



**AUDA-NEPAD**  
AFRICAN UNION DEVELOPMENT AGENCY



# Land Governance Mainstreaming Tool

**giz** Deutsche Gesellschaft  
für Internationale  
Zusammenarbeit (GIZ) GmbH

2020

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This tool will be critical and strategic to the success of strengthening Land Governance in the continent and achieving the African Union Agenda 2063 as well as the United Nations Sustainable Development Goals for the Africa We Want.

# ABBREVIATIONS AND ACRONYMS

AfDB	African Development Bank
ALPC	African Land Policy Centre
AU	African Union
AUC	African Union Commission
CAADP	Comprehensive Africa Agricultural Development Programme
CCRO	Certificate of Customary Right of Occupancy
CSIFs	Country Strategic Investment Frameworks
ECA	Economic Commission for Africa
F&G	Framework and Guidelines
FAO	Food and Agriculture Organisation
FDI	Foreign Direct Investments
LG	Land Governance
LGP	Land Governance Program
LGAF	Land Governance Assessment Framework
LPI	Land Policy Initiative
NAIPs	National Agricultural Investment Plans
NELGA	The Network of Excellence on Land Governance in Africa
AUDA-NEPAD	African Union Development Agency-New Partnership for Africa's Development
RECs	Regional Economic Communities
SADC	Southern African Development Community
SAGCOT	Southern Agricultural Growth Corridor of Tanzania
SDGs	Sustainable Development Goals
STC	Specialized Technical Committees
UNDESA	United Nations Department of Economic and Social Affairs

# EXECUTIVE SUMMARY

Effective land governance mainstreaming requires plans, resources and dedicated people to ensure that commitments are translated into action and actual change on the ground. Although land governance has been a pre-occupation of the African Union (AU) and its agencies, land governance mainstreaming has not been adequately addressed and more precisely, there has not been comprehensive land governance mainstreaming tool to guide countries in mainstreaming land governance in their strategies and plans.

The synthesis of land governance issues in Burkina Faso, Benin, Madagascar, Ethiopia, Uganda, Tanzania, Namibia and Botswana has shown that African countries, particularly the selected countries, underscore the importance of land governance mainstreaming by undertaking some initiatives towards that front. However, there are challenges that limit effective land governance mainstreaming. One of the challenges is lack of a clear mainstreaming tool that provides practical steps on effective mainstreaming of land governance into the national priority programs and investment plans. Furthermore, there are a number of identified land governance mainstreaming barriers such as historical land injustices, ethnicity, cultural dominance and political conflicts and instabilities, that have been identified from the selected countries.

This land governance mainstreaming tool is developed with the aim of supporting mainstreaming of land governance into national priority programmes. It is expected that this tool will help to support and inform decision making processes on land governance on the basis of participatory assessment of barriers to land governance mainstreaming. It will further enhance participatory assessment of land governance mainstreaming barriers. With such a tool, each department or agency implementing land governance mainstreaming project is expected to adopt its action plan to structure and monitor activities for mainstreaming Land Governance.

The document is organised into two major parts. Part A provides background and justification for the tool and Part B focuses on the land governance mainstreaming tool. Each of these parts is divided into sections. Section I of part A provides the rationale for and review of mainstreaming land governance. Section II identifies land governance challenges and issues in the context of land governance mainstreaming in Africa. The identified issues include multiple legal systems, land tenure insecurity, lack of protection of customary tenure, unregulated land, unregulated land deals, abuse of state control over land, increasing land and natural resource degradation, conflicts over land and natural resources, land information management and administration inefficiencies and women land rights. Land Governance Barriers are discussed in section III.

Part B provides the land governance mainstreaming tool based on the identified issues in section II and III of Part A. It outlines the essentials of the land governance mainstreaming tool, key entry points for the mainstreaming tool and the practical approach for land governance mainstreaming into national priority programs.



# PART A: BACKGROUND AND JUSTIFICATION

## Section I: Justification and Rationale for Land Governance Mainstreaming

### Introduction

Land governance mainstreaming encompasses the integration of sustainability objectives to build internal and external capacities, strategies, policies and programs to improve land governance and capacity to deliver land-related programmes in order to achieve broader sustainable development goals. Through land governance mainstreaming, programmes or activities that affect land governance are assessed, based on existing procedures. Mainstreaming land governance can be implemented as an internal operational process through specific strategies, policies, programs, and operational procedures. This needs a specific tool and the outcome are verified by a specific monitoring and evaluation tool.

For a successful land governance mainstreaming, stakeholders and staff need to understand the importance of addressing land issues within national priority programmes and projects. Communal progress or expansion of economic activities will only be achieved if land governance is improved to support the existence of communities, food security and investment. In recognition of this standing, it is important to ensure that land governance is fully integrated into policies, programming, and operations using a specific tool.

### Justification for the Tool

In Africa, land is an important resource and it is central to the continent's agenda for sustainable development. The African Union has taken various initiatives such as the formulation of the African Union Declaration on land issues and challenges in Africa and the Framework & Guideline (F&G) on land policy in Africa, among others, to address land governance issues. At national level, countries have developed strategies and plans and undertaken policy and legal reforms with a view to promoting land governance. There has however been lack of land governance mainstreaming tool to guide countries in incorporating land governance in their national agendas. As a result, land governance has been dealt with in piecemeal manner and mostly on ad-hoc basis. Lack of a mainstreaming tool has undermined the contribution of the land resource to socio-economic development. As a result, there is need for developing a tool for incorporating land governance into sector plans and national priorities such as Comprehensive Africa Agricultural Development Programme (CAADP), National Development Plans (NDPs) and Country Strategic Investment Frameworks (CSIFs).

A number of initiatives have been taken to enhance good land governance in Africa. The initiatives aim to promote land governance mainstreaming at regional and national levels. Some of the initiatives include





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ADMINISTRATION  
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AND LAND  
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ADEQUATE  
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AND  
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the Land Policy Initiative (LPI), the Nairobi Action Plan on Large Scale Land-Based Investment in Africa, and the AU Declaration on Land Challenges in Africa. In particular, the Framework & Guideline (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<sup>1</sup>. African governments are encouraged to pay attention to the status of land administration systems, including land rights delivery systems and land governance structures and institutions, and to ensure adequate budgetary provision to land policy development and implementation. The Declaration on Land Issues and Challenges in Africa adopted by the 13th ordinary session of the Assembly of African Heads of State and Government 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 the security of land tenure for African women.

In 2011, the Nairobi Action Plan was adopted to promote the assessment of land-based, large-scale investment, gender differentiation and poverty impacts. It focuses at inter alia on enhancing the capacity of governments and institutions to facilitate fair and transparent negotiations that may result into equitable land investments and development of policies and land use plans to facilitate equitable access to land. The Land Policy Initiative (LPI) – African Land Policy Centre (ALPC)<sup>2</sup> was tasked to develop a work plan and implementation mechanism for the Plan and ensure collaboration between actors among others. It also supported efforts of Member States to align the National Agriculture Investment Plans (NAIPs) to targets of the 2014 Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods adopted by the Heads of States and Governments.

The ten-year implementation plan for Agenda 2063 further notes that a key tool to achieving environmentally sustainable climate resilient economies and communities is to implement fully the AU Framework and Guidelines on Land Policy in Africa” at the national level and “promote the domestication of the Framework and Guidelines... and Guiding Principles on Large Scale Land Based Investments in Africa. Key targets and indicators associated with AU Agenda 2063 (to be achieved by 2023) and SDGs (to be achieved by 2030) include land governance targets and indicators in the realms of: equitable access to land for women, men and youth; and security of land rights for women and vulnerable groups.

At the sector level, African heads of state and governments have also adopted the (CAADP) as its continental framework for agriculture-led growth in 2003 and endorsed AUDA-NEPAD’s Environment Action Plan (EAP), with TerrAfrica as a flagship programme. AUDA-NEPAD’s approach is comprehensive and has evolved over time. Since 2014, implementation has been guided by the Malabo Declaration on CAADP and by the Rural Futures - an important framework for rural transformation. It is therefore clear that the African Union and its agencies recognise the need to mainstream key themes such as land policy and governance in national priority plans.

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<sup>1</sup> *The Framework and Guidelines (F&G) on Land policy in Africa. 2010. P 13.*

<sup>2</sup> *The African Union Commission (AUC) under the auspices of the LPI supported the transition of the Land Policy Initiative (LPI) towards ALPC.*

The AUDA-NEPAD as the development Agency of the African Union is mandated with, amongst others, the translation of policy decisions into actionable projects and programmes. In light of the continental policy decision on land, the AUDA-NEPAD has undertaken the Land Governance Programme (LGP), that provides support to member countries in mainstreaming land governance issues into sectoral plans and strategies. In order to do this, the AUDA-NEPAD LGP has been working to produce evidence to raise understanding at the country and international levels, of the role of land governance for Africa's structural transformation, sustainable development and climate change adaptation and opportunities for investing in the land sector. While it is imperative to mainstream land governance, the various initiatives have been project-based and scattered. Besides, there is a lack of guide on considerations for mainstreaming land governance into national priorities. It is therefore critical to develop a tool that can guide governments to mainstream land governance into their different national priority sectoral strategies and plans.

### Rationale of the Tool

The tool is intended to help country experts to mainstream land governance in a comprehensive, systematic and participatory way based on the Land Governance Assessment Framework (LGAF) methodology. According to the LGAF key areas of good governance includes (i) property rights to land (at group or individual level); (ii) public oversight over land use, management, and taxation; (iii) analysis of the extent of land owned by the state is defined and how the state exercises it, and how land is acquired or disposed of; (iv) analysis of management of land information and ways in which it can be accessed; (v) avenues to resolve and manage disputes and hold officials to account; and (vi) procedures to deal with land-related investments. While the LGAF is a diagnostic instrument to assess the status of land governance at the country or sub-national level using a highly participatory and country-driven process that draws systematically on local expertise and existing evidence rather than on outsiders; this mainstreaming tool provides guidelines for incorporating land governance in priority programs based on a comprehensive review of information regarding land governance.

