Why Does Deliberative Community Consultation in Large-Scale Land Acquisitions Fail? A Critical Analysis of Mozambican Experiences

¿Por qué falla la consulta comunitaria deliberativa en las adquisiciones de tierras a gran escala? Un análisis crítico de las experiencias mozambiqueñas

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Abstract

Community consultation prior to large-scale land acquisitions (LSLA) is a cornerstone that justifies the portrayal of projects as partnerships or land grabs. This study focuses on one of the countries most targeted by LSLA in the last decade, namely, Mozambique. We examine the legal and theoretical bases that support community consultations and analyse their corresponding everyday practices in Mozambique. The article argues that, although the existence of these participatory forums is inspired by normative ideals of popular deliberation, the prevailing practices in these spaces are diametrically opposed to deliberative foundations and values. As shown in this study, this mismatch between theory that is institutionalized in legal frameworks and practice derives largely from the interplay of hierarchical relations anchored in, *inter alia,* formal and customary ethnically based realms, gender disparities, and livelihood orientations. A core argument of the article is that any attempt to ameliorate these practices must consider critical insights regarding the centrality of enhancing social equality and inclusion in participatory spaces —challenges that are immense in places marked by deep structural inequalities.

Keywords: consultation, deliberative democracy, large-scale land acquisition, land grabbing, land rights, Mozambique.

Resumen

La consulta con la comunidad antes de las adquisiciones de tierras a gran escala (LSLA) conforma la piedra angular sobre la cual se justifica la representación de proyectos como asociaciones o la toma de tierras. Este estudio se centra en uno de los países con más LSLA en la última década, a saber, Mozambique. Examinamos las bases legales y teóricas que apoyan las consultas comunitarias y analizamos sus correspondientes prácticas cotidianas en Mozambique. En el artículo se sostiene que, aunque la existencia de estos foros participativos se inspire en ideales normativos de deliberación popular, las prácticas predominantes en tales espacios se muestran diametralmente opuestas a fundamentos y valores deliberativos. Como se expone en el estudio, este desajuste entre la teoría

institucionalizada en los marcos jurídicos y la práctica deriva, en gran medida, de la interacción de relaciones jerárquicas ancladas en las esferas étnicas formales y consuetudinarias, las disparidades de género y los medios de subsistencia. Un argumento central del artículo es que, en cualquier intento de mejorar dichas practices, se han de considerar aspectos críticos relacionados con la mejora de la igualdad social y la inclusión en espacios participativos —desafíos inmensos en lugares marcados por profundas desigualdades estructurales.

Palabras clave: consulta, democracia deliberativa, adquisición de tierras a gran escala, apropiación de tierras, derechos a la tierra, Mozambique.

1 Introduction

The most recent decade has seen an unprecedented number of large-scale land acquisitions (LSLA) in the Global South, particularly in Sub-Saharan Africa, targeting a vast array of sectors (*e.g.,* agriculture, forestry, and mining). Although the majority of projects are of an extractivist character —*i.e.,* involving «the extraction of natural resources, in large volume and intensity, mainly to be exported as raw materials» (Gudynas 2015, p. 13)— and have been historically accompanied by social and environmental costs at the local level, the current wave is considered a potential driver of local development (Von Braun and Meinzen-Dick 2009). Local consultations, through which affected communities may establish dialogue with investors and make gainful decisions about the exchange of their land, are a key enabler of mutually beneficial agreements and have therefore been institutionalized in national and international frameworks.

In Mozambique, one of the countries most frequently targeted by recent LSLA, a World Bank study has estimated that LSLA amounted to 2.67 million hectares between 2004 and 2009 (Deininger & Byerlee 2011, p. 62), whereas data from the Land Matrix (2017) suggest that LSLA accounted for 2.43 million hectares between 2004 and 2014. Considering that approximately 80 % of Mozambique's economically active population is engaged in agriculture, the processes through which large parcels of land are conceded to investors have fundamental implications for the future of rural livelihoods (FAO 2016).

Community consultations seem to be a major (if not the sole) novel aspect in processes of LSLA in Mozambique. No attempts to consult communities were made in colonial Mozambique as Portuguese monocultures partly reliant on coerced African labour evicted smallholders from the most fertile lands (Roesch 1991, pp. 252-253; Bowen 2000, pp. 28-36). Likewise, after independence, the government of the Frente de Libertação de Moçambique (FRELIMO), aligned with Soviet ideas, allocated the best lands to state farms and promoted the communalization of agricultural production in a top-down fashion (Bowen 2000, pp. 48-57). Since the liberalization of Mozambique's economy in the late 1980s, new participatory pro-

cedures have emerged, from multi-level elections to local community consultations (Canhanga 2009). The latter are meant to mimic ideal archetypes of deliberative democratic processes that have become increasingly popular in the last three decades, in line with efforts to expand and deepen citizen participation.

Despite an increasing amount of literature on LSLA, no single overarching study has been devoted to analysing consultations. Thus, in the current body of literature, this novel forum for participation is not addressed in a comprehensive way that promotes the understanding of researchers, practitioners, and policy-makers involved in the discussion or the implementation of community consultations. Our study addresses this gap in the literature as it seeks to *a)* identify the everyday practices in consultations between investors and communities in Mozambique and *b)* analyse these practices in relation to their theoretical basis of deliberative decision-making, which is increasingly institutionalized in international and national legislative frameworks.

The research questions that have guided our study are as follows. 1. What are the everyday practices underpinning consultation processes? 2. How do these practices correspond to their legal and theoretical precepts? 3. How do these practices affect the deliberative potential of these forums?

To answer these questions, our study builds on a critical reading of a wide range of secondary material (*i.e.,* previous research, reports, and legal public documents). In addition, we utilize primary material from fieldwork in 2013 and 2017 in the Lower Limpopo Valley, where a Chinese company was in the process of occupying 20,000 hectares of land previously used by smallholders. Fieldwork consisted of 213 structured interviews (the analysis of which is presented in Porsani *et al.* 2017) and a series of semi-structured interviews and focus group discussions upon which this study draws. Semi-structured interviews were conducted with non-governmental organizations, company representatives, and local governmental and traditional authorities. Focus groups were conducted with individuals who had lost or were about to imminently lose land (*i.e.,* who had fields in the area targeted by the investor). To reach persons who had lost land, we relied on a civil society organization that advocated for farmers' land rights (Forum of the Gaza NGOs, or «Fonga»), visited the areas surrounding the newly ploughed Chinese fields, and approached a site where fields had been allocated to some of the affected farmers.

This article is organized as follows. In the next section, we present the international framework and the Mozambican legislation on consultations in LSLA along with the main ideas of and criticism to deliberative theory that inspired these legal frameworks. These theoretical bases are important to the extent that they constitute the normative basis sustaining consultations, establish the

archetype of these encounters, and create particular expectations for them. In the two sections thereafter, we present the way these ideals are expressed in the everyday practices underpinning consultations in Mozambique and analyse their conformance to what is legally required as well as what is posited by, and challenging to, deliberation. We assess these everyday practices based on a vast literature review and our own case study material. Our analysis reveals a multitude of factors that shape consultation processes, in which hierarchical relations between, *inter alia,* formal and customary ethnically based realms along with contextually meaningful social identities such as gender defy the deliberative aspiration of these forums. Our findings reiterate the view of consultations as processes in which formal or substantial exclusion prevails despite their sound theoretical and legal basis. Following our analysis of everyday practices, complexity is added as we present understudied cases in which material or immaterial community gains emanated from consultations and discuss proposals from civil society to improve these unequal encounters. Finally, we conclude by stressing that only critical engagement with the challenges of achieving deliberation in places marked by deep structural inequalities can inform understandings and prospects of LSLA as coercive or consensual processes.

