scale agriculture (peanut, squash, and corn) and supplemented by off-farm labor. Most Guarani communities do not have access to forested areas while other communities, lying within the buffer zone of the Serranía de Aguaragüe, have

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<sup>2</sup> Open access forests are not formally managed. GMAs have both customary and statutory dimensions discussed below.

restricted access to forest resources. Importantly, the Bolivian Chaco is where the country’s most important hydrocarbon reserves are located. Because hydrocarbon operations in the region preceded the creation of the TCOs and indigenous representative organizations, the reconstitution of indigenous identity and territory has been significantly influenced and constrained by these operations (Humphreys Bebbington 2012).

## Indigenous and Local Community Land Holdings

Both countries have significant areas designated for or owned by Indigenous Peoples and local communities – approximately 53 percent in Zambia and 36 percent in Bolivia.

**Table 1. National Level Statistics of Land Designated for or Owned by Indigenous Peoples and Local Communities<sup>i</sup>**

Country	Total Country Area (Mha)	Designated for Indigenous Peoples and Local Communities		Owned by Indigenous Peoples and Local Communities		Total Area Designated for or Owned by Indigenous Peoples and Local Communities	
		Area (Mha)	Percent of Country Area	Area (Mha)	Percent of Country Area	Total Area (Mha )	Total Percent of Country Area
Bolivia	108.33	0.47	0.43	38.92	35.93	39.39	36.36
Zambia	74.34	39.21	52.74	-----	0	39.21	52.74

All areas are shown in millions of hectares (Mha).

As shown in Table 1, under Zambian formal law, just over half of Zambian land (52.74 percent) is designated for or owned by Indigenous Peoples and local communities. There is a large gap between the percentage of land area that is legally recognized as belonging to communities (which RRI tracks), and the popularly cited figure of 94 percent of land area that communities claim to have rights to (Sitko, Chamberlin, and Hichaambwa 2015).

Bolivia has a national land registry that collects sex-disaggregated land ownership data, but this system does not extend to TCOs. As Zambia does not have national registration systems, the sex of land holders is not known.

## Statutory and Customary Tenure Systems

Bolivia and Zambia both have dual tenure systems in which both statutory and customary laws are recognized. In Zambia, customary law is recognized but subordinate to the Zambia Constitution and the statutory legal framework.<sup>3</sup> In Bolivia, the 2009 Constitution established the autonomy of subnational governments and indigenous territories. The State recognizes that TCOs should be administered according to the customs and practices (so-called “*usos y costumbres*”) of the indigenous group and has adopted a hands-off approach in terms of how they distribute land and natural resources within the TCO.

<sup>3</sup> In Zambia, Article 1 of the Constitution of 1991, as amended by Act No. 2 of 2016, establishes the supremacy of constitutional provisions and states that customary law is void to the extent of any inconsistencies.

Given the dual tenure systems in Bolivia and Zambia, and in accordance with their respective national economic development objectives, the research areas are characterized by a mosaic of land tenure arrangements that have overlapping land and resource management strategies administered under statutory and customary law.

The actors responsible for land and resource management and the interests that they pursue are shown in Table 2.

**Table 2: Actors Present and their Interests in the Study Areas**

<b>Actors Present and their Interests in the Study Areas</b>	<b>Bolivia</b>	<b>Zambia</b>
Government Actors	X	X
Forestry Department		X
Department of National Parks and Wildlife (DNPW; includes GMA management)		X
Ministry of Hydrocarbons/YPFB	X	
Traditional Leaders	X	X
Private Sector Actors		
REDD+ practitioners		X
Tourism and Lodge owners		X
Transnational hydrocarbon companies	X	
Private landholders with land claims (non-indigenous ranchers and peasants in Bolivia, other private citizens in Zambia)	X	X

### **Bolivia**

The Bolivian State recognizes, protects and guarantees the collective lands of a range of highland and lowland indigenous and indigenous-campesino populations. According to the 2009 Constitution, collective property cannot be bought or sold, cannot be mortgaged or otherwise exchanged. It is not subject to payment of taxes. Community lands can be titled in ways that also acknowledge the “complementarity between collective and individual rights” respecting the preferences of the local organizations (2009 Constitution, Art. 394 III).

In the Bolivian Chaco, the TCO Weenhayek and TCO Yaku Igua have made significant claims for land with the National Institute of Land Reform (INRA), but efforts to complete the titling process (*saneamiento*) are stalled.<sup>4</sup> As shown in Table 3, most of the TCO Weenhayek land claims have been accepted by the INRA but the TCO has received legal title to approximately one-third of the claimed land; the TCO is characterized by the significant presence of non-indigenous ranchers and peasants. The TCO Yaku Igua has been far less successful in terms of INRA acceptance of claims and in the amount of land titled to communities; the TCO is facing increasing land pressures, in part from the rapid urbanization of the border area but also due to ranching and the expansion of commercial agriculture (soy) and hydrocarbon activities.

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<sup>4</sup> Saneamiento: the process of clearing errors and contradictions in the land registry and finalizing legal title

**Table 3: TCO Yaku Igua and TCO Weenhayek Land Claims and Titling: 1997-2015**

TCO (Native Community Land)	Amount of Land in hectares			Estimated population	Number of communities
	Initially claimed	Accepted by INRA	Titled to TCOs (December 2015)		
TCO Yaku Igua	325,000	75,322	6,020	2,368	20
TCO Weenhayek	201,000	195,847	64,000	5,036	60

Source: CERDET 2015

In both TCOs, there are many *terceros* (outsiders), mostly small scale ranchers, but also others with land claims and legally recognized lands within the TCO. TCO lands are rarely contiguous in Bolivia, and this has led to tensions and land conflicts with *terceros* that can turn violent.<sup>5</sup> The situation is made even more complex by the exploration and exploitation of natural gas within the TCOs of the Chaco. Natural gas is one of Bolivia’s most important exports, and taxes and royalties linked to natural gas production provide hundreds of millions of dollars to local, regional and central governments. The existence of the TCO does not give the indigenous group any formal *de jure* say or veto over whether gas exploration and extraction can proceed (though of course it increases their *de facto* leverage over such projects).

### Zambia

Zambian Chiefs act as custodians of customary land, allocating plots to subjects living within their chiefdom boundaries, as well as to outsiders who wish to settle or invest in their chiefdoms. Customary lands in Zambia are neither systematically mapped nor registered and boundaries between and within chiefdoms, as well as those between statutory and customary land holdings “need clarification” (GRZ 2015, 20). Plot boundaries within chiefdoms also are unclear, yet nearly two-thirds of the country’s forests are on customary land (Kalinda et al. 2013).

The country has an extensive network of national parks, Game Management Areas (GMAs) and national and local forest reserves (Republic of Zambia 2006). GMAs, buffer zones around national parks protecting biodiversity, big game and mega-fauna essential to the tourism industry, are administered under both statutory and customary law. In GMAs, wildlife is managed by the state (Department of National Parks and Wildlife - DNPW) and cannot be hunted; however local community members maintain their customary rights under customary law to collect forest produce in GMAs. Yet, given the threat that poaching presents to the country’s wildlife populations, game guards are often overzealous in restricting these rights.

Women negotiate with male relatives and Chiefs for agricultural plots and interact with government authorities (e.g., the DNPW and Department of Forestry) for the collection of non-timber forest products (NTFPs). As discussed elsewhere, dispute resolution mechanisms involving local communities and GMA management in the Eastern Province need improvement (Caron and Fenner n.d.; Sichilongo et al. 2012; Metcalfe 2005). As a result, men and women rarely attempt to contest these power relations.

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<sup>5</sup> See Anthias (2014) for detailed account of tensions around TCO land titling efforts in the Guaraní TCO Itika Guasu, also in Tarija.

In 2010, CSOs together with traditional authorities started experimenting with ways to improve tenure security for families within their chiefdoms, resulting in a customary land rights documentation process. The Traditional Land Holding Certificate (TLHC) recognizes land rights at the individual or sub-family, household or village level.

Women may receive a certificate documenting use and occupancy rights to land held under customary tenure, regardless of marital status. A woman's name may be listed first on a certificate as the land's 'primary' rights holder, granting her primary land rights rather than the secondary rights she previously received via husbands or other male relatives, disrupting tradition and the hierarchical relationship between men and women in land allocation processes. However, the clarification of rights could be improved with their statutory recognition.

## Customary Land Inheritance Patterns (matrilineal and patrilineal)

### **Bolivia**

In Bolivia patrilineal land inheritance practices exist. Guaraní culture is characterized as matrilineal; historically, men would join the woman's household, thus forming part of her extended family. However, in the TCO Yaku Igua, it is less frequent to find couples living with the woman's family, especially with significant numbers of men engaging in off-farm labor. It is more common to find women living with the man's family. If the woman's family has greater access to cultivable land, then the man will live with the woman's family. Both men and women inherit land, which are generally very small plots and divided among the siblings. Historically, male heirs would enjoy greater rights and privileges, but with the advent of more awareness around gender equity, this situation is changing. Weenhayek family structures are patriarchal and patrilineal, but residence is matrilineal or uxorilocal. When a woman dies, the man will generally look for a new wife and any children from the previous marriage will be looked after by the parents or family members of the deceased. After the death of a spouse, the woman can request to remain on the land where she lived with her husband. The death of a spouse does not signal an expulsion from the community or land that is occupied.

### **Zambia**

In Zambia matrilineal inheritance practices exist. Many Zambian tribes in the Eastern Province practice matrilineal (uxorilocal) marriage, where a husband goes to live with his wife's family and works land accessed through her male relatives; however, virilocal marriage – where a woman goes to her husband's natal village – also takes place and may be becoming more common (Van Asperen and Mulolwa 2006). In matrilineal-matrilineal systems, a woman's access to land is mediated through her male kin or traditional authorities (i.e., Chiefs), although often her husband officially receives the land allotment (Peters 2010). When a man who marries into a matrilineal family dies, his wife's brother and sister-in-law normally take over the household property; his own children and widow do not inherit the land and property acquired during marriage. The widowed woman must appeal to her brothers or uncles for access to land, which according to local customs they are not obligated to provide, and often will only do so if she agrees to marry another male relative. If the woman dies, her children again remain with her male relatives and her husband usually returns to his natal village.

## Results and Discussion

This section of the synthesis report is organized according to the five research questions. Additional details and supporting evidence can be found in the accompanying Bolivia and Zambia case studies. A comparison of the three research sites is provided in Table 5.

## How Women Maintain Access to Land and Forest Resources

*Research Question 1: In landscapes where statutory and customary tenure arrangements overlap, how do women maintain access to and control over land and forest resources?*

In the communities studied in Bolivia and Zambia, women use a number of strategies to secure access to land and forest resources, as discussed below

### **Bolivia**

In the Bolivian TCOs, the primary struggle is for collective territory and self-rule, and all TCO members join together to seek to consolidate land claims. Women's identity is closely tied to community identity and women participate actively in collective efforts to recognize and/or defend TCO lands from perceived acts of dispossession. They actively participate in organized protests, marches and road blockages as part of the mobilization effort.

Within the TCO, both men and women have equal rights to request and access land from the local leader and/or community assembly to establish a home, to cultivate individually and raise small animals. In the TCO Weenhayek, men and women seek permission from the Capitán Grande to establish a new settlement. In land-short Guaraní communities, women produce on collective plots to overcome shortage of land labor. Reciprocity is strong and women will come together to produce on small garden plots for subsistence and sell any surplus. Women who are heads of households and women with spouses work together under the same conditions. Interviews with Guaraní women reflected that they do inherit land from their parents. Often parents will, while still alive, assign parcels to their adult children to construct a home and have some land to cultivate. Finally, given the very significant land pressures in the region, the TCO Yaku Igua uses a variety of strategies to make more land available to its members including using financial resources from agreements with hydrocarbon companies to buy land and pressuring the government to turn over state lands to the TCO. Women interviewed reported gaining access to land through the TCO but also through kinship ties, the purchase of very small plots of land and in some cases renting land.

In Bolivia, land titling has been central to giving women greater access to land and security of tenure. However, within collective tenure arrangements (TCOs) the way in which land titling takes place can serve to "invisibilize" women and their rights to land.<sup>6</sup> The argument of "usos y costumbres"<sup>7</sup> (uses and customs) used by male leaders in some TCOs to impede the application and exercise of indigenous women's rights to lands remains an important concern. Indigenous women's lack of awareness of their rights contributes to this problem (INRA 2008). Beyond land formalization processes, greater interinstitutional coordination and resources are required to support women's productive activities. Women's ability to make full use of access to land is dependent upon the ability to mobilize physical, technical and material resources in order to make the land productive.

### **Zambia**

In Zambia, the chiefdoms are administrative units in which collective action occurs via the traditional authorities (Chiefs) and among subjects (between men and women). Chiefs are increasingly acting to support women's land rights. Since the signing of the Lusaka Declaration in 2014, a number of Zambian

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<sup>6</sup> Invisibilize: A term from Feminist/Political Ecology, use here to describe the intentional practice of exclusion.

<sup>7</sup> The argument is that gender equity is a Western, non-indigenous concept and therefore outside the customs and practices of the group. It is seen as externally imposed and a potential threat to community harmony and tradition.

Chiefs are issuing land certificates (see Box 1) as a way of clarifying the rights of their subjects, reducing inheritance and boundary disputes, and combatting property grabbing after a spouse's death. While certification initiatives indicate that some Chiefs are using their power in ways that benefit women, in some cases families have had to organize against the disproportionate power held by Chiefs.

In Zambia, women approach Chiefs as individuals and as groups to obtain agricultural land, thereby bypassing male relatives. While such approaches may lead to positive outcomes, the gains may not be sustainable in the long term as Chiefs have the ability to reallocate land as they see fit. There is evidence of some women's groups converting their collective holdings to leasehold status in an effort to better secure their tenure. In cases where more than one woman has had land reallocated by the Chief to an outside investor, women have joined together with men who have experienced the same struggles, using the formal justice system to bring formal charges against the Chief for the dispossession of land. At present, several court cases are pending. With respect to exercising their customary rights to collect non-timber forest products in GMAs, there is little evidence that women organize and publicly challenge the state authorities that manage GMAs when these rights are curtailed (Caron and Fenner n.d.). However, this lack of action may reflect women's desires to use their capacities effectively, and to act based on what they believe is "possible and desirable in a context where family and kinship" (Kabeer 2011, 525) are sources of security.

#### BOX 1: [How Land Certification Initiatives in Zambia Help Promote Gender Justice]

In Zambia, pilot certificate programs appear to promote gender justice in customary tenure systems by allowing women to claim primary rights to land, ensuring that widows inherit land and are not displaced following a husband's death, and moving beyond access toward women's control over their certified plots. Certification *clarifies* boundaries making them clear not only to the individual certificate holders neighbors and others living within community tenure systems, but also to outsiders who seek land for new investments.

From an investor's perspective, certification makes it easier to know who the rights holders are and with whom they need to negotiate land deals. Household or individual-level certification as is currently implemented in Zambia increases the administrative costs for investors (i.e., negotiate with multiple rights holders in a chiefdom rather than with just the Chief). While it is unclear if the Zambian Government or outsiders will ever recognize such certificates, land rights activists hope that their recognition will increase certificate holders' ability to access compensation in an environment characterized by increasing land-based investments. In the meantime, a growing network of national CSOs are working together with the Ministry of Gender and Child Development on an ambitious gender equality and equity agenda, which may place land into the hands of more women, improve tenure security, and more equitably distribute land resources between men and women in customary tenure systems.

End of Box 1\*\*\*\*\*

## How Women Participate in Land and Forest Resource Governance

*Research Question 2: In such landscapes, how do women participate in local and national land and forest resource governance, and what factors enable and constrain participation? What factors enhance or otherwise limit women's collective organizing around land rights and natural resources?*

### **Bolivia**

In the TCO Yaku Igua, leaders are traditionally male, though in last decade two of the five provincial level leaders (Capitanes Grandes) have been female. At the municipal level, one of the top two leaders is

always female. At the community level, while there are few female leaders, there is significant participation of women in meetings due to male migration for work.

In the TCO Weenhayek, of the 40 positions in the overall territorial organization, only two are filled by women. Of the 60 community level leaders, only one is a woman.

Women leaders feel they make significant sacrifices to assume leadership positions, both financially and emotionally. They derive a sense of empowerment from their engagement, but they are also at the receiving end of significant harassment and abuse from male members and leaders and often feel excluded or marginalized. In the TCO Weenhayek, women leaders felt that women’s leadership was stronger in the past when male leadership was more democratic and transparent, and in both TCOs women are keen to have greater access to information, to be better prepared, to be better negotiators and strategists. In both case study areas, women leaders must negotiate with a range of actors including local, regional and national government actors and private and state oil and gas companies. Given the importance of these relationships, the amount of resources involved, and prevailing attitudes that female leadership is inferior, male leadership has dominated both external negotiations and internal decision-making.

### **Zambia**

In Zambia there are 288 Chiefs (241 Chiefs, 43 Senior Chiefs and 4 Paramount Chiefs) of which only 6.25 percent are women. Women may also serve as village headpersons, and indunas or Chiefs’ advisors. In the Eastern Province’s 57 chiefdoms, there are no women Chiefs.

### *Factors that affect women’s participation in governance*

The research found that there are legal, political and socio-cultural enabling factors and constraints on women’s leadership and agency, which affect the space for women to participate in land and resource governance. Table 4 presents these enabling factors and constraints.

**Table 4. Factors that Enable and Constrain Women’s Leadership and Agency**

<b>Enabling Factors</b>	<b>Bolivia</b>	<b>Zambia</b>
Favorable legal frameworks and an expanding dialogue about women’s rights and gender equality	X	X
Long-term funding for women’s training and leadership development	X	X
National and local civil society networks	X	X
International and regional civil society networks	X	X
Women elected to office/appointed to ministerial positions (visibility of women in power)	X	X
Discussions about de-patriarchilising <sup>8</sup> and increasing women’s representation in government structures	X	

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<sup>8</sup> “De-patriarchilising” is not about women’s representation but rather about addressing or rooting out the gendered assumptions and practices of the country’s institutions that sustain women’s subordination.

<b>Enabling Factors</b>	<b>Bolivia</b>	<b>Zambia</b>
Quotas for women's representation <sup>9</sup>	X	
Role of the Agriculture Sector		
Feminization of agriculture	X	
Prominent role for women in small holder agriculture		X
<b>Constraints</b>	<b>Bolivia</b>	<b>Zambia</b>
Social-cultural norms		
Belief that men are heads of household and should attend public meetings instead of women	X	X
Belief that chiefs and village headpersons are primary decision makers	X	X
Indigenous and local women's inability to speak dominant language	X	
Indigenous and local women's lack of access to information and lack of knowledge about laws <sup>10</sup>	X	
Indigenous and local women's lack of information about meetings with outsiders (transparency)	X	X
Assumption that existing indigenous representative organizations will be democratic, gender-responsive, and transparent <sup>11</sup>	X	
Administrative shortfalls (insufficient funding to carry out gender mandates, lack of trained staff, lack of tools to carry out gender work)	X	X
Male harassment/undercutting of female leadership	X	

### *Factors that Affect Women's Collective Organizing*

In previous decades, the leadership of women's organizations was largely dominated by professional and middle class women without the participation of broader groups in society. In Bolivia, indigenous and rural women leaders have assumed highly visible roles both in women's organizing and in political and government spheres, which brings new and important opportunities for advancing women's rights. In Zambia, women are very active in CSOs and are working towards getting women more involved in electoral politics. However, women's ideological positions are not all the same and there are tensions between party, community and gender loyalties. This presents new challenges to building common agendas to address the legacies of colonialism and patriarchy.

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<sup>9</sup> The Bolivian constitution calls for gender parity in public office. For example, the list of candidates for Parliament must be 50% women and 50% men. The parity concept is complemented by the concept of "alternating" in which a male representative must be replaced by a female representative and vice versa. This is at all levels of both national and subnational elected bodies.

<sup>10</sup> While there are state policies that acknowledge indigenous languages as national languages, they are not followed in practice.

<sup>11</sup> These are assumptions by the State, donors, companies/investors, and sometimes by NGOs.

Women leaders, NGO activists and scholars agree that a persistent gap remains between the overarching legal framework in a given country and the mechanisms required to ensure that governments meet their commitments to gender equality. Mechanisms to promote greater accountability and transparency are lacking and urgently needed to address discriminatory practices towards women.

## Bargaining to Establish Access and Participation

*Research Question 3: How do men and women engage in bargaining across differences of gender, household status, generation and ethnicity in order to establish access and participation?*

In both Bolivia and Zambia, women negotiate with men and/or male-dominated structures against their exclusion from accessing land and natural resources.

