

# **THE APRM AND LAND REFORMS IN AFRICA**

*Enhancing good governance in land management*

**Final Draft Paper**

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## **Acronyms**

APRM	African Peer Review Mechanism
AU	African Union
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRM	Country Review Mission
CRR	Country Review Reports
CSAR	Country Self Assessment Report
ECA	Economic Commission for Africa
FAO	Food and Agriculture Organization
FDI	Foreign Direct Investment
F&G	Framework and Guidelines
GDP	Gross Domestic Product
IDP	Internally Displaced Persons
IPACC	Indigenous Peoples of Africa Co-ordinating Committee
LPI	Land Policy Initiative
NEPAD	New Partnership for Africa's Development
UNCCD	UN Convention to Combat Desertification
UNDP	United Nations Development Programme

## Glossary

***Agrarian reform:*** a process of “land reform” which also addresses the political economy and ontological context in which rural society uses land resources.

***Civil society:*** non-state actors in decision-making.

***Commercial pressure over land:*** means a situation where foreign and national investors or potential investors are motivated to acquire large tracts of land for large-scale economic activities including agriculture, mining or recreation.

***Corruption:*** dishonest or fraudulent conduct by those in power for personal gain.

***Customary right:*** right derived and based on traditional norms and stipulations of a society.

***Good governance:*** features of good governance include accountability, political stability, government effectiveness, regulatory quality and rule of law, as well as control of corruption. The principles of good governance can be made operational through equity, efficiency, transparency and accountability, sustainability, subsidiarity, civic engagement and security.

***Governance deficits:*** denotes a situation where the existing set up to oversee the way in which official activities are run does not meet the ideal institutional set up.

***Governance:*** is the way in which society is managed and how the competing priorities and interests of different groups are reconciled. It includes the formal institutions of government but also informal arrangements. Governance is concerned with the processes by which citizens participate in decision-making, how government is accountable to its citizens and how society obliges its members to observe its rules and laws.

***Indigenous communities:*** these are communities that claim original rights to a territory, and still lead a life that is closely related to the land and natural resources.

***Land administration:*** the structure and processes for the determination, archiving and delivery of land rights, and the systems through which general oversight on the performance of the land sector is managed.

***Land conflict/dispute:*** is a social fact in which at least two parties are involved, the roots of which are different interests over the property rights to land: the right to use the land, to manage the land, to generate an income from the land, to exclude others from the land, to transfer it and the right to compensation for it. It is a misuse, restriction or disagreement over property rights to land.

***Land governance:*** the political and administrative structures and processes through which decisions concerning access to and use of land resources are made and implemented including the manner in which conflicts over land are resolved.

***Land information system:*** a set of principles governing the collection, processing, storage and use of data on land ownership, usage, quality, location and change over time and the body of data sets prepared for use in decision-making on the basis of those principals.

**Land policy:** the set of agreed principles to govern ownership (or access to), use and management of land resources to enhance their productivity and contribution to social, economic, political and environmental development and poverty alleviation.

**Land reform:** a process which involves comprehensive restructuring or redesign of at least three components of the land system; namely its property structure, use and production structure and the support services infrastructure.

**Land tenure:** the nature of and manner in which rights and interests over various categories of land are created or determined, allocated and enjoyed.

**Legal pluralism:** is a situation where there is more than one legal system applying to land and property rights at the same time

**Natural resources:** the constellation of all biotic and non-biotic substances which naturally occur on and are sustained by the physical surface of earth, including water.

**Security of tenure:** means a situation of recognizing and guaranteeing a property owner, individually or as a community, their right for a given period or in perpetuity under known conditions.

**Statutory right:** a right in land and property derived from the official legal system

**Urbanisation:** a socioeconomic situation where the proportion of the population of a country living in urban areas is increasing, whereby the main economic activities of this population are not agricultural.

## **Executive summary**

### **1. Introduction to the African Peer Review Mechanism**

The African Peer Review Mechanism (APRM) is a mutually agreed instrument established in 2003 by the African Union in the framework of the implementation of the New Partnership for Africa's Development (NEPAD). The objective of the APRM is to foster the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated regional and continental integration. The thematic intervention areas of the APRM are: (i) democracy and political governance; ii) economic governance; iii) cooperate governance, and; (iv) socioeconomic governance. During the reviews, the APRM Country Review Reports (CRRs) of almost all reviewed countries revealed the existence of certain governance patterns.

### **2. Objective**

The main objective of this paper is to identify the common problems on land facing APRM countries and to provide analytical research with a view to suggest recommendations implementable at country level. The paper will facilitate the development of an APRM land governance review framework, which will be a tool to help APRM upcoming countries to assess their policies regarding land governance and monitoring of progress. The framework will contain set of land governance indicators which will be identified within the existing expertise of the Land Policy Initiative (LPI).

### **3. Theoretical framework on land governance**

Good governance is an integral part of sustainable development and key to poverty reduction. It reflects the values of participatory behaviour, transparency and accountability that aim to promote the effectiveness, efficiency, equity and the rule of law (United Nations Development Programme, 1997). Good governance does ensure that political, social and economic priorities are based on accumulated societal consensus. This allows government to serve the needs of society through the implementation of government tools that are designed to be responsive to changing societal demands and to encourage sustainable development.

Among the features of good governance in a leadership setting are: accountability, political stability, government effectiveness, regulatory quality and rule of law, as well as control of corruption. The executive plays a major role in the governance system. It ensures peace, security and stability; and creates the enabling environment and regulatory framework for productive and creative activities and provides essential public services for the citizens. The effectiveness and accountability of the executive are therefore central to state performance. As noted, accountability entails inclusiveness, popularity, transparency and responsiveness to the public (*ibid*). In addressing good governance, the rule of law remains a central vehicle. It is such rule of law that ensures relevant institutions are in place for promoting a democratic society; laws are accessible and citizens are in positions to bring their grievances to the court of law, where courts deliver and are perceived to deliver justice.

Land governance in Africa occupies a vital position, as land is the single greatest resource in most of its countries. Where weak governance is permitted to mushroom, it affects the general fabric needed for sustainable land development. In the African context, governance can either be formal land administration or customary tenure arrangements. Weak land

administration may be part of the overall problem of governance. The choice of institutional structure through which land rights are to be managed has major implications for the distribution of power within society, and many countries have experienced longstanding tensions between governments and customary structures regarding control over land.

#### **4. Critical land governance issues in Africa from Country Review Reports**

Most countries in Africa have deficits in good land governance, including capacity to appropriately address such common governance issues as: legal pluralism, land tenure insecurity, state sovereignty over land, land resources degradation, environmental sustainability, poor conflict prevention and resolution mechanisms, gender and inter and intra-generational inequality, centralization of land administrations, and non-transparency and non-accountability particularly when it comes to allocating large tracts of land and rights to exploit natural resources. There have also been juristic or diffusive plural legal systems governing land. Although pluralism is not bad in itself, if not well regulated or where certain forms of tenure are allowed to override others, it can be a source of insecurity.

#### **5. Manifestations and impact of weak land management in Africa**

When looking at poor governance, one has to magnify the image to see the land issues that can heighten socioeconomic problems and what governance issues can result into land problems. Land and land related issues do not exist in a vacuum. They exist in society and this affects people's livelihoods and interactions. Interactions or relationships that are built between the individual and the property (land) have clear implication to its governance. Humans are social beings and politics is inherent in humankind, therefore politics has direct impact on land issues. As discussed, land conflicts, wars, exclusion *etc* are all linked to politics. Weak governance may be a result of weak institutions that are fragmented and uncoordinated. But also weak institutions may result into poor governance; where such institutions cannot deliver or engage people, and cannot do other necessary activities to streamline the land administration. This may in turn fuel corruption, a common vice in governance problems. In many of the Country Review Reports (CRRs) and Country Review Mission (CRM) reports, corruption was singled out as a critical aspect affecting governance in Africa. Weak governance also reduces security of tenure, hence poor investment in land.

#### **6. APRM-CRM led land reforms and contributions in Africa**

Through the APRM, countries have made particular achievements crucial for land governance in Africa. Best practice in areas of decentralization, gender equality and more open, consultative, transparent and inclusive government has ramifications for good land governance. The good practices in government, popular participation models in land decision-making, land dispute settlement mechanisms, land gender mainstreaming, land institution transparency, cost effective land registration and titling, land law and policy harmonization have been identified. There is an acute need to launch a special program to follow-up on the country mechanisms for good land governance in Africa.

#### **7. Land governance practices in Africa: sampling best practices**

APRM Country Reports highlight examples of best practices worthy of emulation. Thematic issues surveyed include statutory and customary rights; gender and land; public participation in land decisions; dispute settlement and conflict management; co-existence



between agriculturalists and pastoralists; and land registration. These themes, which are critical for good governance of land, should also form the benchmark for reviewing country performance under the APRM.

Best practices in statutory and customary tenure were identified in South Africa, while those in gender equality were identified in Ethiopia, Uganda, Nigeria and Mozambique. Good examples of public participation in decisions on land issues were found in Nigeria and South Africa (*imbizo*). From Rwanda, Ghana and Burkina Faso examples of effective dispute resolution and conflict management are highlighted. While coexistence between farmers and herders has been difficult, an example of symbiotic co-existence was found in the case of the Sudanese *Kawahla* (farmers) and the *Gawamba* (herders)—in the village of Gereigikh in North Korfodan State and the Dinka and Misseriya in Abyei who have learnt to coexist, thus offering useful lessons. Finally successful examples of large-scale land registration at low cost are discussed using examples from Ethiopia and Madagascar.

## **8. Designing an APRM land governance review framework**

Finally, guidelines have been proposed for an APRM Land Governance Review Framework, based on the African Union’s Framework and Guidelines on Land Policy in Africa, United Nations Convention to Combat Desertification, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa. Governance issues for which assessment criteria are proposed include: commitment to land policy development; Integrating land issues into decision-making processes; legitimacy of indigenous land rights systems; strengthening the land rights of women; enhancing access to land through tenure reform; balancing pro-poor priorities with market orientation; clarifying property rights in agriculture; promoting the development of land rights transfer systems and markets; land needs for sustainable urbanization and other uses; reform of land rights delivery systems; and reform of land governance institutions.

Moreover, it is recommended that a tracking system be put in place and that there should be constant and consistent feedback.

# **1. Theoretical Framework of the Report**

## **1.1 Background information and rationale**

Africa is the second largest continent in the world, comprising 54 countries with a population of over a billion. The continent is the scene of many disputes related to land and natural resources. In part, this is a result of increased demand on these resources emanating from population growth on the one hand, and the increasing depletion of the resources in terms of quantity and quality due to degradation, over-use, over-harvesting, governance deficits, and external factors such as climate change and commercial pressure, on the other.

A number of these countries have applied the APRM and the resulting country reports show major concerns regarding governance of land and natural resources. These countries are Algeria, Benin, Burkina Faso, Ethiopia, Ghana, Kenya, Lesotho, Mali, Mauritius, Mozambique, Nigeria, Rwanda, South Africa, Tanzania and Uganda.

## **1.2 Introduction to the African Peer Review Mechanism**

The African Peer Review Mechanism (APRM) is a mutually agreed instrument established in 2003 by the African Union in the framework of the implementation of NEPAD. It is voluntarily acceded to by the African Union member states in order to self-monitor all aspects of their governance and socioeconomic development, including conflicts. The objective of the APRM is to foster the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated regional and continental integration. The thematic intervention areas of the APRM are: (i) democracy and political governance; (ii) economic governance; (iii) cooperate governance; and socioeconomic governance. As of mid-2012, 31 countries had formally joined the APRM.<sup>1</sup>The peer review process takes one or more of the following forms: base review, carried out within 18 months of a country becoming a member of the APRM; periodic review every 2 to 4 years; requested review – any country can request an additional review for its own reasons; and “crisis” reviews. Signs of impending political or economic crisis could be a sufficient cause to institute a review.

The APRM-CRRs make remarkable and competent assessment of the reviewed countries. APRM-CRRs of almost all reviewed countries have revealed the existence of certain governance problems. Among the common ones, four issues have been identified in more than one thematic area: (a) managing diversity (b) corruption; (c) land resource management, and, (d) elections. The APRM Heads of State in the Extraordinary Summit in October 2008, held in Cotonou, Benin also deliberated on the following cross-cutting issues (i) management of diversity & xenophobia, (ii) elections, and, (iii) resources control and land management, as well as, (iv) corruption. It is within this context that the Economic Commission for Africa (ECA), as a strategic partner of the APRM process, has taken commendable steps since 2009. These include undertaking a series of studies focusing on cross-cutting and emerging systemic issues, as they require a holistic approach in the search for durable solutions to the continent’s governance challenges.