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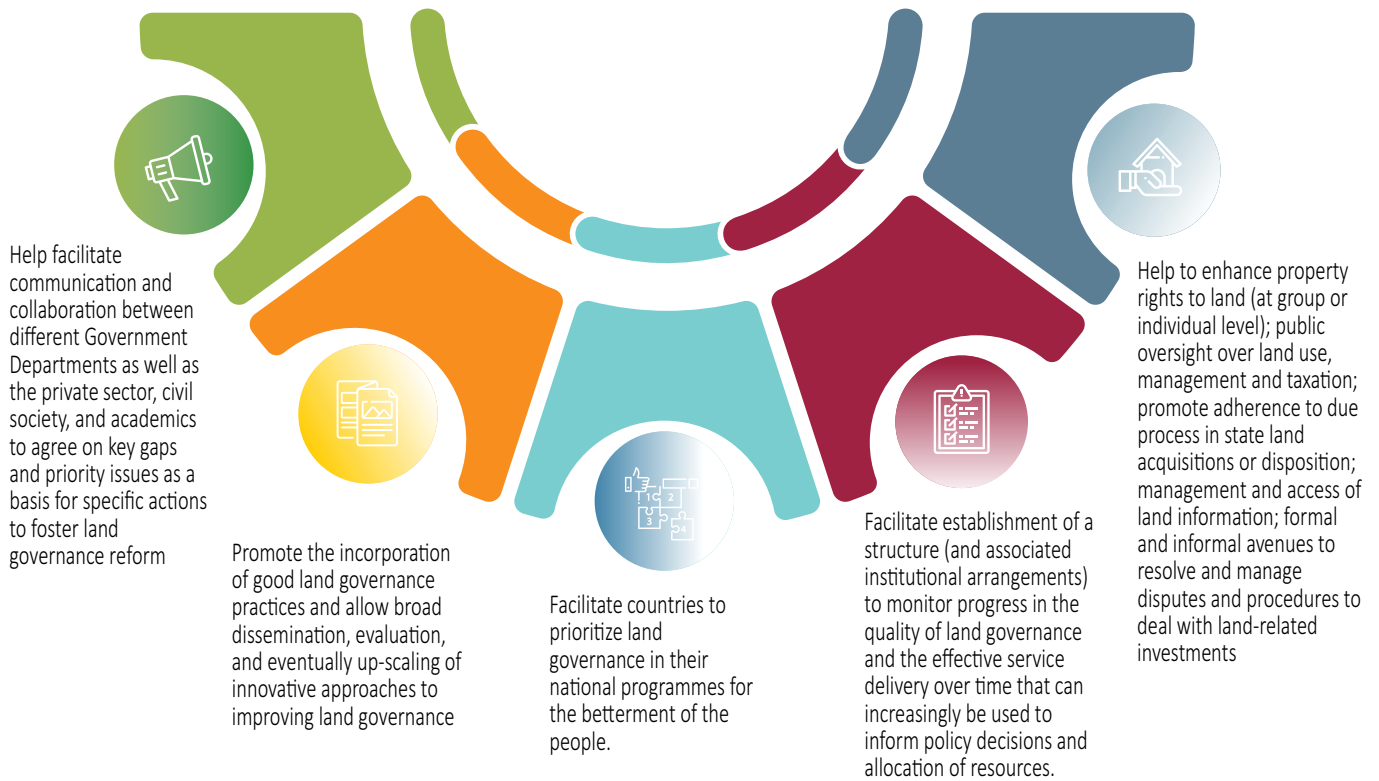
THE TOOL IS  
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FRAMEWORK  
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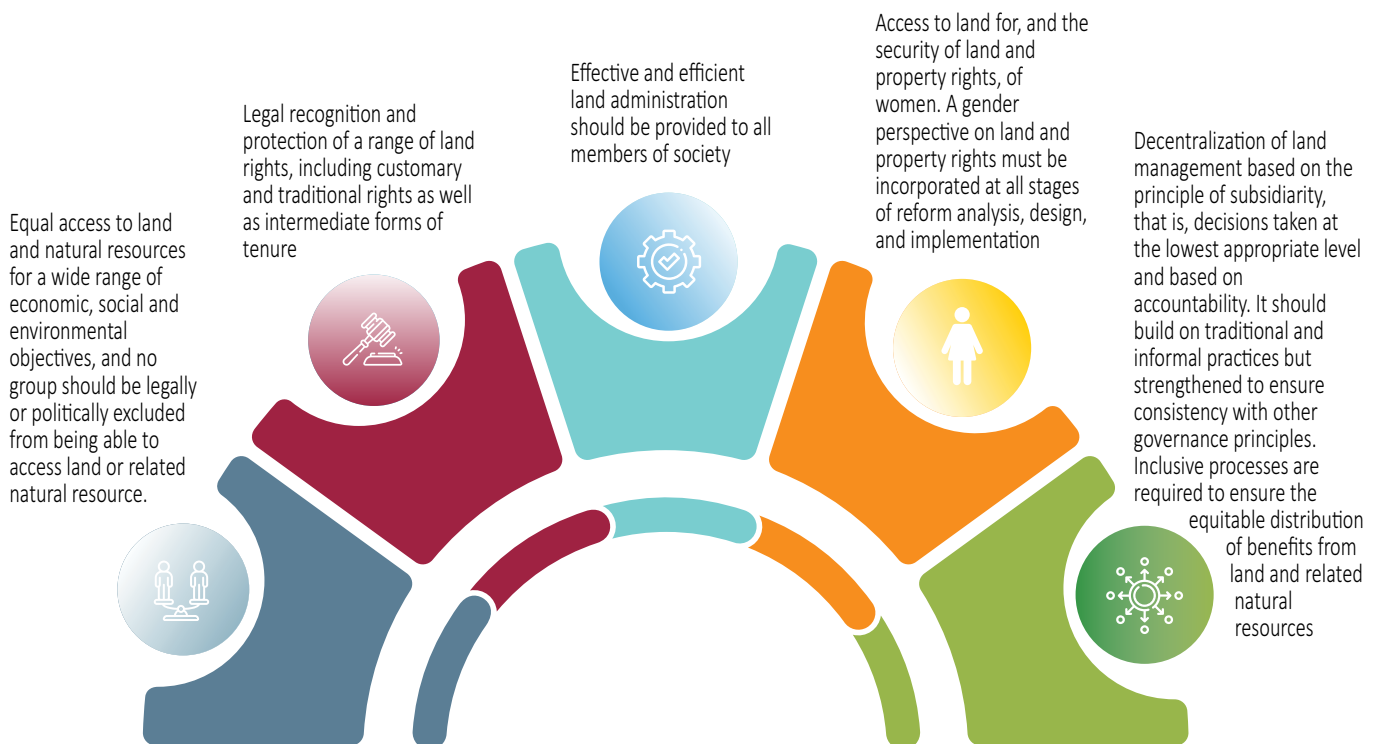


REGULATION

The tool has a number of benefits. In particular, it will;



It is further envisaged that; the land governance mainstreaming tool shall promote;



## Section II: Context of Land Governance and Mainstreaming in Africa

### Land Governance in Africa

After independence, all countries in Africa introduced some kind of land reform with the main objectives of addressing colonially based unequal ownership and rationalizing discriminatory land use policies and insecure land tenure systems and others had to undertake land reform in order to improve tenure security, especially under customary land tenure systems<sup>3</sup>. Land reforms have largely been unsuccessful as a result of persistent social and cultural attachment to land and reform efforts have not managed to adequately restructure the dualistic land holding systems resulting from colonization. Dualistic or multiple land holding systems still exist in Africa, with customary land tenure systems being less secure than statutory ones. Inequality in land ownership that affects marginalized groups, such as women, youth and indigenous people is still a problem. The country analysis henceforth provides country experience on land governance.

As such, the Framework & Guidelines (2010) developed by the AUC- ECA- AfDB joint Land Policy Initiative define 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<sup>4</sup>. FAO (2007) has outlined the aspects of good and weak land governance systems<sup>5</sup>. These aspects would usually be: Consultative; Participatory; Interactive; Inclusive; Consensus-based; Timely and professional; Transparent; Gender-sensitive; Innovative; and, Cost effective<sup>6</sup>. Many legal systems centralize control over land and natural resources in the hands of the State and undermine or fail to legally recognize the land rights of local landholders, therefore, paving way for what is lawful but unjust or inefficient and inequitable system of managing land. In such a context, existing land policies and laws have accorded little importance to local land management practices, and have somehow neglected good practices and capacities for land adaptation and innovation. One of the consequences of not involving local actors in the process of developing land policies and laws is that people end up with a lack of information on land policies and laws<sup>7</sup>.

### Land Governance Mainstreaming

Land governance mainstreaming in Africa is vital as it enhances the potential of socio-economic development. With its vast natural resources, Africa remains largely underdeveloped despite its resource-rich potential. In Africa, access to land, tenure security and land management have remained critical factors for development and general welfare of the society<sup>8</sup>. Economically, land governance mainstreaming can increase the flow of net economic benefits in terms of per capita income and increased productivity. It can provide conducive environment on how realized investment can continue to

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<sup>3</sup> AUC, ECA-AfDB, *Guidelines on Land Policy In Africa Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods*. 2010. P 8.

<sup>4</sup> AUC-ECA-AfDB Consortium, *Policy in Africa: Key Messages and Recommendations*, February 2011.

<sup>5</sup> FAO, *Good Governance in land Tenure and Administration*, FAO Land Tenure Studies 9. 2007. Rome.

<sup>6</sup> *Ibid.*

<sup>7</sup> FAO, *Food Security and Agricultural. Mitigation in Developing Countries: Options for Capturing Synergies*. October 2009. Rome.

<sup>8</sup> *Ibid.*

earn a return. It may create attractive environment for potential investment; ensures market certainty and investor confidence and predictability and creates economic incentives to invest, innovate and produce among investors.