### **Bolivia**

In our interviews with women members and leaders, the obstacles they identified as limiting their access to land were largely focused on outside threats from the *karai* (whites/mestizos) and less focused on internal discriminatory attitudes and practices that limit such access. Women are very aware of the consequences and potentially damaged social relations that would result from challenging male authority structures. The collective sense of being Weenhayek or Guarani prevails; thus women are caught between their gender identity and their cultural identity.

### **Zambia**

In both matrilineal and patrilineal social groups, women's access to land depends on their relationship with men. Women employ a variety of bargaining strategies with their husbands, partners, and traditional and state authorities (both individually and collectively) to better secure their access, use, and control over community lands. One CSO representative stated that the women's land rights movement needs to move beyond access and towards consolidating women's control over land (Interview, 29 August 2016).

Married women bargain with their husbands for access to a plot of the family's land to farm. In many cases, husbands instruct their wives where to plant their crops, and may shift this every year, moving wives to areas that need significant preparation before planting. Women's inability to control where they plant, and for how long, is a gendered form of labor exploitation.

Women in the Eastern Province said they had been granted land by appealing directly to the Chief, bypassing their husbands. However, with the power to allocate land, Chiefs can also take it away and some have violated their responsibilities to the community by giving or selling land to investors.

Women in Zambia also bargain as groups to gain access to land. Women who have participated in training provided by a range of national-level CSOs use the knowledge and skills to organize to obtain and maintain control over productive resources outside their family network.

Women must often cross boundaries of state forests, national parks, land privately-owned by investors, and GMAs to gather non-timber forest resources for subsistence, and to which they are entitled. However, neither women nor men bargain with the state guards or rangers in GMAs, fearing they will be accused of or arrested for hunting animals.

## Networking and Organizing around Women's Land Rights

*Research Question 4: To what extent is there a history of collective feminist and national level networking and organizing in Bolivia and Zambia around women's land rights?*

Women in rural Zambia have a long tradition of collective action, from work groups that pound maize and shell ground nuts to traditional ceremonies where they express their "feelings, worries and problems" (Ndhlovu 2005, 2). Following independence, the Government's Ministry of Community Development and Social Welfare and foreign assistance programs harnessed these existing local social structures to form women's clubs. Over time these clubs used their seed money to conduct study tours allowing them to network and aggregate into Area Development and District Development Associations. Zambian women who attended the United Nation's Third World Conference held in Kenya in 1985 returned to Lusaka and started the Non-Governmental Organizations' Coordinating Council (NGOCC). In addition to holding the government accountable to the conventions it has signed (see Appendix A), NGOCC is a network of 104 Zambian civil society and community-based organizations (CBOs) supporting women's leadership development and access to healthcare, education, and land. NGOCC is one consortium in a strong and growing network of Zambian NGOs, research institutions, and CBOs that advocate for women's rights to land.

In Bolivia, there is a strong history of collective campesino-indigenous networking and organizing for women's land rights. The National Confederation of Campesino, Indigenous and Native Women of Bolivia "Bartolina Sisa" (FNMCB-BS), founded in 1980, with over 100,000 members across the country, is the largest and most important representative organization of campesino-indigenous women (Villaruel, 2011). Both CIDOB and the APG Nacional (national level representative organizations of lowland indigenous and Guaraní populations) have elected women leaders to important positions. For lowland indigenous women, mobilizing and organizing efforts for land are directed towards furthering the historical TCO claims for territory and self-governance. Such mobilizations are about advancing the collective agenda of the TCO, and often in resistance to external threats of dispossession from private third parties (ranchers and peasants) or private hydrocarbon companies or the Bolivian State. Indigenous women are active in social protests, and are found leading marches and protests, children in hand, to defend the TCO. Women take great pride and gain a sense of empowerment from their mobilizing efforts. Increasingly, lowland indigenous women are participating and gaining experience in regional, national and international networks in which they interact, create relationships, forge alliances and set agendas going forward.

## Conclusions and Key Findings

Over the past two decades, significant attention and effort has focused on improving women's access to land and security of tenure. This is especially the case for poor, indigenous and traditional rural women whose income and subsistence are derived from agriculture and access to natural resources. In both Bolivia and Zambia, there are rapid and dynamic processes of change underway with profound implications for traditional livelihoods and the management of community-based tenure systems and territories.

In Bolivia, the growing importance of women in an increasingly feminized agrarian economy is reflected in women's increasing presence and control over the *chaco* (parcel), either as the head of household or because men are engaged in off-farm labor elsewhere (climate change effects such as drought are a major factor). Yet their increased presence in agriculture should be interpreted within the context of an agricultural sector in crisis as men move on to more profitable, off-farm economic opportunities. In the Bolivian Chaco, this crisis is further deepened by a combination of factors including growing demand for land, significant water constraints, an increasingly unpredictable climate, and the State's proposed expansion of hydrocarbon activities. In Zambia, while agriculture remains the dominant economic activity for rural families in general, and for women in particular, there are increasing demands for acquisition of land for commercial farming or mining; Chiefs are often under pressure to dispossess their subjects to allocate land for local and foreign land-based investment.

**In the communities studied in Zambia and Bolivia, customary tenure systems have had a mixed record in terms of women's increased access to and control over land and forest resources.** Despite important changes in legislation affirming women's rights to access land and forest resources, under community-based and customary tenure arrangements such access remains contingent on obtaining permission from male-dominated authority structures.

In Zambia, access to land is gained through a male relative or through a Chief; the case study shows that women are starting to publicly challenge power structures, currently targeting traditional leaders. In Bolivia, access to land is gained through predominately male traditional authority structures at the community level; women do not generally participate in meetings in which discussions and decisions about access to land are conducted.

**It should not be assumed that women's statutory rights will be respected by traditional leaders in their administration of customary laws.** Traditional customs and practices that constitute customary tenure systems are less formal than statutory land tenure systems and thus more flexible and adaptable to changes in the internal and external environment. Customary law is generally unwritten and is administered and enforced by traditional authorities who are predominately men.

Although statutory laws that govern land and forest resources in Bolivia and Zambia are 'gender neutral', in practice this is not sufficient to protect or ensure women's rights to land and resources, and in fact hurt women because they do not redress historically discriminatory practices. Zambia's newly-amended Constitution addresses this weakness in two ways: First, by making customary law valid but subordinate to the Constitution. As stated in Article 1, "any other written law, customary law and customary practice that is inconsistent with its provisions is void to the extent of the inconsistency" (GRZ 2016, Art. 1). Second, Article 8 states that non-discrimination is a fundamental principle of the constitution and is specifically defined as pertaining to sex – any customary law or practice that contradicts the provisions of the Constitution cannot be considered valid customary law. Thus, while Zambia has legitimized customary law, it has NOT legitimized discriminatory practices against women

that are perpetuated under customary law. In other words, traditional leaders cannot use tradition or custom to justify discriminatory practices.

In Bolivia, the state has firmly committed to “eliminating all forms of discrimination against women in accessing, securing title to and inheriting land” (footnote, Article 402 of the 2009 New Political Constitution of Bolivia). However, specific policies and enabling legislation to ensure women’s ability to make use of these rights have not yet been enacted. While the Bolivian state presumes that traditional mechanisms for allocating customary land and forest resources will result in equitable outcomes, these traditional mechanisms reflect deeply embedded patriarchal attitudes and practices.

Male leaders and community members, including those who preside in traditional courts, should be sensitized to statutory law regarding women’s tenure rights to ensure that customary practices respect those rights. Both countries have had successful national campaigns sensitizing the public to current laws ( Bolivia’s Law 348 (2013) Against Domestic Violence and Zambia’s 2011 Anti-Gender Based Violence Bill) and the issue of domestic violence and/or deeming property rights violations as criminal offenses. A similar campaign that would raise awareness and remind the public that discrimination against women will incur stiff and systematically applied sanctions could be pursued with respect to women’s statutory rights.

Policy-makers should not assume that customary management of natural resources is necessarily more inclusive and/or gender sensitive. In the same vein, policy-makers and donors must be vigilant of customary leadership arrangements and decision-making structures that exclude or subdue women’s voices (e.g. by appointing women’s representatives rather than allowing women to choose their own representatives, or limiting their representation to positions of limited power, i.e. secretary of gender) and thus limit their access to information and spaces for decision-making.

Donors who support initiatives for land certification and/or titling need to pay close attention to how certifying and providing titles to lands or plots held under customary tenure changes the gendered nature of household and familial relationships and the hierarchical relationship between certificate or title holders and traditional leaders.

**Women can and do mobilize and organize to protect land rights but rarely challenge male authority in their households and communities.** In Brazilian TCOs, women mobilize and organize around land rights in the face of external threats (such as extractive industry projects or the reallocation of lands to other land-based investors). In Zambia, women will also mobilize together and with men in similar positions and pursue legal action against Chiefs who dispossess them of their customarily-held land. However, they do not use these tactics within their own collectivities, villages or households to access land and natural resources.

For women in both Zambia and Bolivia, the maintenance of social relationships within the community and the household are important to gaining and maintaining access to benefits from land and natural resources. Pursuing claims within the male-dominated community structure is high risk and can lead to social isolation. In the Bolivian TCOs, women are more concerned with outside threats to communal land than with internal discriminatory practices; thus, their collective indigenous identity prevails over gender identity. Challenging male authority within the Zambian household is also avoided; women as individuals or groups seek access to land from Chiefs thereby by-passing male relatives.

**Consulted women leaders and women’s organizations consistently noted the need for greater transparency, access to information, and support in analyzing information related to the administration of collective lands and natural resources.** Women noted that such information is not shared with them, that land/territory titling processes do not include them, and that they do not

participate in meetings in which discussions and decisions about land use and access are conducted. Greater access to information is of special concern to women leaders.

**Investments in grassroots and indigenous women’s organizations and networks, leadership development and rights education are critical to the gender justice agenda. Women must know their rights in order to fully exercise their rights.** Lack of access to information is a significant problem – exacerbated by language, educational and socio-cultural barriers (i.e., social norms that inhibit women’s intra-household bargaining power or marginalize women based on their marital status). Furthermore, within male-dominated local indigenous organizations, leaders do not ensure that both women and the entire community are sensitized to statutory law regarding women’s tenure rights and that customary practices respect those rights.

**The presence of outside interests/pressures on collective lands/territories creates a particular challenge for women’s access to land and natural resources.** Women expressed both concern and frustration with negotiated arrangements with third parties and are often unaware that land has been lost until after the fact.

**Respect for customary rights by outsiders and various state agencies is important.** There are significant and persistent tensions between statutory and customary laws in which outsiders and state representatives do not respect customary law and practice. Outsiders may attempt to encroach upon collective lands or otherwise inhibit women’s access to natural resources (i.e. to collect wood, water, medicinal plants, etc.) and state officials in areas with overlapping jurisdictional arrangements may curtail recognized customary rights in order to privilege state interests.

In the Eastern Province of Zambia, guards in Game Management Areas (GMAs) often chase away community members who are exercising their customary rights to gather non-timber forest products, and sometimes threaten them with arrest. In Bolivia, *terceros* (outsiders) are often skeptical of customary law. They argue that indigenous groups already have too much land and do not make good use of it. Furthermore, with land formalization efforts in Bolivia, titling of rancher lands were given priority.

External actors often assume that traditional leaders have power to make unilateral decisions with respect to land use and allocation. Among lowland indigenous groups of the Bolivian Chaco as well as in Zambia, leaders are expected to consult with the community before making a decision to work with an investor. External actors can distort the legitimacy and inclusiveness of customary decision-making by failing to recognize the limits of traditional authority.

**There is no sex disaggregated data available in either Zambia or Bolivia documenting how land is allocated and/or registered in customary systems.**

## Policy Recommendations

Overall, these cases exploring the dynamics of gendered access to land and forest resources in Bolivia and Zambia suggest a number of policy recommendations applicable across scale: local, national and global.

- **Support reforms that harmonize statutory frameworks so that statutory frameworks recognize and clarify customary rights.**
  - Rights must not only be recognized, they must be respected. This will require the training of government stakeholders who work in areas with overlapping tenure systems to understand and respect customary rights and to recognize the hybrid arrangements that exist in some settings.

- **Support initiatives that clarify rights within customary tenure systems.** More specifically:
  - Support locally-informed research to better understand the different ways that rights could be clarified (according to units of analysis such as at the individual level, household level or family level). Initiatives intended to clarify rights should consider local social structures and social organization of agriculture and resource use and how these influence one another.
  - Encourage and support local research that explores how women react to discriminatory practice or mistreatment, how this impacts their relationships within the community and with traditional authorities.
  - Encourage cooperative and inclusive strategies for conducting local research (i.e. women community researchers)
- **Invest in systems that support the collection of sex-disaggregated data in the land sector, particularly under customary tenure systems.** Due to current lack of data in both countries, there is little ability to monitor women’s land access / ownership.
  - In Bolivia, there is no information on women’s ownership of land inside a TCO, or updated information on the number of women members in TCOs.
  - In Zambia, there is no national land registration system. There is no sex-disaggregated data for persons who obtain leasehold titles. In chiefdoms where pilot certification programs are taking place, sex-disaggregated data is collected but is not aggregated across participating chiefdoms. However, based on communication with Zambia-based development practitioners, it is estimated that less than 10 percent of chiefdoms are engaged in some type of certification experiment.
- **Recognize that traditional authority structures may not be gender sensitive** – do not over-romanticize the “customary”; embrace with caution.
  - The presence of women Chiefs and leaders should not be assumed to be evidence of women’s empowerment or leadership, as women may occupy such positions in order to maintain kinship ties and social relationships. Outsiders should not assume that women chiefs and leaders are more gender-sensitive or progressive than their male counterparts.
  - Understanding who is in authority is central to understanding how decisions are made – whose opinion or knowledge is taken into account, and how access to land and natural resources is determined (c.f. Larson, Cronkleton, and Pulhin 2015).
- **Support traditional leaders, both men and women, to engage in gender responsive and gender equitable land programming** and create opportunities for them to share their perspectives with other traditional leaders who have not ventured into such programming.
- **Invest in systems of transparency and accountability** to delineate:
  - Who oversees traditional authority/Chiefs
  - How grievances/conflicts with leadership are resolved
  - How local dispute resolution systems intersect with formal/state systems, and how women’s marital status impacts various kinds of disputes (i.e., inheritance and succession, boundary)
- Create programs, capitalize upon existing programs, and establish conditions within which women who exercise their rights and entitlements can do so without being seen as threatening or trying to disenfranchise men. Strengthen already existing regional networks to add on this kind of work.

**Table 5. Gender, Land, and Resource Access: Bolivia’s Yaku Igua and Weenhayek TCOs and Zambia Eastern Province Study Area – Compared**

	Bolivia		Zambia
Factors/Elements	TCO Guarani Yaku Igua	TCO Weenhayek	Eastern Province
Origin of the organization	Provincial APG-Yacuiba created with support of National level Guarani federation, the APG-Nacional, in 1996	Weenhayek Organization created at level of historical territory in 1989, with support of Swedish Evangelical Mission and later of CIDOB, the lowland indigenous confederation	N/A – chiefdoms granted authority over lands post-colonialism
Origin of collective lands	Demands made in 1997, again in 2001, and again in 2005. None were successful, and TCO was granted minimal lands by government	Demands made by TCO in 1992. Government makes provisional grant of 195,000 ha in 1993, though by 2015, only 64,000 ha were titled	Previously known as ‘native lands’ during colonial rule, Chiefs serve as custodians of land held collectively as customary tenure systems
Source of organizational strengthening	Compensation from hydrocarbon company guarantees 20 years of income; APG-Nacional consolidates and becomes politically active; supportive government laws	Between 2000-2005, internal structure is reorganized to be more open. From 2007-2015, internal struggles over resources from hydrocarbon companies weakens organization	N/A
Traditional authorities	In 1987, moves from traditional authority structure to more formal modes of election and organization of leadership at provincial, municipal, and community levels <sup>12</sup>	In early moves from traditional authority structure to more formal modes of election and organization of leadership at both municipal and community levels, though community level leadership currently weaker	Chiefs are recognized by the state, have the power to allocate land in chiefdoms to their subjects and to outsiders wishing to invest, liaise with government and NGO officials, and preside over traditional courts

<sup>12</sup> Prior to the creation and organizing activities of the national indigenous organizations such as the Asamblea del Pueblo Guarani (APG) and the Confederation of Indigenous Peoples of Eastern Bolivia (CIDOB), both the Guarani and the Weenhayek in this region followed locally-based traditional authority structures, i.e. village elders. Once the Guarani and Weenhayek were “organized” in the wave of lowland indigenous organizing of the 1990s, they adopted a model similar to the rural unions of Bolivia where there are local/community level representative organizations, usually elected, and federations at the provincial/departmental

Factors/Elements	Bolivia		Zambia
	TCO Guarani Yaku Igua	TCO Weenhayek	Eastern Province
Gender of leadership	Traditionally male, though in last decade 2 of 5 provincial level leaders (Capitanes Grandes) have been female; one of top two municipal leaders is always female; less female leadership at community level; male migration means participation in meetings is mostly female	Of 40 positions in overall territorial organization, only 2 are women. Of 60 community level leaders, only one is a woman.	There are 241 Chiefs, 43 Senior Chiefs and 4 Paramount Chiefs in Zambia. Among these 288 Chiefs, only 6.25 % are women. Women may also serve as village headpersons, and indunas or Chiefs' advisors. Among the Eastern Province's 57 chiefdoms, there is no Chieftainess.
Total area of TCO	75,000 ha claimed; 6,020 granted	197,847 ha claimed; 64,000 ha granted	NA
Number of communities and 2012 population	20 communities (1 urban, 2 periurban, 17 rural)  2,368 people	60 communities (3 urban, 57 rural)  5,036 people	Population is 1,592,661 in a 51,476 sq. km area; largest rural dwelling population in the country (87.4%) <sup>13</sup>

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levels. The change from village elders to elected authorities reflected the need to have leaders who could speak Spanish, who were literate, and who could negotiate with the outside world (State, companies, donors, etc.)

<sup>13</sup> Given the absence of a national land register, the fact that the country's last national-level mapping exercise took place in the 1960s, and as pointed out in the Draft National Land Policy 2015, internal boundaries "between provinces, districts, constituencies, chiefdoms and protected areas are not always clearly defined on the ground. There is need to clarify internal administrative boundaries." (2015, 14)

	<b>Bolivia</b>		<b>Zambia</b>
<b>Factors/Elements</b>	<b>TCO Guarani Yaku Igua</b>	<b>TCO Weenhayek</b>	<b>Eastern Province</b>
Access to land within community	Through inheritance from parents or approval of community leader in cases where a person moves from one community to another  Over time, women's access has increased because of rising sensitivity to the importance of gender equity	Through inheritance from parents or approval of community leader in cases where a person moves from one community to another	Through inheritance from parents, allocations by a traditional leader, or permission from husband or other male relative to use land  Women's access has increased because of greater sensitivity to gender equity concerns, and certification efforts
Access to natural resources within community	Few communities have woodlands; if they do have access to NTFPs and timber, it is modest and regulated	Most communities (80%) have forest access; many different NTFPs accessed 30% of communities have access to hunting, timber extraction	Forests and grazing lands surrounding villages are 'open areas' for all to use  People have customary rights to gather forest produce for subsistence use from GMAs
Women's participation in mobilizations	Women participate as part of TCO in mobilizations for land and are especially present in protests and roadblocks – many men are absent working elsewhere	Male leadership of mobilization; women's participation limited to localized (issues directly affecting TCO Weenhayek) protests and roadblocks, women participate as part of TCO	Women participate in mobilization for land in single- sex groups; they will mobilize with men in the context of large-scale dispossession
Recognition of women's rights	Single women are recognized as having rights to land	Women's land rights quite restricted because of dominance of male leadership	Women have secondary rights to land (single women via their fathers, married women via husbands)  Certification may improve the rights of all women including widows and divorcees

	Bolivia		Zambia
Factors/Elements	TCO Guarani Yaku Igua	TCO Weenhayek	Eastern Province
Women's economic activities	Most income from service work for other families; very little sale of agricultural products; care for kitchen gardens and small animals	Most income from <i>artesanía</i> (handicrafts) Women responsible for collection of NTFPs (fruit, firewood and fibers)	Women cultivate a range of crops (including beans, groundnuts, and sweet potato), care for small animals, and collect NTFPs (leafy greens, mushrooms, berries, firewood)
Women's access to other resources	No privileged access to funds from oil/gas companies or public programs/subsidies Improving access to public programs/subsidies	No privileged access to funds from oil/gas companies or to public programs/subsidies The latter have been ended on charges of corruption in community or reduced because of cost	Women who belong to cooperatives or women's groups may access agricultural inputs through the Farmer Input Support Program Chiefs who issue certificates are raising awareness among local agricultural service providers to treat them as 'collateral' similar to the treatment of title deeds issued by the state

## Zambia Case Study

### Women's Leadership, Agency and Voice: Promoting Gender Justice within Community-Based Tenure Systems, Zambian Case Study

Cynthia M. Caron<sup>14</sup>

#### Introduction

Tenure security has become a major focus of donors, policy-makers, and the media in the past ten years, especially in countries where customary and statutory tenure systems co-exist. How women gain access to and maintain control over land and forest resources depends both on existing institutional frameworks and on women's efforts to promote gender justice within customary tenure systems. This case study examines women's ability to acquire land and forest resources in Zambia's community-based tenure systems in the context of the country's gender equality and land governance framework (see Appendix A). Research took place in 2016, including fieldwork in the Zambian capital, Lusaka, and three districts in the Eastern Province: Chipata, Petauke and Nyimba.<sup>15</sup>

The case study draws on a desk review and primary data collected through 21 key informant interviews with government officials, staff from civil society organizations (CSOs) that work at the intersection of gender and land rights, traditional leaders (e.g., Chiefs, village headpersons and indunas) and three women-only focus group discussions (see Appendix B). It highlights the multiple social positions of women (i.e., as wives, friends, widows) including their engagement in collective action and their individual negotiations with persons in power to access land and resources. The study examines the role that CSOs play in creating a gender and land rights network and initiatives to strengthen women's land rights within the broader pursuit of gender equity and equality.