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<sup>1</sup> These countries are: Algeria, Congo Republic, Ethiopia, Ghana, Kenya, Mozambique, Nigeria, Rwanda, South Africa and Uganda; Burkina Faso, Cameroon, Gabon, Mali, Mauritius and Senegal (in 2003); Angola, Benin, Egypt, Lesotho, Malawi, Sierra Leone and Tanzania (in 2004); Sudan and Zambia (in 2006); Djibouti and São Tomé and Príncipe, (in January 2007); Mauritania, Togo (in 2008); Equatorial Guinea, Liberia, and Niger (in 2012).

### **1.3 Objective of the paper and framework**

The main objective of this paper is to identify the common problems on land facing APRM countries and to provide analytical research with a view to suggesting recommendations implementable at country level. The paper has led to the development of an APRM land governance review framework, which will serve as a tool to help APRM upcoming countries to assess their policies regarding land governance and monitoring of progress. The framework will contain a set of land governance indicators which will be identified within the existing expertise of LPI.

### **1.4 Specific tasks to be addressed**

This paper addresses the following tasks:

- Review the APRM CRM reports, particularly the section related to land, in order to identify key land governance issues in Africa
- Conceptualize the critical issues of land governance in Africa
- Analyse the causes, manifestations and impacts of weak land management on the Continent
- Review existing documents and frameworks on land in Africa in order to reform and formulate adequate regulations with the view to enhance land governance
- Present critical political aspects of land in Africa
- Present evidence of best practices from successful cases on land governance as highlighted in the APRM Country Reports by pointing to best experiences in programmes and strategies for country-level reforms
- Outline the impact of best practices on land governance on inclusive socioeconomic development
- Provide guideline on the designing of a APRM land governance review framework that will ensure technical capacity for the upcoming APRM reviews

## **2. Theoretical framework on land governance**

### **2.1. Defining governance**

According to the Food and Agriculture Organization (FAO), governance is the process of governing. It is the way in which society is managed and how the competing priorities and interests of different groups are reconciled. It includes the formal institutions of government, but also informal arrangements. Governance is concerned with the processes by which citizens participate in decision-making, how government is accountable to its citizens and how society obliges its members to observe its rules and laws.

Good governance has a number of aspects including the avoidance of corruption, accountability, political stability, government effectiveness and regulatory quality, as well as the rule of law. Good governance means that government is well managed, inclusive and results in desirable outcomes. The principles of good governance can be made operational through equity, efficiency, transparency and accountability, sustainability, subsidiarity, civic

engagement and security. Governance can be poor if government is incorruptible but tyrannical, or is democratic yet incompetent and ineffective.

Therefore, good governance is an integral part of sustainable development and a key to poverty reduction. One of the prime objectives of NEPAD is for Africa to promote democracy, good governance and peace in close partnership with development partners (FAO, 2007). Good governance reflects the values of participatory behaviour, transparency and accountability that aim to promote the effectiveness, efficiency, equity and the rule of law (United Nations Development Programme, 1997). Good governance ensures that political, social and economic priorities are based on accumulated societal consensus. This allows government to serve the needs of society through the implementation of government tools that are designed to be responsive to changing societal demands and to encourage sustainable development. Ashton (2005), states that: *“in order for the functioning of a governance system to be effective, efficient and socially relevant, it should be directed by the principles of good governance. Good governance is founded on the attitudes, ethics, practices and values of society”*.

Provided governance is about people and how they organize themselves for common objectives, the people are the ultimate source of constitutional and political legitimacy in a democratic society. It is the people who benefit when the fundamentals of good governance are upheld.

To that end, the executive plays a major role in the governance system. It ensures peace, security and stability; creates the enabling environment and regulatory framework for productive and creative activities; and provides essential public services for the citizens. The effectiveness and accountability of the executive are therefore central to state performance. As noted, accountability entails inclusiveness, popularity, transparency and responsiveness to the public. In addressing good governance, the rule of law remains a central vehicle. It is such rule of law that ensures relevant institutions are in place for promoting a democratic society; laws are accessible, and citizens are in positions to bring their grievances to the court of law (Orapan & Srisawalak, 2008).

## **2.2 Land governance in Africa**

As land is the single greatest resource in most African countries, land governance in Africa is of prime importance. For this reason access to land, tenure security and land management have significant implications for the development and general welfare of society. Good governance is a crucial factor in ensuring access to land, security of tenure, sound investment in land and social cohesion. Proper land administration provides the needed infrastructure for an efficient economy, thereby touching on every aspect of socioeconomic welfare of the people (FAO, 2007).

If weak governance persists, it adversely affects the conditions for sustainable land development. In the African context, land governance can either be formal land administration or customary tenure arrangements. When poor governance exists, poor and marginalized groups like women, children, those with disabilities, the elderly, indigenous communities etc find themselves outside the rubric of the law. Weak governance may also mean that land is not used appropriately to create wealth for the benefit of society. Lack of competence in land administration can be an important constraint on development and the eradication of poverty. Good governance in land administration is one of the central requirements for achieving good governance in society (*ibid*).

Weak land administration may be part of the overall problem of governance. Land administration may suffer from lack of transparency and accountability as a result of confusing regulatory frameworks and complex administrative processes. Land governance issues in Africa based on the APRM Country Reports demonstrate particular concern in almost every country. Essentially, many conflicts in Africa are an outcome of poor governance by the relevant institutions. Sometimes institutions have failed to guarantee the needed equity, efficiency, transparency and accountability in decisions resulting into severe negative outcomes. With that in mind, it is crucial to ponder the type of policy strategies that can help achieve good governance in land tenure and administration (*ibid*).

Many African countries now realise that conflicts caused by exclusion are inimical to good governance because one obviously needs a nation first, before good governance. Access to land, equitable distribution of resources and the sharing of political power in heterogeneous societies continue to generate communal and ethnic tensions and conflicts. Some of those conflicts are of low intensity, as in the Niger Delta region in Nigeria, and some have been more explosive, as in Sudan, Rwanda, Burundi, Northern Nigeria and Somalia. The challenge is to include all ethnic, racial and gender categories in the political process. While majority rule maybe the hallmark of liberal democracy, the protection of minority rights constitutes the major strength and resilience of any democratic system (ECA, 2009)

The linkages between good governance, democracy and development are recognized by Africa's major national and regional institutions. Across the Continent, there is consensus that good governance advances political representation, civil liberties and constitutionalism; as well as increasing transparency and accountability. These elements of democracy promote the peace and stability crucial for economic investment. In a continent noted for poverty, good governance is therefore a precondition for poverty reduction (*ibid*). The pressure on land from growing populations coupled with land degradation, in a framework of deficits in governance set-ups, has led to numerous land conflicts within countries and sometimes, between countries.

There are special conditions that aggravate governance problems in land management. Violent conflicts cause significant changes to land tenure and administration, such as the displacement of people and the destruction of land administration records; and are associated with long-lasting problems of low resources, weak institutions and unclear, insecure land tenure arrangements. Similar problems can occur after emergencies and natural disasters or through sustained severe poverty. There is as much a need to improve governance in such conditions as there is in more stable situations, yet there is a difference as to what can be achieved in the short term (FAO, 2007).

### **2.3 Understanding the political dynamics of land policies**

The choice of institutional structure through which land rights are to be managed has major implications for the distribution of power within society, and many countries have experienced longstanding tensions between governments and customary structures regarding control over land. Depending on circumstances, some countries have tried to undermine traditional authorities to manage land in favour of the state. Different land user groups, often with very different social bargaining power (e.g. the marginalized position of pastoralists vis-à-vis farmers, and of both groups vis-à-vis urban elites, in most African countries such as Rwanda, Kenya, Uganda and Nigeria), compete for scarce land resources through a variety of channels, including political patronage and allegiance.

African governments are often under pressure from foreign investors to establish investor-friendly legal and policy frameworks. International donors and development agencies also influence policy processes in developing countries through conditionalities attached to their financial assistance. As a result of all these forces, decisions concerning the formulation and implementation of land policies and laws are affected by political considerations more than by research outputs.<sup>2</sup> Therefore, agencies working on land issues in Africa should seek to understand these political processes and take them into account in their activities (Cotula *et al*, 2004).

### **3. Review of critical land governance issues in Africa from CRRs**

#### **3.1 Introductory remarks**

This part looks at land governance issues in Africa. The framework and guidelines developed by the AUC- ECA-African Development Bank (AfDB) joint Land Policy Initiative defines land governance as the political and administrative structures and processes through which decisions concerning access to and use of land resources are made and implemented, including the manner in which general oversight on the performance of the land sector is managed. FAO (2007) has outlined the aspects of good and weak land governance systems. A good land governance system would usually be: consultative; participatory; interactive; inclusive; consensus-based; timely and professional; transparent; gender-sensitive; innovative; and cost-effective (Government of Kenya, 2009). Most countries in Africa have deficits in good land governance, these include capacity to appropriately address such common governance issues as: legal pluralism; land tenure insecurity; state sovereignty over land; land resources degradation; environmental sustainability; poor conflict prevention and resolution mechanisms; gender and inter and intra-generational inequality; centralization of land administrations; non-transparency and non-accountability, particularly when it comes to allocating large tracts of land and rights to exploit natural resources.

#### **3.2 Legal pluralism and conflicting tenure systems**

Most countries in Africa have juristic or diffusive plural legal systems governing land. Pluralism, if not well regulated or where certain forms of tenure are allowed to override others, can be a source of insecurity and conflict. The plurality of legal norms of tenure has resulted in insecure tenure, especially for land held under indigenous systems. In Uganda for instance, the land tenure system is multiple, thus fuelling conflicting management. The existing land tenure systems are; customary, freehold, *mailo* and leasehold. Uganda's customary tenure recognizes land as a resource for which people have use-rights. Individual ownership of land is not allowed, but access to land for individuals is. In contrast, the Ugandan freehold, *mailo* and leasehold systems recognize individual ownership with exclusive rights, acquired through formal contractual arrangements between seller and buyer. Such diverse systems require a robust framework, without which frequent conflicts cannot be avoided. The different interpretations of land ownership in Uganda are a major source of conflict. Government policy promotes greater individualization of land, which confers permanent use rights to individuals and enables the transfer or sale of land. The government also plans to take a transformational approach to

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<sup>2</sup> See some characteristics of land resources in the APRM Countries from the African Development Indicators, 2011; World Development Indicators 2012; and the CIA World Fact Book.

customary tenure, issuing certificates that confer rights to convert customary lands into freehold tenure (Fitzpatrick, 2005).

In addition, the lack of a reliable land registration system, such as is the case in the Comoros, has been cited as a cause of tenure insecurity. In Ethiopia, the policy of land redistribution promotes insecurity of tenure because it allows, among other things, periodic redistribution; is inefficient because it constrains land transactions; has inhibited the emergence of a dynamic land market; and promotes fragmentation of land and growing pressure on land resources because it discourages rural people from leaving their farms for other employment opportunities. (AUC-ECA-AfDB Consortium, 2010).

Pluralism can be a source of insecurity if not well regulated, or where certain forms of tenure (e.g. statutory) are allowed to override others, especially for land held under indigenous/customary systems. The plurality of the legal systems can also give rise to multiple land authorities, which are sometimes uncoordinated. Plurality has also fuelled land conflicts to continue over access to land and natural resources.

### **3.3 Poor land tenure security**

Most countries in Africa suffer from land tenure insecurity or vagueness, especially for the majority of landowners. Most land does not carry formal title. Simply considered as the relationship among people with respect to land, the importance of clearly defined land tenure cannot be over-emphasized (FAO, 2007). In the absence of clear rules of land tenure, there are potentials for insecurity. For instance, where land is vested in the state, customary land rights of people living on such land are susceptible to tenure insecurity if these rights are not adequately recognized as fully legitimate and respected in law and practice. The role of the state as regulator and manager of land issues is a key factor in land tenure security. Inappropriate policies for abolition and replacement of customary land rights, and compulsory land acquisition are also a major source of tenure insecurity.

In addition, communities whose land has mineral and oil deposits, who border reserve land and those on land earmarked for infrastructure and urban development, also suffer tenure insecurity. Growing populations, declining soil fertility, increasing environmental degradation, climate change, and new opportunities for agricultural commercialization have all heightened demands and pressure on land resources and caused land conflicts and tenure insecurity. A recent survey (Alden-Wily, 2012) provides an analysis on the status of customary land rights in sub-Saharan Africa, and points to the weak legal status of such rights in many African countries. Governments often regard such lands as un-owned public lands or state property, making them particularly vulnerable to involuntary loss. This conflict of claim and interest directly affects most rural Africans. Moreover, many African rural poor no longer have sufficient access to farmlands to compensate for the loss of their collective lands. APRM reports for Benin, Burkina Faso, Kenya, Mozambique and Tanzania point to the problem of insecurity of land tenure. Land reforms have to be structured with the interests of poor majorities in mind.