Lack of land governance mainstreaming affects the general fabric needed for sustainable land management. With poor land governance, the poor and marginalized groups like women, children, those with disabilities, elderly etc find themselves outside the purview of the law. Thus, land governance mainstreaming can facilitate the inclusion of different groups in land management<sup>9</sup> through the adoption of participatory approaches.

Land governance mainstreaming can also address the geo-political, economic, social and demographic factors that impact Africa's land regime. It can assist in dealing with the colonial experience in various regions, diversity and degree of persistence of indigenous cultural and normative systems, variety of legal regimes relating to land tenure, use, management and environmental governance<sup>10</sup>. The SDG Survey noted the issues of importance in the subregion including inter alia: lack of inclusive economic growth; agriculture and food insecurity; environment and poor natural resource management (forest, water and soils); social protection for the poor and vulnerable; sanitation and urban management; and peace and security<sup>11</sup>. The Africa Regional Implementation Meeting (Africa-RIM)<sup>12</sup> also identified Africa's core problems to include: gender inequality and empowerment of women; vulnerability and lack of resilience, including climate change; unfavourable access to and transfer of environmentally sound technology, including climate change adaptation and mitigation; land degradation and desertification, drought and deforestation; water resource mismanagement and lack of access to safe water; peace and insecurity; and lack of climate-change adaptation and mitigation measures<sup>13</sup>.

It is also increasingly being realized that land is a major political asset in most African countries<sup>14</sup>. 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 the circumstance, some countries have tried to undermine traditional authorities to manage land in favour of the state.

In some instances, ethnic identities are amplified in order to make claims over land and its resources. Land related conflicts are not only based on competition for the land and its resources but also local power struggles, poor governance and leadership which uses multiple fronts, such as ethnicity, gender, and location. Politicization of ethnicity create a vicious cycle of inequitable access to land and other natural resources and may trigger a wave of uncontrolled conflicts. Thus, political authority and power control over land is a recipe for violent conflicts. Mainstreaming land governance is vital in reducing land related conflicts and inefficiencies in land administration. This can help address historical factors/injustices, multiplicity in land tenure; accommodate customary land rights while ensuring that the rights of women and other marginalized groups are respected. In the absence of a clear tool to mainstream land governance, the challenges will remain despite the isolated efforts that have been undertaken at the regional and national levels.

<sup>9</sup> *Ibid.*

<sup>10</sup> See for instance, the AU, ADB, ECA, *Framework and Guidelines on Land Policy In Africa Land Policy in Africa: A Framework to Strengthen Land Rights Enhance Productivity and Secure Livelihoods*. 2010.

<sup>11</sup> UNECA, *Report on sustainable development goals for the West Africa subregion 2015*. P 1.

<sup>12</sup> This was organized by ECA in collaboration with the African Union Commission (AUC), the African Development Bank (AfDB) and the United Nations Department of Economic and Social Affairs (UNDESA) to deliberate on the main outcomes of Rio+20 and their implications for Africa

<sup>13</sup> *Ibid.*

<sup>14</sup> Ashton P.J., *The Role of Good Governance in Sustainable Development: Implications for Integrated Water Resource management in Southern Africa*, paper presented at the International symposium on Ecosystem Governance, Kwa Maritane South Africa. 2015.



## Section III: Land Governance Mainstreaming Challenges and Barriers

### Land Governance Mainstreaming Challenges

This section provides some of the dominant land governance challenges in Africa that require a clear mainstreaming tool. The challenges range from legal, policy, institutional and administrative. The identified challenges affect most African countries and do hamper socio-economic development of African countries.

#### Multiple Legal Systems

The multiplicity of legal systems is one of the features of the land tenure regime in the selected countries. All countries entertain dual customary and statutory laws while others recognize the application of some common law principles as in the case of Tanzania<sup>15</sup>. Multiplicity, if not well regulated or where certain forms of tenure are allowed to override others, can be a source of insecurity. The multiplicity of legal norms and the dual system of tenure results in insecure tenure, especially for land held under indigenous systems. In Burkina Faso for instance, all land is considered state property, and anyone seeking to access land must apply for use rights while local communities do not recognize this monopoly of ownership and regard themselves as the true owners of their land by virtue of their ancestral rights. State monopoly of landownership has resulted in great insecurity with regard to land tenure for the 90 percent of the population whose rights to land are customary<sup>16</sup>. It is also at the root of the enduring conflict between the legality of the state monopoly of land and the legitimacy of communities' land claims. The fact that the ownership system in the country is mostly based on customary rules rather than modern registration constitutes an impediment in providing fixed capital to boost agricultural production<sup>17</sup>. Lack of a customary tenure formalization in Tanzania for instance has been cited as a cause of tenure insecurity for customary right holders. In Ethiopia, the policy of land redistribution promotes insecurity of tenure because as allows among other things periodic redistribution and promotes fragmentation of land and growing pressure on land resources because it discourages rural people from leaving their farms for other employment opportunities<sup>18</sup>. It also gives the state immense power over the farming population because land is state property. The periodic redistribution and levelling down of landholdings that it gives rise to, means there are generalized insecurity and little incentive on the part of landholders to invest in the land and to manage it properly<sup>19</sup>.

The multiplicity of the legal systems can also give rise to multiple land authorities which are sometimes uncoordinated. Sometimes this framework can allow people to choose the legal framework that provides them with the best claim (“forum shopping”)<sup>20</sup>. This ultimately increases uncertainty and confusion when people pursue different ways to legitimize claims to the same parcel of land. In addition, the presence of diverse tenure concepts or

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<sup>15</sup> See Section 180 of the Land Act and section 2 of the Judicature and Application of Laws Act (JALA).

<sup>16</sup> Bazame, R et al; *Land management and Policy on Sustainable Use of Land Resources: The Case of Burkina Faso*, A paper presented at the 2017 World Bank Conference on Land and Poverty, Washington DC, March 2017.

<sup>17</sup> *Ibid.*

<sup>18</sup> AUC-ECA-AfDB Consortium, *Land Policy in Africa: Eastern Africa Regional Assessment*. 2010

<sup>19</sup> *Ibid.*

<sup>20</sup> Bazame, R et al., *Loc cit.*

laws creates ambiguity as different sets of rules can apply under different institutions in the same area namely customary and statutory<sup>21</sup>. Even parallel institutions if not checked lead to competition for the same jurisdiction which could fuel conflict. Although most countries after independence formulated land policies and laws, and instituted tenure and institutional reforms to deal with this colonial/historical legacy, multiplicity persists and needs to be recognized as a reality and not as an obstacle in changing lives of the poor<sup>22</sup>. Therefore, the land governance mainstreaming tool should facilitate equal recognition of the diverse land tenures and multiple institutional frameworks that are a key feature of African land tenure.

### Land Tenure Insecurity

Land tenure insecurity is generally one of the most complex challenges in Africa. Tenure insecurity inhibits land development and meaningful investment<sup>23</sup>. Without security, land users cannot risk investing in the land. As a result, various efforts and initiatives by governments and the private sector directed at poverty alleviation are thwarted down from the onset. Thus, tenure insecurity impacts socio-economic efforts to improve the livelihoods of the people. Tenure has tended to become more insecure in many areas with changes in the way land transfers are carried out in the context of a rapid increase in demand for land, increasing investments in commercial agricultural production in some areas, real estate development in many urban areas, and land accumulation for speculation purposes<sup>24</sup>. Empirical evidence in most developing countries shows that there can never be meaningful investments in agriculture without ensuring the security of tenure for both small and large-scale farmers. For instance, studies by Goldstein and Udry [2008], argue that insecurity of tenure may deter investments<sup>25</sup>. This is particularly true in the ever-evolving socio-economic landscape of most rural economies, which is further complicated by the increase in natural population. Investment in agriculture is argued to have unconditional cost but pay a return only if the investment is not threatened by either encroachment or expropriation<sup>26</sup>. Insecurity arises from lack of clear rules of tenure and informality. For instance, where land is vested in the state, customary land rights of people living on this land are susceptible to tenure insecurity if these rights are not adequately recognized as fully legitimate and respected in law and practice. In Tanzania, lack of village land use plans, as well as Certificates of Customary Right of Occupancy (CCROs) for land owners put the villagers at a disadvantage on investment deals<sup>27</sup>. In Madagascar land tenure insecurity is a widespread problem. The absence of legal titles give land users little chance to be fairly compensated if land is expropriated, or leased. Activities like grazing, or beekeeping, are often neglected by compensation, despite their importance for people's livelihood and culture of the Malagasy people<sup>28</sup>.

LAND TENURE INSECURITY IS GENERALLY ONE OF THE MOST COMPLEX CHALLENGES IN AFRICA. TENURE INSECURITY INHIBITS LAND DEVELOPMENT AND MEANINGFUL INVESTMENT

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> Grain, *Turning African farmland over to big business*, April 2010. <http://www.grain.org/fr/article/entries/4062-turning-african-farmland-over-to-big-business>

<sup>24</sup> Tatwangire and Holden, *Modes of Land Access and Welfare Impacts in Uganda*, Unpublished paper in the PhD Thesis, UMB School of Economics and Business, Norwegian University of Life Sciences, 62–89. See also, Tatwangire, A and Holden, *Modes of Land Access and Welfare Impacts in Uganda*. A revised version of the contributed paper prepared for the presentation at the International Association of Agricultural Economists Conference. Beijing, China, August, 16–22, 2009

<sup>25</sup> *The Profits of Power: Land Rights and Agricultural Investment in Ghana*. *Journal of Political Economy*, 2008, vol. 116, no. 6.

<sup>26</sup> FAO, 2009.opcit.

<sup>27</sup> FAO, 2009.opcit.

<sup>28</sup> Kironde L., *Improving Land Sector Governance in Africa: The Case of Tanzania Paper prepared for the "Workshop on "Land Governance in support of the MDGs: Responding to New Challenges" Washington DC March 9-10 2009.*

<sup>28</sup> Giulia F, et al., *Land grabbing in Madagascar: Echoes and Testimonies from the Field* 2013.