The case study begins with a brief introduction to the study site, the research context, and the country's gender equality and land governance framework, before focusing on substantive themes including recent innovations in increasing land tenure security, women's agency both in the form of collective action and individual negotiation, and training traditional leaders and local magistrates to pursue gender equitable land and property allocation. It concludes with a brief summary of the main findings. In an accompanying synthesis report, this case study is analyzed together with a parallel study conducted in Bolivia, drawing attention to commonalities and difference between these two contexts and offering policy recommendations for promoting gender justice in community tenure systems.

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<sup>15</sup> In order to protect the identities of the Chiefs, chiefdoms are not listed.

## Study Site and Research Context

Zambia is a southern African country that gained independence from Britain in 1964. It has borders with Angola, Botswana, Malawi, Tanzania, Namibia, the Democratic Republic of the Congo, Mozambique, and Zimbabwe. The country's population is slightly over 13 million with approximately 60 percent of the population living in rural areas (GRZ 2012). Approximately 7 percent of the country's population lives in the Eastern Province, where more than 87 percent of people reside in rural areas (USAID 2014). Agriculture supports the livelihoods of over 70 percent of this Province's population, with 78 percent of women engaged in agriculture (Sitko et al. 2011). The main crops cultivated by women include groundnut, sweet potato, and beans. Nearly two-thirds of the country's forests are on customary land. The Eastern Province contains less than 10 percent of the country's above-ground forest biomass, ranking fifth among Zambia's nine provinces. Twenty-four percent of its forests are managed by traditional authorities, while 33 percent have formal management plans and 42 percent are considered unmanaged (Kalinda et al 2013, 627). Women collect non-timber forest products from customary land, including open-access forests that surround villages and Game Management Areas (GMAs).<sup>16</sup> Land and forest resources are essential to the rural household economy, but also form the basis of the national economy with a tourism sector and national park network, gem and industrial mineral mining, a national strategy for Reducing Emissions from Deforestation and Degradation (REDD+), and commercial agriculture (RoZ 2006).

The colonial legacy of a dual tenure system still characterizes the country's two categories of land: state land and customary land. Similarly, the government maintains a plural legal system of statutory and customary law. Customary law is valid under the Constitution, but subordinate to it. Therefore, any customary practice that contradicts or is inconsistent with constitutional provisions is neither legal nor valid.

Under Zambia's dual legal system, both Chiefs and magistrates in the lower court handle local land and property disputes. There are 288 Zambian Chiefs, including Senior and Paramount Chiefs, and approximately 6 percent of Chiefs are women (Interview, 29 August 2016). Chiefs maintain law and order in the chiefdom; ensure that all the subjects have a piece of land to put up a house, cultivate crops, an area to graze livestock; liaise with state representatives and local and foreign investors, and see *'that there is peace in the chiefdom'* (Interview, 23 August 2016). Chiefs are not elected, but rather succeed one another based on kinship and membership in a royal family and rule for life (Baldwin 2013). In the case of gross negligence or a successful lawsuit pursued in the formal justice system, a Paramount Chief may remove a Chief.

While all land is vested in the President, a significant amount of land is held under customary tenure arrangements and managed by Chiefs and headpersons under traditional law (Sitko et al. 2014; Spichiger and Kabala 2014). Table 1 shows that just over half of the country's land (52.74 percent) is designated for Indigenous Peoples and local communities. **The juxtaposition of this figure with the popularly-cited figure of 94 percent (Sitko et al. 2015; USAID 2010) highlights the gap between Zambia's statutory protection of community-based tenure and the reality that community-based customary tenure is pervasive throughout the country even if not recognized by statutory law.**

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<sup>16</sup> Open access forests are not formally managed. GMAs have both customary and statutory dimensions discussed below.

**Table 1. Land Designated for or Owned by Indigenous Peoples and Local Communities in Zambia**

Total Country Area in millions of hectares (Mha)		74.34
Designated for Indigenous Peoples and Local Communities	Area (Mha)	39.21
	Percent of Country Area	52.74
Owned by Indigenous Peoples and Local Communities	Area (Mha)	-----
	Percent of Country Area	0
Total Area Designated for or Owned by Indigenous Peoples and Local Communities	Total Area (Mha)	39.21
	Total Percent of Country Area	52.74

The Ministry of Lands, Natural Resources and Environmental Protection manages state land. The rights to all wildlife, trees, and forest produce, including those on customary lands, lies with the President (GRZ 2015a; 2015b; 2016). In Game Management Areas (GMAs),<sup>17</sup> where statutory and customary law overlap, local communities have customary rights to collect non-wildlife resources for subsistence use (GRZ 2015a), but are not allowed to hunt wildlife. Previously called the Zambia Wildlife Authority (ZAWA)<sup>18</sup>, the Department of National Parks and Wildlife manages and protects wildlife in GMAs.

Long-standing gendered discriminatory practices persist in Zambia’s dual land tenure system (Ravnborg et al. 2016). Even though Zambian women rely on customary land and forests for subsistence and income generation (Moore and Vaughan 1994; Kajoba 2002; USAID 2010; Spichiger and Kabala 2014), neither the statutory nor customary laws that govern resource management provide “affirmative support for the protection and improvement of women’s rights” (USAID 2010, 2). Women primarily have secondary rights to land secured through men. The fact that women’s access to customary land, as well as the security of that access, is contingent upon gendered social relationships with authorities and kin contribute to women’s tenure insecurity and their continued subordination (see Box 2).

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#### Box 2.

There are 73 distinct tribes in Zambia, and though matrilineal inheritance predominates, a few tribes are patrilineal. Many tribes practice matrilocal (uxorilocal) marriage, where a husband goes to live with his wife’s family and works land accessed through her male relatives; however, virilocal marriage – where a woman goes to her husband’s natal village – also takes place and may be becoming more common (Van Asperen and Mulolwa 2006). In matrilineal-matrilocal systems, a woman’s access to land is mediated through her male kin or traditional authorities, although often her husband officially receives the land allotment (Peters 2010). If a woman dies, her children remain with her male relatives and her husband usually returns to his natal village. If widowed, a woman traditionally would appeal to her brothers or uncles for access to land, which they might grant and sometimes only if she agrees to marry another male relative. Where such customary practices persist, they are inconsistent with the Constitution, and are illegal.

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<sup>17</sup> GMAs act as buffer zones surrounding national parks and cover approximately 22 percent of Zambia’s land area (Simasiku et al. 2008).

<sup>18</sup> The 2015 Zambian Wildlife Act established the Department of National Parks and Wildlife to take over ZAWA responsibilities (GRZ 2015a).

End of Box 2\*\*\*

The fact that men dominate matrilineal groups is often overlooked, as it is assumed that when land is inherited through the maternal line that women control it. Yet, when a man who marries into a matrilineal family dies, his wife's brother and sister-in-law normally take over the property. His children and widow do not inherit the land and property acquired during marriage. His nieces and nephews do. Land and property stays within the natal family, but women do not control them. Recent certification initiatives that grant community-recognized rights to women may change these gendered discriminatory practices, as might the Government's expanding gender and land governance framework that together with the country's gender and women's rights activist network seeks to close the gender gap in customary land tenure systems.

### The Institutional Environment: Frameworks for Gender Equality and Land Governance

The Government of the Republic of Zambia's 2016 Constitution attests to the equal worth of women and men, providing a supportive infrastructure for the country's existing gender-sensitive laws. The government adopted its first National Gender Policy in 2000 to mainstream gender across national level policy and programs. The first strategic gender action plan included 21 land-sector activities "to facilitate equal acquisition of land between men and women" (GRZ 2002, 23), including rights-based awareness raising and training programs for government officials and traditional leaders, advocating for gender equitable legal reform, and public awareness campaigns about a woman's right to own land. The Gender Policy and its strategic plan together with an active network of women and gender-oriented CSOs have created momentum that has spurred legal reform and created new measures to promote gender equality as outlined in Appendix A.

While the state retains *de jure* ownership over all land, wildlife, trees, and forest produce, traditional leaders exercise considerable authority over customary land (GRZ 2015a; 2015b; 2016). Chiefs and village headpersons grant occupancy and use rights to customary land generally to men, as they are considered the head of household. Chiefs are the main point of contact for state officials, investors, donors, and rural communities when it comes to land allocation within their chiefdom (Brown 2005; Sitko 2010; Baldwin 2013).

The 1995 Lands Act authorized the conversion of customary land to leasehold land. Under the act, Chiefs must give written approval for the conversion of any customary land to leasehold status (GRZ 1995). Once converted and titled, leasehold land is recognized and governed under statutory law and can be sold and used as collateral to raise financial capital. The Lands Act does not address traditional customs and practices that limit women's ability to own and control land. Finally, the Lands Act establishes the Lands Tribunal. Any person who opposes a decision made by a person in authority with respect to a land issue can apply to the Tribunal for redress. Chiefs are considered among the "people in authority" (GRZ 2010b, 600).

The traditional customs and practices that form the basis of community-based tenure systems are not codified as those outlined in Appendix A, Table A1. Customary law is unwritten, administered by customary authorities, and guided primarily by the matrilineal-matrilocal practices discussed in Box 2. Traditional customs and practices are not static. An important feature of customary law and tenure pertinent to this discussion is that they should be seen as "living social institutions", flexible and able to adapt the rules of land and resource access to new economic, demographic or environmental pressures or following the acquisition of new knowledge (Freudenberger 2011).

Some lawyers and women's rights activists argue that while the gender-oriented laws and policies presented in Appendix A, Table A1 protect and advance the rights of women, the statutory legal

framework considers a woman and protects her rights as a private individual, thus abstracting her from the social and community relations she has with extended family. Customary law, on the other hand, situates and treats her within a larger set of familial and kin relations and the traditional hierarchy of Chiefs and subjects. Tensions between individual rights and the community expectations and obligations that traditional norms beget may create difficult choices for women living in community tenure systems (Brown and Gallant 2014).

In order to overcome potential tensions, the Zambian government and CSOs are using gender equity and equality discourse to harmonize statutory and customary law, which may change women's ability to access and control land. Through training programs and dialogues, grassroots and CSO activists work with traditional authorities, allowing them to incorporate new ideas into pre-existing practices, adapting them in context-relevant ways and redefining prevailing values and norms in the process (Brown and Gallant 2014). All the CSOs that participated in this research conduct awareness raising programs at the local and district level, educating men and women about new gender equity laws and policies as well as land rights programming such as the Zambia Land Alliance's study circle curriculum, *'Let's talk about Land'* (ZLA, n.d.). The ways in which gender equality functions as an entry point for discussions about the gendered relations of culture and power in Zambia's land sector, as well as the means through which gendered social relations shape women's leadership and agency, are documented in a multiplicity of voices below.

### Documenting Customary Land Rights through Certification

Customary lands in Zambia are neither systematically mapped nor registered. Boundaries between and within chiefdoms, as well as those between statutory and customary land holdings, "need clarification" (GRZ 2015c, 20). These factors combined with population growth and growing demands for food, fuel, carbon sequestration and wildlife and biodiversity conservation are among the pressures on customary land. Plot boundaries within chiefdoms also are unclear. In a recent survey, 26 percent of farmers interviewed in the Eastern Province indicated that they had been involved in a land dispute in the past three years (boundary and inheritance disputes are the most common; Sommerville 2016).

In 2010, CSOs together with traditional authorities started experimenting with ways to improve tenure security for families within their chiefdoms, resulting in a customary land rights documentation process. Senior Chief Kalindawalo, with assistance from the Petauke District Land Alliance (PDLA), was one of the first Chiefs in the Eastern Province to issue the Traditional Land Holding Certificate (TLHC) (PDLA 2011). **The TLHC recognizes land rights at either the individual or sub-family / household level. With the certificate, women regardless of marital status may receive a certificate documenting and recognizing her use, management, and withdrawal rights to a plot of land granted by the Chief as well as the right to exclude others from using it (Table 2).** Alienation rights are limited. A certificate holder cannot sell land. However, certified land can be transferred to another individual, in which case the Chief must be notified and the change duly recorded. Rights continue for as long as "the bearer agrees to observe all customary land rules of the chiefdom" and does not apply "to convert the land from customary land to state land."<sup>19</sup> A woman's name may be listed first on a certificate as the land's 'primary' rights holder, granting her primary land rights rather than the secondary rights she would have received via her husband or other male relative, disrupting tradition and the hierarchical relationship between men and women in land allocation processes.

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<sup>19</sup> These caveats are taken from three certificates currently issued in the Eastern Province.

A number of international organizations such as USAID,<sup>20</sup> Namati, and the Open Society Initiative of Southern Africa work with CSOs to support certification programs in Zambia’s Eastern Province. These projects clarify individual, household or village-level land rights through participatory mapping exercises and/or boundary demarcation using mobile GPS technology followed by issuance of a certificate that clearly states certificate holders’ claims and land use responsibilities. Table 2 juxtaposes women’s customary rights with and without certification. The ways in which women access and maintain control over land in the absence of certification is discussed in the next section on bargaining power.

**Table 2: Customary Rights of Zambian Women in the Eastern Province Study Area**

Right <sup>21</sup>	Without Certification	With Certification <sup>22</sup>
Access Rights	Yes	Yes
Withdrawal Rights	Yes	Yes
Management Rights	Yes	Yes
Exclusion Rights	No	Yes
Alienation Rights	No	No
Duration of Rights	No	Yes
Due Process and Compensation Rights	No	No

The Zambian government does not recognize certificates as legal documents; however, Chiefs and local communities recognize the rights that certificates convey. TLHCs are considered legitimate and may increase land tenure security for a few reasons. **First, as a certificate holder’s neighbors are involved in the demarcation process, boundaries are mutually agreed upon, which should reduce encroachments and disputes. Second, the listing of a spouse’s or next of kin’s name on the certificate should reduce property grabbing and the forced migration of widows/widowers after a spouses’ death. In this regard, certificates foster a normative change with respect to the treatment of widows.** Chiefs interviewed noted that the traditional practice of grabbing a woman’s property and sending her and her children ‘back home’ after the husband’s death was unjust. As one Chief noted,

We list the spouse and the next of kin including children and grandchildren on the application [for the TLHC] ... We’ve educated women in the chieftdom to have this certificate with her name on it especially if there is a family feud. Why? Because of the custom of the matrilineal Nsenga people, if the husband dies the property is not for [my] children but for .... nieces and nephews

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<sup>20</sup> One USAID intervention is subject of an impact evaluation using a randomized, control trial methodology. Baseline and endline comparisons will statistically test the significance of certificates in enhancing women’s access to and control over land.

<sup>21</sup> The bundle of rights addressed here stem from RRI’s *Depth of Rights* typology. However, unlike RRI’s global analyses, the assessment of these rights in Table 2 reflects the exercise of customary rights that may not be written; moreover, the table does not reflect the community-based tenure regimes that define RRI’s analysis. Please see: RRI. 2014. What Future for Reform?; [http://www.rightsandresources.org/wp-content/uploads/doc\\_6587.pdf](http://www.rightsandresources.org/wp-content/uploads/doc_6587.pdf)

<sup>22</sup> There is no standardized certificate template that all Chiefs use. The responses in this column are based on the review of three sample certificates collected during fieldwork in the Eastern Province.

.... They will send her and her children away .... This creates disadvantages for women because she may have been here 30 or 40 years, she might be 60 years old and she has to start all over again in her natal area. The children have built friendships. The widow has a hard time resettling. If the widow appears as the next of kin ... and the children as dependents, the village land committee at the palace will investigate instances of grabbing. (Interview, 23 August 2016)

Third, certification does not appear to have eroded the power of traditional authority. The Chief is still seen as the custodian of the land. As one woman observed,

The land that we have is not ours, it belongs to the Chief. We are told that we cannot convert it to state land, but we are given a paper that shows that 'this is your land'. This paper is not a title deed for you to use to sell the land, but a certificate that shows evidence of land ownership. (Focus group discussion, 22 August 2016)

In addition to certification's role in mediating potential inheritance disputes and changing the fate of widows, it also might address discriminatory practices that married or divorcing women continue to face when accessing land in customary tenure systems. As discussed below, local government and traditional leaders have not necessarily been well trained in new legal and constitutional reforms, which do not permit sex-based discrimination and significantly improve the position of women.

### Bargaining for Access to Land across Scale

The common statement that women's access to land depends on their relationship with men holds true in both matrilineal and patrilineal social groups. The belief that men are the head of household with the primary responsibility of supporting the family and thereby the only rightful owners of land is among the "gendered self-perceptions, gender stereotypes and beliefs about cultural expectations" (Evans 2016, 391) that maintain the gender gap in asset ownership. How women in Zambia's Eastern Province bargain with men and traditional and state authorities individually and collectively is discussed below.

#### **Bargaining with a husband**

One woman who married into the patrilineal Ngoni tribe explained how she bargained with her husband for access to a plot of the family's land to farm:

I asked for land from my husband so that I can start farming on my own. He refused saying why should we split the field when we are married. I told that it is because when we harvest and sell our produce you don't give part of the money so that I can buy household stuff and clothes for the children. He said this farm is not for two people but one. The Chief only knows me as the owner of this land and that was the end of the conversation. Men refuse to give their wives land purely because of jealousy, they know that if a woman has land they will use it well in farming and get ahead of them. (Focus group discussion, 22 August 2016)

A similar struggle for land ended another woman's marriage:

My marriage ended because of what has been said here. My husband would refuse to share the money after selling the farm produce. When I asked for land so that I can start farming on my own he refused to give me land saying you didn't come with land here. I went ahead and used a portion of it, but he ended up selling everything that I had planted without sharing money with me. The following year I asked my husband for a piece of land where I planted my groundnuts. Before I could even harvest, my husband went and removed everything. This marked the beginning of marriage failure and today we are no longer together. (Focus group discussion, 22 August 2016)

These quotations illustrate how and under what circumstances women ask their husbands for land, reaffirming Mvududu and McFadden's (2001) argument that women in southern Africa only have 'so-called access' to land as 'control and therefore power remain with men' (39). **They show how women's customary access, withdrawal, and management rights to a plot of land and the length of time for which a woman might enjoy such rights vary according to each woman's relationship with men in power, and render her unable to exclude or transfer her limited rights to a plot to others (Table 3). One CSO representative stated that the women's land rights movement needs to move beyond access and towards consolidating women's control over land** (Interview, 29 August 2016). Another woman and gender rights activist confirmed this sentiment saying:

They (women) never permanently own one particular piece of land as theirs. Even when they are given by their husbands, they will be moved. The men will just wake up and say, 'I want to grow another crop here. I'm giving you that piece of land [over there]'. She has to start all over again. She has to prepare land again .... they move because they don't own the land. You don't have the control, so you can't say no. (Interview, 17 August 2016)

In many rural communities, husbands instruct their wives where to plant their crops, which tend to be nitrogen-fixing crops such as groundnuts and beans. When the cropping season is over, often she will not be allowed to cultivate that same plot again. The husband will take it for his own cultivation benefiting from the enhanced soil fertility from her previously-planted crops. A husband may also shift his wife's field every year, moving her to areas that have been abandoned for a long period of time and need significant preparation before planting. Not only is she forced to clear that land, she may lose access to it after one season or immediately after clearing. **Women's inability to control where they plant and for how long is a gendered form of labor exploitation, which constrains/limits her bundle of rights (Table 3).**

It is 'not easy' for a divorcing woman to ask for marital property either. Divorce is

not tolerated by and large ... you want to remain married because being married is a big issue in Zambia ... you almost don't even want to think or talk about it, but because of the fact that ... children might need to be sustained from that land at some point and the mother most times would be the one to remain take care of the children. So if she goes away empty handed .... how will she feed the children if she has nowhere to cultivate? (Interview, 18 August 2016).