2
International and national frameworks on community consultation and their theoretical basis

Following the most recent global food crisis of 2007-2008, sizeable land acquisitions in the Global South were reported (Grain 2008; Deininger & Byerlee 2011). These land acquisitions are often referred to, particularly by critical voices, as land grabs (Li 2011; Borras *et al.* 2013). Although definitions of land grabbing may vary, they usually allude the land dispossession of inhabitants of the Global South due to national or international investors' purchasing or long-term leasing (usually of 30 to 99 years) of the «best» areas (with regard to irrigation potential, proximity to markets and availability of infrastructure) (Zoomers 2010; Cotula 2011; Deininger 2011).

The first international attempt to instate community consultations prior to LSLA was conducted in 2009 under the «principles for responsible agricultural investment that respects rights, livelihoods and resources», or PRAI (FAO *et al.* 2009). In 2012, the «voluntary guidelines on the responsible governance of tenure of land, fisheries and forest in the context of national food security», or VGGT, were formulated (FAO 2012). More recently, the «principles for responsible investment in agriculture and food systems», or RAI, were approved (CFS 2014).

These principles and guidelines are part of the push for international codes of conduct to govern transnational investments in ways that craft «win-win» development outcomes (Borras & Franco 2010). These instruments extol the promotion of commercial farming as essential to close the productivity gap between African agriculture and the rest of the world where the Green Revolution materialized in addition to the potential of investments to improve local access to capital and technology, create employment, enhance the livelihoods of smallholders and vulnerable groups, promote participation and inclusiveness, and eradicate poverty (FAO *et al.* 2009, pp. 1-2; CFS 2014, pp. 3-4). As highlighted by Borras and Franco, these codes do not question «the variable kinds of development that may be envisioned by communities […] [but presuppose] a certain vision of successful national capitalist economic development, along with an implicit belief that rural poverty is the result of poor developing countries' failure to follow this particular path» (Borras & Franco 2010, pp. 510-511).

The question is accordingly not *if* but *how* LSLA should occur. Instatement for community consultation does not emerge in a legislative vacuum but builds on broader bodies such as the «Universal Declaration of Human Rights» (UN General Assembly 1948), which affirms that no one shall be arbitrarily deprived of his/her property and that everyone has the right to an adequate standard of living,[1] and, more specifically, the «Indigenous and Tribal Peoples Convention» (ILO 1989), and the «United Nations Declaration on the Rights of Indigenous Peoples» (UN 2007). The latter adjudicate people's right to lands, territories and resources that have been traditionally occupied[2] along with the centrality of free, prior, and informed consent on matters that affect them.[3] Accordingly, the international legal framework enshrines people's right to determine their own priorities for the process of development[4] and claims that when faced with proposals for extractive activities in their lands, potentially affected peoples should be consulted with the objective of achieving agreement on the sharing of benefits from these activities or, at least, fair compensation for eventual damages.[5]

In a similar vein, the previously mentioned PRAI, VGGT, and RAI instruments proclaim that consultation with communities should occur prior to decision-making, should be organized in a climate of trust, and should comprise ongoing dialogue. Information should be made available on which communities can evaluate the proposal and understand their rights; procedures should be clarified and formulated to minimize elite capture and to allow the manifestation of the voices of vulnerable groups; decisions should be documented in a formal record, and means to monitor and enforce agreements as well as to resolve disputes should be defined (FAO *et al.* 2009;[6] FAO 2012;[7] CFS 2014).[8]

The rhetoric of this international framework is in line with Mozambique's land legislation, which has been praised as one of «the most

1 Universal Declaration of Human Rights, Articles 17 and 25.
2 Indigenous and Tribal Peoples Convention, Articles 14 and 15; United Nations Declaration on the Rights of Indigenous Peoples, Article 26.
3 Indigenous and Tribal Peoples Convention, Article 16; United Nations Declaration on the Rights of Indigenous Peoples, Articles 10, 18, 19, 20, and 32.
4 Indigenous and Tribal Peoples Convention, Article 7; United Nations Declaration on the Rights of Indigenous Peoples, Articles 3 and 23.
5 Indigenous and Tribal Peoples Convention, Articles 6 and 16; United Nations Declaration on the Rights of Indigenous Peoples, Articles 10, 19, 20, 28, and 32.
6 Principles for responsible agricultural investment that respects rights, livelihoods and resources, Principles 3 and 4.
7 Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security, Principles 3B.6, 9.9, and 12.5-12.10.
8 Principles for responsible investment in agriculture and food systems, Principle 9.

promising legal frameworks in Sub-Saharan Africa» (Kloeck-Jenson 2000). Accordingly, the National Policy on Land has attempted to reconcile private investments with the fight against poverty (Mozambican Republic 1995). It specifies that it is the interest of the State to «ensure the rights of the Mozambican people over the land and other natural resources, as well as promote investment and the sustainable and equitable use of these resources»[9] (Mozambican Republic 1995). To ensure these outcomes, Mozambique's 1997 Land Law (which replaced the previous Land Law of 1979 and its Regulation of 1986) maintained all land, as well as all natural resources, under the ultimate property of the State,[10] but recognized the legality of customary land rights[11] and rights over land occupations exceeding ten years (*i.e.,* «good faith occupation»)[12] – conditions that can be attested through verbal testimonies[13] (Mozambican Republic 1997). These assertions were corroborated by the latest Mozambican Constitution, which reiterated state ownership of all land[14] and the rights acquired through inheritance or occupation[15] (Mozambican Republic 2004). Additionally, the Land Law declared equal land rights for men and women,[16] gender equality that was reaffirmed by the latest Constitution[17] (Mozambican Republic 1997; 2004).

These dual assertions (*i.e.,* that customary forms of land access are valid and that women and men should have equal land rights) are by no means harmonious. Customary land rights vary throughout Mozambique largely due to ethnic traditions. In the southern and central zones, patrilocal residence customs prevail, and land inheritance follows a patrilineal mode; in the north, matrilocal residence customs prevail, and land inheritance follows a matrilineal mode (Vijfhuizen & Waterhouse 2001, pp. 266-269). These differences imply that, despite contextual exceptions, women in the southern zones tend to have weaker control over land, particularly in situations of divorce or widowhood (Vijfhuizen 2001, pp. 89-91).

Notwithstanding this contradiction between the formal and customary systems, the official recognition of customary forms of land access and of gender equality constitutes legal benchmarks that support the understanding of Mozambique's land framework as exemplary in the African context, particularly in terms of safeguarding communities' rights in relation to external investment interests. Consequently, according to the Land Law, men and women —as individuals or collectives—[18] have the right to obtain «land use titles»[19] known as DUATs[20] (Mozambican Republic 1997). Although the acquisition of these titles is not a requirement for communities or their members,[21] they are compulsory for investors who want to secure land access[22] (Mozambican Republic 1997).

Specifically, the Land Law determines that the title release to investors is dependent on the approval of the local district administrator, which may be given after consultation with communities to

9 National Policy on Land, Section IV, point 18.
10 Land Law, Article 3.
11 Land Law, Articles 12 and 13.
12 Technical Annex to the Land Law Regulation, Article 1.
13 Land Law, Article 15.
14 Constitution of the Republic, Article 109.
15 Constitution of the Republic, Article 111.
16 Land Law, Article 16.
17 Constitution of the Republic, Article 36.
18 Land Law, Articles 10 and 12.
19 Land Law, Article 16.
20 DUAT (Direito de Uso e Aproveitamento da Terra) literally means the «Right to Use and Benefit from the Land».
21 Land Law, Articles 13 and 14.
22 Land Law, Article 11.

confirm that the requested land has no occupants[23] (Mozambican Republic 1997). The regulation of the Land Law states that, if the land is occupied, common work should be carried out involving different parts (members of the local government, the investor, and the potentially affected local community) with the goal of defining the terms of partnership between the investor and the community[24] (Mozambican Republic 1998; 2010a). Recently, three specific procedures were legally instated: consultations should occur in at least two meetings held 30 days apart;[25] one copy of the minutes of the consultation should be given to the community;[26] and the district administrative authorities should state the consultative procedures to safeguard the effective participation of community members[27] (Mozambican Republic 2011). The minutes of the consultations, along with complementary documents (among which is an «exploration plan»),[28] should then be submitted to the appropriate state organ,[29] which may issue a provisory authorization of two to five years[30] (Mozambican Republic 1997; 1998). If the exploration plan is followed (a judgment that should be done by the «Cadastral Services»),[31] the authorization or DUAT may be extended to 50 years with possible renewal;[32] otherwise, it should be revoked[33] (Mozambican Republic 1997; 1998).