In a survey by Alden Wily, (2012) on modern African land tenure challenges, he highlights the weak legal status of customary land rights in many African countries. To him, governments have often regarded collective resources such as forests, rangelands, marshlands and other uncultivated lands as un-owned public lands or state property, making them particularly vulnerable to involuntary loss. The resources on these lands are not deemed the property of rural communities, in accordance with customary norms hence affecting land rights of most rural Africans<sup>29</sup>. In Ethiopia for instance, the ideals of the Arssi Oromo customary tenure, on land, is that land is the property of the patrilineal descent group or clan, and a principal objective of customary tenure is to retain land within the descent group<sup>30</sup>. As such, the Arssi Oromo customary tenure is in direct tension with the principles of state land ownership. Rather than land being a right of national citizenship, according to customary ideals land access is limited to clan members<sup>31</sup>. Changes in customary land tenure (through reforms) may reflect inequitable trends, including accelerating class formation and the concentration of landholding. Such trends, which jeopardize the rights of the majority poor, are increasingly having a direct effect on precious local common resources such as forests.

Also, communities whose land has mineral and oil deposits, who border reserve land and those on land earmarked for infrastructure and urban development, have been suffering from 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. The tenure system in the pastoralist and semi pastoralist areas lacks policy definition for effective formalization and define the co-existence of multiple rights on the same plot of land. This trend is notable in Botswana, Madagascar and Ethiopia, Burkina Faso and Benin<sup>32</sup>. Providing secure rights to land is a critical component of poverty reduction as land tenure determines access to the land and other natural resources upon which human livelihoods depend.

It is therefore important that, customary land tenure rights should be recognized and upheld in their unique forms. States should put in place mechanisms to uphold the tenure status of customarily held resources. Such recognition will not only safeguard the interest of rural communities which are based on customary norms but will also promote production efforts by rural communities to emancipate themselves from poverty. The land mainstreaming tool should promote national efforts aimed at land tenure security. It has to provide the impetus for states' efforts to put land tenure security as one of their key considerations in land governance with a view to promoting socio-economic development including more investment in the Agricultural sector. It should promote recognition and safeguard such customary tenures against annihilation by more formal systems of land.

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CUSTOMARY LAND  
TENURE RIGHTS  
SHOULD BE  
RECOGNIZED AND  
UPHELD IN THEIR  
UNIQUE FORMS

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<sup>29</sup> Alden-Wily, L. *Global Land Rush. Paper presented at the International Conference on Global Land Grabbing, 6-8 April 2011, organized by the Land Deals Politics Initiative (LDPI) in collaboration with the Journal of Peasant Studies and hosted by the Future Agricultures Consortium at the Institute of Development Studies, University of Sussex. 2012.*

<sup>30</sup> Mamo H., *Land, local custom and state policies: Land tenure, land disputes and disputes settlement among the Arssi Oromo of southern Ethiopia (Shoukadoh, Kyoto, 2006).*

<sup>31</sup> *Ibid.*

<sup>32</sup> Adrian, C and Cathy, W., *Winners and Losers: Privatizing the commons in Botswana, Securing the commons No.9. See also, Teyssier et al., Decentralization of land management in Madagascar: process, innovations and observations of the first outcome. Presented at World Bank Conference on Challenges for Land Policy and Administration February 14-15, 2008 Washington, D.C. <http://siteresources.worldbank.org/INTIE/Resources/475495-1202322503179/LandDecentralizationinMadagascar.pdf>, Crewett, W., A. Bogale, B. Kor; Land Tenure in Ethiopia: Continuity and change, shifting rulers, and the quest for State control, CAPRI Working Paper No. 91. September 2008., Bazame, R et al., Loc Cit, Grain., Turning African farmland over to big business, April 2010. <http://www.grain.org/fr/article/entries/4062-turning-african-farmland-over-to-big-business>*





### Unregulated Land Deals

Africa is facing the pressure of the rush for lands and natural resources for commercial exploitation. Governments are generally in favour of land deals in the belief that there is idle, unused land; and that large-scale investment in land by foreigners will result in employment, improvement in rural infrastructure, food sufficiency, and government revenue<sup>33</sup>. There are, however, strong arguments to the contrary raised by other writers and in various reports. For instance, the land that is being mostly targeted is the land belonging to communities under customary tenure and in particular the commons<sup>34</sup>. As a result, local communities who have an interest in such lands are rarely consulted and face direct evictions and loss of valuable farmlands. It has also been noted that although the initial pretext of the large-scale commercial investors is acquisition of marginal lands for biofuel, the most valuable land assets of rural communities is the one that is being targeted leaving the communities sinking deeper in poverty<sup>35</sup>.

Governments appear to be unable to protect the land rights of local communities or promote their bargaining power in the investment deals due to minimal legal constraints. Two constraints that could 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. In the case of Tanzania, public interest includes acquiring land for investment purposes<sup>36</sup>. Additionally, a large-scale allocation should always involve consultation with affected communities otherwise customary landholders cannot be protected. Free, prior, and informed consent for the allocation of customary lands should be made obligatory when the public interest is involved. Lack of assurance that evicted customary landholders or those deprived of parts of their lands will be able to find jobs or other livelihoods to compensate for their losses has been a critical challenge. The losses endured by local communities may be great, including the commercial value of the land, the recurrent-use values of the resource, and the future value of the land for commercial enterprise. The Ethiopian government, has been blamed for leasing out land for free or at very low cost to Karuturi, in Gambela region in anticipation of a higher income tax receipts, job creation, and advancing a tool to “build up capitalism,”<sup>37</sup> although there is considerable debate as to whether these benefits actually have been realized. In Namibia there is also indication that an unregulated land market exists in communal areas<sup>38</sup>. Many land deals in Africa have resulted in misery to local communities and have hardly resulted in increased employment or improved livelihoods. It is therefore critical for land governance mainstreaming to look at land investment deals from a win-win basis than from the volume of flow of foreign direct investments. It must promote more community participation, social consensus and informed choices than stated directed choices.

<sup>33</sup> Vhugen, D; *Large-scale commercial investments in land: Seeking to secure land tenure and improve livelihoods*, Report prepared for a conference entitled “Subsistence Agriculture: Confronting Environmental Change and Social Justice,” jointly organized by Haramaya University College of Law’s Environmental Policy Center and Social Justice Center, April 23-25, 2010.

<sup>34</sup> Adrian, C and Cathy W, *Winners and losers: privatising the commons in Botswana. Securing the commons No.9*. See also, Hundie, B; *Property rights among Afar pastoralists of Northeastern Ethiopia: Forms, changes and conflicts*. Presented at —Survival of the Commons: Mounting Challenges and New Realities, The Eleventh Conference of the International Association for the Study of Common Property, Bali, Indonesia, June 19–23, 2006.

<sup>35</sup> Kironde, J.M and Tenga W, R; *Report on the Study of Policy, Legal and Institutional Issues related to Land in the SAGCOT Project Area*, 2012.

<sup>36</sup> See section 3 of the *Land Acquisition Act*, Cap. 118 R.E. 2002.

<sup>37</sup> McLure, J; *Ethiopian Farms Lure Investor Farms as Workers Live in Poverty*, Bloomberg, Dec. 31, 2009.

<sup>38</sup> Namibia Future Foundation., *An enquiry into land markets in Namibia’s communal areas*, Final Report, 25th February 2017.

### Abuse of State Control Over Land

The role of the state over property is pivotal in all the countries in Africa. In most of the countries, the state holds all land and grants leases or rights of occupancy and use to users<sup>39</sup>. States hold land in protected areas in all the countries. Where the land is vested in the state (sometimes in the President, as Trustee), the state sometimes abuses the trusteeship powers<sup>40</sup>. Public land and resources have in some countries been converted (through cheap sale or allocation) to private property. 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 also remains contested in Africa<sup>41</sup>. In countries like Namibia, Tanzania, Burkina Faso the legal framework for expropriation under the eminent domain remains deficient or is applied arbitrarily with a limited mandate for public oversight<sup>42</sup>. Land governance mainstreaming should assist to regulate and facilitate the exercise of eminent domain in accordance with the due process of law and established international standards and practices.

### Increasing Land and Natural Resource Degradation

Land degradation has been worsening in Africa and is a challenge to many countries. Typical proximate causes include over-cultivation, over-grazing and deforestation<sup>43</sup>. The process of soil degradation is affected 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; and external conditions such as climate change<sup>44</sup>. 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<sup>45</sup>. These forms can be found individually or in combination. In Botswana for instance, there is rangeland degradation due to a high livestock population; the tendency of farmers to keep cattle in excess of sustainable stocking levels; low off-take rates; the incidence of bush fires which reduce available forage; self-allocation of land in peri-urban areas; competition for land between livestock and wildlife; and reduction in grazing and arable land due to the encroachment of alternative uses<sup>46</sup>. Other threats to biodiversity include rangeland degradation, the destructive habitats, climate change and the potential introduction of genetically modified organisms<sup>47</sup>.

<sup>39</sup> For instance see Section 4(1) & (2) Land Act [Cap 113 R.E. 2002] – Tanzania.

<sup>40</sup> Daewoo Land Deal in Madagascar (2008) is a classic example where Daewoo negotiated with Madagascar government on the lease of 1.3 million hectares of farmland in Madagascar which is about half of all arable land in the island, See, Hong, K.C; How to create win-win land deals in Mozambique; Strategic review of Daewoo land deal in Madagascar as a case study, School of International Affairs, Columbia University, 2011.

<sup>41</sup> Legal Assistance Centre, Namibia., *A Place We Want to Call Our Own: A Study on Land Tenure Policy and Securing Housing Rights in Namibia, Land, Environment, and Development (LEAD) Project Report*. Windhoek: LAC, 2005, <http://www.lac.org.na/projects/lead/Pdf/aplaceweantocallourown.pdf>.