Traditionally, the plight of a divorced woman is similar to a widow's. She is expected to go 'back home' with her children or marry a male relative. If a woman had a customary marriage, her marriage is not legally recognized by the state and she is not protected by The Matrimonial Act. In the case of divorce, certification could potentially strengthen the land rights of women who had customary marriages. Chiefs interviewed who also issue certificates have not mediated any divorces among couples holding a certificate to confirm this suggestion. While a statutory marriage<sup>23</sup> would increase a woman's rights to land and property when a marriage dissolves, Brown and Gallant warn that

Community pressure to adhere to traditional practices may force them [women] to abandon their property, particular if *the woman* (their emphasis) is refusing to be inherited by a male relative (a common custom in many regions). Thus women are caught between differing sets of law and are under pressure to conform to traditional practices (2014, 6).

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<sup>23</sup> A commentary written by a Chief and posted on the Zambian House of Chiefs website presents five reasons why rural men prefer customary marriages (<http://www.houseofchiefs.com/2012/03/5-reasons-why-traditional-marriages.html>)

At the local level, a woman pursuing a land or property claim in a divorce could use either the traditional Chief's court or the state-supported local or lower court. Both courts 'share a common jurisdiction in customary law matters' (Robin 2009, 2), with local courts also handling civil disputes regarding land and marital claims (Spichiger and Kabala 2014). If a divorced woman were to go away 'empty handed' from a marriage after visiting the Chief's court, she may appeal to the Paramount Chief. If the same were to occur after leaving the local court, she may appeal to the subordinate court followed by the High Court and Supreme Court. If a complainant is displeased with any land-related ruling that she receives, she might appeal to the Lands Tribunal as well.

### **Bargaining with the Chief**

Women who participated in focus group discussions said they received positive responses from Chiefs when they asked for their own land to farm, expressed in following types of statements:

The land I use for farming was given to me by the Chief. I just went straight to see the Chief and asked for land I can use for farming and I was given without paying anything. (Focus group discussion, 22 August 2016)

Accessing land from the Chief is not a problem. If you are Zambian and live here or around this area ... then they know that you are not a foreigner, but one of their own. (Focus group discussion, 22 August 2016)

A husband does not challenge a Chief who has granted land to his wife. With the power to allocate land, Chiefs also can take land away. Tenure security of customary land rests on maintaining a good relationship with the Chief and Royal Family, by respecting the Chief's decision-making power and authority. Chiefs are both respected and feared. A group of women in the Eastern Province explained how this is so when reflecting on how they felt after their Chief gave some of the community's land to an investor without consulting them first:

He did not tell us, his children, his people, ... we are his children. Even if he told, we [would] just go like 'um!' ... we fear punishment (Caron and Fenner n.d).

This quote illustrates not only how respect and fear run together, but also demonstrates the Chief's power to allocate land to others and illuminates local social relations, namely the paternalistic relationship between a Chief and his subjects, 'children' for whom a Chief is responsible.

**Chiefs often violate their responsibilities when they give land to an investor.** Despite respect and fear, displaced and dispossessed persons are taking action against Chiefs who nullify their customary rights. For example, a group of farmers has sued Senior Chief Chiwala of the Copperbelt Province over their displacement after he gave their land to a local investor (Kafue 2016). Another displaced group comprised mostly of women has sued Chief Sinazongwe of the Southern Province for 'selling' their land to an investor. This case, pending before the High Court, shows how a group of mostly women, who also belong to a local development association and benefitted from their leadership development training, are using their knowledge to reclaim their land rights (Personal communication, 26 September 2016).

### **Women's Bargaining for Access to Land as Groups**

Women in rural Zambia have a long tradition of collective action, from work groups that pound maize and shell ground nuts to traditional ceremonies where they express their "feelings, worries and problems" (Ndlovu 2005, 2). Following independence, the Government's Ministry of Community Development and Social Welfare and foreign assistance programs harnessed these existing local social

structures to form women's clubs. Over time these clubs used their seed money to conduct study tours allowing them to network and aggregate into Area Development and District Development Associations. Today, both village-level groups and area associations acquire land for collective use. After acquiring land, groups often ask for the Chief's permission to convert it to leasehold status, which is governed by statutory law. After conversion, groups can use that land as collateral to obtain loans from local banks in order to construct buildings to hold meetings and training programs or rent the facility out to others. The surrounding land is used for agriculture and other income generating activities such as pig or goat rearing. If a widow's relatives grab the property after her husband's death, group leaders may intervene and help her keep the house (as per the Intestate Succession Act) and then allow her to cultivate a plot on the group's land. One woman and gender rights activist stated that:

We are building the capacities of women so that they are able .... to stand for themselves. We encourage not this one (woman) having her own piece of land .... if you are married, you are better off owning the land together. (Interview, 17 August 2016)

Women bargain across a male-dominated hierarchy as individuals and groups to gain access to land. Women who have participated in financial management, legal awareness, and leadership training provided by a range of national-level CSOs use the knowledge and skills to organize to obtain and maintain control over productive resources. Since married women depend largely on their husband's largesse for access to a plot of land, and often with very little control over that plot beyond one season, women owning land together disrupts that dependency. Accessing land through the Chief or in a group enables women to access land outside her family network and maintain control over it, adding to whatever land she might have already had access to through her husband.

### **Bargaining with State Authorities**

Women gather non-timber forest resources such as leafy greens, fallen branches, or mushrooms. To fulfill these subsistence needs, they must often cross adjacent boundaries of state forests, national parks, land privately-owned by investors, and GMAs. Boundaries indicating changes in these various designations are not well defined (GRZ 2015c; Interview, 26 August 2016), and leads to uncertainty. Neither women nor men bargain with the state authorities mandated to protect wildlife when they meet them in GMAs, stating:

We can only go up to a fixed point; because there are these ZAWA people who came. They divided the area and apportioned us a specific area for our use. We do not access their area because we would be arrested .... sometimes even when they find us [in] the area designated to us, they still chase us. (Caron and Fenner, n.d).

The fear of being arrested or detained prevents local communities from exercising their customary rights to collect non-wildlife resources in GMAs. One group of women in the Eastern Province said:

(Participant): There are many ... berries because no one uses them. When we are passing through the forest, we just look at the berries because we are scared.

(Facilitator): Why do you fear getting wild fruits?

(Participant): .... We are scared because wild fruits are not found near [the village]. They are found deep in the forest so if you are found by the game rangers they will think that you are with your husband to kill the animals. So we do not go there and when we see these wild fruits we just look at them because we are scared. We cannot risk our lives because of berries (Caron and Fenner, n.d).

While indicating that men and women do not demand their rights when they meet guards or rangers, these quotes also indicate a lack of recognition of and respect for customary rights to collect non-wildlife products, providing additional evidence of sub-optimal tenure relations (Metcalf 2005) and “poor definition of user rights in GMAs” (Sichilongo et al 2012, 7), and indicating that some state authorities need additional training on customary rights.

## Networking for Women’s Land Rights

Civil society actors at multiple levels support and help to expand the space for women’s collective action. Networking extends beyond national boundaries into regional collectives across southern Africa, which in turn support national-level initiatives. The flows of knowledge and resources that support women’s leadership and acts of solidarity to secure access to land are discussed below.

### Regional level networking and resources

Regional networking has expanded across the continent. In 2014, CSO members, government representatives and traditional leaders from Malawi, Zambia, and Zimbabwe met in Lusaka to discuss women’s land rights. The meeting resulted in the Lusaka Declaration on Land Rights for Women. The eight Zambian Chiefs who signed the declaration pledged to undertake a number of actions including:

- making land available to men and women and protecting communities’ rights to land through community land certificates
- holding dialogues on land rights for women through structures such as the House of Chiefs, and
- removing negative cultures and customs that put men and women at a disadvantage regarding access to, ownership of and control over land (We Effect and Women for Change 2014, 2-3).

### National level networking and resources

Zambian women who attended the United Nation’s Third World Conference held in Kenya in 1985 returned to Lusaka and started the Non-Governmental Organizations’ Coordinating Council (NGOCC). In addition to holding the government accountable to the conventions it has signed (see Appendix A), NGOCC is a network of 104 Zambian civil society and community-based organizations (CBOs) supporting women’s leadership development and access to healthcare, education, and land. NGOCC is one consortium in a strong and growing network of Zambian NGOs, research institutions, and CBOs that advocate for women’s rights to land. The Zambia Governance Foundation (ZGF), a non-thematic organization which funds local CSOs, regularly holds ‘learning and sharing events’ so that its members can discuss issues they confront in the field, including commercial pressures on land and women’s land rights. Finally, Zambia’s legal sector, including its national law association and legal aid clinics, provides pro bono services for women making land and property claims using either the statutory and customary legal framework. **In the absence of a national system that systematically collects sex-disaggregated data across the land administration system, it is impossible to know what types of disputes women tend to face and how they choose to resolve them. In a recent rapid assessment of Zambian women’s use of the justice system to address a land issue, over 50 percent contacted the Chief or village authority, 25 percent used the Lands Tribunal, and 20 percent used formal court processes (Brown and Gallant 2014, 23).**

### Inter-personal networks and resources

Collective action among women at the village level takes various forms. As noted above, women’s groups mobilize to acquire land, take a Chief who dispossesses them to court, and will come to a widow’s aid, yet women who participated in focus group discussions noted that rarely will a married

woman ask for assistance when she and her husband have a land-related dispute, as *'everyone sorts out their own issues.'* One woman explained:

I did ask for land from my husband. He denied... me. Because this was a family issue I couldn't ask anyone to intervene.... These are family matters no one dares to take them out of their homes. If you do tell your family members about what is going on and maybe you want to leave your husband, their responses are usually ... 'You have children. How are you going to look after them if you leave?' (Focus group discussion, 22 August 2016)

One woman who asked for and received assistance after she could not resolve a dispute with her husband stated,

A friend of mine lent me a portion of her field to use when my husband refused to give a piece land and I started having problems with him. My friend made sure her husband didn't find out because she scared that he would be upset. (Focus group discussion, 22 August 2016)

The belief that access to land within the family is a private, family problem and not a gender-based, collective problem for women often stops women asking other women for help. Also, an individual woman might be hesitant to intervene in a household situation where there might be larger and unknown issues at stake. The family is both a source of identity and struggle for women. Marriage is often a strategic alliance, and the maintenance of alliances may be more important than the needs of any one individual woman (Mvududu and McFadden 2001, Kabeer 2011). The pursuit of an individual claim potentially could foreclose future collective action among women within the extended family or damage a social or livelihood network (Cleaver 2009). In the end, and as the quote above illustrates, individual women might help one another, but they do so in secret.

Zambian activists are still in the process of building 'sisterhood' across the country, pushing women to think beyond gendered expectations of leadership and publicly taking on issues that affect women as a group (Geisler 1995). During the recent 2016 elections, for example, women's organizations such as Women for Change publicly brought women candidates together, asking them to speak to their personal strengths and not antagonize one another, hoping that women will "learn to work together even when [they] .... belong to different political parties or different tribes ... [women] still need to work together for the common good of the woman" (Interview, 17 August 2016).

In addition to promoting women's issues through political events, CSOs also conduct training programs with traditional authorities to promote interests that are in the 'common good of the woman.'

### Training and Capacity Building with Traditional and Local Authorities

I wanted to do this [issue certificates] because it addresses the issue of transparency in customary land administration. I have express authority. I can do whatever I want. For example, I can say, 'If you give me X, I'll give you land'. Some Royal Highnesses are selfish at the expense of their local people, their subjects. I wanted to maintain trust in the Chief (Chief, 23 August 2016).

Women's rights to land and gender equality are becoming integrated into Chiefs' duties, as the Government of Zambia and CSOs attempt to harmonize statutory and customary law and practice. **Training is critical to facilitating the cultural change that improving gender relations requires.** NGOCC and its organizational members routinely hold provincial-level meetings among Chiefs and raise awareness on issues ranging from child marriage to gender-based violence and the idea of land rights as human rights. One Lusaka-based activist noted that women Chiefs also need to be sensitized to these issues, as they act out of "customary norms that are controlled by patriarchal structures" (Personal

communication, 26 September 2016). Training with Chiefs on women's land rights has led several Chiefs to publicly support these rights and to instruct their subjects to do so, too. As one focus group discussion participant stated, "Some men don't deny their partners land because we have been told before by the Chief, when we were called for a meeting by the Chief, that men should not deny their wives land" (Interview, 22 August 2016).

Gender equity programming addresses customary practices that maintain male bias in land allocation, resulting in an active struggle between these two set of ideas. For example, one Chief interviewed reinforced male bias in the allocation process when he said, "men need a bigger area" however, during the same conversation he later said that land allocation, "now needs to do done more equally" (Interview, 22 August 2016). Gender rights activists engage in active dialogue about gender rights such as child marriage, property grabbing, and inheritance with 'progressive Chiefs' who "listen, [they] think ... some traditional practices are negatively affecting my people, and say we can change" (Interview, 19 August 2016), in the hope that Chiefs will educate one another through traditional structures such as the House of Chiefs.

The individuals who preside over the state's local or lower courts are 'lay' magistrates. Traditional courts are often preferred as local magistrates neither know local customs well nor command the same respect as a Chief. Local magistrates might be weak on the law and not understand that customary law that is discriminatory should not be applied. If that is the case local magistrates cannot give fair judgments, as they will not recognize women's rights to own property. One Lusaka-based lawyer who works in the NGO sector noted that "those who have gone through some training, they [magistrates] will at least recognize a woman's rights to own land or property in her own right ..... our Zambian laws with regard to acquisition of property, really our laws do not discriminate" (Interview, 19 August 2016). Gender activists expose local magistrates to the gender bias present in customary practice and introduce more gender-equality approaches. As one legal rights activist noted:

When we are meeting the local courts ... who usually preside over dissolution of customary marriages, we try to make them [magistrates] ... gender sensitive so that when they are passing judgment they understand that ... because a woman is easily disadvantaged [they might think] 'Let me be fair on how I will decide on how property should be settled' (Interview, 18 August 2016).

## Conclusion

Women's access to land in Zambia's community-based tenure systems is contingent on a man's permission, whether a male relative or a Chief (as the majority of Chiefs are men). The country has a relatively new, yet strong, legal and policy framework that, when paired with robust gender discourse, has the potential to strengthen women's and gender rights. **However, the implementation of gender-sensitive law and policies is hindered for several reasons: 1) legal and constitutional reforms have not been thoroughly integrated into the systems moderating formal justice, traditional justice or land allocation processes; 2) the statutory legal framework is based on a brand of individualism that overlooks the manner in which women are embedded within a wider community that comes with particular expectations and obligations; and 3) the framework is relatively new, with much awareness raising and training of government and customary authorities still ahead. It remains unclear what the individualized nature of statutory law might mean for collective action among women.**

That said, case study research found that women *as groups* have used the statutory legal framework to pursue claims following land dispossession. In bringing charges against Chiefs in the High Court, they contest the state-sanctioned power structures that allow one individual (i.e., Chief) to dispossess the

collective. While women have accessed land collectively through the Chief and intervened when widows suffer property grabbing, case study research did not find evidence of women collectively contesting power structures within the family and controlled by husbands. Instead, to acquire land, they by-pass family members by securing land through the Chief. **This process represents a missed opportunity for land rights dialogue at the household and community level.** Women also do not challenge representatives of the state (e.g., ZAWA) when their legitimate customary rights to collect forest products in GMAs is curtailed. Women exercise their agency when they choose to act and when they choose not to. Women's explanations of how they bargain for land and resource access or avoid confrontation resonates with Kabeer's argument that women use their capacities and knowledge to make judgements based on what they believe is "possible and desirable in a context where family and kinship" (2011, 525) are sources of security. A better understanding is needed of what rural Zambian women know and believe is possible with respect to achieving gender equity in land and resource access, under what conditions women will engage in collective action to achieve it, and how to overcome their tendency to avoid confronting particular power structures such as the state.

Thus far, pilot certificate programs appear to promote gender justice in customary tenure systems by allowing women to claim primary rights to land, ensuring that widows inherit land and are not displaced following a husband's death, and moving beyond access toward women's control over their certified plots. Certification clarifies boundaries making them clear not only to certificate holders' neighbors and others living within community tenure systems, but also to outsiders who seek land for new investments. While it is unclear if the Zambian government or outsiders will ever recognize such certificates, land rights activists hope that certificates would increase rights holders' ability to receive *compensation* (Table 3) in an environment characterized by increasing land-based investments and potential displacement. In the meantime, a growing network of national CSOs are working together with the Ministry of Gender and Child Development on an ambitious gender equality and equity agenda, which may place land in the hands of more women, improve tenure security, and more equitably distribute land resources between men and women in customary tenure systems.

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## Bolivia Case Study

Women's Leadership, Agency and Voice: Promoting Gender Justice within Bolivian Customary-Based Tenure Systems<sup>24</sup>

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## Introduction

This case study examines the experiences of indigenous women's access to land and forest resources in the Chaco of Tarija, a lowland, semi-arid region in Southeastern Bolivia. Specifically, the case draws upon the experiences of two distinct indigenous groups that rely on customary tenure arrangements in two TCOs (Tierra Comunitaria de Origen/Native Communitary Land).<sup>25</sup> The first case centers on the TCO Weenhayek, a more traditional and independent population living in small settlements along the Pilcomayo River, and whose livelihoods are based on a combination of activities including fishing, hunting, gathering of forest resources and agriculture. The second case, that of the TCO Yaku Igua, an affiliate of the Asamblea del Pueblo Guaraní (APG), reflects a longstanding, comparatively less successful struggle to gain territory and self-rule amidst active land conflicts and resistance to expanding oil and natural gas operations. **The study explores how women's leadership and mobilization to access natural resources differs among ethnic groups and is conditioned by state-driven territorial projects, networks and relationships with other local, regional and national actors.**

In recent years, in response to favorable political openings, indigenous groups across Bolivia have engaged in organizing and mobilizing to seek government recognition of territorial claims with divergent outcomes. Indigenous women have played important roles in mobilizing for land and tenure security. The trajectories of these efforts are important to consider in terms of how they shape both internal power dynamics within Guaraní and Weenhayek representative organizations as well as the externally oriented projects to negotiate, reclaim and consolidate territory and resources.

The case study is based on a review of previous studies, reports, and publications as well as field work conducted in the months of July and August 2016 in the Department of Tarija, Bolivia. The research team conducted 19 interviews with male and female members and leaders of the TCO Weenhayek and the TCO Yaku Igua. In addition, nine interviews were conducted with key observers (researchers, academics and informed NGO staff) based in La Paz, Santa Cruz and Tarija whose work focuses on issues of gender, land rights and indigenous rights (see Appendix B). The principal investigator was supported by a team of CERDET researchers based in Tarija and Villamontes.

The paper begins with a discussion of the elements of the national context that frame women's access to resources in the TCOs Yaku Igua and Weenhayek, and continues with a detailed discussion of the two TCOs. We provide context to the historical trajectories of each ethnic group as they negotiate an increasingly complex physical, social and political landscape, explain the organizational processes among the Guaraní and Weenhayek, and comment on the current status of their claims to territory and land. The fourth section of the paper discusses factors affecting women's access to resources in the two TCOs: the gendered nature of customary tenure rights, male migration, women's organizing and mobilizing for access to land and natural resources, women's capacity to exercise voice, and a series of factors that facilitate and impede access to land and forest resources. The paper closes with a discussion and conclusions.

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<sup>25</sup> Tierra Comunitaria de Origen (native community lands) are indigenous communally-managed territories. In 2009, the government introduced the term TIOC - Territorios indígenas y originarios campesinos/Indigenous originary-peasant territories for those TCOs that had completed the land titling process and where ready to proceed to autonomy. There are three indigenous populations in the Chaco of Tarija: Guaraní, Weenhayek and Tapiente. The latter group is very small with only about 100 families and was not included in this study. These TCOs have not completed the land titling process and therefore continue to refer to themselves as TCOs.