According to these regulations, consultations preceding LSLA constitute the forum where communities decide whether to cede land to investors and the terms of eventual concessions. There is, however, one exception to these two scopes: when the government deems the land in question to be of national interest. In such case (according to the Law of Territorial Planning, the Regulation of Relocation Process due to Economic Activities, and their related regulations and directives), involuntary land expropriation is legally recognized (Mozambican Republic 2007; 2008; 2010b; 2012; 2014). In these circumstances, communities do not hold the right to refuse the project or the ceding of their land. However, they do hold the right to information,[34] participation,[35] and fair compensation that should enable the establishment of life standards equal to or better than the previous ones[36] (Mozambican Republic 2007; 2008; 2010b; 2012; 2014). Consultations in contexts of involuntary land expropriation constitute a central forum where affected communities should be able to discuss and negotiate compensatory measures of their choice[37] (Mozambican Republic 2007; 2008; 2014). At least four public consultations should be held[38] (Mozambican Republic 2012; 2014).

This Mozambican legal framework is aligned with the international ideals of local participation through consultations as key enablers of consensual outcomes that should be beneficial to all parts involved or, at least, not detrimental to any of these parts. Such correspondence is further substantiated by Mozambique's declared view of consultation as «a very important procedure […] that brings closer different interests, creates an environment for negotiation,

23 Land Law, Article 13.
24 Regulation of the Land Law, Article 27, that was further clarified by the decree 43/2010 which modified the Regulation of the Land Law.
25 Complementation to the Regulation of the Land Law, Article 1.
26 Complementation to the Regulation of the Land Law, Article 2.
27 Complementation to the Regulation of the Land Law, Article 6.
28 Land Law, Articles 19 and 20; all required documents are specified in the Regulation of the Land Law, Article 24.
29 As specified in the Land Law, Article 22.
30 Land Law, Article 25; Regulation of the Land Law, Article 28.
31 Regulation of the Land Law, Articles 3 and 37.
32 Land Law, Articles 17 and 26; Regulation of the Land Law, Article 31.
33 Land Law, Article 27; Regulation of the Land Law, Article 32.
34 Law of Territorial Planning, Article 21; Regulation of the Law of Territorial Planning, Articles 10, 69 and 71; Regulation of Relocation Process due to Economic Activities, Article 14; and Technical Directive to the Process of Elaboration of Resettlement Plans, point 2.3. Point 2.1 of the Directive of Expropriation due to Territorial Planning specifically states that prior to expropriation due national interest, the government should issue a public statement specifying the reasons for, and the area affected by, expropriation; and that such statement should be published in the Bulletin of the Republic.
35 Law of Territorial Planning, Article 22; Regulation of the Law of Territorial Planning, Article 9; Regulation of Relocation Process due to Economic Activities, Articles 4 and 10.
36 Law of Territorial Planning, Article 20; Regulation of the Law of Territorial Planning, Article 70; Directive of Expropriation due to Territorial Planning, point 2.2; Regulation of Relocation Process due to Economic Activities, Articles 4 and 10; and Technical Directive to the Process of Elaboration of Resettlement Plans, point 2.1.
37 Law of Territorial Planning, Article 9; Regulation of the Law of Territorial Planning, Article 75; Regulation of Relocation Process due to Economic Activities, Articles 13 and 23.
38 Regulation of Relocation Process due to Economic Activities, Article 23; Technical Directive to the Process of Elaboration of Resettlement Plans, point 4.2.

[and] enables the discussion and impartial analysis of diverse aspects […]»[39] (Mozambican Republic 2014).

The Mozambican and international frameworks' prescriptions for community consultation have not emerged in a theoretical vacuum. On the contrary, they are part of (and institutionalize) ideals of popular deliberation that aim to deepen citizen participation. The deliberative trend that began to gain traction from the 1980s has been propelled not only by the perceived need to create spaces for interaction between different actors (*e.g.,* communities, social movements, national and international non-governmental organizations or NGOs, private enterprises, and formal state structures) but also by growing attention to new modes of decision-making in which individuals can be actively involved rather than passive subjects. These developments are closely linked to growing concerns with the legitimacy of decisions from, as well as the efficiency of, elitist Schumpeterian models of democracy in which «democracy is seen as a competition among elites, with ordinary people having a say only at election times» (Dryzek 2010, p. 23).

The terms «deliberative», «participatory», and «radical» are often used interchangeably by scholars to underscore a normative view of democratic processes in which participants, as equal citizens, reason and engage in a mutually respected debate. As formulated by Cohen and Fung,

> citizens should have greater direct roles in public choices or at least engage more deeply with substantive political issues and be assured that officials will be responsive to their concerns and judgements […] radical democrats emphasize deliberation. Instead of a politics of power and interest, radical democrats favour a more deliberative democracy in which citizens address public problems by reasoning together about how best to solve them —in which no force is at work, as Jürgen Habermas said, «except that of the better argument» (Cohen & Fung 2004, pp. 23-24).

Consequently, inclusion, equality, reason, and commitment to a common good rather than bargaining for self-interest are viewed as the foundations of deliberation. In this sense, popular deliberation is intrinsically linked to the free and equal exposition and appraisal of different views in processes whose outcomes can be deemed legitimate to the extent that «all those subject to them have [had] the right, capacity, and opportunity to participate» in their making (Dryzek 2010, p. 21). In addition to strengthening the legitimacy of decision-making, some deliberative democrats suggest that deliberation, by allowing the appraisal of different perspectives and knowledges, tends to produce better decisions and performs better at solving problems than its alternatives (Bohman 2006; Landemore 2014).

Deliberative processes have been increasingly incorporated in policy- and decision-making throughout the world as preferred best practices underpinning support for decentralization and accounts of political legitimacy (Sass & Dryzek 2014, p. 5; Lalander

39 Technical Directive to the Process of Elaboration of Resettlement Plans, point 4.

2016). Nonetheless, as deliberative ideals are institutionalized and enacted, experiences reveal the challenges of ensuring some of the most central fundaments or requisites of deliberation, namely, inclusion and equality (Gambetta 1998; Parkinson 2006; Karpowitz *et al.* 2009; Sass & Dryzek 2014; Abdullah *et al.* 2016). Accordingly, critical voices note the utopian character of deliberation in the face of inherent power asymmetries within any group and the partiality of forums that inevitably exclude, formally or substantially, the most disenfranchised voices, legitimizing the *status quo* (Sanders 1997; Young 2001). Through this critical lens, deliberative processes stand accused of working in potentially undemocratic ways by «discrediting on seemingly democratic grounds the views of those who are less likely to present their arguments» (Sanders 1997, p. 349).

In the following sections, we will analyse the manifestation of deliberative ideals in the context of LSLA in Mozambique. Based on a literature review and a case study analysis, we scrutinize the everyday practices that prevail around consultations and discuss their correspondence to their legal precepts and deliberative fundaments.

3
What do we know about the conundrum of community consultations in LSLA in Mozambique?

Before we begin this section, we would like to clarify that our analysis is not restricted to any particular type of project since the legal precept of community consultation is overarching and applicable to any land investment (*e.g.,* related to agriculture, agro-livestock, forestry, and the mining sector).

Although there are examples in which no form of community consultation occurred (Hanlon 2004; Åkesson *et al.* 2009; Matavel *et al.* 2011), in most cases, meetings seem to occur prior to LSLA (Norfolk & Tanner 2007). The practice of holding only one (often short) consultation was widespread until 2011, when a ministerial decree required investors to hold at least two sessions with communities.[40] These encounters among communities, representatives from the government, and representatives from the company contribute to validating the perception of the legality of land deals in conformance with international and national legal frameworks. Nonetheless, although legislation has made strides in the materialization of meetings, its implementation remains limited by everyday practices that jeopardize deliberation. These practices, schematized in Figure 1, imply that consultations irremediably corroborate land concessions.