<sup>42</sup> Byamugisha, F. F. K; *Securing Africa's Land for Shared Prosperity: A program to Scale up Reforms and Investments, Africa Development Forum Series*. Washington DC. World Bank, 2013. See also, AU-IBAR, *Sustainable Natural Resources Management and Land Policies: A Review in Kenya and Burkina Faso*. Nairobi, Kenya: African Union – Interafrican Bureau for Animal Resources: AU-IBAR Monographic series No.3., 2013. [www.au-ibar.org/component/jdowONFads/finish/46/1145](http://www.au-ibar.org/component/jdowONFads/finish/46/1145), See also, Kironde L., *Improving Land Sector Governance in Africa: The Case of Tanzania Paper prepared for the “Workshop on “Land Governance in support of the MDGs: Responding to New Challenges” Washington DC March 9-10 2009*.

<sup>43</sup> Pamela J, and John P (eds), *Policies for Improved Land Management In Uganda: EPTD Workshop Summary PAPER NO. 10*. 2001.

<sup>44</sup> Sulle, E. and F. Nelson; *Biofuels investment and community land tenure in Tanzania: The Case of Bioshape, Kilwa District*. Working Paper 73, Brighton. Future Agricultures Consortium, 2013.

<sup>45</sup> Bazame, R et al; *Loc cit*.

<sup>46</sup> Adrian, C and Cathy W, *Winners and losers: privatising the commons in Botswana*. *Securing the commons* No.9.

<sup>47</sup> *Ibid*.



In general, continued land degradation has led to low productivity, poverty, and potential famine and further created platform for land conflicts; and in many times, led to actual conflicts. In Namibia, climate change has further posed a great risk since the country is extremely vulnerable to climate change impacts primarily due to its low adaptive capacity<sup>48</sup>. This phenomenon needs to be addressed. Land governance mainstreaming can help regulate the problem with a view to promoting productivity, ensure food security and enhance climate mitigation efforts.

### Conflicts over Land and Natural Resources

Conflicts over land and natural resources are a common problem in Africa. 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 and 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).

THERE IS  
INCREASING  
INCIDENCES OF  
CONFLICTS ON  
LAND AFFECTING  
LIVELIHOODS OF  
THE COMMUNITY  
MEMBERS

In countries such as; Burkina Faso, Benin, Madagascar, Ethiopia, Uganda, Tanzania, Namibia and Botswana, there are conflicts concerning access to, and control of: arable land; range (pastoral) land; water; forests; minerals; and so on. In Uganda in particular, the high incidence of land disputes is attributed to the demand for land required for public use, private sector-led development, and speculation. There is increasing incidences of conflicts on land affecting livelihoods of the community members, especially women and children, whose fundamental rights are increasingly getting abused by interests of powerful elites<sup>49</sup>. In Botswana, land use conflicts have increased as pressure on land use grows and people are pushed to the margins. The conflicts manifest in cattle and wildlife competition over grazing areas, water and land; cropping and livestock production versus wildlife due to crop damage; and livestock versus wildlife and gatherers<sup>50</sup>. In Ethiopia, population growth, frequent drought, resource degradation, and encroachment or expropriation of rangelands are some of the causes of inter-pastoral conflicts and between pastoralists, the government, and farmers<sup>51</sup>. Informal and unregulated land markets in Benin have resulted in conflicts over land<sup>52</sup>.

There is generally poor infrastructure to minimize the occurrence of conflicts (e.g. comprehensive national land use plans); a poor conflict resolution set up, mainly based on the judicial model and less on alternative dispute resolution mechanisms. In Uganda for instance, challenges in addressing land disputes include lack of faith in the judicial system due to the delays in resolving these disputes, poor facilities in the institutions mandated to address land disputes, lack of coordination and politicisation of land issues<sup>53</sup>.

<sup>48</sup> Sam M. Mwando, Tigisty Maswahu et al, *An In-Depth Assessment of Land Governance in Namibia*. NELGA p. 16.

<sup>49</sup> See Tumushabe, *op cit*.

<sup>50</sup> Adrian C, and Cathy W., *Winners and losers: privatising the commons in Botswana. Securing the commons No.9*.

<sup>51</sup> Hundie, B; *Property rights among Afar pastoralists of Northeastern Ethiopia: Forms, changes and conflicts*. Presented at —*Survival of the Commons: Mounting Challenges and New Realities, The Eleventh Conference of the International Association for the Study of Common Property*, Bali, Indonesia, June 19–23, 2006.

<sup>52</sup> Grain., *Turning African farmland over to big business*. April 2010. <http://www.grain.org/fr/article/entries/4062-turning-african-farmland-over-to-big-business>.

<sup>53</sup> *Ibid*.

Land governance mainstreaming is crucial to ensure that land conflicts and land disputes are given due consideration. Necessary institutions and infrastructure have to be in place to deal with land conflicts which have been the cause of the fighting, property destruction, displacement and hunger in many places of Africa. The tool will not only be a catalyst for dealing with land conflict related issues but will promote mechanisms aimed at addressing the same.

### Land Information Management and Administration Inefficiencies

In the selected countries most of the land is held informally, under tradition and customs, or under vague tenure or right of use or occupancy. The cost of formalization is enormous and large-scale formalization questionable. The procedures and standards for formalization are characterized by bureaucratic, expensive and time-consuming procedures<sup>54</sup>. Land records are not available and existing land registry records are a mismatch between the land policy, legal framework, and implementation process. There are still multiple possessions of titles for the same land and lack of automated land recording and documentation system. Land administration is in many cases centralized, policies and institutions need more coordination. There is also need for more transparency and accountability in land administration. In Namibia for instance, while policies and regulations are clear, institutions tend to operate in silos<sup>55</sup>. It has been remarked that, although the mandate of the Ministry of Land Reform and the Ministry of Agriculture includes alleviation of poverty, in practice there is a need for harmonising certain functions to increase the chances of achieving the objective of poverty alleviation<sup>56</sup>. Land governance mainstreaming has to promote land information and administrative efficiencies to ensure that states direct themselves at creating operational land information data bases and automation systems.

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LAND RECORDS  
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AVAILABLE  
AND EXISTING  
LAND REGISTRY  
RECORDS ARE  
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BETWEEN  
THE LAND  
POLICY, LEGAL  
FRAMEWORK, AND  
IMPLEMENTATION  
PROCESS

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### Women's Land Rights

Gender discrimination in access to and control of land remains a serious impediment to development in Africa. While the major tillers of land in Africa are predominantly women, they benefit inequitably from the proceeds from the land as they still face discrimination under both customary and statutory systems of land tenure, due to culturally embedded discrimination beliefs and practices and male dominated inheritance systems<sup>57</sup>. Under many systems of customary law, women regardless of their marital status cannot own or inherit land, property and housing in their own names. Succession and inheritance rights remain problematic. Often, women cannot inherit the matrimonial home on the death of their spouses as a result of gross disparities in land ownership between men and women. Customary practices do vest male members with the power to deal with important assets such as land<sup>58</sup>. Women as a result, have usufruct rights but may not own or inherit property.

<sup>54</sup> Byamugisha, F. F. K; *Securing Africa's Land for Shared Prosperity: A program to Scale up Reforms and Investments, Africa Development Forum Series*. Washington DC. World Bank, 2013.

<sup>55</sup> Nujoma, U; *Good Land Governance for the 2030 Agenda, A paper presented on the Fourth High Level Forum on the United Nations Global Geospatial Information Management Session, in Addis Ababa, Ethiopia, 20-22 April 2016*.

<sup>56</sup> *Ibid*.

<sup>57</sup> FAO, *Women in Agriculture: closing the gender gap for development, in the State of Food and Agriculture, Social Development Dept of the FAO*, <http://www.fao.org/docrep/013/i2050e/i2050e.pdf> cited in USAID Report on the Property Rights and Resource Governance, Burkina Faso.

<sup>58</sup> AUC-ECA-AfDB Consortium; *Land Policy in Africa: Eastern Africa Regional Assessment 2010*.

In some countries, women are only allowed to hold marginal land but are prevented from planting or harvesting some products. The marginalization of women on land also excludes them from using land as a loan security or even making important economic decisions and investments. Such economic exclusion is one of the most serious obstacles to increasing the agricultural productivity and incomes of rural women.

In Madagascar for instance, women do not inherit land or inherit very small plots upon marriage. Upon divorce, women do not have access to their husband's land, even if they were formally married; however, they may be able to access land within their natal community<sup>59</sup>. In Namibia, women, both married and unmarried gain access to land through their husbands, brothers, uncles or parental families<sup>60</sup>. The control of land is usually in the hands of men. Women are often more involved in the use of the land, for instance, tending crops.

While some countries such as Benin have domesticated the relevant international treaties guaranteeing women's land and property rights, other countries such as Tanzania, women's access to land is restricted notwithstanding provisions of the Land Acts and National Land Policy that invalidate the application of discriminatory practices to land administration<sup>61</sup>. For communities such as pastoralists, and hunters/gatherers, the law in Tanzania has not been definitive in its provisions. These groups have continually faced rampant acquisitions from state actors, investors and individuals. In Ethiopia and Uganda, daughters inherit land only in exceptional circumstances, when there is no suitable male heir or when the father dies intestate<sup>62</sup>. Where women inherit land, they typically receive a fraction of their brothers' shares and often have to share a single parcel with other female heirs. Also, women are regarded as being unable to own property in their own right, and as mere trustees for male kin. On the death of a wife, there is usually no property distributed as it is assumed to belong to the widower. In Namibia, although there is equality of women's property rights to those of men as established by law, there are considerable limitations to exercising such rights in practice due to existing traditional and cultural practices and beliefs that entrench patriarchal privileges. Consequently, the land governance mainstreaming tool should promote gender equality. The tool should promote consideration of gender rights in all land initiatives in order to ensure meaningful contribution of women to economic development.

### Land Governance Mainstreaming Barriers

Apart from the above challenges of land governance, there are various land governance barriers which also need to be considered during land governance mainstreaming. The barriers include historical injustice, cultural dominance, ethnicity and political unrests. These issues are deemed to be barriers as they can inhibit efforts aimed at promoting land governance. Careful consideration of these barriers and provision of modality to circumvent them is very important. Land governance mainstreaming initiatives should therefore not overlook or underestimate the impact of such barriers.