## Land, Property and Gender in Bolivia

The Bolivian Chaco is part of the Gran Chaco Americano, the second-most extensive forest remaining in South America. The Bolivian Chaco covers an area of approximately 60,000 square miles, is home to 30 indigenous groups and thousands of species of plants, birds, mammals, reptiles and amphibians (Alcorn, Zarzycki, and Cruz 2010). In spite of being a semi-arid region, the Chaco has more edible plants per hectare than parts of the Amazon.<sup>ii</sup> The Bolivian Chaco extends across three Departments: Santa Cruz, Chuquisaca and Tarija with significant variations in rainfall, plant and animal life. The ethnic groups discussed in this study reside in adjacent TCOs in the southernmost part of the Department of Tarija bounded by the Serranía de Aguara Güe National Park and the international borders of Argentina and Paraguay.

### *Property rights and access to land and natural resources*

Ninety percent of all agricultural land in Bolivia is held by 10 percent of landholders. This highly concentrated and unequal distribution of land is accompanied by persistent income inequality, though Bolivia's Gini Coefficient has dropped significantly from 0.60 in 2002, to 0.40 in recent years (World Bank, 2015).

In 2006, the Morales/MAS government introduced a new Agrarian Reform Law 3545 (Ley de Reconducción Comunitaria de la Reforma Agraria) to address deficiencies with Land Reform Law 1715 (1996) known as the Ley INRA. The objective was to speed up the legal titling process, to distribute State lands to rural indigenous-peasant households and advance the recognition of indigenous territorial claims which had lagged under previous governments (Colque, G. Tinta, E. and Sanjinés, E. 2016). Law 3545 promotes greater gender equity with respect to land ownership and stipulates that the woman's name must appear before the man's name on the legal title. With respect to collectively held lands, the names of male and female members of the organization now appear on the collective title.

With the new Agrarian Reform Law of 2006 and its enabling legislation, the Morales government made the titling of collective lands and territories a strategic element of its plan to transform the structure of ownership of land and forest resources in Bolivia while at the same time affirming indigenous practices of self-governance related to the use, management and control of natural resources in their territories.

Given the precolonial existence of indigenous nations and indigenous campesino peoples and their ancestral domain over their territories, free determination is guaranteed within the framework of State unity, consisting of their right to autonomy, to self-government, to their culture, the recognition of their institutions and the consolidation of their territorial entities, in accordance with the Constitution and the law (2009 Constitution, Art. 2).

Importantly, State recognition of indigenous territorial rights does not inhibit individual rights to land ownership within these territories (individual rights can be held by indigenous persons as well as by non-indigenous "terceros" or third parties). In this way, collective rights to land and territory are made compatible with individual property rights. (Paye, Arteaga, and Ormachea 2013)

The State recognizes, protects and guarantees the collective lands of a range of highland and lowland indigenous and indigenous-campesino populations. According to the 2009 Constitution, collective property cannot be bought, sold, mortgaged or otherwise exchanged. It is not subject to payment of taxes. However, community lands can be titled in ways that acknowledge the "complementarity between collective and individual rights," respecting the preferences of the local organizations (2009 Constitution, Art. 394 III).

## *Gender equality, legal frameworks and discourses*

Since 2006, Bolivia has embarked upon a process of change in which gender equality has been incorporated as a cross-cutting theme across all levels of government. The extent to which this has diminished the asymmetries of power between men and women remains to be seen. However, there have been significant legal gains favoring women's access to land and security of tenure, which are reflected in the numbers of women whose names appear on legal land titles either as individuals or together with their spouses. **There is clear evidence that women – in particular indigenous-peasant women- are accessing land with the support of the State** (Lastarria-Cornhiel, 2007)(Instituto Nacional de Reforma Agraria 2008).

While the State is committed to “eliminating all forms of discrimination against women in accessing, securing title to and inheriting land,”<sup>26</sup> specific policies and enabling legislation to support women's empowerment and *to make use of these rights* have not yet been enacted. **In order for women to exercise their rights to legal title they must first know what their rights are. Lack of access to information is a significant problem, and language barriers have meant that indigenous women do not participate in informational sessions.**

The National Land Reform Agency (INRA) is charged with helping to educate women about their rights, however the agency struggles to fulfill this mandate. The Vice Ministry of Land has also assumed responsibility for disseminating information to rural women, yet neither agency has sufficient numbers of trained staff to carry out this enormous task (Ramirez Carpio 2010, 25). Officially the transversal nature of the gender mandate requires that all government employees must be gender-trained. However, the state is limited in terms of its institutional capacity and ability to engage with women's empowerment processes, especially those related to access to land and security of tenure. **Furthermore while land titling has been central to giving women greater access to land and security of tenure, it is insufficient to transform the broader institutional dynamics that contribute to indigenous women's subordination.** It is reminiscent of earlier land reform efforts that put so much faith in the redistribution of land but failed miserably in supporting small-scale agriculture through credit and technical assistance support and access to markets. Put another way, holding legal title to land is an achievement of great importance, but does not guarantee a woman's ability to make full use of access to land.

Historically, women were not targeted as beneficiaries of State agrarian reform and land resettlement schemes nor were they included as titleholders; rather they were seen as part of the family unit (*unidad familiar*) with title held by the husband. Bolivian law did not recognize women-headed households or the right of married women to an equal part of land assets (Urioste 2003). **The seemingly gender neutral agrarian reform of 1953 was in fact highly discriminatory towards women.** Land reform efforts were renewed in the 1990s and by mid-decade the National Institute for Land Reform (INRA) was created with important international donor support. In addition to updating the national land registry and formally titling lands distributed through the land reform and resettlement efforts of previous decades, INRA had a clear mandate to include women in the land titling process. Early on, however, it was clear that INRA had little capacity to reach out to women and as a result few women received title to land.

The 2009 Constitution (Nueva Constitución Política del Estado –NCPE) re-established Bolivia as a plurinational republic enshrining the role of the State in the country's development. The National Development Plan (Plan de Desarrollo Nacional - PDN) of 2006 aimed to increase the State's

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<sup>26</sup> Article 402 of the 2009 Constitution (translation mine).

participation in key sectors of the economy, channel resources to labor-intensive sectors, introduce new social (cash-transfer) programs and expand existing ones, as well as reestablish the State's ownership over its natural resources and development process. The Bicentennial Patriotic Agenda 2025 (2014), following on the gains of the first eight years of Morales/MAS rule, called for an end to extreme poverty, improvements in social services, the industrialization of natural resources, the promotion of women's equality and further economic diversification among others goals.

Importantly, the 2009 Constitution set the stage to rebalance political power in Bolivia. For the first time in its history the Bolivian state recognized all 37 Indigenous Peoples, their social and political rights and their cultures and languages. Furthermore, the Constitution established a framework for the autonomy of subnational governments and indigenous territories – deepening a process with roots in the decentralization/municipalization initiatives of the 1990s. Finally, the new Constitution adopts the elimination of all forms of discrimination against women as a cross-cutting theme and specifically recognizes women's rights to land, including as beneficiaries of State sponsored land redistribution and settlement programs:

The awarding of lands will be conducted respecting the right of women to appear as titleholders on land documentation and promoting their access to, distribution and redistribution of land, without discrimination and independent of their civil status or common law marriage (2009 Constitution, Article 395)

While the country's formal legal framework establishes equal land and property rights for both sexes, customary practices reflect a continued bias toward male ownership of land. Those voices promoting legal formalization and tenure assumed that by ensuring legal title and security of tenure for all landowners, a dynamic land market would be created supporting a more efficient use of land (Lastarria-Cornhiel, 2011). Collectively-held lands in Bolivia are held by indigenous and indigenous-peasant groups who combine both individual use with some sort of collective management of pasture lands and forests. Furthermore, the Bolivian State recognizes and respects that the administration of TCOs should be conducted through the customs and practices (so-called "usos y costumbres") of the indigenous group. Appendix A, Table A2 highlights the most significant laws related to gender equality and the promotion of women's land rights.

## Native Community Lands (TCOs): Indigenous Identity, Territory and Governance

### *TCO Yaku Igua*

Today's Guaraníes of the TCO Yaku Igua were referred to as "Chiriguanos" by the early chroniclers who passed through the Chaco looking for trade routes. Distinguishing themselves from other groups, they referred to themselves as Ava (men). The Guaraní resisted all efforts by Spanish soldiers, and later Franciscan missionaries, of settlement and pacification. As a result, they were persecuted in both the colonial and republican periods and driven from their territories as cattle-ranching and the system of *hacienda* expanded throughout the Chaco. After independence (1825), under neo-colonial rule, treatment of lowland indigenous populations worsened as the Bolivian government sought to exert greater control over its frontier areas. Seeking to control the Chaco frontier, the state distributed indigenous lands to soldiers for their military services but also promoted the notion of *tierras baldías* – undeveloped lands available for mestizo and European settlement. The final defeat of the Guaraní in the Massacre of Kuruyuki (1892) led to surviving families either fleeing deeper into the Chaco forest or being forced to work as invisible, unpaid labor on the haciendas and to the consolidation of the system of *empatronamiento*. *Empatronamiento* refers to the practice of debt bondage in which Indian *peones* received food and shelter and less often small amounts of money in exchange for their labor. Women

and children also worked as domestic laborers and children would “inherit” the debt of the parents. The *patrón*, or boss, was the figure of authority and would exercise absolute control over the lives of his workers.

The National Revolution of 1952, while introducing a series of major social reforms, discouraged indigenous identities by pronouncing there were no more Indians, only campesinos (Canessa, 2016). Guaraní populations were largely marginalized from accessing the new rights contained in these reforms - including universal suffrage.<sup>27</sup> The Agrarian Reform of 1953 focused on breaking up the large landed estates of the highlands and valleys but left large landholdings in the Chaco intact.<sup>28</sup>

Beginning in the early 1980s, however, and with support from non-governmental organizations (NGOs) linked to the Catholic Church and to international donors engaged in human rights and the promotion of democracy, Guaraní communities began to reclaim ancestral lands and freedom for the families bound in relations of *empatronamiento*. This led to inter-ethnic mobilizing and organizing that eventually created the Confederation of Indigenous Peoples of Eastern Bolivia (CIDOB).

In 1987, 20 zone-based Guaraní organizations came together to create the National Guaraní Assembly (Asamblea Nacional del Pueblo Guaraní - APG) around the struggle for land and recognition. In 2002, a diagnostic study commissioned by the APG cited a population of 43,036 Guaranies of which 11 percent were still living as *empatronados* within the haciendas in the Chaco of Chuquisaca and Santa Cruz despite efforts to end the practice (Comisión Interamericana de Derechos Humanos 2008). In 2006, the Morales/MAS government introduced additional land reform that targeted these estates for expropriation and redistribution to Guaraní families.<sup>29</sup>

In the Chaco of Tarija the organizing process began somewhat later. Guaraní organizations emerged beginning in the 1990s and, with the support of NGOs, began pressuring for land and territorial recognition. In Tarija, there are five municipalities with Guaraní communities, and three municipalities with TCOs of which the TCO Yaku Igua is one. The 20 communities that make up the TCO Yaku Igua are located in and around the border town of Yacuiba and adjacent to the international highway that links the city of Santa Cruz to Yacuiba and continues on to Argentina. Guaraní families live interspersed with peasant families and recent migrants from highland areas and small and medium cattle ranches. In 1997, the APG Yaku Igua made an initial land claim that was withdrawn shortly after. In 2001, after a violent confrontation involving local peasant families and landless migrant families and ranchers in the community of Panantí, the central government instructed the National Institute for Land Reform (INRA) to facilitate titling (*saneamiento simple*) without recognizing the TCO's demand for territory. At this point, the APG Yaku Igua presented a new demand for 325,000 hectares including the entire Serranía de Aguarañe National Park. The demand sparked outrage among local peasants, landless migrants, ranchers and the powerful Civic Committee of Yacuiba. Ultimately the APG Yaku Igua was forced to reduce its demand for territory to just over 75,000 hectares, focusing instead on recovering state lands.

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<sup>27</sup> Historically the Guaranies did not participate in elections, either as voters or as candidates. Prior to 1952, the Constitution did not recognize Guaranies and other lowland indigenous groups as citizens with full rights. Also, between 1952-1982 Bolivia was governed by a series of military dictatorships. Finally when democracy was restored many Guaraní were unable to vote because they lacked proper documentation (Castillo Guzmán y Soria Torres (2011)

<sup>28</sup> Under the 1953 Agrarian Reform Law these groups were categorized as grupos selváticos (jungle groups) and thus not considered potential beneficiaries of the reform program.

<sup>29</sup> It was not until 2008 that the last Guaraní families living as *empatronados* were liberated.

Under Bolivia's statutory laws, Indigenous peoples and local communities own or control approximately 36 percent of the country's land (RRI, 2015). For the most part, indigenous populations organized into TCOs have gained control over significant amounts of territory, however the case of the TCO Yaku Igua reveals that not all TCOs are successful in gaining access to land. As of 2016, the total amount of land titled to the TCO is less than eight percent of the land requested (see Table 1). Over half of Guaraní families work plots of land of less than 2 hectares (CCGT, 2009: 70), and some only have a plot of land large enough for a home and a patio garden. An additional 4,600 hectares of state land has been identified to add to the TCO, bringing the total to just over 10,600 hectares – a fraction of what was originally identified as necessary to meet the needs of these 20 communities. Guaraní communities have limited access to forest lands given their proximity to Yacuiba. Those communities located nearer to or within the buffer zone of the Serranía de Aguara Güe National Park have very restricted access to forest resources.

Interviews with women in Guaraní communities confirmed that women do ask their community leaders (mburuvicha or capitán) for land and such requests are granted providing they can demonstrate the need for additional land (e.g., the formation of a new household, young adults or families without access to land, community projects, or multiple household collectively-managed plots). Women request land to build a house, to grow subsistence crops and to keep small animals. Women do not need permission to enter TCO lands to collect firewood, fruits, and seeds though the communities located near the highway report a very reduced use/reliance on forest products to meet subsistence needs. **Reciprocity and collaboration characterize social relations among the Guaraní. The needs of families are taken into consideration and a solution is found by the community leader and in some cases by the community assembly.** For example, in the community of Panantí, one female leader explained that several households, headed by young women with children, received a small parcel of communal land to farm. Women report that they will pool their labor to support agricultural production activities given that men in the community engage in off-farm wage labor

### **APG Yaku Igua organization and structure**

The APG Yaku Igua, which brings together some 620 Guaraní families in the municipality of Yacuiba, follows a more modern organizational structure promoted by the APG Nacional. Prior to 1980, Guaraní leadership was characterized as traditional (clan-based) and most often hereditary. In the late 1990s, the APG Nacional introduced an organizational structure corresponding to the administrative municipal units of the Chaco. The structure is multi-tiered: community, zonal, regional and national. There are 20 communities that form the TCO Yaku Igua. Each community elects a Capitán Comunal who then come together to participate in the Zonal Assembly. The Capitanes elect the Mburuvicha Guasu (Capitán Grande) as well as other positions on the Directorate.

The Capitán Grande is the authority in the TCO and represents the TCO to outside interests. The Segundo Capitán is usually female. If the Capitán Grande is female then the Segundo Capitán is male (reflecting the notion of gender parity). There are a series of elected technical leadership positions that follow the APG Nacional framework known as PISET: Production, Infrastructure, Health, Education and Land. Since 2010, a position for Gender was added. The PISET structure is replicated at various levels. **The community assembly is open to all members of the TCO and, given the high levels of male migration, there is significant presence of women in the assembly and as leaders.** Of the 20 communities, there are four female Capitanes and a strong presence of women in the technical positions—usually health, education, and gender. Of the eight leadership positions at the zonal level, the Segundo Capitán and the Secretary for Gender are held by women.

Guaraní indigenous women are highly active in regional, national and international networks. In some regions, they have organized female organizations such as the Central Intercomunal de Mujeres de la Capitanía de Isoso (CIMCI). Recently, a woman was elected head of APG Nacional. In Tarija, Guaraní women of the different zonal APGs have not created female organizations as this has been discouraged. Nonetheless, Guaraní women do participate in larger assemblies of indigenous women within Bolivia, at the level of the South American Chaco, and Latin America.

### Inheritance

Under customary law Guaraní women inherit land upon the death of their spouse and on occasion from parents – though there is no clear model followed and individual families decide which children will receive land. While still alive, parents are able to assign parcels of land *en calidad de señaladas de vida de los padres*<sup>30</sup> to adult sons and daughters in order to build a home and have some land to cultivate. When the parents die, there is a formal division of the parcels. In some cases, there are disputes among surviving children over the distribution of assets, but these are usually resolved at the family level, if not in the community assembly. Widows continue to reside in their home in the community unless they decide to remarry, in which case they then join their husband's community. Women interviewed reported that widows are usually provided for by their children and by the larger community, especially if they are elderly and they or their spouse are well respected. Widows may continue to own land but find themselves without the physical and material resources to cultivate. In this instance a male relative may request to farm the land or other joint cultivation arrangements may be negotiated.

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### Box 3: Patrilineal Practices Dominate

Guaraní culture is characterized as matrilineal – historically men would join the woman's household forming part of the woman's extended family with the new couple building a home near her parents' home. In the communities of the TCO Yaku Igua, residence is mixed and it is less common to find couples living with the woman's family, especially with significant numbers of men engaging in off-farm labor. Instead, women often live with the man's family. If the woman's family has greater access to cultivable land (because her parents are community leaders, or have accumulated wealth through off-farm work, and have purchased land privately), then the man will live with the woman's family. **Still, patrilineal norms and practices dominate among the Guaraní and while land is inherited by both men and women, sons generally receive preference and better parcels of land. This would indicate the continuation of earlier attitudes that husbands of daughters would provide for them.**

CCGT; Ministerio de Justicia; Vice Ministerio de Justicia Comunitaria; y COSUDE (2009) Diagnóstico Socioeconómico del Pueblo Guaraní del Departamento de Tarija.

Teijeiro, J. (2007) Regionalización y diversidad étnica cultural en las tierras bajas y sectores del subandino amazónico y platense de Bolivia. La Paz: Plural.

End of Box 3\*\*\*\*\*

In recent years, the territorial project of the TCO Yaku Igua has stalled, colliding head-on with central government territorial projects to control and exploit natural resources, specifically natural gas. In 2008, the TCO Yaku Igua leadership negotiated an agreement with the Morales/MAS government to co-manage the Serranía de Aguargüe National Park together with the National Protected Areas Service (SERNAP), an area the Guaraní have seen as part of their ancestral lands. Almost immediately however,

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<sup>30</sup> Literally as instructed by the living parents.

the arrangement broke down when the government announced it intended to pursue a program of exploratory oil drilling within the Aguaragüe along with a series of infrastructure projects. Unable to convince the government to abandon these plans, Guaraní leaders initiated protests over the proposed drilling, the lack of progress in titling TCOs lands, and the lack of Free, Prior and Informed Consent (FPIC) processes. Later, Guaraní communities in the Chaco joined with other lowland indigenous groups to protest a proposed highway through the Isiboro Sécore National Park and Indigenous Territory (TIPNIS),<sup>31</sup> and then again after the government passed legislation permitting the expansion of hydrocarbon operations in national parks and protected areas in 2015. In the current scenario, it is unlikely that TCOs in the Chaco will see their territorial claims fulfilled by the state (Fundacion Tierra, 2014; Humphreys Bebbington, 2012; Anthias, 2014). Indeed, this confluence of factors shapes the territorial ambitions of indigenous populations in important ways and most certainly impacts the ability of indigenous women to gain access to land and resources under collective territorial arrangements. The presence of powerful, outside actors reinforces male-dominated negotiations and decision-making over land, and excludes women from accessing financial resources such as compensation agreements.

### *TCO Weenhayek*

The TCO Weenhayek lies northeast of the TCO Yaku Igua, following the Pilcomayo River from the town of Villamontes to the border with Argentina. The TCO straddles the municipalities of Yacuiba and Villamontes, encompassing a part of the Chaco forest that is drier but extremely rich in plant and animal life.

Following the March for Land and Territory (1990)<sup>32</sup> – in which the Weenhayek did not participate – the Bolivian government recognized a provisional territorial claim of 195,000 hectares subject to confirmation and according to a formal titling process. This process began in 1996 with the new INRA Law. However over the period 1996-2016, the TCO has only managed to secure 64,000 hectares of the total amount demanded (see Table 2 below) – creating 24 territorial pieces that are not contiguous – while the INRA has titled to outsiders some 100,000 hectares of land lying within the area formally claimed by the TCO Weenhayek. The remaining (disputed) lands are yet to be titled. Weenhayek leaders have remarked that the titling program, meant to help indigenous groups recover territory, has done more to help outsiders secure legal land titles within the TCOs. The process of recovering and gaining formal title to TCO lands has been dominated by male leadership and priorities. Women have had

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<sup>31</sup> The conflict around the Isiboro Sécore National Park and Indigenous Territory (TIPNIS) was sparked when the Bolivian government announced it would construct a highway through the territory. The highway, linked to a Brazilian-driven series of continent-wide investments, would bring development to the region and potentially open the area to hydrocarbon development. The announcement generated a counter movement to save the TIPNIS led by lowland indigenous groups in which indigenous women were visible participants. A March to La Paz was organized, and at one point, women leaders obliged Chancellor David Choquehuanca to march with them to urge President Morales to reconsider his position. The March cut short when soldiers sought to stop the protesters. In the wake of the TIPNIS conflict, the relationship between lowland indigenous leaders and the MAS/Morales government grew increasingly tense leading to government efforts to replace national indigenous leaders with new leaders supportive of central government positions. This has resulted in the existence of dual representative organizations of lowland groups and has affected women's indigenous organizations as well. Both female and male representative organizations of lowland indigenous have been weakened.