40 Complementation to the Regulation of the Land Law, Article 1.

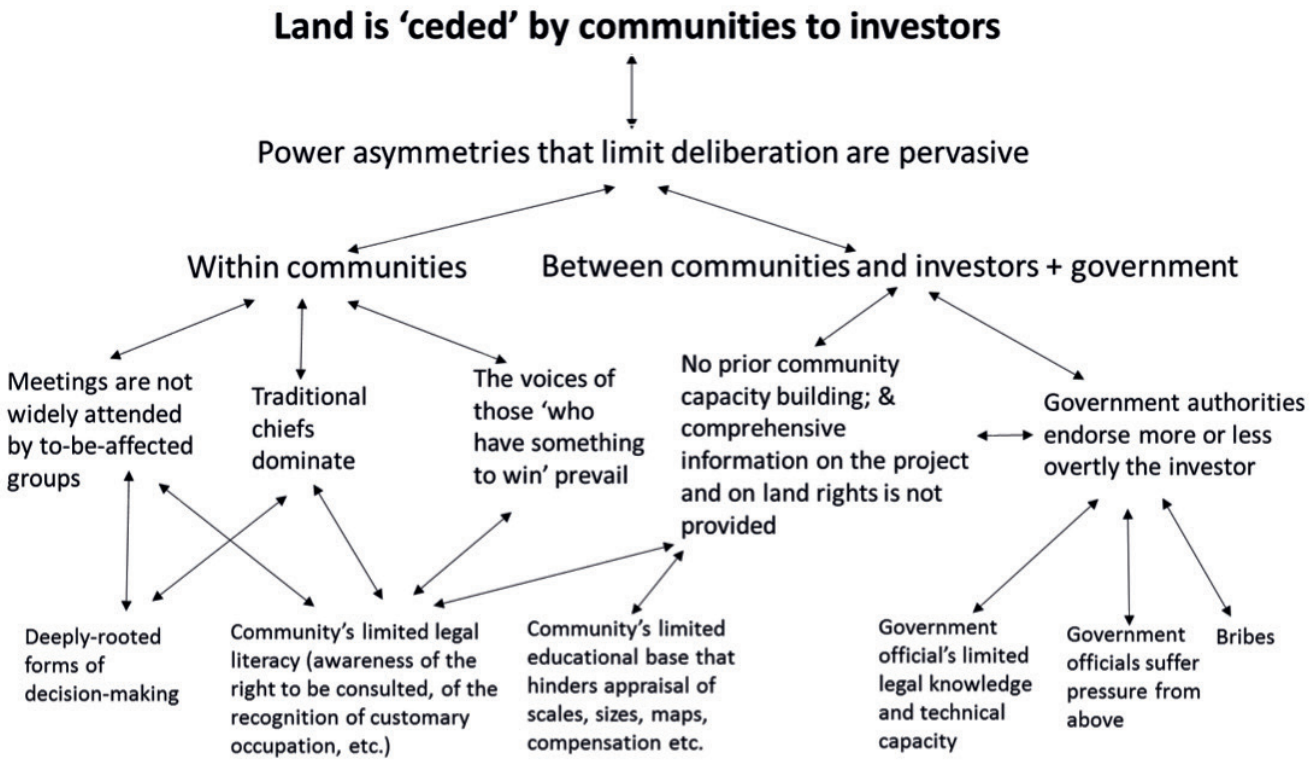

Figure 1
Everyday practices within community consultations that lead to land being ceded to investors

As noted by Tanner & Baleira (2006), the initial meeting often serves to determine a date for the subsequent meeting, which stresses positive aspects such as job creation and infrastructure instead of providing factual information on the project's characteristics and expected impacts (Waterhouse *et al.* 2010; Andrew & Van Vlaenderen 2011). These meetings are held with the main purpose of obtaining corroborative signatures on agreements that are vague and oftentimes contradictory (German *et al.* 2015; Milgroom 2015). This means that as a matter of rule and despite a substantial legal framework on communities' right to information,[41] as an integral part of informed consent, communities rarely know «who the investor is; what the planned investment will be […]; what land the investor has requested […]; or how the planned investment will impact the […] the community» (Knight 2010, p. 140).

The suppression of central project information severely compromises communities' deliberative capacity since one cannot deliberate something that one does not understand. Deliberation thus assumes that individuals have sufficient knowledge about the issues under consideration (Cohen & Fung 2004, p. 27). Access to information and accurate data has been problematized by scholars who are critical of deliberation in inevitably plural communities since inequality of information (and of the ability to process it) tends to

41 Principles for responsible agricultural investment that respects rights, livelihoods and resources, Principle 3; Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security, Principle 12.11; Principles for responsible investment in agriculture and food systems, Principle 9; Law of Territorial Planning, Article 21; Regulation of the Law of Territorial Planning, Articles 10, 69 and 71; Regulation of Relocation Process due to Economic Activities, Article 14; and Technical Directive to the Process of Elaboration of Resettlement Plans, point 2.3.

be the rule rather than the exception in decision-making processes (Sanders 1997, pp. 351-354; Przeworski 1998, p. 145).

In theory, and in line with the international framework and Mozambican legislation, in addition to providing affected communities with an understanding of the project, consultations should allow for «effective» and «meaningful» participation of individuals and groups, «negotiation», and «impartial analysis».[42] Dynamics that limit these processes seem to derive from investors' and governmental authorities' attempts to simplify and speed procedures while complying with traditional forms of decision-making. Accordingly, most (if not all) meetings occur, at least initially, only with the village leadership vested in the figure of the chief and individuals close to him who give their consent without conversing with other community members (Borras *et al.* 2011; Fairbairn 2013).

Despite recognition that consultations should account for existing power imbalances and strive to reduce elite capture,[43] the chiefs' prompt approval is often explained in terms of the seizing of private benefits, such as gifts, food, money, favours, and work positions (Baleira & Buquine 2010; Fairbairn 2013). However, there is also evidence that chiefs perceive that they were not given the option of refusing the deal (Milgroom 2015). With the knowledge that investors' plans are endorsed by higher authorities, local chiefs are certainly aware of the relationships at stake and are wary of the eventual implications of their own positioning.

Another way of approaching the lack of direct community engagement is in terms of «who appoints whom» as legitimate decision-makers or, in other words, who is responsible for the selective involvement of particular individuals in consultations. It is often noted that investors accompanied by government officials first address community leaders (Otsuki *et al.* 2017). However, in most cases, this seems to be the result of local chiefs' self-selection since the praxis is that, when different projects arrive in communities, the people who come forward are, as a matter of rule, the chief and his mates (Wragham 2004). The rootedness of this practice in long-standing forms of decision-making exemplifies how «culture meets deliberation» and shapes «the way political actors engage one another» in more or less overt deliberative forms (Sass & Dryzek 2014, p. 20). Decision-making in rural Mozambican communities has been centralized in the figure of the village chief. This feature was strengthened by the colonial system of leadership co-optation through indirect rule and by the reinstated relationship of local authorities with the FRELIMO government (West & Kloeck-Jenson 1999; Bowen 2000, pp. 47-49). Exploitative as they may be in some cases (such as when using their privileged position to garner personal benefits), they also serve important roles of community cohesion and conflict resolution that are usually perceived locally as more legitimate than alternatives emanating from the formal governmental realm (West & Kloeck-Jenson 1999).

42 Indigenous and Tribal Peoples Convention, Article 6; Principles for responsible agricultural investment that respects rights, livelihoods and resources, Principle 4; Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security, Principles 3B.6, 9.9, and 12; Principles for responsible investment in agriculture and food systems, Principle 9; Complementation to the Regulation of the Land Law, Article 6; Technical Directive to the Process of Elaboration of Resettlement Plans, point 4. See also Indigenous and Tribal Peoples Convention, Article 6.

43 Principles for responsible agricultural investment that respects rights, livelihoods and resources, Principle 4.2.2; Principles for responsible investment in agriculture and food systems, Principle 9.