### **3.4 Unregulated rush for Africa's land**

It is an acknowledged fact that Africa is now facing the pressure of the rush for the continent's lands and natural resources for commercial exploitation. Governments are generally in favour of such commercial acquisitions for number of reasons, including the belief that there is a lot of idle, unused land; and that large-scale investment in land by foreigners will result in

employment, improvement in rural infrastructure, food sufficiency, and increased government revenue. There are strong arguments to the contrary (Anseeuw, *et al*, 2011; Oxfam, 2012, 2011; Palmer, 2011). Two thirds of lands is being acquired by foreign investors in Africa. The dominance of sub-Saharan Africa as a land provider also suggests to some, a new “scramble for Africa”, which investment hungry governments in Africa heartily welcome. The way this land rush is being handled does not conform to the principles of good land governance (Alden Wily, 2012).

The pressure for land rush in African countries is both internal and external. Internal investors and speculators are acquiring large areas of land, leading to observable concentration of land ownership in a few hands.

Governments appear to be unprepared to protect the land rights of local communities, or fully utilize their bargaining power in the investment deals due to legal constraints to the wilful reallocation of customary lands. Two constraints that come into play are the need to pay compensation when people are removed and the need for state allocations to be in the public interest. Neither presents an impediment if customary lands are considered to be less than real properties. Transparent, democratic and just governance is also being impeded by practices related to the land rush. The losses endured by local communities can be very great; and these include the commercial value of the land, the recurrent-use values of the resource, and the future value of the land for commercial enterprise.

The land rush can threaten civil peace. The deprivation and denial of rights to land have been shown historically to be major triggers of conflict and outright civil war, as in the case of the Niger Delta in Nigeria and the Rift Valley in Kenya. In the Niger Delta, the source of Nigeria’s oil and gas deposits, from which about 80 per cent of Nigeria’s foreign exchange is derived annually, has experienced one of the most protracted and deadly conflicts since the 1990s. Instances in Uganda include where a sugar cane producer staked out a forest he was determined to chop down in order to plant sugar cane, and when a consortium of North American, Malaysian and Singaporean investors was recently granted thousands of hectares of land in Kalangala District by the government to establish an oil palm plantation (World Rain Forest Movement, 2009). Such activities have fuelled fears of land alienation among Ugandans, particularly those living in rural areas. In Mali, a number of companies got allocated land under debatable circumstances in the aftermath of grants to the citizens. The companies involved include Malibya (allocated 100,000 hectares), Groupe Tomota (100,000 hectares), SOCIMEX SA (10,000 hectares) and N-SUKALA (20,000 hectares) with operations expecting to directly or indirectly adversely affect hundreds of thousands of individuals.

China and some Middle East countries such as Kuwait and Qatar have secured massive tracts of land in Ethiopia and Sudan for food production for export. Some foreign entrepreneurs have also sought to grow food for sale back home, like the case of Indian merchants in Ethiopia. China has leased 6.91 million acres in the Democratic Republic of the Congo for the world's largest oil palm plantation. South Korea's Daewoo conglomerate planned to buy 2.9 million acres of Madagascar until the deal collapsed in 2009 when rioters toppled the island's government.

A number of common issues have been identified in Africa concerning large-scale land acquisition. First, there are loopholes in customary laws, national land policies legislation and institutions that are exploited to facilitate large-scale land acquisition; second, rural communities lack knowledge and empowerment to deal with large-scale land acquisition; and,



third, the government plays a significant role in facilitating large-scale land acquisition, mainly through the principle of state ownership over land and in the belief that such acquisition is beneficial to the country. Such uncontrolled rush for land has generated heated debates in recent years. In Tanzania, for instance, the allocation of over 10,000 hectares of land in the former Burundian Refugees Camp of Katumba to *Agrosol* stirred serious concern.

The Nairobi Plan of Action acknowledges that land-based investments should ensure the country's rich land and natural resources are fully utilized to promote equitable economic growth, peace and prosperity for its people. The Plan also seeks to promote alternative land-based investment models which can increase agricultural productivity and maximize opportunities for Africa's farmers. Special attention will be given to smallholders; and the potential negative impacts of large-scale land acquisitions will be minimized using approaches such as land for equity and contract farming.

It is under such circumstances that the FAO came up with '*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*' (2012). The purpose of these voluntary guidelines is to serve as a reference, as well as to provide guidance to improve the governance of tenure of land, fisheries and forests with the overarching goal of achieving food security for all, and support the progressive realization of the right to adequate food in the context of national food security.

The FAO guidelines are intended to contribute to the global and national efforts towards the eradication of hunger and poverty, based on the principles of sustainable development and with the recognition of the centrality of land to development by promoting secure tenure rights and equitable access to land, fisheries and forests.

### **3.5 Prevalence of state sovereignty over land**

The role of the state in land governance is pivotal in all the countries in Africa. In some countries, the state holds all land and grants leases or rights of occupancy and use. States hold land in protected areas in all the countries. Where the land is vested in the state (sometimes with the President as trustee), there has been concern that trusteeship powers could be misused. In many countries, the power of eminent domain and the police powers of the state (which allow states to regulate land use in the public interest through land use planning, granting of planning permission, taxation, and enforcement of environmental and agriculture regulations) have not been exercised judiciously and in the public interest. What constitutes "public interest" has remained a matter of contention. The debate on the relationship of the state with land has been a critical issue in many African countries. The recent villagization and resettlement of villagers for rural development process that took place in the Gambella Region and across the border between Ethiopia and Somalia, by the Ethiopian government sheds light on the reality of the problem.

### **3.6 Land and natural resource degradation**

The land degradation situation in Africa is worsening, and has become a challenge for many governments. This is partly due to poor land management regimes, but increasing population growth has put pressure on land and natural resources, as well as contributing to land degradation and desertification. Land degradation comes in many forms including loss of soil fertility, top soils, and forest cover, as well as soil erosion, soil salinization, creeping desertification, and so on. These forms can be found individually or in combination.

The pressures and driving forces that are attributable to land degradation are similar across the countries of Africa. Typical proximate causes include over-cultivation, over-grazing and deforestation. The process of soil degradation is fuelled by poverty, population dynamics, insecure tenure, weak institutional support (e.g. extension, credit, etc.), political instability and factors related to physical land attributes such as topography, and soil and rainfall conditions, as well as external conditions such as climate change. Generally, continued land degradation leads to low productivity, poverty, potential famine and creates a climate for land conflict. Indeed, many times it leads to actual conflict (see APRM reports for Ghana, Algeria, Lesotho, Uganda and Kenya on land degradation issues). The phenomenon needs to be addressed.

### **3.7 Continued conflicts over land resources**

Conflicts over land and natural resources in Africa are an everyday occurrence. These could be between opposing communities, one wanting to use resources in a way different from the other community (e.g. herders against farmers; farmers against miners); between landowners and investors; and between landowners and public authorities (who may for example want to conserve land, or use it for public purposes).

Conflicts can occur because of access and control of: arable land; range (pastoral) land; water; forests; minerals; and so on. There have been clear incidents of conflicts in different countries. A good example is in Kenya, where in Nandi, Kericho and Nakuru districts violent clashes broke out and resulted in the creation of internally displaced people (IDPs). There have also been clashes recently between the Pokomo and Orma communities over water and land in Tana River County, where more than 140 people were killed recently<sup>3</sup>. Triggers for land conflicts include: demographic pressure; droughts, floods and landslides; global warming and climate change; land and natural resources degradation; demarcation/reservation of land for national parks, game reserves and conservation; vague understanding/definition in existing laws of traditional rights of access to land and natural resources; poor land governance systems; harvesting of natural resource (including timber, minerals, animals, and water for animals or irrigation); armed conflicts and political instability; and increasing commercial pressure on land including large-scale land acquisition for investment.

In Tanzania, conflicts between pastoralists and farmers occur frequently, leading to loss of life, livestock and other property, leading to increases in general insecurity in the affected areas.

In all countries, there is lack of adequate infrastructure to minimize the occurrence of conflicts (eg comprehensive national land-use plans); poor conflict-resolution mechanisms, and those in existence are mainly based on the judicial model and less on alternative dispute resolution mechanisms. Countries are worse equipped to deal with conflicts involving whole communities. Minimizing and quickly resolving land conflicts is key to ensuring good land governance in Africa.

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<sup>3</sup> Between July 2012, and January 2013, more than 140 people – including women, children and police officers on duty – were killed in waves of attacks and counterattacks in more than a dozen swampy villages in the Tana Delta, a remote corner of eastern Kenya: a deadly mix of land grabs, ethnic strife and politics. Source URL: <http://www.france24.com/en/20130110-kenya-violence-tana-delta-blues-ethnic-strife-election-politics>, viewed December 5 2013

### **3.8 Weak land management and administration**

Institutional frameworks have been blamed for the failures of land delivery in most countries. The institutions have been prone to corruption; understaffing; insufficient tools and capacity; and abuse of power. There has also been lack of coordination between land legislation and other sectoral legislation, particularly forestry, water and mining. Lack of human, material and financial resources frustrates the successful application of existing land policies and laws. These limitations have been demonstrated, particularly in regard to securing the rights of certain groups such as migrants or dealing with the specificity of activities such as animal rearing, which is characterized by mobility.(FAO, 2007)Lack of automated land recording and documentation system has been of great concern. In many cases, land administration is centralized, and characterized by non-transparency and lack of accountability, which inhibits low-income households, as well as potential investors,(see the APRM reports for Nigeria and Kenya).In Samburu and Isiolo,(Kenya) the problems of communal titles and the fate of trust lands were stated as matters of continued concern. On the Kenyan coast, the slow pace of registering titles for locals and the continued control of the limited land by rich investors remains a thorny issue<sup>4</sup>. In Benin, inadequate capacity in human and material resources has been blamed for lacks in efficiency of internal controls, resulting low institutional capacity. Similar problems are shared in other countries like Mozambique, Ghana and Mauritius. Therefore it is high time for African countries to reform their institutional frameworks to ensure that they operate under sound principles of good governance.

### **3.9 Inter-and intra-generational equity issues; rights of pastoralists and indigenous peoples**

Equity issues are at the core of land governance in Africa. These include issues of inequitable distribution of land and natural resources; discrimination on the basis of gender and age; overemphasis on some forms of land use (e.g. agriculture); and the neglect of the land rights of pastoralists and indigenous communities (such as the Karimojong in Uganda, the Batwa in Uganda and Burundi, and the Ogiek in Kenya). Pastoralist and hunter/gatherer communities (such as the Maasai, Hadzabe, Karimojong, Batwa, San and the Ogiek) are dependent on specific geographical habitats for their livelihood. The alienation of their land through gazettelement of their habitats as forests or other protected areas,as well as the excision and allocation of their land to private interests makes their tenure insecure.

Pastoralism is often viewed as an archaic practice without a future. This is not the case. Pastoralism is a highly specialised activity, requiring considerable knowledge and skills. It contributes substantially to the national economy. Mobility is a key feature, enabling livestock owners to find fresh pastures during dry seasons and times of drought.

Policies for a more prosperous future for pastoralism include securing and protecting pastoralists' livelihoods, strengthening pastoral economies, empowering pastoralists and encouraging policy dialogue, and investing in essential services. It is essential that governments provide pastoralists with secure access to communal grazing lands and water resources. These rights should be enshrined in law. Just as importantly, policies should protect pastoralists' right to pursue a nomadic way of life. Mobility enables pastoralists to seek the best grazing land and maximise the productivity of their herds. It is also an essential part of their trading strategy.

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<sup>4</sup> In August 2013 the Kenyan Government issued 60,000 land titles to coastal land owners, but the action was seen as having been done in a hurry and needed more fundamental preparation

There may not be a generally accepted definition of indigenous peoples of Africa, but according to the Indigenous Peoples of Africa Coordinating Committee (IPACC), groups claiming to be 'indigenous' in Africa are mostly those who have been living by hunting and gathering; by transhumant (migratory nomadic) pastoralism, and those practicing traditional drylands horticulture, including oasis cultures. These different peoples represent the backbone of Africa's traditional knowledge of nature and sustainable development in remote rural areas.

"Indigeneity" is associated with both the negative experience of discrimination and marginalization from governance, as well as the positive aspects of being holders of unique knowledge, which has emerged through the long-term management of arid area and tropical forest ecosystems. Indigenous cultures arise and are sustained by the wise use of natural resources.

Clearly, there is need to understand indigenous peoples' way of life and to protect their land rights.

### **3.10 Poor women's land rights**

In most African countries there are gross disparities in land ownership between men and women. This is because of the customary practices that vest male members with the power to deal with important assets such as land. Women may have usufruct rights, but they may not own or inherit. In Mali for instance, women are traditionally excluded from owning land, except for temporary cultivation or use, with the possibility of the land being taken back at any time. In other countries women are only allowed to marginal land and are prevented from planting or harvesting some products. Women may be the tillers of the land (besides their heavy work load as mothers and family administrators), but they benefit inequitably from the proceedings from the land. Land is often considered valuable collateral by financial institutions. So with along with the marginalization of women with regard to land, they are therefore often excluded from obtaining loans or making important economic investments.