<sup>32</sup> La Marcha por el Territorio y Dignidad of 1990 involved the massive mobilization of lowland indigenous groups who walked from Beni to the city of La Paz. They were met by then President Jaime Paz Zamora who made important commitments to recognize indigenous territorial claims (Fundación Tierra, 2012).

limited opportunities to learn about the process or gain access to negotiations with INRA - largely relying upon their husbands for information and to communicate their views.

The Weenhayek live in a series of settlements along the Pilcomayo River. Historically the Weenhayek have lived from a combination of fishing, hunting, gathering and, to a lesser extent, agriculture. **More recently men have engaged in wage labor in response to a mix of factors including government employment programs, prolonged drought affecting fish stocks and increased economic activity in the area, though this dynamic is largely confined to the northern third of the TCO with access to the town of Villamontes. In some cases this has led to an increase in female headed households. It is estimated that over 85 percent of land titled to the TCO remains forested (CERDET, 2009). Over 22 varieties of wild fruits are known to and consumed by Weenhayek families (although as families adopt more urban habits they are replacing forest products with purchased processed food). Indeed, the Weenhayek refer to their territory as the *Casa Grande*, or Big House, seen as providing for all their needs. All land is communally held and assigned: there are no individually titled lands among the Weenhayek.**

One important phenomenon is the growth in the number of Weenhayek settlements. In 2002 there were 22 settlements which remained stable until 2010. In the last few years over 60 new settlements have been created in part under the logic of occupying territory but also to access additional resources from the government and the hydrocarbon company operating within the TCO (Humphreys Bebbington and Bebbington 2010). Previously, the creation of a new settlement involved the participation of all men and women in a community assembly. Now, the creation of new settlements is tightly controlled by the Capitán Grande and male leaders of settlements who are loyal to him. This has exacerbated tensions among members of the TCO and led to the emergence of rival leaderships. Women's voices are largely absent in conversations about new settlements and thus effectively excluded from decision-making about how financial and land resources are to be used.

Weenhayek livelihoods are changing rapidly, impacted by climate change (drought), the expansion of natural gas exploitation and related infrastructure development in the TCO, and the rapid urbanization of Villamontes.<sup>33</sup> The upper third of the TCO (located closest to the city of Villamontes), which has much greater access to transportation, markets and wage labor opportunities, has suffered the greatest degradation of its forested areas and the resulting loss of resources supporting hunting and gathering activities. Proximity to urban areas is also said to contribute to class differences and changing social relations including the emergence of "individualistic" behaviors. For younger women there are increased opportunities to study and seek employment, however older women expressed concern over the loss of traditional values such as reciprocity among youth. In contrast, two-thirds of the (lower) TCO report greater reliance on hunting and gathering activities given the relative abundance of animals, wild honey, forest fruits, carawata and palo santo.<sup>34</sup> Here residents point to a more communitarian vision of territory, greater family unity, fewer interventions by outsiders and less individualism (CERDET 2009).

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<sup>33</sup> In 2010-2011 a severe drought provoked a collapse in the fish population and foodstuffs were distributed to Weenhayek settlements.

<sup>34</sup> Carawata produces a fiber that is used by Weenhayek artisans to make highly durable bags and clothing. These items are used for domestic purposes but are also sold to tourists and represent an important source of income especially to women, and especially during the period of scarcity during the closed season on sabalo fishing. Palo santo (*Bulnesia Sarmientoi*) is a wood highly valued for its medicinal properties but also used in handicrafts and to make furniture.

Historically, the traditional authority of Weenhayek clan-based settlements is the Capitán.<sup>35</sup> It is uncommon for women to serve as Capitanes but there have been some in past years. For example, women occupy two of the 40 leadership positions in the TCO: one is the widow of an ex Capitán Grande who no longer participates in meetings and the other is the Secretary of Gender, named by the Capitán Grande, and not elected by female TCO members (a position previously elected by Weenhayek women). **Thus the presence of women leaders should be understood in relation to preserving existing social relations and loyalties rather than as part of any process of women's empowerment.**

The TCO is governed by the Organization of Capitanías de Weenhayek (ORCAWETA) a second level organization representing all Weenhayek communities and settlements. ORCAWETA was created in 1996 with support and guidance from CIDOB, the national level representative organization of lowland indigenous groups in Bolivia. The principle authority is the Capitán Grande who is elected by TCO members. Another important authority in the TCO is the evangelical Pastor.<sup>36</sup> **The presence of the Evangelical Church is significant in Weenhayek culture and the longstanding bilingual education program has produced an important number of Weenhayek teachers and professionals.**

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#### **Text Box: Patrilineal dynamics**

**Weenhayek communities consist of extended families where reciprocity and social harmony are key for survival.** The family structure is patriarchal and patrilineal but residence is matrilineal or uxorilocal. In recently formed families, the man moves to the home of the woman at least until the first child arrives when a new home is erected in another part of the settlement. If the couple lives with the wife's family it is expected that the man will provide for his in-laws, sharing any fish or game caught, or products collected from the forest or crops harvested. Living with her parents, the woman feels more protected by her parents and brothers from domestic abuse. In more recent decades, especially in the case of families with leaders and where the men are professionals (teachers, health workers), men can negotiate with their spouse to avoid moving into the house of his in-laws and instead live with his parents. When a spouse dies, the man will generally look for a new wife and any children from the previous marriage will be looked after by the parents or family members of the deceased. In recent times, men recently widowed or divorced may continue to look after their children, but this is not typical. After the death of a spouse the woman can request to remain on the land where she lived with her husband. However, if a woman remarries she no longer retains her husband's land. This land will pass to their children or husband's relatives. Under Weenhayek customary practice, the death of a spouse does not signal an expulsion from the community or land that is occupied.

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The gender division of labor in Weenhayek families is well defined and rigid. Women are responsible for carrying out domestic and reproductive tasks and do not generally engage in wage labor. This rigidity

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<sup>35</sup> Capitán is the Spanish term that refers to this authority while *niyaat* is the traditional Weenhayek term for leader.

<sup>36</sup> Swedish missionaries linked to the Free Swedish Mission in Bolivia (MSLB) founded a Mission in Villamontes in 1948. This Mission closed in 2003 and in 2007 the Fundación Indígena Weenhayek (FI'WEN) was created to continue the religious and educational work of the Mission.

may be linked in part to the long-term presence of the conservative evangelical church.<sup>37</sup> Every Weenhayek family can request land to build a house or to cultivate with the request being made to the community leader (Capitán comunal). More recently, in the northern (Villamontes) portion of the TCO, those soliciting land or asking to create a new settlement must also obtain the permission of the head authority (Capitán Grande) of ORCAWETA, the representative organization of the Weenhayek.

Women's leadership and participation in the TCO Weenhayek has a checkered path. In the TCO's early years, 2000-2004, women had their own representative organization and had a designated position in ORCAWETA. However, the leadership changed in 2005 and since then women's participation has been limited to a single position (Secretary of Gender) named by male ORCAWETA leaders. Former women leaders remarked that in earlier times their work and participation was more supported by the Capitán Grande but that subsequent male leadership grew more hostile to women's presence at meetings and their efforts to direct more organizational resources towards women's projects. The reasons for this change are not entirely clear. Interviews suggested that subsequent ORCAWETA leadership did not encourage or seek women's participation. Women's leadership might also have been seen as a threat to the balance of power between clans and thus a threat to internal harmony.

There are emerging class differences between Weenhayek settlements with greater access to urban areas and the more isolated settlements found in the lower two-thirds of the TCO. In San Antonio, an urban settlement forming part of the city of Villamontes and the base of the Weenhayek's religious community, both men and women have greater access to educational opportunity. Men are more likely to seek university training while women do not and instead train to become teachers and health care workers. Importantly, the MSLB and now the Fundación Indígena Weenhayek, have provided a space for women to study and to exercise leadership in programs and activities in support of the community. In contrast, women's roles in rural settlements are much more constrained and focused on child rearing and maintaining the home. Access to education is limited to primary school and it is rare for female adolescents to leave the settlements to continue their studies. Rural families sustain themselves primarily through fishing, but also through hunting and gathering, reflecting their continued dependence on forest resources for subsistence. There is little agriculture and some small animal raising. Women will go into the *bosque* (the dry scrub forest) to look for *caraguata*, a fiber which is used to make clothing and domestic items as well as bags for sale. The sale of these items is an important source of income for women and it sustains families during the period when commercial fishing is not allowed and in the dry months when fruits and seeds are less available. None of the women interviewed owned land individually though some women held private fishing concessions granted by the Bolivian State. Fishing concessions can be very lucrative as they allow the owner access to the Rio Pilcomayo during the commercial fishing season and the ability to sell their catch to the market. Fishing concessions are relatively new and can be inherited as private rights granted by statutory law. This has led to growing individual wealth and accumulation by some which is counter to the norms of Weenhayek society. Weenhayek women inherit fishing concessions too, providing themselves and family members with the opportunity to earn significant income. In recent years, drought, upstream toxic spills linked to mineral extraction, and downstream alterations to the river's flow have impacted fish populations and imperiled traditional Weenhayek livelihoods including those of the women who hold fishing rights.

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<sup>37</sup> The evangelizers were a very conservative Swedish Church that banned dancing and the celebration of Weenhayek religious/cultural practices. Slowly but surely old practices are returning, but this is a source of constant tension.

Historically, land was not individually owned by members of the TCO, though the settlements closer to urban areas (Villamontes) are experiencing significant change. In recent years, in the northern section of the TCO, male heads of households have petitioned the Capitán Grande not to access more land per se but rather to obtain land to establish new settlements as a means to access resources from local government programs and corporate social responsibility programs linked to natural gas operations in the TCO. This diverges significantly from earlier, more participatory and consensus-based forms of decision-making in which all members of the community would come together to consider and discuss how land and resources were to be allocated. Former women leaders we interviewed were extremely critical of current male leadership and opaque decision-making around the creation of new settlements and noted that this has become a source of tension and conflict within the TCO.

### Territorial Claims in the TCOs

Table 1 provides basic data on the claims for territory made by the TCO Yaku Igua and Weenhayek. In each case, efforts to complete the *saneamiento* process of TCO lands are stalled. The TCO Weenhayek, with a territorial demand of approximately 201,000 hectares, has only secured title to one-third of the area originally demanded. The TCO Yaku Igua has fared much worse; the INRA has accepted less than one-quarter of its claims, and less than 10 percent has been formally titled. In both TCOs, there are many *terceros* (outsiders), mostly small scale ranchers, but also others with land claims and legally recognized lands within the TCO. **TCO lands are rarely contiguous in Bolivia, and this has led to tensions and conflicts with *terceros* that can turn violent.**<sup>38</sup> The situation is made even more complex by the exploration and exploitation of natural gas within the TCOs of the Chaco. Natural gas is one of Bolivia’s most important exports, and taxes and royalties linked to natural gas production provide hundreds of millions of dollars to local, regional and central governments. The existence of the TCO does not give the indigenous group any formal *de jure* say or veto over whether gas exploration and extraction can proceed (though of course it increases their *de facto* leverage over such projects).

**Table 1: TCO Yaku Igua and TCO Weenhayek Land Claims and Titling: 1997-2015**

TCO (Native Community Land)	Amount of Land in hectares			Estimated population	Number of communities
	Initially claimed	Accepted by INRA	Titled to TCOs (December 2015)		
TCO Yaku Igua	325,000	75,322	6,020	2,368	20
TCO Weenhayek	201,000	195,847	64,000	5,036	60

Source: CERDET 2015

Clearly, land formalization efforts related to the territorial claims of the titling of TCO Weenhayek and TCO Yaku Igua have produced mixed results. While the Bolivian state has legally *recognized* indigenous demands for territory, the amount of land *redistributed* is a small percentage of the amount originally

<sup>38</sup> See Anthias (2014) for detailed account of tensions around TCO land titling efforts in the Guaraní TCO Itika Guasu, also in the Department of Tarija.

requested – and deemed necessary for the group’s survival (VAIPO 2000). Indeed, the prioritization given to the titling of privately held lands within the TCO has generated irritation and resentment among indigenous leaders and members who note that TCO titling has resulted in legitimizing the illegal, private occupation of their territories. Prospects for amplifying TCO lands is complicated in that any additional land for a TCO must be procured through *recortes* (reductions of property considered not fulfilling the mandated social economic function) that are returned to the state and then added to the TCO. The situation of the TCO Yaku Igua is much more dramatic in that there are limited possibilities for adding significant amounts of land to the TCO. One strategy the TCO has explored is the purchase of privately held land, a practice which some women referred to in our interviews. But this requires financial resources and the TCO Yaku Igua, unlike other TCOs in the Chaco of Santa Cruz, has been largely unable to negotiate territory and/or significant financial resources in exchange for permitting hydrocarbon projects.

### Comparative Analysis

Table 2 summarizes elements of the preceding discussion to provide a simplified comparison of the organization, land holdings, and gender dynamics of the two TCOs. The main takeaway from this comparison is that while the organizational process of the Guaraní in Yaku Igua preceded that of the Weenhayek, to date the Weenhayek have made greater progress in securing rights to land and territory, largely because the regional political economy has offered less resistance to these claims: in Yaku Igua, regional elites have been sufficiently powerful to block TCO efforts to secure land. **In each of the organizations there has been a certain shift from traditional to somewhat more modernized (i.e., rotating) forms of leadership, but the Guaraní have made more progress than the Weenhayek around gender norms and the visibility of women’s leadership . This in turn means while women’s access to land is slightly easier in TCO Yaku Igua, there is far less TCO land to access in the first place. Constraints on TCO claims to land are less severe in TCO Weenhayek because their land is so poor that regional elites have been less interested in it.**

**Table 2: Gender, Land and Resource Access in the TCOs Weenhayek and Yaku Igua**

	Guarani Yaku Igua	TCO Weenhayek
Origin of the organization	Provincial APG-Yacuiba created with support of national level Guarani federation, the APG-Nacional in 1996	Weenhayek Organization created at level of historical territory in 1989 with support of Swedish Evangelical Mission and later of CIDOB, the lowland indigenous confederation
Origin of collective lands	Demands made in 1997, again in 2001 and again in 2005. None is successful, and TCO is granted minimal lands by government	Demands made in 1992, and government makes provisional grant of 195,000 ha in 1993, though by 2015 only 64,000 ha are titled
Source of organizational strengthening	Compensation from hydrocarbon company guarantees 20 years of income; APG-Nacional consolidates and becomes politically active; supportive government laws	Between 2000 and 2005, internal structure is reorganized to be more open. From 2007-2015 internal struggles over resources from hydrocarbon companies concentrates decision-making, weakens organization

	<b>Guarani Yaku Igua</b>	<b>TCO Weenhayek</b>
Traditional authorities	In 1987 moves from traditional authority structure to more formal modes of election and organization of leadership at provincial, municipal and community levels	In 1990s moves from traditional authority structure to more formal modes of election and organization of leadership at both municipal and community levels, though community level leadership currently weaker due to excessive concentration of leadership and competition for financial resources
Gender of leadership	Traditionally male, though in last decade 2 of 5 provincial level leaders (Capitanes Grandes) have been female; one of top two municipal leaders is always female; fewer female leaders (capitanes) but significant leadership in other thematic roles (health, production etc.) at community level; male migration means participation in meetings is mostly female	Of 40 positions in overall territorial organization, only 2 are women. Of 60 community level leaders, only one is a woman and she is appointed by Capitan Grande
Total area of TCO	75,000 ha claimed; 6,020 ha granted	197,847 ha claimed; 64,000 ha granted
Number of communities and 2012 population	20 communities (1 urban, 2 periurban, 17 rural)  2,368 people	60 communities (3 urban, 57 rural)  5,036 people
Access to land within community	Through inheritance from parents or approval of community leader in cases where a person moves from one community to another  Over time, women's access has increased because of greater sensitivity to gender equity	Through inheritance from parents or approval of community leader in cases where a person moves from one community to another
Access to natural resources within community	Few communities have woodlands; if they do, access to NTFPs and timber is modest and regulated	Most communities (80%) have forest access; many different NTFPs accessed. 30% of communities have access to hunting, timber extraction
Women's participation in mobilizations	Women participate in mobilizations for land and are especially present in roadblocks; women participate in protests and mobilizations as part of TCO	Male leadership of mobilization; women's participation limited to localized (issues directly affecting TCO Weenhayek) protests and roadblocks; women participate as part of TCO

	Guarani Yaku Igua	TCO Weenhayek
Recognition of women's rights	Single women are recognized as having rights to land	Women's land rights quite restricted because of dominance of male leadership
Women's economic activities	Most income from service work for other families; very little sale of ag products; care for kitchen gardens and small animals	Most income from handicraft production for sale. Women responsible for collection of NTFPs (fruit, firewood and fibers).
Women's access to other resources	No privileged access to funds from oil and gas companies; improving access to public programs/subsidies	No privileged access to funds from oil or gas companies or public program subsidies, and latter have been ended on charges of corruption in community or reduced because of cost

Factors affecting Women's Access to Land in the TCOs Yaku Igua and Weenhayek

*Promoting women's access to land under statutory and customary tenure arrangements*

The 2009 Constitution recognizes equal rights for both women and men to land, including the right to own property, to inherit property, and to share marital property. Despite multiple commitments and initiatives to promote gender equality, the early years of implementation of Ley, INRA Law 1715 (of 1996) failed to fully incorporate women as beneficiaries of land titling programs. **Firstly, women were not made aware of their legal rights; secondly women were not included in land regulation processes; and thirdly, INRA staff and the field brigades in charge of verifying land claims had no gender training and no skills to ensure that women would benefit from legal titling initiatives (Lastarria-Cornhiel 2009).**

In response, a coalition of women's organizations, feminist activists and scholars mobilized to pressure the government so that additional reforms were introduced. From 2001-2005, and supported by a World Bank Supplemental Land Administration Project in Bolivia (P074819),<sup>39</sup> INRA created new internal procedures to ensure women's participation. Following the example of other Latin American countries, women's names were to be added to land titles (Deere et al. 2011). When a legal title or regularization certificate is issued to a couple – regardless of their marital status – both names are to be included in the space provided for the titleholder with the woman's name recorded first. Under this new procedure, women are considered legitimate co-owners of land – and in the case of divorce or the death of her spouse, her ownership of the asset is legally recognized. **Our interviews with men reflected a degree of backlash to the policy of recording women's names first. One INRA official based in Tarija noted that the modified procedures are seen by some men as giving preference to women's property rights. In the cases discussed here, women do not generally participate in the meetings with INRA officials and**

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<sup>39</sup> The original project, the National Land Administration Project, received funding of US\$27.2 million, and the supplemental project was funded for US\$7.5 million. An important provision of both projects was to develop and apply equity criteria regarding the distribution, administration and tenure of land with respect to women - independent of their civil status. (USAID 2006)

**while very interested in their TCO land titling process they do not have information about the status of TCO claims.**

In recent years INRA has adjusted its approach so that all staff and field teams (brigadas de campo) conduct training sessions with women and men from the TCO on gender and land rights in their native language. The number of land titles issued to women, and titles issued jointly to men and women, rose significantly both at the national level and in the Department of Tarija especially after 2007 (INRA 2008). **However, despite these important successes in titling, men continue to control flows of information, access to and decision-making around land and natural resources. This is especially the case for TCOs in the Chaco where our interviews revealed that men lead and dominate negotiations with INRA and where male leaders are seen as dominating internal TCO decision-making over natural resources. In the case of the TCO Weenhayek, INRA officials meet periodically with community leaders (Capitanes) to discuss progress towards identifying titling of the TCO. It is rare for women to participate in these meetings or to be informed about discussions linked to the TCO's land claim as this is a process closely controlled by the Capitán Grande and the community leaders loyal to him. Furthermore, government and INRA staff have been hesitant to intervene in the internal decision-making structures of indigenous representative organizations.** In the case of the TCO Yaku Igua, women leaders we interviewed were aware of their land rights, having participated in extensive training and through their work with NGOs. **Nevertheless, they still did not enjoy the same sorts of relationships or interactions with INRA staff and thus were not fully informed as to the status of the TCOs land claims, and expressed a sense of being relegated to lesser roles within the leadership – especially ones that do not involve negotiations with external parties.** There is no legal mechanism to oblige TCOs to adopt principles of gender equity in their decision-making structures related to the management of TCO resources.