As a consequence of this intra-community power asymmetry, even when the community as a whole is invited to meetings, the voice of the chief and voices endorsing his words are the voices raised (Otsuki *et al.* 2017). When community members are present, women are usually absent even though their livelihoods are proportionally more dependent on land (Waterhouse *et al.* 2010; Porsani *et al.* 2017). These meetings are generally poorly attended even when the project is expected to affect a large number of people (Tanner & Baleira 2006).

Although the power emanating from the chief's authority seems to be a central factor in the absence of women's and other possibly divergent voices in consultations, it is not the sole reason. In one case, a woman reported that the views of the younger male population who were interested in employment had prevailed (Matavel *et al.* 2011). In general, the voices of those who expect to gain from the land deal predominate (such as tractor drivers and skilled workers), to the detriment of those who are likely to lose from it (such as women, farmers, and charcoal producers) (Waterhouse *et al.* 2010; Hanlon 2011). Furthermore, meetings at which governmental authorities are present tend to be associated with the leading party FRELIMO (Wragham 2004). Thus, non-exclusive social identities or standpoints based on a combination of factors (such as gender, age, ethnicity, livelihood or class, and political inclination) interact to validate some voices while silencing others.

The above practices withstand the specific legal requirement for «consultative procedures to safeguard the effective participation of the community»,[44] more general premises of equality,[45] particularly gender equality,[46] and the expectation that diversity in deliberative processes should be conducive to decisions that are valuable or beneficial to the community as a whole. This epistemic value is usually explained in terms of the wider variety of perspectives that deliberation can account for in comparison to its alternatives (Bohman 2006; Landemore 2014). Nonetheless, the Mozambican experiences of community consultations indicate that intra-community diversity and divergence work against the most disenfranchised parts in a context where deliberative processes fail to include, formally or substantially, the perspectives of all affected groups.

Although deliberative democrats do not deny the existence of self- or group interests, they tend to emphasize the difference between decisions made in private spheres and those made in public spheres and the congruency of rationality with political values (such as fairness, liberty, equal opportunity, public safety, and common good), which leads to public «decisions that are not simply a product of power and interest» (Cohen & Fung 2004, p. 26). As Esterling *et al.* (2015, p. 530) remind us, divergence and disagreement are expected in any deliberative process since, «with no disagreement, reasons need not be offered nor considered». Nonetheless, these processes require that participants «listen to others who do not

44 Complementation to the Regulation of the Land Law, Article 6.

45 Universal Declaration of Human Rights, Article 2; Constitution of the Republic, Article 36.

46 Universal Declaration of Human Rights, Preamble; Principles for responsible investment in agriculture and food systems, Principle 3; Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security, Principle 3B.4; Land Law, Article 16.

share their beliefs, values or interests, to engage in constructive dialogue, to gain knowledge, and perhaps to be persuaded about the merits of views that differ from their predispositions» (Esterling *et al.* 2015, p. 529).

In a context where diversity is not a neutral attribute but irremediably implies inequalities, the equal treatment of participants in deliberative processes is severely compromised, as the Mozambican experiences indicate. Consultations' formal or substantial exclusion emphasizes the importance of recognizing group-based identities or perspectives and rendering visible intra-community power asymmetries to counteract what scholars critical of deliberative processes consider «a tendency» of deliberation to privilege certain types of agendas, speeches and cultures to the detriment of those already underrepresented, such as women, ethnic minorities, and the poorer (Sanders 1997, p. 349; Parkinson 2006, p. 36).

In addition to power discrepancies within communities, the lack of divergent voices in consultations seem to derive from inequalities between communities and external agents (*i.e.,* investors and governmental authorities) (Peters 2013; German *et al.* 2015). The pervasive lack of education is one of the aspects that contributes to make community members ill equipped to negotiate on an equal footing with the investor (Wily 2011). This unequal basis is exemplified by the affected individuals' inability to grasp the real magnitude of thousands of hectares (Åkesson *et al.* 2009), their low understanding of the worthiness of the ceded land and resources and of the consequences of the project to the existing land uses (Hanlon 2004), and their inability to evaluate the fairness of the deal (Otsuki *et al.* 2017). Unsurprisingly, different cases report that communities easily fall prey to discourses that rely on external technology that is not understood locally, such as geographic mapping and agro-ecological zoning that reveal underutilized spaces (Waterhouse *et al.* 2010).

These difficulties are reinforced by low levels of legal literacy since individuals are often unaware that the Land Law recognizes customary rights and stipulates consultations prior to land concessions (German *et al.* 2015). According to research conducted in Northern Mozambique, only 40 % of the population was cognizant of the legal necessity of consultations (Matavel *et al.* 2011). The international framework recommends that «the State or other relevant parties should inform individuals and communities of their tenure rights, and assist to develop their capacity in consultations and participation, including providing professional assistance»[47] (FAO 2012). This recommendation is comprehensible since a prerequisite for deliberation is that participants, aware of their rights, are able to critically assess all raised arguments (Parkinson 2006, p. 4). Hence, deliberation is contingent upon the consciousness raising and capacity building of all engaged parties (Lalander 2016). In the absence of these processes, hegemonic discourses lead to strong

47 Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security, Principle 12.9.

argumentative biases (Young 2001), and communication becomes a type of instrumental rhetoric that co-opts participants instead of producing reasonable debate (Parkinson 2006, p. 26).

Adding to communities' weak educational and legislative basis, the alignment between the government and investors contributes to further undermining the potential of forums with deliberative democratic pretentions. As mentioned, chiefs who are wary of the consequences of an oppositional stance may feel compelled to approve projects endorsed by the government. Voice is further jeopardized in meetings when community members perceive the government to be on the side of investors. Borras *et al.* (2011, p. 227) note that room for community contestation of a project is limited once it appears to enjoy official support. Similarly, Bechtel (2001, p. 9) reports that it is extremely difficult for communities to go against the «combined weight» of investors and the government. Communities' impression that they have no choice but to accept the project is well founded (Milgroom 2015). First, following legislation,[48] district authorities and officials from the Cadastral Services are typically present in community consultations. However, these government officials often follow instructions from above that entrust them with the task of securing communities' acceptance (Tanner & Baleira 2006; Baleira & Buquine 2010). When implicit coercion is insufficient, authorities may resort to assertions such as the «land belongs to the State» (Åkesson *et al.* 2009, p. 9) or «you may be angry but they [investors] will stay» (Hanlon 2002, p. 22).

The weight of the above statements should not be underestimated. Whereas the legality of customary rights to land was only recognized by the latest 1997 Land Law,[49] individuals' experiences that reify the conviction that «the land belongs to the State» date back to the colonial period (Roesch 1991, pp. 252-253; Bowen 2000, pp. 28-36). These experiences continued during the decades after independence when the FRELIMO government promoted the involuntary resettlement of communities in an attempt to form communal villages along socialist lines (Bowen 2000, pp. 48-57). Notwithstanding the legal recognition of customary rights, ultimate State ownership of all land has been reaffirmed by the current legislative framework, which allows land expropriation in particular conditions (*i.e.,* when the land is deemed of national interest).[50]

Thus, more or less overt practices and discourses that reproduce *status quo* relations contribute to the creation of zones of influence in which not everything is open to deliberation, not everyone is allowed a voice, and not all arguments are raised and appraised neutrally. It is these influential zones of deliberative settings that critical scholars remind us to be sceptical of (Young 2001). In a lifelike example, Young's characters, the deliberative democrat and the activist, face each other in an unequal relationship in which the former represents the state authority and the latter, the oppositional activist. In an ideal scenario, this liaison would express a constructive

48 Complementation to the Regulation of the Land Law, Article 2.

49 Land Law, Articles 12 and 13.

50 Land Law, Article 3; Law of Territorial Planning and its Regulation; Directive of Expropriation due to Territorial Planning; and Regulation of the Relocation Process due to Economic Activities.

deliberative debate characterized by respect and understanding for one another and with the aim of reaching consensus on a situation to be resolved. However, in real-life settings, the characteristics of the relation and the discursive atmosphere reflect distrust, anger and frustration on behalf of the activist and ignorance and stultification of the other on behalf of the state (Young 2001). As illustrated by Young's tale and the Mozambican examples, achieving a setting in which deliberation can fulfil its promises is, particularly in spaces marked by deep structural inequalities, an immensely challenging quest.