Gender discrimination in access to and control of land remains a serious impediment to development. One of the most serious obstacles to increasing the agricultural productivity and incomes of rural women is their insecurity in terms of land tenure. Traditional/customary systems that might have protected a woman's access to land during her lifetime are breaking down under population, economic and environmental pressures. Some countries such as Benin, Ghana, Kenya, Mauritius and Nigeria have domesticated the relevant international treaties guaranteeing women's land and property rights. Although some progress has been made in policy, legal and institutional reforms concerning marriage, inheritance and land/property rights law, enforcement of such reforms remains a key challenge in many countries and progress to equality is slow.

While in some African countries women's land rights are enshrined in the constitution or land law, in reality this does not bring feasible outcomes with respect to equitable access and control over land, mainly due to poor implementation and enforcement of the laws. Women still lack decision-making power. Effective land administration requires women's participation at policy formulation and at level of implementation on an equal footing with men in order to ensure gender-equitable land tenure system. Participation of women in local land management and administration committees, including in land dispute resolution/management committees, is basic for women's empowerment as it enables them to take part in community level decision-making processes.

Meaningful representation is an important step towards helping women gain access to established rights. It is not just a matter of placing women in positions to add to numbers, but to ensure that their voices are heard. Women must be an integral part of the implementation of land reform programmes. Training community members as paralegals, topographers and conflict mediators can help build community skills and increase the probability that women's concerns will be addressed. Women's organizations can be effective tools in promoting local participation, building consensus and raising consciousness at all levels, especially as women are generally not well represented in decision-making bodies. Therefore, they are often instrumental in pressuring for government programmes to include women as equal participants.

### **3.11 Inadequate protection for refugees, migrants, internally displaced persons and non-citizen long-term residents**

Many African countries host refugees, returning refugees, IDPs and migrants and those who might face forced resettlement as a result of government projects or natural calamities. People may be forced to move as a result of political strife within and between countries. Kenya, Uganda, Rwanda Burundi, DRC, Sudan, Southern Sudan, Tanzania and others are facing this problem (Sylla, 2010, 2011). Migrants may be people seeking better opportunities by way of land resources such as pastures, water, and minerals. The move of migrants to areas with established communities and land tenure systems leads to conflicts and misunderstandings as well as instability over the rules of access to land and resources.

Tanzania has recently flushed over 12000 non-citizen long term residents from the country in an exercise known as *Operation Kimbunga*. Many have been repatriated to their perceived countries to of origin, but many have simply nowhere to go. In such a situation the property rights of such persons become precarious.

### **3.12 Unattended historical land injustices**

A number of countries have what have been known as historical land injustices, grievances that stretch back to colonial land administration practices and laws that resulted in mass disinheritance of communities of their land; grievances which have not been sufficiently resolved to date. Sources of these grievances include land adjudication and registration laws and processes, and treaties and agreements between local communities and colonial governments. Such countries include South Africa and Kenya (Government of Kenya 2009). The grievances remain unresolved because successive post-independence governments have failed to address them in a holistic manner. Thus, they continue to cause hardships to affected societies. Grievances include those of the Karimajong of Uganda, Kabanje village in Zambia and those in Matutuine district in Mozambique. Good governance principles are key to addressing such injustices.

### **3.13 Neglect of local land management practices**

The existing land policies and laws have accorded little importance to local land management practices, and have neglected good practices and capacities for land adaptation and innovation. These include the *Ngitiri* practices of land management in Tanzania. Where local land use systems have been adopted, such as in Benin, they have proved to work well.

### **3.14 Urbanization**

Although Africa is the least urbanized of the continents, urbanization is taking place very fast with the contingent growth of unplanned and informal settlements, sometimes on marginal land. These invariably lack basic infrastructure as well as clear land tenure rights.

In one respect, rapid urbanization in Africa is causing the displacement of people native to the area in which urban areas are expanding, including expansion on village commons<sup>5</sup>. The displacement could be state sanctioned (e.g. through declaration of land use planning schemes); but it could also be market driven, e.g. where speculators buyout landowners for future land subdivision and disposal. The question of current and future land rights for those who are socially and economically weak need to be part of the national governance agenda. This includes children and youth whose parents sell clan land without considering the interests of future generations.

### **3.15 Conclusion**

From the foregoing, land governance in Africa is multifaceted. It has to be looked at in terms of the different contours that impact on land management. Various issues impact on land governance and it is these issues that any appropriate framework has to address in order to meet the qualities of a good governance land regime. In all cases, it would appear that adherence to good land governance principles can minimize conflicts and lead to a more sustainable land rights regime.

## **4. Existing documents and frameworks on land in Africa**

### **4.1 Overview**

In order to enhance the management of land and land related conflicts and good land governance, a number of initiatives covering the region need to be considered. These initiatives aim at making the social, economic and political life in Africa more people-oriented, more participatory, more transparent, while minimizing resource degradation and utilizing resources sustainably for the benefit of the majority, therefore leading to peace and security. The key initiatives to land management and land reform include the LPI, the Nairobi Action Plan on Large Scale Land-Based Investment in Africa, the 5-Year LPI Strategic Plan and Roadmap (2012-2016), the AU Declaration on Land Challenges in Africa, and recommendations of the Permanent Committee of the Pan-African Parliament; the APRM for monitoring and evaluating progress in land policy formulation and implementation and the United Nations Convention to Combat Desertification (UNCCD).

### **4.2 Review of the documents and frameworks**

#### **4.2.1 Framework and guidelines on land policy in Africa**

In recognition of the centrality of land in African development, the AUC, ECA and the AfDB launched a joint LPI in 2006, with a view to developing a framework and guidelines (F&G) on land policy in Africa. The endorsement of the F&G by the AU joint conference of ministers in charge of agriculture, land and livestock in April 2009, and the adoption of a

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<sup>5</sup> Known as *Rweya* in some parts of Tanzania

“Declaration on land issues and challenges in Africa” by the 13th ordinary session of the Assembly of African Heads of State and Government were important achievements. The Declaration called for the effective use of the F&G to inform national and regional land policy processes, while committing to give specific attention to strengthening security of land tenure for African women. The F&G promotes the need for a shared vision among all stakeholders of a comprehensive and coordinated land policy as a major factor in national development. It urges African governments to pay attention to the status of land administration systems, including land rights delivery systems and land governance structures and institutions, and to ensure adequate budgetary provision to land policy development and implementation.

Apart from the F&G, the AU-Declaration<sup>6</sup> contains a set of commitments by heads of state to *inter alia* prioritize, initiate and lead land policy development and implementation processes; support the emergence of the institutional framework required for the effective development and implementation of land policy and implementation and allocate adequate budgetary resources for land policy development and implementation processes, including the monitoring of progress. In order to achieve the realization of the above, the Declaration pushes forward measures to ensure that land laws provide for equitable access to land and related resources among all land users, including the youth and other landless and vulnerable groups such as displaced persons, in addition to strengthening security of land tenure for women.

Further to this, the Permanent Committee<sup>7</sup> has made important contributions in land governance in Africa. For instance, in 2011 it endeavored to move a motion to call for a moratorium on new large-scale land acquisitions pending implementation of land policies and guidelines on good land governance. It also recommended for formulation of land policies that recognize and secure the land rights of citizens as a precondition for any negotiation on investment. It further urged for the development and implementation of guidelines on good land governance to enhance a code of conduct for foreign direct investment (FDI) in Africa. Although the moratorium was not successful on text, many countries have reformulated their land policies and tried to promote good governance aspects, such as public participation in decision-making, transparency etc.

The Nairobi Action Plan (2011)<sup>8</sup> was adopted in 2011 at the high level forum on FDI in land in Africa. The Plan aims to promote assessment of land-based, large-scale investment; gender differentiation and poverty impacts. Its focus includes enhancing the capacity of governments and institutions to facilitate fair and transparent negotiations towards equitable land investments and the development of policies and land-use plans to facilitate equitable access to land. The LPI has been tasked to develop a work plan and implementation mechanism for the Plan and ensure collaboration between actors.

In order to facilitate the implementation of the AU Declaration on land issues in accordance with the Framework and Guidelines on Land Policy, the LPI formulated a strategic plan and roadmap.<sup>9</sup> The Plan outlines key objectives outcomes, outputs and timeframe. Some of the objectives include mainstreaming land in the agenda for Africa’s development, enhanced synergies and coordination, support for land policy development and implementation in Africa, as well as enhancing the implementation of the Nairobi Action Plan.

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<sup>6</sup> AU Declaration on Land Challenges in Africa: Assembly/AU/Decl.1(XIII) Rev.1.

<sup>7</sup> Recommendations of the Permanent Committee of PAN-AFRICAN PARLIAMENT (2011).

<sup>8</sup> The Nairobi Action Plan on large scale land-based investment in Africa.

<sup>9</sup> The 5-Year LPI Strategic plan and roadmap (2012-2016).

## **4.2.2 United Nations Convention to Combat Desertification**

The United Nations Convention to Combat Desertification (UNCCD)<sup>10</sup> is also an important instrument as it provides the means to combat desertification and mitigate the effects of drought through national action programmes. These programmes incorporate long-term strategies supported by international cooperation and partnership arrangements. The Convention is based on the principles of participation, partnership and decentralization, the backbone of good governance and sustainability. It is clear that when looking at land governance initiatives in Africa, one ought to consider the above frameworks as they provide a basis for regulating land governance issues. Although individual states are still at different stages in the implementation of the frameworks, they signify the positive strides being made in the right direction on land governance. It is therefore, the duty of states to consider the importance of these frameworks and see how they can integrate them in their domestic land regimes.

## **4.2.3 Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security**

The objective of guidelines adopted in 2012, is to improve governance of tenure of land, fisheries and forests. Such guidelines are for the benefit of all, with an emphasis on vulnerable and marginalized people. Its goals include food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development. All programmes, policies and technical assistance to improve governance of tenure through the implementation of these guidelines need to be consistent with states' existing obligations under international law, including the Universal Declaration of Human Rights and other international human rights instruments.

In order to achieve the above objective, the guidelines seek to:

1. Improve tenure governance by providing guidance and information on internationally accepted practices for systems that deal with the rights to use, manage and control land, fisheries and forests.
2. Contribute to the improvement and development of the policy, legal and organizational frameworks regulating the range of tenure rights that exist over these resources.
3. Enhance the transparency and improve the functioning of tenure systems.
4. Strengthen the capacities and operations of implementing agencies; judicial authorities; local governments; organizations of farmers and small-scale producers, of fishers, and of forest users; pastoralists; indigenous peoples and other communities; civil society; private sector; academia; and all persons concerned with tenure governance as well as to promote the cooperation between the actors mentioned.

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<sup>10</sup> 1994.



#### **4.2.4 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa**

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa is a ground breaking women's rights legal instrument. Since the Protocol came into force in 2005, there have been efforts to ensure its ratification and domestication by African nations, so that the rights set forth in this instrument can be realized in practice. To date, 36 of 54 African countries have ratified the Protocol.

The Protocol is determined to ensure that the rights of women are promoted, realised and protected in order to enable them to enjoy fully all their human rights. Article 15 is on the right to food security and requires states parties to ensure, inter alia, that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to: "Provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food".

Article 19 is on the right to sustainable development and states that women shall have the right to fully enjoy their right to sustainable development. In this connection, the states parties shall take all appropriate measures to (inter alia): c) promote women's access to and control over productive resources such as land and guarantee their right to property.

#### **4.3 Conclusion**

The purpose of this paper is also to internalize/operationalize the above guidelines, conventions or protocols in the development of a framework for carrying out APRM reviews.

### **5. Manifestations and impact of weak land management in Africa**

#### **5.1 Introductory remarks**

Despite the land frameworks underpinned above, APRM states have continued to struggle with some of the land governance issues. Such issues have manifested in different ways and have resulted into diverse consequences. Therefore, this part looks at the manifestation and impact of poor or weak land governance in Africa.

#### **5.2 Corruption**

Judicial courts, in dealing with land disputes in Africa are reported to be overwhelmed with legal cases of this nature. This has fuelled corruption, a common vice in situations of governance deficits. In many of the CRRs and the CRM reports, corruption was singled out as a critical aspect affecting governance in Africa. In the Algerian report, corruption was noted to have affected governance in all political, economic, social and business aspects. Both large and small-scale bribery is common, as confirmed by public opinion and the authorities, and also stated in the country self-assessment report (CSAR). The CRM also noted that very few studies on corruption had been conducted in Algeria. For Burkina Faso, corruption includes bribery, embezzling of public funds, illicit extortion of money for public services, forgery, false orders and over-invoicing. In countries such as Benin, Mali, Burkina Faso, Kenya and Mozambique, the APRM panel recommended ratification and enforcement of essential instruments to combat corruption. Poor pay and poor training of staff has been a good push factor for soliciting bribes and entertaining malpractices in land administration. On that basis, land organs are particularly

vulnerable to practices of weak governance unless effective mechanisms to check and control corruption are place (FAO, 2007).