Box 4: \*\*\*\*\*

## **It's the destination not the journey: Three pathways to land in the TCO Guaraní Yaku Igua**

### **María Elena – APG, Community of Caiza near Yacuiba, community leader in charge of Housing and APG zonal leader of Education**

María Elena is a single mother with six children. Her parents migrated to Caiza from Chuquisaca where they were *empatronados* on a hacienda. Caiza is a mixed community of Guaraní and peasant families.

We received a small plot of land through the community organization (OTB), we did not buy it. Even though we are part of the APG Yaku Igua, the OTB still helps us to get land (Guaraní families) but other forms of support (i.e. projects) we do not receive any of that. With the plot of land we received, 15 by 30 meters, we have built our house.

Interview, Community of Caiza, August 5, 2016

### **Celina – APG, Community of Caiza, former leader**

Celina is a single mother, caring for seven of her children, who has lived in the Department of Santa Cruz. Together with her husband the family moved to Caiza where they bought a small plot of land to live and cultivate. He went to work in Argentina. Later they separated. Celina begged him to keep the land for their children but he has refused.

Today I have a small parcel, 33 by 23 meters, which I bought from an elderly couple with no children. Part of the land I bought – I gave a piece to my daughter so that she could build her home, and a piece of land to a son to do the same, and a piece of land to another son who has not yet built his home. And there will still be some space so that my other daughter can build too. We received support to build our homes but we did this by blocking access to the (natural gas) plant. We mobilized because all that land really belonged to the TCO and they made a (land) deal with outsiders. In the end though, we won and received support from the Mayor's office to build our homes. The mayor's office provides us with the building materials.

Interview, Community of Caiza, August 5, 2016

### **Sofía – APG, Community of Tembipe, former leader, in charge of Gender**

Sofía is separated from her husband. She has four children. Sofía is originally from Chuquisaca and was brought to Villamontes to work as a domestic servant without pay from age 7 to 14. After living in Santa Cruz with her husband, she returned to the Yacuiba and settled in Tembipe where she learned about the APG and the collective land claim. Via the APG Yaku Igua, the Community of Tembipe was able to use funds from an agreement with Transierra (a natural gas pipeline company) to purchase 15 hectares of land.

We wanted to leave the villages where we lived with peasant families. We wanted something of our own and this is when we made the request from the (government) Plan de Desarrollo Guaraní (Guaraní Development Plan) which at the time was to purchase land for the entire community. We were 18 families. Single mothers were included too. We all received something, but the Guaraní need for land is so great – we are all Guaraní in the community. Three hectares are communal and the rest is individual.

Interview, Community of Tembipe, August 6, 2016

End of Box 4 \*\*\*\*\*

As exemplified by the quotations above, women's individual ownership of land for cultivation is not common in either TCO, with most land being held as collective land (though we did find instances of women owning land in the Guaraní TCO Yaku Igua).<sup>40</sup> When women do own land, they tend to own small, inferior parcels of land. Under customary law, women are expected to join their spouse and move to his community thus diminishing her presumed need for land. A similar pattern is detected with respect to inheritance where sons are preferred over daughters. Even though collective titles are neutral concerning who gains access to land under customary law and do not explicitly prohibit women from gaining access to land, statutory law does not include specific instructions to ensure that women are not de facto excluded from participating as a full member of the TCO. These challenges reflect larger questions within the TCO as to who has the authority to distribute land, to act on requests for land, and to ensure that the process is fair. As discussed earlier, each TCO establishes its own internal processes, in which community leaders and higher level leaders play important roles. **These processes are based on consensus of TCO members, are flexible and often reflect "customary practice of the moment" (Deere et al. 2011, p 22). These practices do not necessarily align with formal law that recognizes equal access to land for both men and women. Indeed, there is no state oversight to ensure such equal access to land for women and men. One NGO Director noted that it is complicated to implement gender equality under customary regimes.** There is a clear tension here between protecting the rights of women to access land and resources and the state's commitment to respect the customary practices of indigenous groups. INRA does not maintain gender disaggregated data for TCO lands, neither does the Vice Ministry of Land. For the most part, the government has taken a hands-off approach to how land is accessed and/or distributed within TCOs leaving such decision-making to traditional authorities under the notion of "usos y costumbres".<sup>41</sup>

### *Male migration and women's access to land*

In many Guaraní communities of the Chaco, temporary or seasonal migration of male heads of households and young men is common (usually up to four months per year, but in some cases for longer periods). Men seek jobs as agricultural laborers and in construction and transportation. Migrants may travel to Argentina for the sugar cane harvest or work in the towns and farms of the Chaco. The income earned from off-farm work is an important part of the family economy.

One consequence of this migration is the 'feminization of agriculture' in which women assume larger roles in decision-making related to the farm and assume greater responsibility for holding the household together (Lastarria-Cornhiel, S. 2009). This is embedded in a broader process of rural change in Bolivia and elsewhere in Latin America in which small-scale agriculture is in decline and the nature of export agricultural production is rapidly changing. In Bolivia, some 86 percent of economically active rural

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<sup>40</sup> Van der Walk, A. and S. Flores (2012) come to similar findings in their study of Guaraní communities in the TCO Caraparí, also in the Department of Tarija.

<sup>41</sup> In an interview with former INRA Director, Juan Carlos Rojas about indigenous women's land rights and customary law in Bolivia one gets a more nuanced sense of the challenge of shifting traditional male authorities' attitudes toward a more gender inclusive stance. "Many leaders, very clearly... maintain a position, that is let's say, inequitable. In many cases this way of thinking and acting is considered part of uses and customs which certainly needs to be discussed... this we are going to leave for a discussion with them... Our concern as INRA is to guarantee what is set out (in the law) is effectively fulfilled and here there are two spheres where we need to work: on the one hand that INRA staff fulfill this decree, and the other sphere is that the beneficiaries accept it, not as an imposition of INRA (INRA, 2008: 122, translation is mine).

women work in agriculture (Lastarria-Cornhiel 2008). With less formal education than men, limited economic prospects and patriarchal attitudes towards protecting women and girls, fewer women migrate. On the other hand, gaining access to land is important not only for food security but also to provide a secure residence as well as a sense of social and cultural belonging and strengthening of social ties. Furthermore, indigenous women now attend community assemblies more frequently and must fulfill obligations to the TCO as representatives of their families. For Guaraní populations, land is fundamental to the preservation of cultural identity and the struggle to “live free, without an owner” – what the Guaranies describe as “nandureko”.

Women’s increased participation and leadership in community organizations is linked to the absence of men. When men are away, women attend meetings as the *suplente* or substitute representative of the family. The active participation of families within the TCO is important to substantiate territorial claims. **Guaraní women we interviewed highlighted two interesting trends: a significant number of households consisting of women and children (but no husband), and an important number of women assuming leadership roles in community organization including negotiations with local authorities for resources and projects.** Gas royalties—until recently—have filled the coffers of municipal governments in the Chaco, creating an array of targeted programs. For example, one popular departmentally funded program, the Programa Solidario Comunal (Communal Solidarity Program) Prosol, provides between US\$285-860 to rural families to support their productive activities.

#### *Capacity-building: Leadership development and collective action*

Indigenous women’s participation in land and territorial struggles in the Chaco reflects a broader struggle over the *right to have rights*, especially given the context of longstanding and pervasive discriminatory and authoritarian attitudes and practices (Dagnino, E. 2008). One indigenous leader we interviewed spoke of her own path to activism and leadership.

I did not realize I was Guaraní, my parents and grandparents never spoke of it. As a young adult, I became involved in organizing efforts to gain access to land with my father’s encouragement. From this I learned of other Guaraní families living under the system of *empatronamiento* (debt-bondage) on nearby farms. These families were paid in-kind ... but never cash. They were not allowed to leave, they had to work for the *patrón*. When our organization attempted to meet with them, we were told it was private property, we were not allowed to enter. We confirmed that there were women there, nearly all of them were women, but we could not investigate further. The worst thing was that no one knew they were there. (Interview, TCO Yaku Igua, July 11, 2016)

Non-governmental organizations, international donor support, and more recently, government programs play a key role in accompanying emerging women’s organizations in the Chaco. Through training workshops and mentoring, women learn about their economic, political and cultural rights<sup>42</sup> and gain skills and become comfortable with public speaking, negotiation and advocacy. One result is the very visible presence of women leaders extending from the community level to the Presidency of the Asamblea del Pueblo Guaraní, the national level representative body of Guaraní peoples. Within a two-year period (2011-2012), the number of women community *Capitanes* increased from 15 percent to 50 percent (Interview with CCMCIAT, 2016). Furthermore, Guaraní women have also been elected to key

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<sup>42</sup> An observation from the former Director of an NGO in Tarija noted the importance of framing discussions in terms of collective rights (*lo colectivo*) versus individual rights, and of working with the organizational structure of the APG including gaining the buy-in of male leaders.

positions in the regional and departmental assemblies. Justa Cabrera, President of the National Confederation of Indigenous Women of Bolivia (CNAMIB), is perhaps the most visible female Guaraní leader as a result of her role in the TIPNIS conflict. She notes that indigenous women continue to be discriminated against because “they are poor, they are women and they are indigenous” (CERDET, 2015: 8)

Legislation promoting indigenous representation and gender equity (and the concept of gender parity) has provided important opportunities to indigenous women to engage with the political process and to serve as public officials. These opportunities were rare before 2006. Today Bolivia has equal numbers of female and male ministers in the cabinet. Indigenous women are elected to the national parliament and departmental assemblies and serve in the public bureaucracy at the subnational level. Still, women in these positions inevitably confront the constraints of deeply patriarchal State institutions (expressed as discriminatory practices based on race, class, gender, ethnic origin, level of education, etc.), exacerbated by the terms in which they enter the State bureaucracy. In response to these challenges, one approach has been to promote the creation of “Agendas Políticas Departamentales” (Departmental Political Agendas) bringing together different groups of women, both urban and rural. These agendas, which emerged in light of subnational elections in 2015, are both calls to action as well as specific tools for promoting gender equity within subnational government (Coordinadora de la Mujer 2015).

However, assuming a leadership role can also carry risks, including exposure to harassment and abuse. Interviews with current and former women leaders in both TCOs revealed the degree to which women are on the receiving end of abuse from male leaders and community members. One member of the TCO Weenhayek described how she was voted out of her position as Secretary of Gender in ORCAWETA by her male counterparts. Her questions and unwillingness to engage in a fraudulent activity eventually led to her expulsion. Working with a group of Weenhayek weavers on her own, she now coordinates directly with the local mayor’s office in Villamontes and with regional government authorities to secure resources and support, bypassing the traditional organization, ORCAWETA. She notes that currently there are no real spaces for women’s participation and that there is little accountability or transparency on the part of ORCAWETA. (Interview, TCO Weenhayek, July 9, 2016). However, local authorities are willing to work with indigenous women who can be quite insistent with local authorities that they must attend to them on the basis of gender equity in Bolivian law.

### *Impediments to women’s access to land and resources*

Formal recognition of TCO lands is still a recent phenomenon for members of the TCO Weenhayek, and an ongoing struggle for members of the TCO Yaku Igua. While the government has formally recognized indigenous territorial claims, the redistribution of land remains enmeshed in a complex web of histories, claims and territorial projects. It is important to remember that the struggle for territory is a collective struggle, assumed by indigenous men and women alike. In the case of the TCO Yaku Igua, the reconstitution of territory lies at the heart of a long-term vision to self-govern, to live *iyambae* (*without patrón*). **Negotiations for land and territory are conducted within the traditional structure of the indigenous organizations which until recently has been dominated by men in the case of the APG Yaku Igua and remains under male control in the case of ORCAWETA.**

An important dynamic of customary-based tenure arrangements is that despite changes in the formal law calling for an end to discriminatory practices towards women, there is no corresponding requirement calling for customary law to end such discriminatory practices. Customary law within the TCOs studied is not written and is often flexible. As previously noted, the Bolivian government has adopted a hands-off approach in terms of how land and natural resources are distributed within the TCO.

In our interviews with women members and leaders, the obstacles they identified as limiting their access to land were largely focused on outside threats from the *karai* (whites/mestizos) and less focused on internal discriminatory attitudes and practices that limit such access. Women are very aware of the consequences and potentially damaged social relations that would result from challenging male authority structures. Their collective cultural identity (as Weenhayek or Guarani) prevails over their gender identity.

On a day to day basis, women heading into the forest to gather wood, access water, collect seeds and fruits and *caraguata* often encounter *terceros*, mostly ranchers, whose properties lie within the TCOs. Women reported that ranchers would occasionally fence an area blocking their route. They also reported incidents of verbal abuse, dogs being set loose, and threatening physical behavior. Women note they have little recourse when this happens and usually go to their husbands or to the community Capitán to complain. **Given the asymmetries of power between indigenous women and the ranchers, and the ever-present possibility of violence, community leaders seek to maintain harmonious relationships with *terceros* living within the TCO.**

## Summary and Conclusions

When we reflect upon the theme of gender equality in Bolivia we find that, beyond the important gains achieved by the feminist movement and women's organizations during the 1990s, and now articulated in the New Constitution and the accompanying set of legal norms and social policies, the structures that sustain patriarchy and gender inequality persist across social, economic and political spheres (Wanderley, F 2010).

The above quote by political scientist and researcher Fernanda Wanderley reflects a sense of dissatisfaction and frustration with the lack of a deeper and broader transformation of Bolivia's institutions. **Our interviews with women indigenous leaders, activists and NGO staff echoed these same sentiments of being "stuck" in still unequal and patriarchal rules and relationships. While bundles of *de jure* rights have shifted for women in Bolivia their *de facto* capacity to exercise those rights remains constrained.**

These sentiments also point us toward the gendered paradoxes of contemporary Bolivia. This is a country in which a process of genuine political change since 2006 has led to profound and concrete achievements in both the Constitution and laws and yet where, at the same time, it has proven exceptionally difficult to embed a gender equality focus in Bolivian politics. **This is also a country that has gone further than any other in Latin America in recognizing customary institutions of resource tenure, collective governance and administration of justice, without properly tackling the many ways in which these institutions diminish women's actions and their interests.** Another part of this paradox is that Bolivia has witnessed a significant increase in women's political participation, and a growing importance of women in an increasingly feminized agrarian economy – yet this participation has delivered many more benefits at the community and family levels than for women's specific interests. **In short, the persistence of patriarchal attitudes and practices and of cultural and customary structures that sustain men's power and women's subordination undermine the efficacy of legislative gains and of women's organizing and political mobilization.** In this closing section we make final observations on these different dimensions of Bolivia's gender paradox.

Bolivia has one of the most progressive legal frameworks for promoting gender equality and legal access to land. Nonetheless the Bolivian experience reinforces the lesson that it is not enough to simply declare that women and men have equal rights to land, even in the most progressive of constitutional contexts. Land formalization and tenure security efforts have faltered in reaching the vast majority of small title

holders across the country (Fundación Tierra 2016). And in the case of the TCO Weenhayek and TCO Yaku Igua, land formalization has not fulfilled the promise of territory and self-governance. Furthermore, under collective tenure arrangements women are less likely than men to be included in informational sessions or to be consulted or included in decision-making around titling issues. Exclusionary practices remain deeply embedded in traditional organizations.

There is a significant gap between the letter of the law and the realities of practice, and customary institutions (including customary tenure) do not help close this gap: indeed they sometimes aggravate it because these customary institutions are themselves embedded in customs of asymmetric gender relations. In such contexts, interventions aimed at promoting indigenous women's access to land and resources must design specific training, activities and procedures to include women, perhaps especially in the presence of customary resource tenure.

The co-existence of statutory and customary law within TCOs gives rise to further challenges. In many interviews we heard of tensions between the two systems, especially related to dispute resolution. For the most part, land disputes among members are resolved at the community level with larger disputes moving to higher levels of traditional authority. Even disputes with non-indigenous *terceros* tend to be resolved locally between the rancher and the indigenous leadership. More protracted conflicts or crimes are taken up by state authority. **By and large, it seems that members of both TCOs recognize and rely on local authorities to resolve disputes. However, in some cases, women TCO members expressed their concerns that male authorities were not fair in their treatments of the parties to the conflict, that there was little transparency in decision-making, and that the decisions made did not abide by the (statutory) law.** To reiterate a point made earlier, discriminatory practice is deeply embedded in traditional authority. This authority does not always acknowledge women's viewpoints or priorities. Women's leadership, NGOs and donors have to stay alert to situations in which women's voice and women's rights are not respected.

And yet, despite this on-going treatment, women's mobilizing and organizing for land and territory has been central to the success of indigenous TCOs claims, and continues to play an important role in access to land and forest resources in the Bolivian Chaco. Indigenous women readily acknowledge their role as defenders of land, water, forests and their determination to create a better world for their children and grandchildren. They are consistently on the frontlines of protests and marches, resisting dispossession and demanding to be consulted. In the process, they often expose themselves and their children to physical and emotional harm.<sup>43</sup> Women leaders feel they make significant sacrifices to assume leadership positions, both financially and emotionally. They derive a sense of empowerment from their engagement, but they are also at the receiving end of significant harassment and abuse from other male members and leaders and often feel excluded or marginalized. In the TCO Weenhayek, women leaders felt that women's leadership was stronger in the past when male leadership was more democratic and transparent, and in both TCOs women are also keen to have greater access to information, to be better prepared, to be better negotiators and strategists.

The women we interviewed were clear in articulating these challenges. "Don't forget that patriarchy also renews itself," commented one, while several noted the serious gap between gains in *de jure* rights and *de facto* rights: **"Much of what we accomplished is on paper but we've not been able to create mechanisms to ensure these commitments are met. We need citizen review boards. Our legal framework is advanced, it's just not effective."** Expressing similar sentiments another commented:

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<sup>43</sup> In the TIPNIS conflict, women and children were among the injured when police forces moved to break up the march (Fundación Tierra 2012).

“Our challenge is to create the norms and regulations from this legal framework. Here is where we are encountering the most resistance.” While there is legislation, enacting the enabling laws that operationalize the legislation is always a struggle and where things bog down.

The leadership roles played by indigenous women in the Chaco are remarkable and have been part of a broader renovation of leadership in women’s organization in general. Previously such leadership was dominated by the presence of professional and middle class women without the participation of broader segments of society. As one woman commented: “A new generation of women, emerging from social movements, are the protagonists of this change process. What is positive is that these new actors represent parts of society that have not participated before.” In this new context, the challenge for women’s organizing is to build bridges among different ethnicities and classes of women to address the legacies of patriarchy and colonialism. Moreover, within the organizations in which women participate, a range of identities are at play. There are tensions between party, community and gender loyalties, as well as among class, ethnicity and gender. Women’s ideological positions are not all the same, meaning that the challenge of forging common agendas is complex.

These different legislative and organizational dynamics are occurring in a context in which indigenous women are assuming greater responsibilities and roles in agricultural production in Bolivia. This phenomenon reflects broader observations and debates about the feminization of agriculture in Latin America. Guaraní women we interviewed confirmed that more and more women are in charge of their *chaco* (parcel) either as heads of households or because men are engaged in off-farm wage labor in urban areas or further afield. While such increased women’s visibility in agricultural production might be seen as an indicator of empowerment, caution is advised. First, small-scale agriculture in Bolivia is in crisis with declining yields and growing constraints linked to water and climate change, and so women’s gains on the farm must be located in a context of an agricultural sector in crisis. Second, this increased role of women in the agrarian economy has not yet shifted the patriarchal practices that inform the customary institutions within which indigenous women operate.

One final point merits making. Indigenous TCOs are in the midst of a dynamic process of change that has profound impacts on traditional livelihoods and the management of collective territories. In this process of change, TCO leaders and members have interacted with a wide range of state and private actors including NGOs, international donors, private hydrocarbon companies, INRA officials, ranchers, private contractors, state agencies, political parties, etc. How such outside actors manage these interactions has significant impact on relationships within the TCO. **Too often external actors see traditional leaders as decision-makers with control when in fact traditional lowland populations’ leaders are more like spokespeople who are expected to consult with the community before making decisions.** When negotiations are limited to discussions between TCO leaders and outside actors, this is seen as off stage deal-making, and while external bodies may see such discussions as more efficient, they are in fact exclusionary. Consequently, they end up undermining traditional practices of community information-sharing and debate. Indeed, these practices foment a culture of the individual over the collective, contributing to internal conflict and ultimately risk eroding the collective institutions that have sustained indigenous groups through periods of crisis. Hence, getting women incorporated into the negotiating processes should be a strategic focus going forward – both the state and private companies must agree to conditions that ensure indigenous women have full information and fully participate in such negotiations and that their concerns are addressed.