The above dimensions of power asymmetries that affect deliberative settings —within communities and between communities and external agents— are magnified by the inadequate monitoring and enforcement of agreements (Otsuki *et al.* 2017). The existence of means to monitor and enforce agreements is central in the international framework addressing consultations in LSLA.[51] Mozambican legislation ascribes monitoring responsibility to the Cadastral Services.[52] Nonetheless, in practice, companies have successively broken agreements and failed to keep promises with no or little consequences (German *et al.* 2015). These shortcomings are partly explained by the already mentioned pressure «from above» exerted on local government authorities or civil servants with monitoring responsibilities. Baleira & Buquine (2010, p. 43) report that officials from the Cadastral Services had numerous threats directed at them if they did not obey orders from above, which were often of an illegal character. Inappropriate monitoring can also result from the meagre resources that are devoted to enhancing the adequacy of land transfers and consultations in Mozambique (as illustrated by the limited hiring, training, and allocation of funds to land administrative bodies) (Kloeck-Jenson 2000; Knight 2010). Unsurprisingly, numerous cases report authorities' limited technical capacity and legal knowledge of due administrative procedures for land concessions (Baleira & Buquine 2010; Andrew & Van Vlaenderen 2011).

Even if legitimate and mutually beneficial agreements were reached in consultations, communities would not know how to use (or would not trust) formal ways to hold investors accountable for their promises (Matavel *et al.* 2011). Otsuki *et al.* (2017) note that prohibitive bureaucracy or blunt indifference awaits communities in Mozambique's formal judicial system. Through the lens of deliberation, community members' perception that they have no means to enforce decisions reached in consultations is likely to contribute to deteriorating the credibility of these events, limiting individuals' willingness to spend time in them and demotivating voice. In other words, attending consultations in a context where agreements can easily be broken may be perceived as an initially worthless deal made by or forced upon affected communities.

Overall, power asymmetries and divergences within communities defy the ideals of inclusion and equality leading to impartial con-

51 Principles for responsible agricultural investment that respects rights, livelihoods and resources, Principles 3 and 4; Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security, Principle 12.4; Principles for responsible investment in agriculture and food systems, Principle 10.

52 Regulation of the Land Law, Articles 37 and 38.

sensus that reflect what is best for entire communities. Moreover, as meetings with consultative façades corroborate decisions made in advance in closed spaces among companies, government officials and, to varying extents, the local customary authorities, the instrumentality of participation is revealed. This instrumentality feeds on the joint force of investors and government and means that although communities legally have the right to refuse the investment, in practice, the room for community deliberation is minimal or non-existent.

4
«Those on top give orders, the rest of us obey»: Chinese rice production in the Lower Limpopo Valley

The above analysis is reiterated by a recent LSLA in one of Mozambique's most important valleys, the Limpopo Valley. The process that we will describe below shows that practices —that are diametrically opposed to the theoretical and legal bases sustaining consultations— also prevail in central areas located near the capital of Maputo and along one of the country's most vital rivers.

In Lower Limpopo, land previously used by smallholders was ceded by the government to a Chinese company, «Wanbao Africa Agriculture Development LLC» (Wanbao), with virtually no community consultation. The deal was established at the end of 2012, and land occupation within the district of Xai-Xai (located 215 kilometres from the capital Maputo) began in January 2013.

Although most of the affected communities were not addressed by the Chinese company or the public company responsible for the area (E. P. Regadio do Baixo Limpopo or RBL), a meeting was called in the town of Chicumbane in which the local chief informed farmers of the investment plan for the area. Farmers who attended this meeting had fields on the right bank of the Limpopo River in a locality adjacent to the town of Chicumbane, known as «Zaninie». In this occasion, farmers were informed that their fields would be occupied by the Chinese company, but they would be compensated with new parcels in an area known as «Mutropa». The conditions were set and reached the farmers indirectly through the chief. Regardless of the amount of land used by each family in the affected area, the compensatory fields would be 0.25 hectares, which, as a matter of rule, did not cover the lost parcels (see Porsani *et al.* 2017). The company ploughed the new terrain, provided seeds for the farmers' initial planting season, and opened drainage channels since the area was known for suffering from recurrent and long inundations. Only the farmers who attended the meeting in Chicumbane received land in «Mutropa».

The names of the farmers who did not attend the meeting did not enter the compensation register.

In this case, one-way information occurred, but free, prior, and informed community consent did not. In the rest of the affected area located on the right bank of the Limpopo River, there was no communication between the investor or government and communities and/or traditional authorities. Farmers understood the company's intention only when Chinese tractors entered their fields. When farmers addressed the company, they received the reply: «Go speak to your government; they gave us the land» (focus group with women of mixed age, 23 August 2013, Xai-Xai District; see also Porsani *et al.* 2018). By the time the initial fieldwork was conducted seven months into the process, approximately 8,000 of the total approved 20,000 hectares had been ploughed for rice monoculture. Throughout the remaining area, farmers were unaware of the company's plan to expand their operations, although they were fearful: «We do not know about tomorrow, but until now, they have not come here. If they want our land, we will not be able to manage. This is the land we have. God willing, they will stop there!» (woman, 43 years old in focus group with women of mixed age, 3 October 2013, Xai-Xai District).

The reason for this differentiated treatment cannot be affirmed with certainty. One plausible explanation seems to be the government's inability to deliver what farmers considered the only acceptable compensation: land of similar type (*i.e.,* located on the floodable and very fertile valley). As explained by one of the farmers, until the arrival of the Chinese, his field had enabled his wife to feed their family. If the same field could not be regained, he and others like him perceived land equitable to the lost parcels (*i.e.,* of similar sizes and located on the river valley) to be the only acceptable compensation (man, 46 years old in focus group with men of mixed age, 8 August 2013, Xai-Xai District). Given that the investor targeted a large part of the valley that, in contrast to the surrounding higher sandy soils, was the only irrigable area, the possibility of providing satisfactory compensation for farmers was limited. This seemed to discourage government officials from enforcing consultations and subsequent negotiations with affected communities.

Company and government officials alike portrayed the project as a done deal justified by its positive potential to create jobs and transfer technology to progressive local farmers (see Porsani *et al.* 2017) as well as the importance of fulfilling the productive capacity of the valley. When questioned about the unfolding process of land dispossession without consultation or equivalent compensation, Wanbao's representative perceived the government to be responsible for eventual reparations with communities. Thus, according to the investors' view (although they planned and had begun to create jobs and implement a training programme in line

with outgrower schemes of production that could benefit some of those affected), direct compensation should be handled by the government, from whom they had acquired the land (interview with Wanbao representatives, 12 September 2013, Xai-Xai District). In turn, government and RBL officials explained that they «cannot possibly satisfy all parts» and that «some will lose, but it is for the overall benefit of the majority», as one official said in reference to the expected drop in the price of rice following Chinese production (interviews with RBL officials, 30 August 2013 and 11 September 2013, Xai-Xai District; interview with official from agricultural department, 19 September 2013, Xai-Xai District; see also Porsani *et al.* 2017). In this case, the notion that the valley should not serve smallholders' private needs but should serve a greater common good through the large-scale production of rice for national consumption was internalized in the discourse by which formal authorities justified the lack of consultations with affected communities. This case demonstrates that a discourse on «fairness to the country» based on the logics of modernization as an imperative for development can be one of the instruments that enables the disregard of legal precepts.

The above excerpts show that the company and government were aligned to make the project a rapidly concretizing reality. In this context, dissident voices were quickly dismissed as emanating from particular political interests. In response to the allegations of a local NGO (Forum of the Gaza NGOs, or «Fonga») that this LSLA followed illegal routes because it bypassed community consultation, an RBL official contended «This NGO is acting on behalf of the opposition; they only want to "make noise" instead of seeing the country grow» (interview with RBL official, 11 September 2013, Xai-Xai District). Thus, in this case, dissident voices were dismissed and attributed to political rivalry.