<sup>59</sup> FAO, 2018. *Gender and Land Rights Database: Madagascar*. [http://www.fao.org/gender-landrights-database/country-profiles/countries-list/general-introduction/en/?country\\_iso3=MDG](http://www.fao.org/gender-landrights-database/country-profiles/countries-list/general-introduction/en/?country_iso3=MDG).

<sup>60</sup> Nujoma, U; *Good Land Governance for the 2030 Agenda*, Loc cit.

<sup>61</sup> Kironde, J.M. 2009. "Improving Land Sector Governance in Africa: The Case of Tanzania", Paper presented at the Workshop on Land Governance in Support of MDGs: Responding to New Challenges. Washington, D.C. March 9-10, 2009.

<sup>62</sup> Tura, H; *Women's Right to and Control over Rural Land in Ethiopia: The Law and Practice*, *The International Journal of Gender and Women's Studies*, Vol 2, No. 2, 2014. See also, Asiimwe, J; *Making Women's Land Rights a Reality in Uganda: Advocacy for Co-Ownership by Spouses*, *Yale Human Rights and Development Law Journal*, Vol 4, 2001. See also, Hannay, L; *Women's Land Rights in Uganda*, Landesa Rural Development Institute, 2014.

<sup>63</sup> AUC-ECA-AfDB Consortium; *Land Policy in Africa: Eastern Africa Regional Assessment 2010*.

### Historical Land Injustices

A number of countries have what have been known as historical land injustices which are grievances which stretch back to colonial land administration practices and laws that resulted in mass disinheritance of communities of their land. The grievances 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 as Uganda, Ethiopia, Botswana, Madagascar and Namibia<sup>64</sup>. Successive post-independence governments have not addressed them in a holistic manner and therefore they continue to cause hardships to affected societies. Mainstreaming land governance should be a tool to provide a path towards addressing such injustices.

### Ethnicity

In some countries like Ethiopia, land administration has been devolved to regional governments, which are required to formulate land proclamations within the framework of the federal land policy<sup>65</sup>. Federalism has, however, been deemed to imply, that each ethnic group has its own home region and, consequently, those ethnic outsiders have a weaker claim to land than indigenous inhabitants<sup>66</sup>. This makes individuals first and foremost citizens of ethnic regions, rather than of Ethiopia. Eshete (2003) argues that, the rights of ethnic groups within Ethiopia's political system have been a polarizing feature of political debate since the late 1960s, with opposing camps drawing on very different interpretations of Ethiopian history. On the one hand, centrists emphasize Ethiopia's historical unity and fear its break up while on the other hand, regionalists use narratives of internal colonization and cultural hegemony by the Amhara and Tigrayan ethnic groups as the basis of claims for greater ethnic autonomy, even secession<sup>67</sup>. It has further been argued that while the universalistic principles of the land policy, accords all Ethiopian farmers equal land rights, the territorial implications of ethnic federalism suggest lesser rights for non-indigenous ethnic minorities. Land administration explicitly distinguished between ethnic groups when the government resettlement programme relocated food insecure farmers from densely populated highlands to more sparsely populated lowlands, in the west and south in order to limit ethnic conflicts<sup>68</sup>. It is therefore imperative that, one cannot successfully deal with land governance mainstreaming in a country like Ethiopia without giving consideration to ethnicity. The tool could endeavour to provide for land governance mainstreaming in cases involving ethnic conflicts to ensure social sentiments are clearly addressed.

### Cultural Dominance

While land in Africa is deemed to have a general cultural value, it has been established that such value varies according to the degree and nature of cultural value. In Madagascar, land plays both a functional and a dysfunctional role in the social, economic and political organization of Malagasy society<sup>69</sup>. Its functional role is evident through the multiple activities that revolve around it and whose effectiveness especially depends on several parameters, including the choice of what kind of land policy to apply. Land is also one of the foundations

<sup>64</sup> Nayenga, R., *Gender dynamics in agriculture in Uganda: What are the key policy considerations? Policy brief prepared for the Government of Uganda, Ministry of Finance, Planning and Economic Development, 2008* <http://www.finance.go.ug/docs/Policy%20brief%20on%20Gender%20Dynamics%20in%20Agriculture%20in%20Uganda.pdf>. See also the African Natural Resources Center African Development Bank, *Review of land tenure policy, institutional and administrative systems of Botswana CASE STUDY*, 2016.

<sup>65</sup> Crewett et al., 'Land tenure in Ethiopia', highlight some limited variation between regional policies.

<sup>66</sup> *Ibid.*

<sup>67</sup> Eshete A., 'Ethnic Federalism: New Frontiers in Ethiopian Politics', *First National Conference on Federalism, Conflict and Peace Building, Addis Ababa: Ministry of Federal Affairs and GTZ (2003)*; See also Merera Gudina, 'Contradictory Interpretations of Ethiopian History: The Need for a New Consensus', in D. Turton (ed.), *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective*, Oxford, Athens, and Addis Ababa: James Currey, Ohio University Press, Addis Ababa University Press (2006). pp. 119–31.

<sup>68</sup> MoFED, 'Rural development policy and strategies' (Ministry of Finance and Economic Development [MoFED], Addis Ababa, 2003), p. 41. See further, Tom Lavers *Responding to land-based conflict in Ethiopia: The land rights of ethnic minorities under federalism. African Affairs*, Volume 117, Issue 468, July 2018, Pages 462–484.

<sup>69</sup> Giulia Franchi, et al, *Land grabbing in Madagascar: Echoes and Testimonies from the Field 2013*.



capable of triggering social and political destabilization in Madagascar<sup>70</sup>. Sale of land to foreigners is still deemed a taboo despite the legal reforms in 2003 that banned this perception to allow foreigners to obtain land for investment<sup>71</sup>. Land governance mainstreaming could acknowledge and accommodate cultural values that are considered intrinsically useful to the local communities for the purpose of the success of the land governance interventions.

#### **Political Conflicts and Instability**

Implementation of land management reforms requires political stability but many countries in Africa have political instabilities and sometimes armed conflict involving neighbouring countries. Sometimes the basis of these conflicts may be land and natural resources. In Botswana, some conflicts have emanated from explosive mixture of political manipulation of competition for land, culture and ethnicity<sup>72</sup>. An effective land governance mainstreaming tool requires the provision of guidance to deal with land governance conflicts.

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A NUMBER OF COUNTRIES HAVE WHAT HAVE BEEN KNOWN AS HISTORICAL LAND INJUSTICES WHICH ARE GRIEVANCES WHICH STRETCH BACK TO COLONIAL LAND ADMINISTRATION PRACTICES AND LAWS THAT RESULTED IN MASS DISINHERITANCE OF COMMUNITIES OF THEIR LAND

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<sup>70</sup> *Ibid.*

<sup>71</sup> <http://www.observatoire-foncier.mg/article-66/>.

<sup>72</sup> Adams, M, et al., "Land tenure policy and practice in Botswana: Governance lessons for southern Africa", *Austrian Journal of Development Studies*, 19 (1), 2003.



# PART B: THE LAND GOVERNANCE MAINSTREAMING TOOL

## Section I: Context of the Land Governance Mainstreaming Tool

### Overview of Development of the Mainstreaming Tool

Generally, there are multiple land governance challenges in Africa that call for a mainstreaming tool as elucidated in the preceding section. There are also manifold barriers to land governance mainstreaming in many countries. The development of the land governance mainstreaming tool is based on the understanding that there already exists a general policy and institutional support for land governance mainstreaming at the level of the AU and its agencies. The AU and its agencies have initiatives and programmes that point toward land governance mainstreaming such as the Africa Union Declaration on Land Issues and Challenges in Africa (2009) and the Framework and Guidelines. The Africa Land Policy Centre (ALPC) in particular has been instrumental in championing land governance mainstreaming in different issues like agricultural development and Comprehensive Africa Agricultural Development Programme (CAADP) so as to enhance agricultural productivity.

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THE DEVELOPMENT OF THE LAND GOVERNANCE MAINSTREAMING TOOL IS BASED ON THE UNDERSTANDING THAT THERE ALREADY EXISTS A GENERAL POLICY AND INSTITUTIONAL SUPPORT FOR LAND GOVERNANCE MAINSTREAMING AT THE LEVEL OF THE AU AND ITS AGENCIES

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## Section II: Practical Steps for Mainstreaming Land Governance

### Essentials of the Land Governance Mainstreaming Tool

- The land governance mainstreaming tool goes beyond the traditional approach of mainstreaming the results of pilot projects through the production of policy briefs or by inviting relevant institutions to share project findings at events in that:
  - It adopts a simple, proactive and strategic process in which activities for mainstreaming land governance are planned, developed and monitored.
  - It focuses on strategic objectives and activities that the countries, stakeholders and development partners can undertake during project implementation that can integrate land governance in plans and programmes so that they can have longer-term impacts – beyond the end of the project.
  - The entry point of the tool is to overcome identified barriers to the mainstreaming of land governance by integrating land governance into key decision-making processes.
  - It promotes capacity and partnership building of relevant stakeholders and institutions.
  - It provides input for deciding what, why, how, when and who to be involved in land governance mainstreaming.
  - It identifies key decision-making processes such as communication, participation, coordination, information value chain and feedback that represent opportunities for promoting mainstreaming of land governance into national priority programs.
  - It integrates land governance concepts into national policies and planning processes by developing a financing mechanism to facilitates its implementation and by creating an enabling environment (i.e. policy, financial, technical and social support) for realization of the land governance goals.

### Key Entry Points for the Mainstreaming Tool

The key entry point for developing the tool is the need to deal with identified land governance challenges. This calls for formulation of objectives of the land governance mainstreaming tool. The objectives focuses on overcoming barriers and addressing key decision-making processes that may facilitate implementation.