**Furthermore, outside actors presume again and again that TCO leadership is male, and that the TCO economy is governed by men.** As this study has shown, this is not the case. At the very least the gendering of TCO governance is contested, and gender roles within the TCO economy are changing profoundly. As long as gender-biased silences and suppositions guide how external actors work with

TCOs, the patriarchy within TCOs will be sustained, weakening possibilities that progressive gains in national legislation might translate into significant progress for women within the TCO.

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## Appendix A: Institutional Frameworks – Zambia and Bolivia

**Table A.1. Government of the Republic of Zambia: Relevant Laws, Policies and Strategic Plans**

Date	Title	Implications for Women Living in Customary-Based Tenure Systems
2016	Constitution of Zambia (Amendment) [No 2, 2016]	Confirms the equal worth of women and men and their right to freely participate in and build a sustainable political, legal, economic, and social order; constitution only recognizes customary law to the extent that customary law is consistent with the constitution
Gender-sensitive laws and policies		
1989	Intestate Succession Act (No. 5)	Takes precedence over customary law; spouse and children are entitled to the house. However, does not cover land in the estate which at the time of death was held under customary law
2004-2008	Strategic Plan of Action for National Gender Policy	Recognizes that customary law confers land ownership to men; promotes working with traditional leaders and local authorities to ensure women acquire land without reference to their marital status
2007	The Matrimonial Act	Applies to women who have a statutory marriage; provisions for maintenance and division of marital property following dissolution regardless of contribution; does not apply to customary marriages
2011	The Anti-Gender Based Violence Bill	Includes intentional destruction or unreasonable disposal of property (such as a house) in the definition of economic abuse to be dealt with in accordance with the Criminal Code and the Penal Code
2013-2016	National Gender Audit	Increases women’s knowledge of the land acquisition process from 60% to 100%; ensures agriculture and land policies do not marginalize women; collects sex-disaggregated data about land ownership
2014	National Gender Policy	Tackles gender-related land issues; including in customary areas where ‘local practices and beliefs’ exclude women from owning land
2014-2016	Strategic Plan, Ministry of Gender and Child Development	Continues implementation of the 2014 Gender Policy, including increasing the number of customary laws that adhere to regional and international gender instruments (e.g., CEDAW)

<b>Date</b>	<b>Title</b>	<b>Implications for Women Living in Customary-Based Tenure Systems</b>
2015	Gender Equity and Equality Bill, 2016	Recommends evaluating and reviews proposed laws and customary laws and practices affecting or likely to affect gender equity and equality, and where necessary revise the law, proposed laws, and customary practices; modifies or changes social and cultural practices to eliminate prejudices and customary practices which are based on the inferiority or superiority of either sex
<b>Land and Forest Laws and Policies</b>		
1995	The Lands Act [Chapter 184]	Allows alienation of land and its conversion from customary to state land; its gender neutral wording may allow discriminatory practices to continue though does not actively permit discrimination
2002 to present	National Land Policy (numerous drafts since 2002; 2015 draft, under discussion)	Would create customary land boards that include four women (two of whom are engaged in farming), collection of taxes on customary land used commercially and progressive tax rates based on property value (state and customary land)
2015	Customary Land Administration Bill (under discussion)	Would recognize customary rights, contingent on draft national land policy passing (Interview, 26 August 2016)
2015	The Forests Act, No 4.	All trees and forest produce vested in the President, commercial use of forests products requires a permit or license
2015	The Wildlife Act, No 14	Permits customary rights and community subsistence use of non-wildlife products

**Table A.2. Plurinational State of Bolivia: Relevant Laws, Policies, and Strategic Plans**

<b>Date</b>	<b>Title</b>	<b>Implications for Women Living in Customary-Based Tenure Systems</b>
1975	Codigo Civil (Civil Code)	Intestate property is to be divided equally among all children (daughters & sons) and the surviving spouse (Art 1094 & 1103). The surviving spouse retains her/his half of the property.
	Intestate Property	
1979	Codigo Familiar (Family Code)	Affirms that spouses have equal rights and responsibilities (Art. 96); Provisions regarding marital property (Art. 102); and Property acquired through grant or adjudication of the State (i.e.

Date	Title	Implications for Women Living in Customary-Based Tenure Systems
		property distributed through agrarian reform, under titling programs, etc. (Art 111)
1990s 2003: Expanded	Derecho Libre de Violencia en la Familia (Family Violence-free Law)	The expanded version of the Law recognized a more comprehensive view of violence including economic, physical, psychological, and institutional. Sanctions increased.
1996	Ley INRA 1715  (the Agrarian Reform Law 1715)	Creation of National Land Reform Institute. Creation of TCOs – indigenous communally-managed territories. Explicit recognition of equal rights to land by women and men. “Equity criteria will be applied in the distribution, administration, tenure and use of land in favor of women, independent of their civil status.” (Article 3, Paragraph V)
1997; 1999; 2005 & 2010	Ley de Cuotas  (Cuotas Law)	Decreases greater gender representation in elected political office and ministerial positions. Also used to support gender equity in leadership positions within social organizations, including indigenous organizations.
2006	Ley 3545 de Reconducción Comunitaria de la Reforma Agraria 3545 (Law of Community Reorientation of Agrarian Reform)	Establishes a more flexible, rapid land titling process, the social-economic function of land and the reversion of ill-used lands to the State. Calls for expropriated lands to be given to indigenous and peasant communities. Establishes control over land transfers. Promotes greater gender equity with respect to land ownership and stipulates that the woman’s name must appear before the man’s name on the legal title. (Reg. 8)
2007	Supreme Decree 29215	Advances women’s land rights through the implementation of training and awareness raising activities related to agrarian processes.
2009	Nueva Constitución Política del Estado (New Constitution)	Establishes gender equality. Land ownership is an equal right for women and men. Eliminates all forms of discrimination against women in matters of land access, ownership and inheritance.
2010	Unidad de Despatriarcalización  Vice-Ministerio de Descolonización (Depatriarchalization Unit of the Vice Ministry for Decolonization)	Seeks to address and eradicate persistent patriarchal practices and gender discrimination with the State bureaucracy.

Date	Title	Implications for Women Living in Customary-Based Tenure Systems
2012	Ley Contra el Acoso y la Violencia Política (Ley 243)	Protects women leaders in political positions from harassment by men.

**Appendix B: Organizations Consulted – Zambia and Bolivia**

**Zambia: Individuals from the following organizations were consulted:**

- Biocarbon Partners
- Caritas Zambia
- Chipata District Land Alliance
- Gender Links for Equality and Justice
- Law Association of Zambia
- Ministry of Lands, Natural Resources and Environmental Protection
- Ministry of Chiefs and Traditional Affairs
- National Legal Aid Clinic for Women
- Non-Governmental Organizations’ Coordinating Council (NGOCC)
- Petauke District Land Alliance
- Tetra Tech ARD, Inc.
- Women and Law in Southern Africa Research Trust., Zambia
- Women for Change
- University of Zambia (UNZA), School of Humanities and Social Sciences
- University of Zambia (UNZA), School of Law
- Zambia Governance Foundation
- Zambia Land Alliance
- Zambia Land Alliance – Nyimba

**Final Interview Schedule in Zambia**

Key Informant Interviews	Number of Interviews
<b>National Level Government officials</b>	
Ministry of Land, Natural Resources and Environmental Protection	2
Ministry of Chiefs and Traditional Affairs	1
<b>Traditional Leaders</b>	
Chiefs	2

<b>Key Informant Interviews</b>	<b>Number of Interviews</b>
Village headpersons	2
Induna (Chief's advisor)	1
<b>Civil Society Representatives</b>	
National (Based in Lusaka)	10
Local (Eastern Province)	2
<b>Academics</b>	1
<b>Focus Group Discussions in Zambia's Eastern Province</b>	
Ngoni women (patrilineal social group)	1
Nsenga women (matrilineal social group)	2

**Bolivia: Individuals from the following organizations were consulted:**

Asamblea Departamental de Tarija – Assembly, Department of Tarija

Asamblea de Pueblos Guaranies (APG Yaku Igua) – Assembly of Guaraní Peoples – Yaku Igua

samblea de Pueblos Guaranies (APG Carapari) – Assembly of Guaraní Peoples – Carapari

Asociación de prodcutoras de mani – Peanut Growers Association (women's group)

Centro de Estudios Regionales para el Desarrollo de Tarija (CERDET) – Center for Regional Studies for the Development of Tarija

Centro de Capacitación e Investigación de la Mujer Campesina de Tarija (CCIMCAT)

Fundación Tierra

Instituto Nacional de Reforma Agraria (INRA) – National Institute for Land Reform (Department of Tarija)

Instituto para el Desarrollo Rural de Sudamérica (IPDRS)

Organizacion de Capitanes Weenhayek (ORCAWETA) – Organization of Weenhayek Captains

**Final Interview Schedule in Bolivia**

<b>Key Informant Interviews</b>	<b>Number of Interviews</b>
<b>Government officials</b>	
National Land Reform Institute – Tarija Office	1
Representative, Autonomy Delegation to Tarija	
<b>Civil Society Representatives</b>	
Local & Regional	4
National & other departments	2

<b>Key Informant Interviews</b>	<b>Number of Interviews</b>
<b>Academics</b>	1
<b>Individual Interviews with TCO members &amp; leaders</b>	
TCO Weenhayek	
Elected Indigenous Leader Departmental Assembly	1
Leaders	3
Members	7
TCO Yaku Igua (Guaraní)	
Leaders	4
Members	4

## Appendix C: Data Collection Tools: Focus Group and Key Informant Interview Protocols

### Focus Group Discussion Questions with Women – Zambia

1. Thank you for meeting with me today. Can you briefly talk about your life in this village and your day to day activities. Do you go into the forest to collect? What things do you collect? Are they for household consumption? Do you barter/sell them?
2. Can you talk a bit about how you (your spouse/family) would request land and or gain access to the forest? Do you have to travel a distance to access these resources or are they nearby?
3. Much of the reading that I have done about Zambian women's rights to land and forest resources says that a woman's ability to access land and forest resources depends on a man or a male relative. However, no one ever gives an example of what that dependency between a man and a woman could be or in what circumstances a woman asks a man for this. I was wondering if you could help me understand this better:
  - a. Do you agree that a woman's ability to access land and forest resources is based on permission of men or male relatives?
  - b. If not, can you give me an example of how women access land and forest resources on their own?
  - c. If so, can you give me an example of when a woman might ask a man or depend on a man for land or access to the forest?
  - d. If a man in this village were to deny his wife or a female relative access, what would other women, men or traditional leaders such as the village headperson in the village do to assist here? (probe more; who are the "kind" of men and women that a woman would want to reach out to for assistance (status, occupation)?)
  - e. Can you walk me through a time when women in this village did come together and help one another access land and/or forest resources? (probe, what was the circumstance, who was involved, what was the outcome)
  - f. If not in this village, have you ever heard about this happening elsewhere?
4. Can you tell me a little bit about how the matrilineal land tenure system works here?
  - a. How has the matrilineal/traditional land tenure system changed in your life time?
  - b. If you wanted to try to change some of these practices, who would you want to work with?
5. With the ability to convert customary land to leasehold status that outsiders including business owners and other investors are able to control land in your area. With such changes in ownership how easy is it for you to:
  - a. Know where the boundaries between land that they have customary rights to and these new investments begin and end?
  - b. Approach people with power or authority such as lodge owners, the DFO, or national park guards (ZAWA) to across through the areas that they control to collect resources such as firewood, berries, mushrooms or other resources (please specify)?
  - c. Do you think there is any confusion among these officials (please specify which one) about what your customary rights are to collect these resources?

- d. If so, can you describe a time when you had an encounter with an official or lodge / game guard and it seemed that you both had a different understanding of what rights to the forest are?
  - e. How did that encounter end?
  - f. Did you seek help from anyone if so whom?
  - g. If not why not? (ask about village headperson, chief, police or other family members including women)
6. Under the 1995 Lands Act, a woman who holds customary rights to land can convert that land to a leasehold status, which would give her as a rights holder protection under different Zambian laws than under customary law. Could you give me an example of why a woman might want to convert land in this way? What are the advantages / disadvantages (probe more)?
    - a. What might a woman “lose” if she decided to convert land to leasehold status?
  7. What kinds of meetings do you attend about land and forestry issues in your village”
    - a. Have you ever been to a meeting where an investor explains about a new project or business that they want to do in your area?
      - i. If so, what can you tell me about that meeting (probe more)
  8. Please explain to me what happens to women in this area when their spouse or relative dies? Can women inherit land and other assets? Do they lose access to land/housing? Must they leave the settlement? Can you give me some examples?
  9. Do women in your area work with regional and/or national organizations that include actions or programming to promote women’s land rights? (probe here)
  10. Is there anything else about women and land and forest right issues that I have not given you the opportunity to say today and that you want me to know?
  11. Do you have any questions for me?

### **Individual Interview Questions with Women – Bolivia**

1. Thank you for meeting with me today. Can you briefly talk about your life in the settlement and your day to day activities. Do you (your spouse/family) have a plot of land that you cultivate? Do you go into the forest to collect? What things do you collect? Are they for household consumption? Do you barter/sell them?
2. Can you talk a bit about how you (your spouse/family) request land and or gain access to the forest to collect honey, plants and seeds? Do you have to travel a distance to access these resources or are they nearby?
  - a. Do you agree that a woman’s ability to access land and forest resources is based on permission of men or male relatives?
  - b. If not, can you give me an example of how women access land and forest resources on their own?

- c. Have women made requests (either individually or collectively) for land and access to the forest? What happened?
  - d. Can you give me an example of when a woman might ask a man or depend on a man to request land or access to the forest?
  - e. If a man in this settlement were to deny his wife or a female relative access, what would other women in the settlement do to assist here? (probe more)
  - f. Can you talk about the activities that take place in your TCO that affect your ability to access land and forest resources?
3. Please explain to me what happens to women in your TCO when their spouse or relative dies? Can women inherit land and other assets? Do they lose access to land/housing? Must they leave the settlement? Can you give me some examples?
4. With respect to decisions made about the activities of third parties within the TCO:
  - a. Do you think you and other women are informed about issues that affect the TCO (i.e. land that is sold to, leased to, or recovered from private individuals or the government, natural gas operations)?
  - b. Do women in the TCO participate in the free, prior and informed consent (Consulta y Participación) processes within the TCO?
  - c. Have women in your TCO organized to claim the right to receive information, participate in these processes? What was the result?
5. Do women in your TCO participate in regional and/or national organizations/mobilization that include actions to promote women's land rights? (probe here)
6. Is there anything else about women and land and forest right issues that I have not given you the opportunity to say today and that you want me to know?
7. Do you have any questions for me?

## Interview with Customary Authorities (chiefs) – Zambia

1. Thank you again for meeting with me. Could you share with me how long you have been a chief and what you consider to be your primary responsibilities?
2. Can you tell me a little bit about how the matrilineal/traditional land tenure system works here?
  - a. How has the matrilineal/traditional land tenure system changed in your life time?
  - b. If you wanted to try to re-introduce some of these practices, who would you want to work with to do so?
  - c. Can you discuss how the system of allocating land for individual and collective purposes has changed or not changed since you have been chief?
  - d. How are decisions made regarding individual/family requests for land? Can women request land? Do women participate in these decisions about land allocation, and in what ways?
  - e. How are decisions made regarding access to common areas (such as forested areas for gathering honey, mushroom, firewood, and other materials)?
  - f. Do men and women enjoy the same rights to inherit land?
  - g. Do men and women enjoy the same rights to inherit land and other assets (i.e. access to forests) after the death of a spouse?
  - h. Can they continue to occupy the land, or must they leave the community?
3. It seems that with the ability to convert customary land to leasehold status, outsiders including business owners and other investors are able to ask for your approval to convert customary land in your chiefdom.
  - a. Do you agree that outsiders are coming to you and asking for access to land / forest and are using the 1995 Lands Act to convert customary land?
  - b. Have any women come to ask you about converting land from customary holdings under the 1995 Act? What are the reasons why they wanted to convert land?
  - c. The new Draft Land Policy is under discussion. What do you think are the advantages and disadvantages of the new policy with respect to attention to women's rights to land and resources?
4. With the changes in ownership that happen after conversion, how easy is it for local communities members to:
  - a. Know where the boundaries between land that they have customary rights to and these new investments begin and end?
  - b. Has anyone in your chiefdom ever come to you to express their concern over a land conversion?
  - c. If so, what were the circumstances?
5. In your role, you need to balance the needs of your people with the needs of the government to generate economic growth?
  - a. Can you give me an example of how you try to balance these?
  - b. How are decisions made about ceding lands/giving concessions to third party actors?
  - c. How do women participate in such decisions?

6. Can you talk about your involvement in regional and national mobilizations and negotiations over customary land in your chiefdom with government authorities?
7. Is there anything else about women and land and forest right issues that I have not given you the opportunity to say today and that you want me to know?
8. Do you have any questions for me?

### **Interview with Customary Authorities (capitanes) – Bolivia**

1. Thank you for meeting with me. Could you tell me how long you have served as Capitán of your TCO and what you consider to be your primary responsibilities?
2. Can you update me on the status of your TCO's claims to territory and discuss how the system of allocating land for individual and collective purposes has changed or not changed with the introduction of "usos y costumbres"?
  - a. How are decisions made regarding individual/family requests for land? Can women request land? Do women participate in these decisions about land allocation, and in what ways?
  - b. How are decisions made regarding access to common areas (such as forested areas for gathering wild honey, seeds, and other materials)?
  - c. In your TCO, who has the right to settle/create new communities?
3. Your TCO reflects the significant presence of third parties. Can you talk about how the presence of non TCO members and activities in your TCO impacts land/forest use? Can you talk a bit about how these activities have impacted/continue to impact how common areas are accessed and managed?
  - a. How successful has the TCO been at petitioning public lands to be incorporated into the TCO?
  - b. How do TCO members learn/discuss issues related to the actions of third parties within the TCO?
  - c. How are decisions made about ceding lands/giving concessions to third party actors?
4. Can you talk a bit about "usos y costumbres" as it relates to practices regarding inheritance of land in your TCO:
  - a. Do men and women enjoy the same rights to inherit land?
  - b. Do men and women enjoy the same rights to inherit land and other assets (i.e. fishing spots, access to forests) after the death of a spouse?
  - c. Can they continue to occupy the land, or must they leave the community?
5. Can you talk about your TCOs involvement in regional and national mobilizations and negotiations over territory and territorial control with government authorities?

6. Is there anything else about women and land and forest right issues that I have not given you the opportunity to say today and that you want me to know?
  
7. Do you have any questions for me?

**Interview Questions for civil society leaders and advocacy (national level) in Bolivia and Zambia:**

Thank you for agreeing to meet with me today.

1. Can we talk a little about your project/advocacy/research work on women's land rights and forest resources management? What is your experience working on indigenous/peasant women's land rights issues? And in what capacity? How does your organization support/engage with indigenous /peasant women's land rights organizations/movements?
2. In your opinion, what the key issues around improving women's land rights and forest resources? What are the key obstacles?
3. In what ways does customary law enhance women's access to and governance of land and forest resources? In what ways is it used to limit or otherwise frustrate increased access?
4. Are you engaged directly with or have studied women's land tenure issues in Eastern Zambia/ TCOs in the Chaco of Bolivia? Have women mobilized -or are mobilizing- to improve their access to land and natural resources? Can you site specific experiences?
5. What are the arguments and strategies you/grassroots actors use to improve women's rights to access in collectively-based tenure systems? Who are they seeking to influence? Are you being listened to?
6. Is there anything else about women and land and forest right issues that I have not given you the opportunity to say today and that you want me to know?
  
7. Do you have any questions for me?
  
8. (For chain or snowball sampling): Given your expertise in this field and based on what we have discussed today, can you think of anyone else that I should speak with? If so would you mind sharing that person's or organizational name with me? (for chain or snowball sampling)

## ENDNOTES

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<sup>i</sup> Source: Rights and Resources Initiative. 2015. “Who Owns the World’s Land? A Global Baseline of Formally Recognized Indigenous and Community Land Rights.” Washington, DC: RRI. <http://rightsandresources.org/en/publication/view/whoownstheland/>

<sup>ii</sup> PNUD 2008 La Otra Frontera: Usos alternativos de recursos naturales en Bolivia.