Although a sentiment of unfairness seemed to prevail among those who had received previous information from their chief and partial compensation from RBL, they were still less inclined to speak against the process in comparison with farmers who had neither been informed nor compensated. In this context where real choices were not offered and complete land dispossession was an omnipresent risk, partial compensation seemed to serve the purpose of silencing resentment. Discontentment was rife and overt among the latter group, who perceived the process as unjust but legal since, ultimately, individuals were convinced that all land belonged to the State. One of the men explained their situation as follows: «Those on top give orders, [and] the rest of us obey. This is much worse than what forced us to use weapons during the war, but what will we do? The government has decided» (senior man in focus group with men of mixed age, September, 5 2013, Xai-Xai District).

In an attempt to achieve compensatory measures, farmers placed their hopes in the ability of their local chiefs to mediate the matter with formal authorities: «We must listen to our chief. Only he can help. He knows people, and we do not» (women, 45 years old in focus group with women of mixed age, September 10, 2013, Xai-Xai District; see also Porsani & Caretta, under review). In addition, the advocacy work of the NGO Fonga was perceived by farmers as promising.

As of August 2017, no further compensation has been provided to the affected communities. Nonetheless, the area occupied by Wanbao has only expanded to 9,000 hectares (and not to the total acquired 20,000 hectares). It is not evident whether this change in plans derives only from declared financial and infrastructural challenges exacerbated by floods of the Limpopo or due to pressure exerted by the NGO Fonga in coalition with communities.

In this case, it has not been possible to determine whether the land occupied by Wanbao was classified as retaining national interest. The discourse of local authorities on the importance of the region to the country's economy and food security supports the «national interest» thesis. However, if that were the case, along with an official declaration,[53] the government should have followed several legal procedures with regard to land expropriation. These procedures comprise the provision of information, the holding of four consultations aimed at reaching an agreement on adequate compensation, and, ultimately, the implementation of measures that allow the affected population to establish life standards equal to or better than their previous ones.[54] However, if the occupied land was not officially classified as holding «national interest», the company should have engaged directly with the communities to secure their consent and negotiate the terms of the land concession.[55]

This case illustrates the lack of transparency in land deals in Mozambique and the difficulty of navigating their conformance to legal frameworks. Even though the material consequences for the communities are likely the same, the question matters of who, the government or the investor, is the main party responsible for infringing the law. In one of the alternatives, the government is the main violator for not fulfilling the requirements on involuntary land expropriation. In the other alternative, the company is the main violator for illegal expropriation, whereas the government is co-responsible for allowing (and supporting) the process. The central role of the government in both alternatives casts doubt on the capacity and willingness of the Mozambican government to implement sound legislation on community consultation in LSLA.

53 Point 2.1 of the Directive of Expropriation due to Territorial Planning specifically states that prior to expropriation due national interest, the government should issue a public statement specifying the reasons for, and the area affected by, expropriation; and that such statement should be published in the Bulletin of the Republic.

54 Law of Territorial Planning, Articles 20, 21 and 22; Regulation of the Law of Territorial Planning, Articles 9, 10, 69, 70 and 71; Directive of Expropriation due to Territorial Planning, point 2.2; Regulation of Relocation Process due to Economic Activities, Articles 4, 10 and 14; and Technical Directive to the Process of Elaboration of Resettlement Plans, points 2.1 and 2.3.

55 Land Law, Article 13; Regulation of the Land Law, Article 27.

5
Renewing faith in consultations? Suggestions from civil society

In our case study and throughout the other experiences analysed by this study, consultations prior to LSLA in Mozambique were either lacking or did not resemble the envisioned forums for deliberative decision-making institutionalized in international and national legal frameworks. The findings from previous studies indicate a vast range of bottlenecks to participation in consultations between investors that apply for land and communities that legally hold the right to these lands (summarized in Figure 1 and analysed in section 3). Our case study reiterates many of these findings and specifically adds new aspects to the discussion, namely: *a)* the weight and instrumentality of hegemonic discourses on the imperative of agricultural modernization and of the prominence of *a* national good over local necessities in the non-compliance to legislation; *b)* the dismissal of critical voices as detrimental to this national common good (and as emanating from political opposition); and *c)* the difficulties of navigating the legality of land deals in a context where the government is either the violator of the law or the violator's active partner.

The everyday practices discussed here imply that legal frameworks on consultation that institutionalize deliberative ideals fall short of expectations. Consequently, rights on paper do not coincide with rights in practice. Li (2011) notes that the mending of deeply rooted practices must involve the complete reworking of power relations. In the deliberative vein, we are faced with the circular problem that, for popular deliberation to occur in line with what is theoretically (and, in this case, legally) postulated, democratic structures must first be in place. As current structures are left untouched, «participatory exclusions» become apparent —processes in which individuals and groups are excluded from decision-making that affects them through seemingly participatory institutions (Agarwal 2001).

Our findings and analysis may seem daunting to those who believe that LSLA, by consulting affected communities, can form the basis of commonly agreed-upon and mutually beneficial relations. However, to critics of LSLA, these findings are likely unsurprising and may strengthen both their conviction of impossible win-win outcomes from deals marked by discrepant power relations and their conclusion that, due to their back-firing effect, consultations, along with their prescriptive codes, are part of the problem rather than the solution to land dispossession. Although this seems to be the case so far in Mozambique, the outcomes of consultations are likely more nuanced and must be addressed in their complexity.

First, although the majority of cases suggests that consultations sway towards the advantage of investors and local elites, a few reports have noted outcomes from consultations perceived as positive by communities: a community that refused an investor (Hanlon 2011); a community that refused the ceding of approximately two-thirds of a requested area (Mondlane 2011); a community that negotiated with three different investors and chose the one that offered the best deal (Hanlon 2002); a community that established an agreement in which the investor would pay 60 % of the accorded compensation up front (Tanner & Baleira 2006); and a community that ensured regular lease fees through a revenue-sharing plan (Norfolk & Tanner 2007). These outcomes are highly interesting despite being superficially addressed in a handful of grey studies. A clearer understanding of the factors that increase communities' deliberative capacity *vis-à-vis* investors is needed.

The deliberative stand internalized by the international and national frameworks ignores (or at least does not problematize) the implicit Habermasian discernment of deliberation not as stand-alone activities but as resulting from processes in which individuals «become more reflective with reference to cultural traditions and political power, and they exercise this capacity in communicative practice that are eventually institutionalized» (Sass & Dryzek 2014, p. 5). The fact that consultations in Mozambique are immersed in a context largely lacking overt forms of inclusion in decision-making is certainly problematic for the deliberative potential of these created forums. Nonetheless, this does not imply that consultations cannot foment reflective processes. Accordingly, studies have noted that consultations (or even the awareness of their legal necessity) can increase individuals' knowledge, and justice-seeking inclination, which may contribute to new room for *a posteriori* and non-invited participation in diverse forms of contestation (Otsuki *et al.* 2017; Leifsen *et al.* 2017). In Mozambique, Tanner & Baleira (2006) suggest that consultations have fomented a local sense of «self-worth» and of «being noticed», promoted negotiation skills, and contributed to greater cognizance of customary rights to the land. Furthermore, individuals' newfound awareness of the law may allow them to mobilize, fight against or demand compensation from investors (German *et al.* 2015; Milgroom 2015). These outcomes broadly match the general expectation that participation, despite being pervaded by equality gaps, can promote learning and reflective capacity and strengthen the citizenry by «training» them in a central democratic skill (Manin *et al.* 1987, p. 354; Gastil & Dillard 1999). This view substantiates individuals' engagement in public matters as valuable and potentially transformative regardless of the outcomes that are directly related to the cause of the engagement.