Corrupt practices have also manifested themselves in service delivery, where officials demand facilitation payments or bribes in order to confer a right. In some cases, like that of Kenya, this has been used to allow citizens to keep land that is leased from the State. Ministries of Land in some countries are the top ranking institutions in terms of corruption. Rife corruption means that strong land management regimes which would be characterized by transparency and accountability get sabotaged. The land sector category occupies the top ten most bribery-prone sectors in the East African region. In a survey by the East African Bribery Index, Kenya was listed as the highest-ranking land corruption country compared to other countries in the region (East African Bribery Index 2011:3). In Nigeria, the current land tenure system is an open door for abuse. For instance, it takes very long to obtain a certification of occupancy for urban land, which then creates a tendency to bribe officials to speed up the process.

### **5.3 Increased social disputes**

Weak governance also reduces land tenure security. Illegal transfers cause legitimate owners or occupiers to lose their rights. With weak governance in land administration there can be multiplicity of land disputes. This arises where the powerful in society claim the land of others, including the state. Rising land values in areas undergoing rapid urbanization are fuelling disputes as land use is shifted from agriculture to housing and commercial activities. The poor may not be able to defend their rights against unfair competition and market pressure, resulting in loss of livelihoods. Where agriculture or mining is introduced into remote areas, there is the likelihood of conflicts between indigenous populations.

There have also been disputes over land ownership between government and communities, as illustrated in Acholiland, in northern Uganda. In this example, a corporate investor, the Madhavani Group, attempted to acquire 20,000 hectares of land for private ownership (Wacha and Jwee, 2011). The ensuing conflict pitted the ‘modernists,’ represented by the government and the Madhavani Group, against the ‘traditionalists,’ represented by the Acholi Land Forum (a non-governmental organization and Members of Parliament from Acholi). The traditionalists successfully sought a court injunction to stop the sale. The Acholi-Madhavani Group case illustrated the complexities of the duality of Uganda’s land tenure: multilayered authority over land, disputes over ownership and the nature of user interests (Deininger and Castagnini, 2006; Fitzpatrick, 2005; Ministry of Lands, Housing and Urban Development, 2011; Mabikke, 2011). In essence, chaos is built within Uganda’s current land tenure systems: the modernists preferring consolidation in the hands of the few for commercial crop production while the traditionalists prefer more equitable distribution within collective land ownership.

In Mali, Tanzania and Kenya conflict between agriculturalists and pastoralists are common. There have also been conflicts between indigenous populations and persons displaced as a result of climate change (environmental refugees). The Plateau State in the Middle-Belt of Nigeria has experienced many ethno-religious conflicts. This has led to thousands of people being killed or displaced. Conflict between settlers and indigenes in Kano has led to the displacement of more than 300,000 non-indigenes, especially those from Southern Nigeria. In Taraba State, Jukun and Tivs have fought frequently over access to arable land. The encroachment of Fulani cattle keepers on farmlands has been the cause of violent conflicts in the state.

## **5.4 Political conflicts and instability**

Implementation of land management reforms requires political stability, but many countries in Africa are facing political instability and sometimes armed conflict, internally generated or involving neighbouring countries; the basis of which may be the fight over land and natural resources. The cases at hand are the conflicts in the Democratic Republic of the Congo and the M23 militia allegedly from Rwanda. The instability in Somalia caused by Al Shabab militia has also caused sporadic unrests in Kenya. The ongoing political strife in Mali by the Islamic movements has destabilized the general socioeconomic welfare of the country. In Nigeria, the fights between the Boko Haram Islamic group and the government has paralyzed the socioeconomic activities of the local people. The Central African Republic is currently engrossed in internal strife, which has led to thousands of deaths and population displacement. Such conflicts are a recipe for weak governance in land matters due to the underlying vulnerability to unrest.

## **5.5 Civil wars**

The inhibiting effects of inequitable access to land and natural resources are exacerbated by general land scarcity. In Rwanda, land scarcity was a factor that led to the genocide. War and genocide have had land as their basis and also have had an impact on land (e.g. during the post-conflict situation). For instance, the massive return of refugees caused systematic destruction of existing woody areas, and a quasi-anarchical takeover of protected nature areas (the Akagera National Park and the Gishwati Nature Reserve for instance). There is also the issue of contested rights over land because of different waves of population movement. The cycles of civil conflict produce successive waves and associated groups of long-term refugees and returnees in need of resettlement. This situation has led to the new national policy of land sharing. In Kenya, land has been at the heart of clashes in different parts of the country which have generated IDPs in the Rift Valley, Coast and Western provinces. In 2008, land was at the centre of the post-election violence in the country. In Sudan, waves of population displacement and return have raised land tenure issues that need to be addressed by a comprehensive National Land Policy. Generally, there is need to adequately and comprehensively address land issues in conflict resolution and reconciliation processes and to secure land for refugees, IDPs and returnees (AUC-ECA-AfDB Consortium, 2010).

## **5.6 Increased insecurity and illegal land evictions**

Virtually all the countries in the region have no involuntary resettlement policies in place. Use of powers of eminent domain by governments and changes from one land use category to the other are major sources of insecurity. This has led to confrontation between the people who reside on the land and public institutions (AUC-ECA-AfDB Consortium; 2010). In Burkina Faso, there have been complaints about involuntary eviction where complainants either contested the amount of the compensation that they had received, or claimed that they had been evicted in accordance with procedures that they considered illegal (AUC-ECA-AfDB Consortium, 2010). In Nigeria, the country review team noted that government compensation for land is a contentious issue. The right of land ownership can be revoked in the interest of the purported public good, which includes mining or agricultural undertakings, or town planning purposes<sup>11</sup>. Although the Nigerian Land Use Act, 1978 specifies that disputes arising from

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<sup>11</sup> Town planning schemes invariably lead to the displacement of poor land owners by the rich or politically powerful

compensation are to be referred to the Land Use and Allocation Committee of the area, there is a strong feeling among stakeholders that compensation is not based on fair market value. Also, it is the perception of people from the Niger Delta area that the inadequacies and inequities of the Land Use Act strongly imply that it was not intended to protect them. Although only few cases of the trend have been cited, the general trend is towards deficiency, calling for clear frameworks from African countries.

### **5.7 Food Insecurity**

Secure access to land is a crucial factor in the eradication of food insecurity and rural poverty. Inadequate rights of access to land, combined with insecure tenure of those rights, often results in entrenched poverty and significantly impedes rural development and the alleviation of food insecurity. Secure access to land often provides a valuable safety net as a source of shelter, food and income in times of hardship; a family's land can be the last available resort in the instance of disaster (FAO, 2007). The United Nations Human Settlements Programme (UN-Habitat) asserts that tenure issues cannot be divorced from the broader issues of governance; hence they are to be looked at through the principles of sustainability, subsidiarity, equity, efficiency, transparency and accountability, civic engagement and citizenship and security (UN-Habitat, 2004). Food insecurity has increased the poverty level of the majority of rural Africans, thus adversely affecting the quality of their lives. Manifestation of food insecurity is vivid in areas where crops have been destroyed by investors in mining areas (a prime example being the Barrick Gold Mine in Tanzania), leaving communities in desperate conditions. Such memories caused residents of the Mimbati-Mtwara region, where huge deposits of natural gas have been discovered, to riot against the investor who was engaged to produce around 3,000 Megawatts of power. Similar problems are to be found in the rural communities of other countries like South Africa, Mozambique, Algeria and Nigeria.

### **5.8 Land and environmental degradation**

Land degradation has been on the increase in Africa. In part, this has been due to poor land management, but also because of the pressure the increasing population has on both land and natural resources, often contributing to degradation and desertification. Land degradation comes in many forms including loss of fertility, loss of top soils, loss of forest cover, soil erosion, soil salinization, creeping desertification, and so on.

Continued land and environmental degradation is a manifestation of weak land management in Africa as governments fail to enforce conservation measures, sometimes engaging in activities such as sanctioning logging, which make the situation of land degradation worse (e.g. by allocating logging permits)

### **5.9 Conclusion**

It is clear that weak land governance is a recipe for social, economic and political unrest. In turn however, political or civil strife can also result in paralysis of land governance frameworks. Hence, any good governance regime must take cognizance of social, economic and political issues that may impact on good land tenure, as well as avoiding possible conflicts that may further render land delivery mythical.

## 6. APRM led land reforms and contributions in Africa

### 6.1 Introduction

Despite the noted manifestation of poor land governance issues, various reforms and contributions have been garnered from the APRM mechanism on land governance in Africa. This part presents some country developments that have been made in particular countries as a result of the APRM initiative. The assessment starts by providing an overview of the APRM assessment and recommendations and the subsequent progress made.

### 6.2 APRM Matrix on policy directions to land reforms

Countries	APRM assessment	APRM country recommendations
<b>Algeria</b>	Different ownership systems for land exist at the same time	Establish legislation to ensure justice, transparency and equity in relation to land allocation
<b>Benin</b>	Absence of accurate information of the land situation in Benin fuels conflict. The poor performance of Benin's agriculture is due to constraints in land.	Call for a specialized institution to facilitate and ensure justice and transparency in access to land. Also, to draw up and implement the Rural Code so as to avoid conflict in rural areas. Furthermore, strengthen and re-energise village committees on conflict resolution
<b>Burkina Faso</b>	Persistent imbalances and inequalities are detrimental to girls and women	Review the legal and institutional machinery, the establishment of a national environment that enables women to be informed actors and beneficiaries of development
<b>Ethiopia</b>	There are land ownership issues and a dichotomy of views on state versus private ownership	A more flexible landholding system centred around providing security of tenure that takes into account local sensibilities, including a mixture of private, state and communal holdings, might generate significant support among the farming population and resolve the structural problems facing the sector
<b>Ghana</b>	Peculiar and complex land tenure system that reflects traditional political organizations. Insecurity of tenure is endemic and affects poverty reduction and growth	Implementation of proposals on a comprehensive land law providing easy access to land in both systems of tenure for vulnerable groups. Furthermore, continue ongoing processes of harmonising the country's land laws
<b>Kenya</b>	Variety of land laws, some of which are incompatible	Implement redistribution and reallocation polices to enforce equitable access to, and use of land
<b>Lesotho</b>	There is a backlog of bills that have yet to be passed by Parliament	Enact all outstanding bills, including the Judicial Administration Bill (2001) and the Judicial Institutions Bill (2003), and adopt the Code of Conduct for Legal Practitioners (2007)

<b>Countries</b>	<b>APRM assessment</b>	<b>APRM country recommendations</b>
<b>Mauritius</b>	Various measures are needed to sensitise and educate people about women's rights and gender issues must be reflected in the law	Rights of women should be more effectively articulated.
<b>Mozambique</b>	The administrative allocation process is hindered by allegations of corruption, delays, uncertainties and insecurities which encourage speculators and discourage investors	Make the land rights to rural land ( <i>predio rustico</i> ) transferable on the same terms as urban land ( <i>predio urbano</i> ), upon registration with the transferee succeeding automatically to any obligation of the transferor.  Nationwide awareness campaigns to promote business ethics, work ethics, individual ethics and integrity, respect of systems, efficiency and effectiveness, importance of safeguarding of national assets, conflict of interest etc all sectors.
<b>Nigeria</b>	Access to land is difficult and costly and the process is cumbersome	Undertake a national review of land law and land rights
<b>Rwanda</b>	Rapid population growth and subsistence farming lead to large shortages of land	Facilitate land registration at district level as well as continuing research on alternative livelihoods to reduce the demand of land
<b>South Africa</b>	Past racial policies have created a skewed pattern of land ownership	Explore innovative ways for accelerating land reform in order to redress the current imbalance in land ownership
<b>Tanzania</b>	Land grabbing by foreign and local powers-that-be at the expense of native land owners and communal land	A more participatory approach to land alienation
<b>Uganda</b>	The size of land held by the poor has been diminishing and land is increasingly in the hands of a few	The Land Bill which the Ugandan government tabled in Parliament has generated a lot of controversy and suggests the need for urgent, broad-based consultations on the land question in general, and the Land Amendment Bill in particular

Source: ECA- Extracts from APRM Country Reports

## **6.3 Country progress on APRM recommendations**

### **6.3.1 Algeria**

Gender equality is a constitutional principle that is constantly reaffirmed, and legal equality covers all civil, political, economic and social domains. The implementation of these principles has facilitated significant progress. The ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1996, has led the government to propose amendments to the Family Code to ensure women's protection. The choice to entrench democracy and ensure ongoing openness to dialogue, especially through the consolidation of the policy of national concord and reconciliation, despite the threat of terrorism, provides the basis for cementing and building an Algerian nation of the future. It has endeavoured to consolidate the policy on national reconciliation, and for consolidating adherence to, and effective ownership of reforms by political parties, civil society and the private sector.