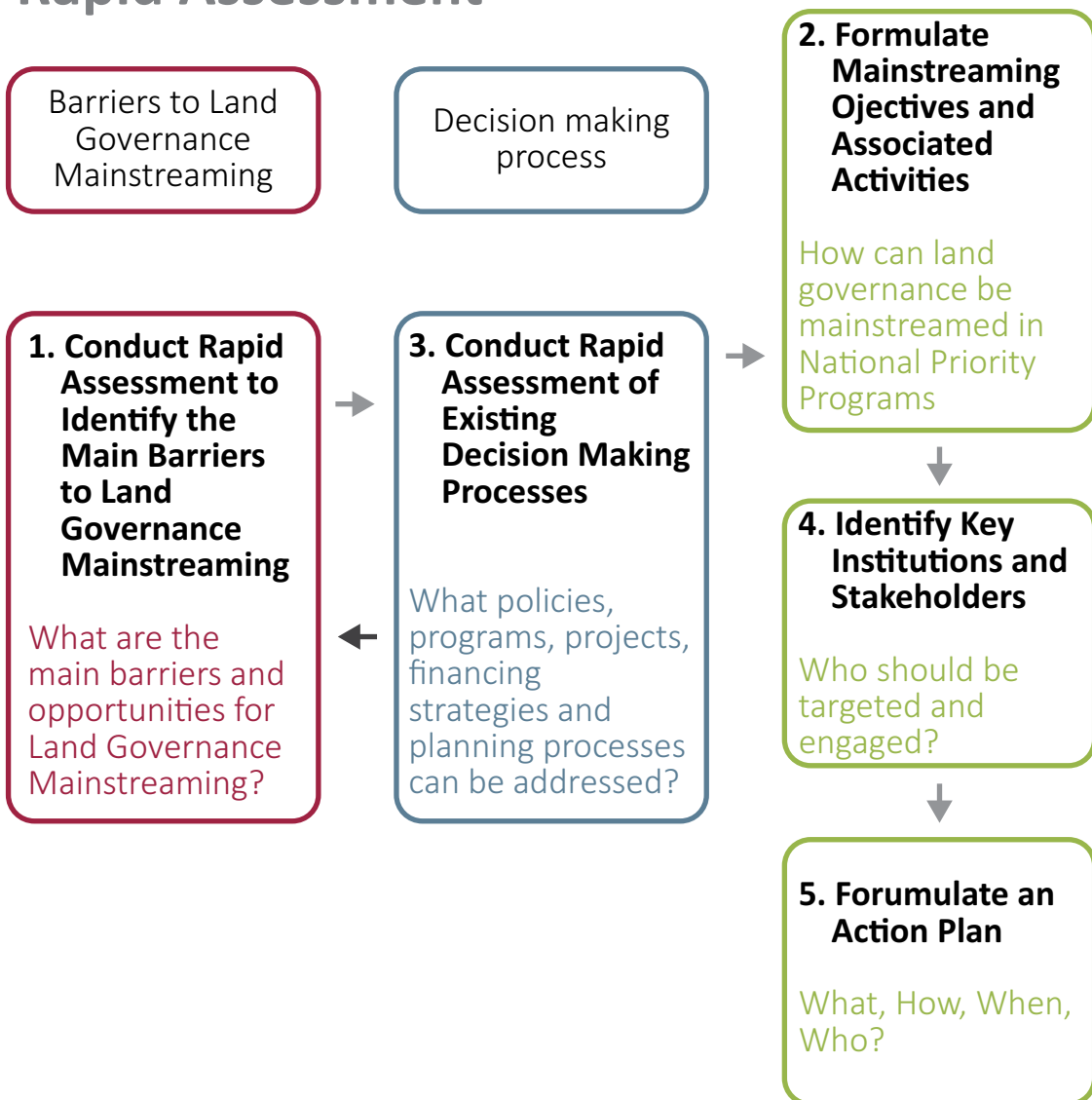


## Section III: Practical Approach for Land Governance Mainstreaming into National Priorities

There are five stages which a country should follow in mainstreaming land governance into its strategies and plans. The flow chart below provides the stages.

**Chart 1: The Land Governance Mainstreaming Stages**

### Rapid Assessment



These stages are further detailed below.

## First Stage

The first stage comprises of conducting a rapid assessment to identify barriers to, and opportunities for mainstreaming of land governance and key entry points for mainstreaming. The objective of this exercise is to identify and prioritize institutional barriers that are limiting the mainstreaming of land governance.

### Activities

- Conduct a mainstreaming assessment to identify both institutional barriers (step 1) and decision-making processes (step 2) by organizing one or more local-level workshops with local stakeholders, technical experts and implementing institutions. Alternatively, gather information from secondary sources on barriers for mainstreaming of land governance.
- Classify the barriers as policy, economic, technological or socio-cultural.
- Formulate the general actions needed to overcome the barriers and with potential to enhance mainstreaming of land governance.
- Synthesize findings

### Issues to be considered

This stage should be conducted in stakeholders' workshop(s) with a clear view to identifying the barriers to the mainstreaming of land governance.

Identification of the main barriers can also be done as part of national, landscape or local assessments of land governance best practices. A mainstreaming questionnaire may be used to help gather information from local stakeholders, technical experts and implementing institutions or review of documentary information may be done.

The identification of barriers provides a first overview of the factors arising for political, economic, technological and socio-cultural reasons that need to be overcome to facilitate the implementation of mainstreaming of land governance.

Key entry points may be those needs and opportunities in the existing institutional setting, such as the existing land governance process, or there may be gaps that should be filled, such as the lack of mechanism/tool for mainstreaming of land governance. Thus, the objectives of the mainstreaming tool might focus on overcoming key identified barriers and addressing crucial decision-making processes that will facilitate the mainstreaming of land governance.

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THE OBJECTIVE OF THIS EXERCISE IS TO IDENTIFY AND PRIORITIZE INSTITUTIONAL BARRIERS THAT ARE LIMITING THE MAINSTREAMING OF LAND GOVERNANCE

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Table 1 gives an example of a questionnaire that might be used in identifying the barriers and opportunities.

**Table 1: Barriers to Land Governance Mainstreaming**

**COUNTRY:**

<b>Objective of Table 1</b>	To identify and prioritize institutional barriers and gaps that limit LG mainstreaming in order to orient mainstreaming objectives towards overcoming them (FINDINGS OF A RAPID MAINSTREAMING ASSESSMENT)
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<b>BARRIERS FOR LG MAINSTREAMING</b>	<b>OPPORTUNITIES TO INTEGRATE LG</b>
Identify institutional barriers for LG mainstreaming (prioritize up to 2 barriers for each category)	Identify opportunities and general actions that LG mainstreaming project could carry out in order to overcome the barriers
<b>Policy, Laws and Regulation barriers</b>	
1.	1.
2.	2.
3.	3.
<b>Programs and projects</b>	
1.	1.
2.	2.
3.	3.
<b>Economic, Financing and incentive barriers</b>	
1.	1.
2.	2.
3.	3.
<b>Subnational/Local government planning barriers</b>	
1.	1.
2.	2.
3.	3.
<b>Technologies and knowledge barriers</b>	
1.	1.
2.	2.
3.	3.



## Second Stage

The second stage involves conducting a rapid assessment of existing decision-making processes. The objective of this stage is to identify and prioritize institutional opportunities or key decision-making processes related to national policies and regulations, planning processes, programmes/projects, financing strategies and mechanisms and local decisions on land use that are facilitating or hindering mainstreaming of land governance and that can be influenced, targeted, strengthened or addressed through the mainstreaming project

### Activities

- Conduct a mainstreaming assessment to identify key decision-making processes that can strategically contribute to the mainstreaming of land governance.
- Analyse existing decision-making processes that need to be addressed and which present opportunities for promoting land governance.
- Prioritize the decision-making processes to be addressed.
- Describe the processes (e.g. their objectives, functions and scope) and how each may contribute to the implementation of land governance mainstreaming.
- Synthesize the findings.

### Issues to be Considered

- Each country has a unique political, institutional, economic, environmental and social setting, with different opportunities and limitations for raising land governance as an important issue in the political, planning, technical and financial spheres.
- A rapid mainstreaming assessment (on barriers and decision-making processes) can be carried out to identify existing and potential policies, institutions, plans and strategies relevant to national economic development, sustainable land management, agriculture, environmental management, and other sectors, such as climate change and biodiversity conservation, and thereby to provide an indication of the existing land governance-related political framework. Nevertheless, it might be unnecessary to develop a complex political and institutional diagnosis beyond the focus of the mainstreaming tool. The idea is to avoid making a long diagnosis but, rather, to briefly describe the political and institutional setting, focus on key instruments that facilitate or hinder land governance mainstreaming, and identify key entry points.
- A wide range of programmes and projects could be considered if they are closely related to land governance mainstreaming.
- National and local decisions may be made through various types of decision-making processes, not just regulatory processes.
- Key decision-making processes can be identified by posing a series of questions.
- Decision-making processes can be conducted at the local level, providing information that will help guide step 3.

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THE OBJECTIVE OF THIS STAGE IS TO IDENTIFY AND PRIORITIZE INSTITUTIONAL OPPORTUNITIES OR KEY DECISION-MAKING PROCESSES

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Table 2 below gives an example of a questionnaire that might be used to assess the decision making process.

**Table 2: Land Governance Mainstreaming - Decision Making Processes**

<b>Objective of Table 2</b>	To identify, prioritize and describe decision making processes in five categories (policies, programmes, finance, land use planning and local level decisions etc) at the national and sub national level where LG Mainstreaming could be further integrated, strengthened, addressed, tackled or changed through the LG mainstreaming tool (FINDINGS OF THE RAPID MAINSTREAMING ASSESSMENT).
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DECISION MAKING PROCESSES	DETAILS OF THE PROCESS AND OPPORTUNITIES FOR LG MAINSTREAMING
Prioritize decision making processes where national priority programs could integrate LG Mainstreaming (e.g. processes to tackle, be strengthened or changed)	Provide opportunities for mainstreaming land governance (consideration should be how the opportunity can contribute to LG Mainstreaming.)
<b>1. POLICIES, LAWS AND REGULATIONS</b>	
Example: The Policies, Plans, laws and Regulations already formulated can be revised and updated. LG Mainstreaming may be further integrated through dialogue and capacity building with the relevant persons and bodies.	
1. [Please complete]	[Please complete]
2.	
<b>2. STRATEGIES, PROGRAMS AND PROJECTS</b>	
Example: The Land Tenure Support Program involves formalization of land titles. Land tenure insecurity assessment done through the LG mainstreaming project can help to identify key areas of formalization. Identified LG Mainstreaming best practices that can be integrated in the work.	
1. [Please complete]	[Please complete]
2.	
<b>3. FINANCING AND INCENTIVE STRATEGIES AND MECHANISMS</b>	
Example: LG Mainstreaming microcredit tool could be developed to support mainstreaming projects	
1.	
2.	