Due to faith in potential material or immaterial community gains emanating from consultations, scholars and civil society

organizations have proposed several procedures to improve these unequal encounters. In Mozambique, the most comprehensive attempt from civil society to improve consultations has been the guide published by the NGO Centro Terra Viva (Tankar 2004). This guide recommends that different communication channels should be utilized in the dissemination of project information and the call to consultations, such as oral conversations that take stock of local associations, written announcements fixed in public areas, letters sent to houses, and radio transmissions. It also proposes that minutes from consultations should be standardized to include central elements; the requested area should be walked through by the community; government authorities should clarify land rights; and traditional leaders should be made aware that all individuals who live in or use the requested area must participate in the decision about whether to cede the land.

In addition, Hanlon (2004; 2011) has suggested the use of community organizers in supporting communities before, during and after consultations (*e.g.,* by helping communities to assess the use and value of their resources, to negotiate sources of income through rents or jobs and to monitor compliance with agreements). The potential of these community organizers should not be underestimated. A recent project under the scope of community land delimitation used the opportunity to explain legal aspects of land transfers, and an *a posteriori* analysis reported that throughout all communities reached by this project, leaders and community members alike had acquired a profound awareness of their rights to the land and their right to negotiate and refute investors' proposals (German *et al.* 2015).

When individuals or groups, due to one or several of their social identities, are unable to engage directly in decision-making whose outcomes affect them, one alternative to increase the inclusiveness of these processes could be the use of independent intermediaries, such as Hanlon's (2004) proposed community organizers. These intermediaries could feed upon more covert forms of deliberation that manifest differently in different cultures (see Sass & Dryzek 2014), thereby promoting the indirect engagement of excluded interests through parallel discussion groups in what has been called «affinity group enclaves» (Sunstein 2002; Karpowitz *et al.* 2009; Abdullah *et al.* 2016). In addition to enhancing the space for more feeble voices, since «members of low-status groups are often quiet within heterogeneous bodies» (Sunstein 2002, p. 186), parallel enclave deliberation could contribute to solving a scale problem that is commonly faced in matters that affect large contingents – such as the concession of several thousands of hectares of land in places where livelihoods rely on natural resources in multiple ways. Since guaranteeing the direct voice or the representation of diverse groups in single forums is practically impossible because «not everyone can be attentive to

every issue which affects them, let alone actively participate in their resolution» (Parkinson 2006, p. 8), multiple and inter-related deliberative sites could improve the performance of deliberation by allowing more people to raise and discuss issues as well as the legitimacy of decisions. Furthermore, given the long duration of land concessions (50 years, with possible extensions), these parallel sites could be used to foment discussion on less immediate concerns, such as the project's long-term social and environmental implications, thereby increasing the attention devoted to future generations (see Eckersley 2000). Nonetheless, these suggested practices, like deliberative processes in general, would require time that the Mozambican government, afraid of losing investors' interest, has not been willing to grant (Hanlon 2011).

Recommendations such as those above, which (as illustrated by the practices analysed here and exemplified by the case in the Lower Limpopo) remain largely unaccomplished in practice, would by no means eradicate inequalities within consultations. The complete elimination of inequalities between individuals and groups in any decision-making process is a utopian goal. Plural and antagonist interests pose limits on expectations from consultations and thus on their potential to reconcile the diverse views not only within communities but also between communities and external (usually extractivist) interests. Nonetheless, following these recommendations may enhance the deliberative capacity of less powerful individuals and improve compliance with the existing legal framework. Suggestions of this kind would have to be implemented tentatively in a way that is attentive to the contextual social realities and cognizant that they carry no guarantees of «win-win» outcomes but only the certainty that consultations are backfiring on the most marginalised land-dependent groups and that LSLA, in countries where natural resources such as fertile land and minerals are relatively abundant, will most likely remain on the agenda of policy-makers.

6
Conclusion

In the context of LSLA, the instrument of community consultation has been used as a benchmark that substantiates projects' portrayal as partnerships or land grabs since, in principle, it can enable land-dependent groups to deliberate on their natural resources and livelihoods. This study has focused on Mozambique, a country that has experienced a substantial amount of LSLA.

The everyday practices analysed here have shown that community consultations broadly repeat some critical deliberative vices: treating communities as homogenous natural social entities; using deliberative spaces for the instrumental end of fabricating consent; and ignoring power in its multi-dimensional na-

ture, which places limits on the presumed democratic equivalence of participants. In these encounters, envisioned through ideals of democratic popular deliberation, legal and voluntary frameworks institutionalize the promise of outcomes as valuable to all parties involved. Nonetheless, despite these frameworks, in practice, consultations have been performative spaces in which voices have followed pre-defined scripts and top-down decisions have been legally ratified.

Consequently, outcomes from consultations can be deemed highly illegitimate through the deliberative rationale from which these processes emanate. LSLA in Mozambique can be more accurately described as «land grabs» than as the consensual «partnerships» envisioned by international and national legal frameworks. The everyday practices enabled by ubiquitous power asymmetries imply that the materialization of theoretically and legally sound precepts contradict forecasts of win-win scenarios —which contributes to explain the devastating consequences LSLA have had on communities at the receiving end of the democratization projection, as illustrated by accounts of land deprivation without compensatory alternatives (Porsani *et al.* 2017).

The most critical voices consider binding and unbinding codes to be mechanisms that are appropriated by profit-seeking agents to drive current land dispossession (FIAN 2010). Others, even if they are also critical of the ways LSLA have occurred, state that unclear or unenforceable laws are to blame and that a stronger legislative framework is needed (Åkesson *et al.* 2009; Knight 2010; Wily 2011). Our study has shown that frameworks resting on the ideal of popular deliberative consultations sustain unwitting practices that are diametrically opposed to the foundations of this inspiring doctrine although not uncommon to its manifestation in the real world (Sanders 1997; Young 2001). Nonetheless there is also (meagre) evidence of communities that managed to reach favourable agreements with investors and of consultations that strengthened individuals' knowledge and justice-seeking inclination. The findings and analysis of this study raise the following question: should community consultations be refuted or rescued? Supporting consultations in their current form means supporting highly illegitimate procedures that have daunting outcomes for the rural poor. However, rejecting consultations as a whole is an integral part of the rejection of the current common sense on the instrumental and intrinsic importance of popular deliberation and democracy.

For democrats who are not ready to give up on consultations, we would like to stress two points. First, the debate about whether and how these events can serve as platforms for inclusive decision-making should be informed by local experiences through which contextual obstacles and opportunities are revealed. There is considerable room for the contribution of more case studies to

orient discussion and action. Second, the espousal of community consultation —similar to support for popular deliberation— has tended to overlook the importance of contextual inequalities that pervade created participatory spaces and limit the inclusiveness of less powerful groups. This inclusion is problematic even in societies that rank higher in terms of democratic benchmarks let alone in less democratized neo-liberal regimes where «powerful elites representing structurally dominant social segments have significant influence over political processes and decisions» (Young 2001, p. 677). It is thus crucial that those involved theoretically or practically with community consultations in LSLA engage with the challenges of deliberation in places marked by deep structural inequalities and substantial democratic deficits. In the Mozambican context, we hope our study can be a starting basis for this critical exercise, which we believe is the principal means to inform prospects of LSLA as coercive or consensual.

For scholars concerned with the manifestations of deliberative theory, this study has provided empirical material on the legal institutionalization of deliberation through consultations in the context of LSLA in Mozambique, noted that faith in deliberation through consultations has been instrumental in the support for LSLA as drivers of development (as demonstrated by the rhetoric of international and national legal frameworks), and, most importantly, analysed some of the challenges deliberative ideals face in conforming to complex realities. As stressed by Sass & Dryzek (2014), empirical studies are central since the political and practical relevance and implications of deliberation must be examined from below and anchored in local-level experiences that vary across cultures and places. We hope that this study encourages further empirical analysis of Mozambique and other contexts in which deliberation confronts structural inequalities. We believe that such analyses are fundamental since the future of rural livelihoods depends largely on consultations' observable procedures but also, and most importantly, on the equality and substantial inclusiveness of these novel forums.

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