### **6.3.2 Benin**

In Benin, the rural land use is of particular relevance to the Government, which fully understands the importance of securing land in the rural areas for carrying out large-scale investments to ensure sustainable agriculture. With a view to enhancing land security in the rural areas, the Government organized several regional seminars and a national land forum. Also, a land use code and rural land plans have been drawn up (Benin Progress Report, 2008/2009).

### **6.3.3 Burkina Faso**

In Burkina Faso there have been political and institutional reforms affecting land efficiency. Such reforms include the passing and implementing a land protection law that will help reduce social tensions.

### **6.3.4 Ghana**

According to the Ghanaian Progress Report No 3 of January-Dec 2008, the country had managed to sign a memorandum of understanding (MOU) with elders and chiefs that ensures return of a percentage of lands to its original owners. This attempt is crucial in ensuring that land conflicts that have affected the country are arrested. In addition, it has managed to reconstitute the National Land Commission to address emerging challenges facing the land sector. In particular the Wassa Amenfi Traditional area has a project for customary boundary demarcation. In addition, there has been improvement in land registration in the country, which goes hand-in-hand with rationalization of land administration. A Land Commission Bill that seeks to harmonize 160 laws governing land in Ghana has been sent to the Cabinet. Designation of new land areas for road construction and other projects has now been an issue of careful planning, especially on how to remove the occupants of such land without breaching the fundamentals of good land governance.

### **6.3.5 Kenya**

In order to prevent and reduce intra and inter-state conflict, Kenya has embarked on a programme to develop and implement a coherent and comprehensive land policy to address

land ownership, use, and administration. A national symposium was held in April 2007 and adopted the Draft National Policy. The National Land Policy was ready in 2009. The Ministry of Lands is also in the process of establishing a Land Reform Transformation Unit (LRTU) to lay down mechanisms of implementing the provisions of the Land Policy. The unit was to oversee the implementation of the Land Policy, pending the establishment of a National Land Commission; which has now been formed. So far, millions of land records have been scanned in line with digitizing all land records to facilitate faster retrieval and storage of land records. Staff are being trained on scanning to take over the programme once the contractor leaves. A task force has been formed to develop a GIS-based Land Information Management System. The Ministry has also introduced passport size photos of parties involved in land transactions. Furthermore, it is in consultation with stakeholders with a view of gazetting the necessary legal provisions on the use of thumb printing on land transfer documents. The Ministry of Lands is also in the process of putting together a team of officers that will be working on the process of land documents to reduce time spent. The Ministry still faces the challenge of massive manual land data, but it has also been fast tracking the issuance of title deeds. From June 2006 to June 2007, 158,948 title deeds have been issued all over the country. (Kenya Progress Report; 2006/2007), and as mentioned earlier, 60,000 titles have recently been issues at the Coast.

The (new Kenyan) Constitution contains fundamental departures from the past: putting public and trust land beyond the reach of greedy leaders, reducing foreign leases from 999 to 99 years, extending inheritance rights to daughters, and establishing a permanent Land Commission to enforce probity, are among the signs of improved statutory framework.

### **6.3.6 Lesotho**

Among the land problems in Lesotho identified by the CSAR were: differentiated access to land; declining land resources because of erosion and other factors; and conflict between chiefs and other land allocation authorities. The administrative management of land allocation, which was identified as needing attention in the CSAR, was reformed by enacting the new Land Act 2010 and the establishment of a new Land Authority. The Land Act of 2010 provides the basis for freeing land for commoditization, which is expected to ensure security of tenure, limit land accumulation or land grabbing, and encourage foreign direct investment (FDI) in the country.

### **6.3.7 Mali**

There have been efforts to define the Agricultural Land Policy and Law and as a result, development of the country's General Land Policy is ongoing in parallel with the development of the Agricultural Land Policy and Law.

### **6.3.8 Mauritius**

Mauritius has committed itself to implementing a series of measures aimed at eliminating all forms of discrimination against women, including mainstreaming the gender equality principle in the legal system, abolishing all discriminatory laws and adopting appropriate laws that prohibit discrimination against women. It also strives to create tribunals and other public institutions to ensure that women are effectively protected against discrimination. The country consolidated its progress to legalize gender equality when it launched its Gender Policy, which reflected its vision for gender equality.



### **6.3.9 Mozambique**

Land ownership matters were central to the battle for independence in Mozambique and its post-independence policy. There is increasing recognition towards the fact that access to land is critical, if vulnerable households are to enjoy sustainable rural livelihoods. Secure access to land, whether through formal, informal, customary or other means, is necessary for rural households to enjoy sustainable livelihoods and is also an important part of sustainable development. While the policymaking process revealed a wide range of divergent interests around the question of property rights, substantial consensus was achieved on the following three core issues namely: continued state ownership of land; protection of existing rights, particularly on communal land; and the opening up of land and other natural resources to the private sector.

There has been a clear need to improve the way in which land rights can be used to foster development in Mozambique. The CRM noted that the present land tenure system, where land is currently the property of the state and only leased to members of the society, is a major hindrance to social and economic progress. Economically, people cannot use land as collateral to secure a loan. This tends to place constraints on economic activities, especially in agriculture. Socially, the system has constrained housing development. This calls for a careful review of the current land tenure system in the country in the light of the existing economic situation (Mozambique -CSAR and CRM).

### **6.3.10 Nigeria**

Nigeria has inter alia formed a coalition group of civil society and private sector representatives to independently monitor programme implementation under the Economic Reform Programme. It has also formed the Nigerian Extractive Industry Transparency Initiative (NEITI), to promote transparency in the country's extractive industry. The public procurement system of the government has been made more open and transparent with the establishment of the Budget Monitoring and Price Intelligence Unit (BMPIU) in the Presidency. These are some of the efforts to bring public trust and reduce possible civil unrest that can hamper land governance.

### **6.3.11 Rwanda**

Rwanda has developed a condominium law to enable individuals to own sections in a building to facilitate decent livelihood and provide useful collateral for accessing loans. The act also aims to mitigate the shortage of land for settlement due to increased population. Rwanda did enact the Organic Land Act No 8/2005, which, inter alia, dealt with issues of land use and management, as well as facilitating use of land as collateral. It has established an inter-ministerial task force to review, harmonize and monitor ratification of codes, laws and conventions. The Organic Land Law No8/2005 of 14/7/2005 has been reviewed and replaced with the new Land Law No 03/2013/02 of 16<sup>th</sup> June 2013.

Inheritance rights are recognised and the law states that registration of land must be in both names of a married couple, and the land can only be sold with agreement of both parties. Land administration has been decentralized to districts and sectors.

### **6.3.12 South Africa**

South Africa has made efforts aimed at accelerating the process of land reform including: the establishment of a dedicated department of Rural Development and Land Reform to deal with issues of rural development and land affairs in order to ensure sustainability of land reform programmes. South Africa has also prioritised the revitalisation and development of rural areas. It has developed a Comprehensive Rural Development Strategy (CRDS) that is indicative of its commitment to prioritize the disadvantaged rural population. Its implementation is based on a three-pronged strategy: (i) coordinated and integrated broad-based agrarian transformation; (ii) an improved land reform programme; and (iii) strategic investments in economic and social infrastructure.

South Africa has embarked on a land reform programme that includes restitution of land rights, land redistribution and land tenure reform. The restitution programme seeks to restore land rights to people who were dispossessed of their land by the 1913 Land Act. The Act makes provision for the establishment of a commission for the restitution of land rights (CRLR) and a land claims court to facilitate its implementation. Further efforts aimed at accelerating the process of land reform in South Africa include the tabling of the Expropriation Bill before Parliament with the object of empowering government to pay a fair price for land. Government has also developed alternative approaches relating to the restitution and redistribution programme (South Africa Progress Report; 2010/2011).

### **6.3.13 Tanzania**

The Tanzania CSAR and the Country Review Mission underscored certain outstanding cross-cutting issues that must be resolved in order to improve governance in Tanzania. However, there have been notable advancements since the Country Review Mission in March 2012. The practice of land grabbing by private investors at the cost of the citizenry was highlighted throughout the country during the CRM. The poor and vulnerable are at risk of losing the land that they have farmed and lived on for generations. Information came to light that in July 2012, a major US energy company (AgriSol) was in the process of acquiring land in Tanzania that would displace more than 160,000 Burundian refugees who have lived there for decades, many of whom are subsistence farmers and leasing the land (see the Oakland Report). Initiatives by civil society to highlight the magnitude of the problem and find lasting solutions have been buttressed by diligent Members of Parliament, who have pressured the Ministry of Lands, Housing and Human Settlements Development to take action to stop the ongoing massive land grab and to eliminate corruption in its ranks. Studies have also been undertaken by civil society to explore the nature of capital investment taking place in certain regions (Ruvuma and Kigoma) and the sociopolitical implications for the peasantry in the area (Tanzania- CSAR and CRM).

### **6.3.14 Uganda**

In Uganda there has been significant progress in preventing and reducing intra-state conflicts. The efforts geared towards amending the 1998 Land Act and formulation of the National Land Policy, with an emphasis on enabling uninhibited and prolonged wide stakeholder consultations in both processes, has laid the basis for achieving consensus on these highly controversial issues (Uganda Progress Report No. 1; 2008/2009). Uganda has generally done a lot to promote gender equality and respect for women's rights, including landownership. This has impacted on peace in the land (Uganda Progress Report; 2011).

## **6.4 Conclusion**

Despite the various challenges faced by APRM countries, most of them have taken deliberate efforts to carry out land reforms aimed at improving land governance issues. It is therefore apparent that with clearly developed land governance review guidelines and framework, these countries can make crucial steps in achieving good governance goals espoused in the APRM key frameworks such as the AU declaration on land and its framework and guidelines.

## **7. Land governance practices in Africa: sampling best practices**

### **7.1 Introduction**

The APRM has at its epicentre the deepening of democratic practices, the strengthening of achievements, dissemination of best practices and the rectification of underlying deficiencies in governance and socioeconomic development processes among AU member states. This is aimed at enhancing opportunities for the different countries to learn from each other. Consequently, country reports highlight examples of best practices worth of emulation.

This section looks at land governance practices in APRM participating countries. A number of thematic issues have been identified as pertinent to inform land governance in Africa, and more so to the APRM countries. It is on the basis of such themes that the country performance survey was undertaken. These include statutory and customary rights; gender and land; public participation in land decisions; dispute settlement and conflict management; co-existence between agriculturalists and pastoralists; and land registration;

These themes, which are critical for good governance in land, should also form the benchmark for reviewing country performance under the APRM. Most countries seem to tread on more or less the same wavelength. Where particular practices were deemed to be best for emulation by other countries it has been specifically highlighted.

### **7.2 Statutory and customary rights**

Ensuring tenure security for customary land rights in Africa is an essential element for sustainable development, given the preponderance of customary tenure. Customary tenure is and always has been, one of the foundational elements of the land laws of all states in Africa. Some features of extra-legal property regimes found in South Africa's informal settlements and communal areas provide a key to the solutions; their social embeddedness; the importance of land and housing as assets that help secure livelihoods; the layered and relative nature of rights; and the flexible character of boundaries.

### **7.3 Gender land issues**

Gender discrimination in access to and control of land remains a serious impediment to development. In a region where land users are predominantly women, radical steps are necessary to remove these constraints. Women face discrimination under both customary and statutory systems of land tenure, as a result of culturally embedded discrimination beliefs and practices and male control of inheritance systems. Under many systems of customary law in the region, women, regardless of their marital status, cannot own or inherit land, property and housing in their own names. Succession and inheritance rights remain problematic, since a

woman cannot inherit the matrimonial home on the death of her spouse. Some have been conditioned to shy away from doing so (AUC-ECA-AfDB Consortium; 2010). Policies and laws in the region give mixed attention to gender land rights. Some countries like Algeria, Burkina Faso, Benin, Lesotho have signed and ratified some of the international instruments that promote gender equality and property rights, leaving some un-ratified. Yet some countries like Ghana have ratified and domesticated the relevant international treaties guaranteeing women's land and property rights. Moreover, in Benin, as in most of the other countries, access to land remains to be through succession to male members of the family. Girls have no right to inherit because, it is thought, they will become members of another family where they can exercise their rights through their children. The access of women to land is particularly difficult for social reasons. In Burkina Faso, women could also be allocated marginal land, only to lose it should the pressure on land increase. Law 14-96/ADP of 23 May 1996 on *Réorganisation Agraire et Foncière* (RAF), promulgated by Decree 96-208 of 24 June 1996, provides for equal access of the people to land in both urban and rural areas. The new Rural Land Tenure Law (adopted in June 2009) also enables legal recognition of rights by customary rules and practices.