4. LAND MANAGEMENT AND LAND USE/PLANNING	
Example: Land Use Planning process is conducted periodically and developed through local governments. The process can be used to integrate LG Mainstreaming.	
1.	
2.	
5. LOCAL-LEVEL DECISIONS	
Example: Community management plans can be strengthened through dissemination of LG Mainstreaming best practices.	
1.	
2.	

### Third Stage

The third stage involves formulation of land governance mainstreaming objectives and associated activities. At this stage, the aim is to come up with objectives and activities for triggering, contributing to or achieving the mainstreaming of land governance in key decision-making processes, based on the preliminary and rapid assessment of barriers, opportunities and entry points.

#### Activities

- Formulate objectives for mainstreaming land governance into policies, plans, financing mechanisms, land-use planning and decision-making processes at the national and/or local levels.
- Determine the expected results from the mainstreaming process for each objective.
- Devise activities for each mainstreaming objective.
- Synthesize the findings.

#### Issues to be considered

- This is the main part of the mainstreaming tool. A small number (1–3) of focused objectives should be formulated.
- The objectives, and their associated activities must be feasible to be undertaken and achieved during the implementation of the mainstreaming tool according to existing priorities, institutional and partnering opportunities, and resources.
- The activities should centre on alliance-building, knowledge management and capacity building and be supported by land governance mainstreaming assessments.

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THE THIRD  
STAGE INVOLVES  
FORMULATION  
OF LAND  
GOVERNANCE  
MAINSTREAMING  
OBJECTIVES AND  
ASSOCIATED  
ACTIVITIES

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Table 3 below provides an example of a table for developing mainstreaming objectives.

**Table 3: Mainstreaming Objectives**

<b>Objective of Table 3</b>		To formulate objectives and activities for mainstreaming Land Governance into key decision-making process (CORE MAINSTREAMING OBJECTIVES)							
Mainstreaming Objectives	Expected Results	Components Or Activities	Decision Making Process To Be Addressed	Target Group	Level of decision to address				
					Policies	Programmes	Finance	Subnational/ Local Government Planning	Local Decisions
					<b>(choose one or more columns)</b>				
Formulate 1-4 objectives for mainstreaming LG into key decision-making processes to facilitate its implementation	Expected results of the actions undertaken by LG Mainstreaming project	Components or activities to be developed by the mainstreaming project and partners. (include several activities per objective – add rows where necessary)	Specify the decision-making processes that will be addressed by each objective and activity	Identify target groups within the decision-making process (if necessary)	X	X	X	X	X
<b>Mainstreaming Objective 1</b>									
Example 1: To integrate LG mainstreaming into Land Use Planning processes	Example: To integrate LG best practices into the participatory land planning process of a given area	1. Develop LG indicators based on LG mainstreaming assessments	Participatory planning process	Subnational/Local government level, Interinstitutional Working groups etc.	X			X	
		2. Convene LG Mainstreaming workshops to integrate LG indicators into the land planning processes							
		3. ....							





## Fourth Stage

The fourth stage involves the identification of institutions and stakeholders. The objective is to identify, characterize and prioritize key national and local institutions and stakeholders that shall be targeted or involved in the land governance mainstreaming.

### Activities

- Identify key institutions and stakeholders with the potential to provide support for achieving the mainstreaming objectives.
- Prioritize and characterize those key institutions (e.g. in terms of their roles and scope) through institutional mapping.
- Classify institutions into partner, target and participant institutions.
- Synthesize the collected information

### Issues to be considered

- The institutional analysis (or mapping) should be used to guide national teams in identifying relevant institutions to be involved in the implementation of the mainstreaming tool.
- The idea is to identify and engage an appropriate range of land governance-relevant institutions and actors from diverse sectors (e.g. agriculture, environment, land-use planning, farmers, the private sector, academia and civil-society organizations) in order to structure an alliance-based tool for mainstreaming land governance.
- Institutional mapping should be done for each objective. (Example; a question to be asked might be: Which institutions should be involved if the objective is to enhance land tenure security?)
- Institutions will have been identified early in the process (i.e. while conducting the previous steps). Once the mainstreaming objectives have been established, however, the institutions can be organized by objective.
- Institutions and stakeholders could be classified according to their role and involvement in the mainstreaming project in the following non-exclusive categories:
  - **Partners:** institutions and stakeholders that could become partners in the mainstreaming project as a way of engaging them in land governance mainstreaming.
  - **Targets:** institutions and stakeholders that could be targeted as agents for mainstreaming of land governance.
  - **Participants:** institutions and stakeholders that could participate in land governance assessments and share and help disseminate the findings.
- The participation of key institutions is important during the development and analysis of the assessments and the delivery of findings.
- Alliances should be built with relevant institutions (e.g. governmental, non-governmental, communities and academic) that are involved in or have the capacity to influence the identified decision-making processes.
- It is important to explore opportunities for building alliances with key institutions for mainstreaming, implementing land governance beyond the project.

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THE FOURTH  
STAGE  
INVOLVES THE  
IDENTIFICATION  
OF INSTITUTIONS  
AND  
STAKEHOLDERS

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Table 4 below provides an example of a stakeholder and institutional mapping framework.

**Table 4: Institutions and Stakeholders**

Mainstreaming Objective	Institutions or Stakeholders	Role In LG Mainstreaming	Sector					Scope of actionW			Type of Partner for the LG Mainstreaming project		
			Government	NGO's	Productive Sector	Research & Extension	International Cooperation	National	Local Government(provincial, district)	Local	PARTNERS for implementing LG mainstreaming activities	TARGETS for mainstreaming LG	PARTICIPANTS and beneficiaries of LG Mainstreaming information
Each mainstreaming objective will involve series of institutions	Identify the main institutions and stakeholders involved (add rows if necessary)	Specify the stakeholder's role in LG Mainstreaming	X	X	X	x	x	X	X	X	Institutions and stakeholders partnering the project to conduct LG Mainstreaming activities	Institutions and stakeholders to be targeted to mainstream LG into their decision-making processes	Institutions that should be part of LG Mainstreaming workshops or receive LG Mainstreaming findings
Example: MAINSTREAMING OBJECTIVE 1: To integrate LG mainstreaming into Land Use Planning processes	Interinstitutional land use/planning committee in a given area	Formulates policies and programmes and mobilizes resources for LG Mainstreaming	X	X	X	x	x		X			X	x
	Communal Council/ Committee	Decide on management plans			X				X			X	x
	Decentralized office of the Ministry for Lands	Provides support	X						X		x	X	x



### Fifth Stage

The fifth and final stage involves formulation of the action plan. The objective is to formulate specific activities, roles, targets, timelines and budgets for implementing the land governance mainstreaming tool.

#### Activities

- Develop an action plan with identified partner institutions, defining activities, budget (if needed), roles and responsibilities for achieving the proposed mainstreaming objectives and activities.
- Synthesize the collected information.
- Integrate the action plan into the overall land governance programme of work and budget.

#### Issues to be Considered

- It is important to share and validate the action plan with the institutions involved, thereby encouraging institutional support and co-financing.
- Once the action plan has been formulated, it needs to be integrated into the overall land governance programme of work and budget.
- Each plan/project could have its own planning process and format for developing an action plan.

THE OBJECTIVE IS TO FORMULATE SPECIFIC ACTIVITIES, ROLES, TARGETS, TIMELINES AND BUDGETS

Table 5 below provides an example of a table for developing mainstreaming action plan.

**Table 5: Action Plan**

MAINSTREAMING OBJECTIVES	COMPONENTS AND ACTIVITIES	BUDGET	RESPONSIBLE	DATES
Mainstreaming Objectives (from mainstreaming table 4)	Separate components and detailed activities, if needed	If needed	LG Mainstreaming Project and/or partners	For monitoring progress
Example: Mainstreaming Objective 1: To integrate LG mainstreaming into Land Use Planning processes	1. Development of LG land use planning indicators based on LG assessments	USD XXX		Day/Month/Year
	2. LG Mainstreaming workshops to integrate LG indicators into the land-use planning process.			Day/Month/Year
	3. ...			Day/Month/Year
Mainstreaming Objective 1:	[Please complete]		[Please complete]	[Please complete]
Mainstreaming Objective 2:	[Please complete]		[Please complete]	[Please complete]
Mainstreaming Objective 3:	[Please complete]		[Please complete]	[Please complete]
Mainstreaming Objective 4:	[Please complete]		[Please complete]	[Please complete]

In view of the discussion and tables above, an ideal country land governance mainstreaming tool that adopts the guidance of this tool should follow the layout below.

- a. Cover page containing name of the country and title of the document
- b. Preliminary pages
- c. Background and justification
- d. Methodology
- e. Literature review of land governance issues
- f. Identification and analysis of land governance mainstreaming barriers
- g. Identification and analysis of land governance decision making processes
- h. Formulation of objectives and activities for land governance mainstreaming
- i. Stakeholder and institutional mapping
- j. Formulation of an action plan for land governance mainstreaming
- k. Conclusion



# CONCLUSION

The land governance mainstreaming tool is the key component in the whole land governance mainstreaming project. The tool uses evidence-based ways to remove key barriers to mainstreaming land governance through improved land governance decision. It links sound scientific assessments of land governance and best practices with the mainstreaming of its priorities in national priority programs and investment programs. The tool eventually aims to bring about a change of perspective and priorities aimed at promoting land governance. Therefore, the use of this mainstreaming tool is one of the strategic activities needed to promote the integration of land governance into policy, planning and finance-related processes.



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