### **7.3.1 Best Practices in Gender Equality**

#### **Ethiopia**

On gender protection, Ethiopia is among the first African countries to ratify the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) referred to in the section on standards and codes of the country report. It has also ensured that the convention is fully integrated in the Constitution and that necessary pieces of legislations are enacted. The Government has formulated several laws and policies to promote gender equality. Article 35 of the Constitution of the Federal Democratic Republic of Ethiopia clearly stipulates the rights of women. The government has also been promoting the mainstreaming of gender in all its development policies and strategies to address gender inequality. The National Policy on Ethiopian Women was formulated and adopted in 1993 in order to address the challenge of gender inequality. National institutional mechanisms were established at federal, regional and *woreda* (district) levels to implement the policy.

#### **Uganda**

The Ugandan Parliament has enacted the Equal Opportunities Act with a view to redressing marginalization and manage ethnic diversity. Specifically, the Act is meant to ensure equal treatment of all groups in Uganda, eliminate inequalities and discrimination against individuals and groups of people on the basis of ethnic origin, socioeconomic status, gender, disability or political inclination. It has also enshrined principles of gender equality in Articles 32 and 33 of the 1995 Constitution of Uganda, as well as embraced in the General Freedoms from Discrimination included in Article 21 of the Constitution. An affirmative clause is also provided in the Constitution. The affirmative action is intended to rectify historical imbalances which discriminated against women's effective participation in decision-making processes. At parliamentary level it is intended to have one woman representative for each district on special seats, while other women are free to compete with men in the normal contest at electoral constituency. At the local council level it provided for one-third representation of Women councillors at all levels.

#### **Nigeria**

Every local government has a woman councillor (21 women in all). There are three women Special Advisors. The target is for 33 per cent of posts to be given to women to serve as directors, executive secretaries of education, pension boards, etc.

#### **Mozambique**

Mozambique has the second highest number of women in Africa in the General Assembly, constituting 38 per cent of the members. This has been attributed to the high level of commitment to promote gender equality even at the party level, where quotas are set aside for women. In its governing statutes, FRELIMO, Mozambique's ruling party has set aside a quota of 35 per cent for its female members.

## **7.4 Public participation: land decisions**

Public participation in land decisions is important in ensuring public contribution and oversight of land governance. Coupled with transparency in decision-making, public participation is an important principle in land governance. Apparently, inadequate information about government plans and procedures prohibit substantive contributions to policymaking. Too often, suggestions offered to the government are ignored in its decision-making and some of the political elites are simply insensitive to feelings at grassroots level. It is felt that government officials underestimate the capabilities of ordinary persons and civil society organisations, to contribute substantially to economic policymaking. Broad participation in national policymaking and transparency in government decision-making would improve program design, policy implementation and sustainable land governance and performance. Some countries have made public participation part and parcel of the land management agenda. The Constitution of Kenya 2010 enshrines a provision that guarantees public participation in land decision-making and institutional transparency in land administration. These are useful tools for promoting public engagement in land governance. Tanzanian land legislation (Land Act (1999) and Village Land Act (1999)) provide clear provisions on public participation in decision-making as well as transparency of land organs.

### **7.4.1 Best Practices in Public Participation**

#### **Nigeria**

##### **Extractive Industries Transparency Initiative**

Nigeria is the first country to adopt the Extractive Industries Transparency Initiative (EITI). The initiative calls for independent audits of the oil and gas sectors to achieve a culture of transparency and accountability for both the oil and gas companies and the government. Audits results are readily and easily accessible to the public, as they are posted on the NEITI website. EITI culture is planned to be extended to the hard minerals sector. Corporate social responsibility coupled with EITI obligations should force companies operating in these areas, especially the Niger Delta, to contribute significantly to the sustainable development of the region. This sustainability should go beyond the life span of the oil and gas resources to ensure lasting development in areas of resource exploitation. Seeing that it is a leader in the implementation of the EITI in Africa, Nigeria could sponsor the development of a regional EITI organization under the aegis of APRM/NEPAD, since the EITI truly falls within the ambit of good governance in the operation of extractive industries. Such industries abound in Africa, ranging from oil and gas through precious metals (diamonds etc) to solid minerals. A regional approach to the EITI will help Africa improve its bargaining power in the global extractive industries and perhaps remove the apprehension felt by some African countries that EITI is merely another device to control and exploit African strategic resources for the benefit of the developed world.

#### **South Africa**

In South African, Imbizo is one of the best examples of popular participatory governance. Imbizo is a government initiative, which consists of a period of face to face interaction and engagement between senior government officials (including the President) of all spheres of government (national, provincial, local) and the public.

## **7.5 Dispute settlement and conflict management: legal framework, rules of access and procedures**

Land dispute mechanisms put in place are quasi judicial and take a long time, exclude the poor and tend not to address community to community problems. There is need to give support to traditional dispute resolution mechanisms(AUC-ECA-AfDB Consortium, 2010).For instance, in Nigeria no formal recognition of traditional rulers is provided for in the Constitution, although they are widely recognized in their spheres of influence as being

legitimate natural rulers (APRM Country Review Report No 8; 2008). While that has been the general perception, most Nigerians in the rural areas lack access to the institutions of the Nigerian state. They find the traditional leaders more responsive, which increases their closeness to them. This closeness has instrumental relevance for governance in Nigeria since the national and state governments exploit it by using the traditional leaders as conduits for public mobilization. Where these informal institutions are not recognized, it does not serve as useful mechanism to advance the land governance agenda. In other countries, systems have been devised to ensure that the land dispute mechanism is best handled at the most appropriate institution. According to the APRM Panel, the traditional institutions and traditional leaders should be insulated from politics and political manipulations, and be encouraged to continue dealing with disputes within their areas of jurisdiction (*ibid*).

Tanzania serves as one of such examples where the dispute settlement mechanism is institutionalized, incorporating both quasi-judicial and judicial bodies. At the lowest level, where formal rules are not sophisticated, the village land council handles the land dispute mediation role. Above that level is the ward tribunal, which is also centred to mediate the disputing parties. If matters cannot be resolved the matter goes to the District Land and Housing Tribunal, the High Court-Land Division and finally the Court of Appeal. Weak land administration institutions and ineffective conflict resolution mechanisms adversely affect productivity and ultimately compromise the well-being of the state and its citizens (AUC-ECA-AfDB Consortium, 2010).

### 7.5.1 Best practices in dispute resolution from APRM countries

#### Rwanda

Out of the APRM countries, one country that stands out as having best practice on dispute settlement is Rwanda. Rwanda has instituted several organizations and bodies that have been created to prevent and manage conflict. This includes the National Unity and Reconciliation Commission, the National Council of Dialogue, the National Commission for Human Rights, and the *Gacaca* courts. In the *Gacaca* courts for instance, the community elects its own judges, considered wise and honourable and all community members of adult age constitute the jury for their peers. It is a participatory instrument of conflict resolution that builds strong community ties, serving important unity and reconciliation purposes.

The *Gacaca* courts were successfully used to resolve cases arising from the 1994 genocide and have since been wound up. Currently, the *Abunzi* committees are the main institution involved in resolving disputes including those about land in the community. They are established under the *Abunzi* law. In promoting universal access to justice, the Government of Rwanda has recognised the importance of promoting dispute resolution at the community level. Thus, in 2006 the Mediation Committees or *ABUNZI* were created with task of mediating some categories of disputes that may arise among people living in same community. According to the Organic Law n° 02/2010 of 09/06/2010 on Organisation, Jurisdiction, Competence and Functioning of the Mediation Committee

Some categories of disputes that may arise among people living in same community. According to the Organic Law n° 02/2010 of 09/06/2010 on organization, jurisdiction, competence and functioning of the Mediation Committee (repealing Organic law n° 31/2006 of 14/08/2006), the Mediation Committee is an organ meant to provide a framework for mandatory mediation prior to filing cases in ordinary courts hearing at first instance. Like *Gacaca*, *Abunzi* was inspired by Rwandan traditional dispute resolution systems, particularly in the form of family meetings (*inama y'umuryango*). The *Abunzi* system is designed to decentralise justice, making it affordable and accessible. The committee members are elected by the members of the same community and are people of character and integrity. Therefore they know the community well and are better suited to resolve cases within their communities.

According to the Organic law n° 02/2010 of 09/06/2010, especially in its Article 2, two types of Mediation Committees exist: a Mediation Committee whose jurisdiction is at the cell level and Appeal Mediation Committee whose jurisdiction is at the sector level. Both committees are comprised of twelve residents of the cell and the sector respectively, who are persons of integrity and are well known for their mediation skills.

Disputes resolved by these Mediation Committees are those that involve people living in the same cell, (not just community) at a cost of one to three million Rwandan francs maximum. Disputes are twofold: civil cases and criminal cases. Among the civil cases, mediators resolve cases such as: disputes related to land and other immovable assets; cattle and other movable assets; breach of contractual obligations in cases not involving central government, insurance and commercial contractual obligations, family cases other than those related to civil status; successions, etc. In all the above cases, the matter at issue should not exceed three million Rwandan francs, except for the cattle and other movable assets whose value should not exceed one million francs.

In criminal cases, mediators have the competence to hear cases related to removing or displacing land and plot boundaries; any kind of destruction or damage to crops; insults; defamation, except in cases where it is done by the media; stealing crops or standing crops; larceny; concealment of goods stolen during larceny; thefts or extortion committed between members of same family (between spouses or by descendants to the detriment of their ascendants for example); killing or wounding without intent domestic or wild animals belonging to another person, etc. In all such cases, the matter at issue should not exceed three million Rwandan francs.

According to the 2010 Citizen Report Cards (CRC) survey conducted by Rwanda Governance Board in all districts and with 3,600 sample size, the Mediation Committees came first as the most appreciated dispute resolution instrument in comparison with other mechanisms put in place to allow the easy access to justice. In fact, when asked their level of satisfaction of the service delivery in the justice sector, 81.6 per cent of respondents declared that they were satisfied with the service delivery of the Mediation Committees in resolving their disputes, in comparison with 63.4 per cent for ordinary courts, 48.1 per cent for the Prosecution and 18.4 per cent for the Access Justice Bureaus.

### **Ghana**

The critical role of traditional chieftaincy institutions in conflict prevention, management and resolution is well established and acknowledged in Ghana. With the support of non-government organizations (NGOs), like the Ghana Association of Chartered Mediators and Arbitrators, the government has recently introduced an innovative, appropriately structured and cost-effective mechanism into the country's justice system – the Alternative Dispute Resolution (ADR). This mechanism can be a useful tool in handling land related disputes to enhance good governance in resource management.

### **Burkina Faso**

Mechanisms for the management of internal conflicts in Burkina Faso are mainly administrative and judicial. Efforts are made to manage conflicts at the local, county, provincial and regional levels. When conflicts erupt, the prefect and technical services (environment, agriculture, livestock breeding, security) together with resource persons, i.e. chiefs or customary owners of land, come together to attempt conciliation. The relevant technical ministries propose actions to resolve the problem, for example, provide trails or delineate fields for livestock use. Then, there are the Village Development Committees (VDCs) which replaced the Land Management Village Committees (LMVCs), which serve as a framework for local land conflict management. If there is no solution at village level, there is the District Court, but whose jurisdiction is limited to penalties providing for compensation under 100,000 francs except penal sanctions. If the problem persists, it is raised to the level of High Commissioners who, with technical services, try to solve it by going on the spot. When there is no agreement, the parties may refer to the High Courts.

## **7.6 Co-existence between agriculturalists and pastoralists: the case of two communities from Sudan**

One of the major problems in Africa is reconciling the land needs of agriculturalists with those of pastoralists and other land users. Conflicts are more frequent and severe during the dry season and during periods of prolonged drought. Often, as with the recent clashes in Kenya, conflicts take on political overtones. However, lessons can be drawn from the experience of two communities—the *Kawahla* (farmers) and the *Gawamba* (herders)—in the village of Gereigikh in North Korfodan State (Sudan) and the Dinka and Misseriya in Abyei, who have learnt to coexist, thus offering useful lessons. Farmers learnt that when cattle graze on their fields, the animal droppings make good manure for crops, improving productivity. Therefore, they allow the herders access to the fields at appropriate times. Now the two communities have developed a symbiotic relationship: they have relationships in the market place over the supply

of manure and labour, and they buy products from each other. In times of drought the farmers sell water to herders. The herders supply farmers with dairy products, while the farmers supply them with agricultural produce.

The risk of a flare-up is always there, usually over animals grazing on cropland and shared water points. However, the communities manage because the tribal system, where traditional leaders arbitrate conflicts is very strong in the area. Furthermore, transhumance routes, whereby herders can move their animals through farmers' areas to other parts of the country in search of pasture and water, are well recognized and protected. Other African countries may draw valuable lessons from this experience. The impact of this co-existence is less disputes and ability by communities to engage in more profitable socioeconomic development activities.

## **7.7 Land registration**

Land registration is considered to be essential for effective land management. However, in most African countries land is held in the form of customary or informal tenures without official papers. Even in cases where it would have been possible to issue Certificates of Title, landowners may not be registered. Thus lessons in best practices in land registration are important to inform the rest of the continent.

### **7.7.1 Best Practices in Land Registration**

#### **Ethiopia**

Ethiopia served as an example of good practice where, over a period of two to three years, the country registered the majority of rural lands in a rapid process at relatively low cost. In 1997, a federal proclamation (law) devolved responsibility for land policy to the regions. Under the programme, each village elects a Land Use and Administration Committee that takes responsibility for public registration of plots in a field-based process with the presence of neighbours to increase transparency and reduce the scope for manipulation or error. Once results have been discussed in public, households receive a preliminary registration certificate identifying their holdings, to be followed by an official certificate with the holders' pictures and space for maps. The programme has registered 20 million plots for some 5.5 million households in a very short time. The cost for first time registration (including the certificate) is around USD1 per plot. Use of GPS to add spatial reference would cost around USD1.5 per plot. This provides an important benchmark for other African countries, and suggests that technical factors are not sufficient to explain the limited progress with implementing innovative new laws and reforms.

The Ethiopian case also illustrates that given the massive scale and positive impact of first-time land registration, technical obstacles and resource constraints cannot explain the near-universal failure by African countries put the innovative aspects of recent legal reforms into practice. Instead, the main obstacle to documenting land rights of current occupiers on a massive scale seems to be political. With political commitment, documenting land rights on a massive scale and at a cost that is affordable under African circumstances is feasible and can have significant benefits even in the short term (Deininger; 2007).

#### **Madagascar**

The example of Ethiopia can be complemented by the case of Madagascar, where from 2005 the government has resorted to the use of local systems of land management to mount a land registration process in rural areas. Before this, one had to travel 300 km to get a title and the process took seven years. Local communities have a *Guichet Foncier* or communal land management office responsible for acknowledging private property rights by issuing a *Certificat Foncier*. The whole system is based on local management. As a result, the time taken to get a title has been reduced to three months, and the cost has come down from USD500 to USD24. The *Certificat Foncier* can be issued 12 times faster. The certificate is to be introduced in urban areas with the support of the UN-HABITAT. (AUC-ECA-AfDB Consortium, 2010).



## 7.8 Conclusion

Best practices in areas of decentralization, gender equality, a more open, consultative, transparent and inclusive government has ramifications for good land governance. The good practices cited have centred on popular participation models in decision-making, dispute settlement mechanisms, gender mainstreaming, institutional transparency, and cost-effective land registration and titling. Apart from those identified, each country should strive to achieve better practices in different areas of land governance so that citizens can get the best from their land at a modest cost.

## 8. Designing an APRM Land Governance Review Framework

### 8.1 Introduction

These guidelines are developed in consideration of the Framework and Guidelines on Land Policy in Africa and the AU Declaration on Land Issues. Under the AU Declaration, African States undertook to carryout various processes for ensuring good governance in land issues. Such processes include developing measures for the establishment of mechanisms for progress tracking and periodic reporting by member states on progress achieved in land governance. The F&G outlines how the land sector should perform its proper role in the development process and promotes the need for a shared vision among all stakeholders, of a comprehensive and coordinated land policy as a major factor in national development.

It points out that progress requires the development of tracking systems and mechanisms of land policy formulation and implementation that will enable African governments learn from past successes and setbacks, and make timely readjustments to national land policy processes.

Other Guidelines, Conventions and Protocols taken into consideration are: Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security; The United Nations Convention to Combat Desertification and the Protocol to the African Charter on Human and Peoples' Rights on the rights of Women.

### 8.2 APRM Land Governance Review Framework

<i>SN</i>	<i>Governance Issue</i>	<i>Assessment Criteria</i>
1	<b><i>Commitment to Land Policy Development</i></b>	<ul style="list-style-type: none"><li>- Land policies support a wide range of economic, social and political objectives including the prevention of conflicts.</li><li>- Land policies ensure prompt and effective conflict resolution through mutually acceptable dispute processing mechanisms.</li><li>- Developing monitoring and evaluation mechanisms for the implementation of national land policies and laws.</li></ul>
2	<b><i>Integrating land issues into decision-making processes</i></b>	<ul style="list-style-type: none"><li>- Good land governance is hinged on principles of inclusiveness and transparency.</li><li>- Structures governing access, control and management of land consolidate democracy in land governance</li><li>- Devolution of power over land management and the decentralization of the delivery of land services to local land governance institutions are enhanced</li></ul>

<b><i>SN</i></b>	<b><i>Governance Issue</i></b>	<b><i>Assessment Criteria</i></b>
		<ul style="list-style-type: none"> <li>- Corruption and inefficiency are exposed and addressed in every level of land administration taking cognizance of studies like those of Transparency International etc.</li> <li>- Land policies are integrated with natural resource management strategies and poverty reduction programmes.</li> <li>- Local actors, including civil societies are fully involved in the process of developing and implementing land policies and laws as necessary land right.</li> </ul>
3	<b><i>Legitimacy of indigenous land rights systems</i></b>	<ul style="list-style-type: none"> <li>- Land policies seek to remove age-old rigidities in traditional structures and systems which tend to discriminate against women and improve indigenous tenure systems.</li> <li>- Land policy processes recognize the role of local and community-based land administration/management institutions and structures as important as State structures.</li> <li>- Traditional land dispute resolution mechanisms to be acknowledged, as they are more accessible to the poor and other marginalized segments of society.</li> <li>- Land policy processes provide for the necessary interface between state and indigenous systems, particularly with regard to the certification of land rights, the empowerment of decentralized institutions in land rights administration, and the management of land as a resource at the local level.</li> <li>- Land policy allows new and innovative policies including the provision of statutory frameworks for the documentation and codification of informal land rights regimes.</li> </ul>
4	<b><i>Strengthening the land rights of women</i></b>	<ul style="list-style-type: none"> <li>- Land rights of women are strengthened through a variety of mechanisms including the enactment of legislation that allows women to enforce documented claims to land within and outside marriage.</li> <li>- Women have equal rights to inherit and bequeath land.</li> <li>- Co-ownership of registered land by spouses including the promotion of women's participation in land administration structures.</li> <li>- Women's rights to land are placed in the public domain of human rights to ensure full enjoyment of land rights.</li> <li>- International conventions on women are ratified and enacted into law.</li> </ul>
5	<b><i>Enhancing access to land through tenure reform</i></b>	<ul style="list-style-type: none"> <li>- States ensure provision of secure access to land through various forms of tenure to facilitate economic opportunity and livelihood security for all land users.</li> <li>- Land tenure reforms to focus on improving access to land and confer security for vulnerable groups, especially women who constitute most of the urban and rural poor.</li> </ul>

<i>SN</i>	<i>Governance Issue</i>	<i>Assessment Criteria</i>
		<ul style="list-style-type: none"> <li>- States to ensure that land policies are achieved (for example, the objectives related to tenure security, equitable access to land, and reduction of conflicts are attained).</li> </ul>
6	<b><i>Balancing pro-poor priorities with market orientation</i></b>	<ul style="list-style-type: none"> <li>- Pro-poor strategies of land development are harmonized with market-driven options.</li> <li>- Land issues are mainstreamed in poverty reduction strategies.</li> <li>- States ensure increased market-driven policies of land development do not expose vulnerable groups, particularly women, to further marginalization through speculation and costly land rights transfer systems.</li> </ul>
7	<b><i>Clarifying property rights in agriculture</i></b>	<ul style="list-style-type: none"> <li>- Property right systems under which land is held and used clarified for the variety of agricultural forms and participants such as rural farmers, particularly women and foreign or local commercial investors.</li> <li>- Secure access to land resources is guaranteed through a variety of tenure systems that ensure returns for short or long term investments.</li> </ul>
8	<b><i>Promoting the development of land rights transfer systems and markets</i></b>	<ul style="list-style-type: none"> <li>- An enabling environment is created for the transfer and exchange of land rights either formally through documented transactions or informally through intra-family or community arrangements.</li> <li>- Robust land rights transfer systems and markets are developed to expand opportunities for the acquisition of land resources</li> <li>- States promote support services infrastructure, particularly low-cost credit facilities, to enable various groups take full advantage of the market.</li> </ul>
9	<b><i>Land needs for sustainable Urbanization and other uses</i></b>	<ul style="list-style-type: none"> <li>- States ensure compensation for land lost, resettlement of displaced people, reparations for environmental damage and the sharing of revenues accruing from investment operations to be properly addressed.</li> <li>- Land rights for informal land dwellers in urban areas are protected</li> </ul>
10	<b><i>Reform of land rights delivery systems</i></b>	<ul style="list-style-type: none"> <li>- Land rights delivery systems comprising of processes concerned with ascertainment, demarcation, survey, registration, and documentation of land rights and systematic tracking of land rights transactions are revitalized and financed.</li> <li>- Land delivery systems are technologically upgraded including the establishment of computerized Land Information Systems (LIS) for faster and more efficient delivery.</li> <li>- Public-private partnerships are promoted in land delivery systems to liberate the provision of services from complex government bureaucracies.</li> </ul>

<i>SN</i>	<i>Governance Issue</i>	<i>Assessment Criteria</i>
11	<b><i>Reform of land governance institutions</i></b>	<ul style="list-style-type: none"> <li>- Laws and institutions dealing with land are harmonized with existing legal and institutional structures governing other aspects of the land sector like water and the environment.</li> <li>- Land policies to avoid fragmentation and duplication of authority and responsibilities in land governance that has led to serious conflict and competition not only across line ministries and institutions, but also between central and local government authorities.</li> <li>- States ensure institutions responsible for land governance, including land held by the state, operate in a transparent, accountable and efficient manner, that they be harmonized and their respective mandates rationalized.</li> <li>- Institutional decentralization is enhanced to facilitate devolution of decision-making and authority to local communities and other stakeholders.</li> <li>- Weaknesses in the capacity of government institutions responsible for land management are tackled.</li> </ul>

States must measure the effectiveness of the use of resources to see whether the resources mobilized for the development and implementation of the land policy have been rationally used in order to achieve satisfactory results with minimal inputs. They must also assess the sustainability of the land policy. This aims at verifying whether benefits derived from the implementation of land policy are sustained and whether they can support further land reforms.

Land governance processes must be full participatory. All relevant stakeholders should be involved from the initial stages of the process. Every effort should be made to achieve this, even if the government is responsible for leading the process. Besides, land administration must be transparent enough to avoid the risk of corruption and malpractices. There has to be systematic and adequate mechanisms for communication and feedbacks. Indicators should be adaptable to time, space and geographical specificities.

### **8.3 Tracking**

Together with established framework, there has to be an effective tracking system that must be geared to determine the overall coherence or consistency of compliance with land governance issues. This involves three main elements, namely (i) internal consistency, i.e. the compatibility of the key components of the land governance framework (customary rights/statutory rights, conservation purposes/economic objectives); (ii) cross-sector consistency, i.e. compatibility with and conformity among the key sectors involved in land governance issues (forest, water, fisheries, agriculture, pastoral activities, mining, urban development); and, (iii) inter-regional consistency, i.e. whether there is convergence between national land policies and synergy with regional developments and policies.

### **8.4 The need for feedback**

Experiences from other initiatives indicate that short of regular and systematic feedback on the successes, failures and the institutional bottlenecks, no effective political remedy can be

applied to re-adjust the whole land policy system. Feedbacks should systematically be documented and disseminated to all stakeholders. For large groups, seminars and workshops are adequate means of communication while reports with precise recommendations are preferable for decision-makers. Inter-sectoral round tables could be also used to share feedback.

## **8.5 Conclusion**

Generally, the report has focused on land governance issues in APRM members. It has underscored the importance of good governance in land sector delivery. It is therefore clear that weak governance may promote inequality, as the rich are able to benefit from the opportunities for self-enrichment while the poor lose their rights to land and common property resources such as communal grazing areas and forests. All reviewed countries have some initiatives to address poverty, increasing insecurity of tenure, resolving conflicts, improving governance and equity and increasing land transparency. Despite the realization that there are benefits to land registration, countries have not been able to mount a programme that could lead to the realization of such benefits on a sufficiently large scale to provide options for the majority poor.

Bearing in mind that governments want to encourage the use of land for bringing about economic development, the APRM reports highlight the problem of land ownership and acquisition due to the complexity of existing land tenure systems that requires extensive negotiations with a number of stakeholders. This is further compounded by an inefficient land administration system that creates problems relating to title deeds. The question of access to land is flagged as a cross-cutting issue that needs to be addressed holistically by governments.

There is a need to work on the land governance guidelines to bring about harmony in land governance in Africa. Such a framework may result into adequate security of tenure, especially (but not only) for individual users in customary land tenure systems. It will also arrest the tendency of most countries to lag behind implementation of international and regional instruments. An action has to be adopted to ensure that the guidelines are thoroughly adhered to by member states.

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