

SPACE, SOIL AND STATUS: INSIGHTS FROM THE APRM INTO THE GOVERNANCE OF LAND IN AFRICA

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Cover photos clockwise from left to right:

Small landholder farms in the Ugandan Highlands (source: page 10)

Jacqueline, a farmer in Rwanda, weeds her potato field (source: page 29)

Nigeria signed a \$22 million contract to supply 400 tractors for farmers in the country in 2013 (source: page 16)

Women from the village of Abeye, Ethiopia with their land certificates obtained through a U.S. Agency for International Development program (source: page 26)

ABSTRACT

Land is central to Africa's fortunes, and thus has occupied a prominent place in the inquiries of Africa's home-grown governance review system, the African Peer Review Mechanism (APRM). This paper interrogates what the APRM's reports from 10 participating countries have had to say on the land issue.

Land is recognised, by the APRM and by the continent's governments and supranational authorities, as a key issue for Africa's future. It is critical for both agricultural and non-agricultural development, and to accommodate human settlement. The key, overarching challenge concerns tenure security. Land in Africa tends to be held through hybridised arrangements, in which formal, statutory systems exist alongside customary or other informal systems. The former place landholding, in theory, under a clearly defined legal order, which in turn makes it suitable as collateral for business endeavours and an asset to be leveraged for developmental purposes. This has led to calls for the formalisation of land titles across the continent. In practice, however, the weaknesses of the continent's state system make this a doubtful prospect at present.

This paper argues that a better option, at least as an interim measure, would be to strive for an adaptation of the continent's informal systems of landholding, with a view to giving them a degree of legal force.

However, this will only deal with part of the land governance challenges facing the continent. Land is an issue that spurs passionate emotions. It is often a proxy for issues of citizenship and belonging. Any solution will need to be sensitive to this and cannot be based solely on economic criteria. The constraints on female landholding require that some traditional practices be confronted. Conflict over land and landed resources – or conflict that has a severe impact on the use of these – needs to be tackled with strong, capacitated action by the state and society.

This suggests that a comprehensive resolution of issues surrounding the continent's land ultimately demands that the capacity of the continent's states be improved. They must be able effectively to establish and implement productive land governance systems, as well as the legal systems, agrarian support and security apparatus required to support and uphold them.

ABOUT THE AUTHOR

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ABBREVIATIONS AND ACRONYMS

| | |
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| APRM | African Peer Review Mechanism |
| CRM | Country Review Mission |
| CRR | Country Review Report |
| CSAR | Country Self-Assessment Report |
| GDP | gross domestic product |
| NEPAD | New Partnership for Africa's Development |
| NPoA | National Programme of Action |

‘There is no doubt that land in Africa is a fundamental social and cultural asset as well as a critically important development resource, especially for the poor, in both rural and urban situations. The realization of those values will require effective land policy development which balances the rights and interests of all users, and ensure the inclusion of all members of society especially women, persons with disability and other landless poor, to enable them realize full social, environmental and economic benefits from land, and which in addition enhances political stability and democratic institution building.’

AUC (AU Commission), African Development Bank (AfDB) & UNECA (UN Economic Commission for Africa), *Frameworks and Guidelines in Land Policy in Africa: Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods*. Addis Ababa: AUC, AfDB & UNECA, 2010, p. 21

INTRODUCTION

Land is axiomatic for life and fundamental for development, a common denominator framing societies’ existence, their aspirations and their prospects. Economists have long recognised that to some extent, all economic activity depends on land and the opportunities and resources that it provides: space, soil, water and minerals, as well as collateral for leveraging funds for investment. These relationships are particularly stark and direct in environments where large proportions of the population depend on agriculture and primary factor endowments for their livelihoods.

This is especially the case in Africa. More than any region of the world, Africa grapples with the burden of underdevelopment. Despite the continent’s recent impressive economic performance, its economies remain heavily dependent on primary industries. Agriculture, typically small scale and geared primarily to families’ subsistence, features particularly prominently. Although precise data is difficult to come by, one widely quoted estimate is that agriculture employs around 65% of Africa’s labour force and accounts for 32% of the continent’s gross domestic product (GDP).¹

But the importance of land is not confined to the role it plays in cropping and pasturage, critical as this is. For Africa’s people and its economy, land is a bedrock resource and a fundamental concern in policy. Exploiting Africa’s substantial mineral wealth, for example, has long been intimately bound to accessing its land.

Beyond this, land has a profoundly emotive cultural and political resonance. Many, if not most, societies recognise a connection with a particular geographical space. More than simply relevant to their material wellbeing, this helps define their identity, their sense of belonging in the world and frequently also their connections with past generations and their deities. In Africa, this element has historically loomed large. A significant aspect of the colonial experience was the displacement of Africans from their land, a

1 World Bank, *Fact Sheet: The World Bank and Agriculture in Africa*, <http://go.worldbank.org/GUJ8RVMRL0>, accessed 22 July 2015.

major grievance taken up by nationalist organisations and liberation movements in the 20th century. It has been a symbolic reference point when landed communities have found their holdings under threat from corporate investments in recent years.

Moreover, Africa is a continent in flux. Africa's population is both growing and urbanising, projected to rise from some 1.1 billion people today to 2.4 billion in 2050, with a majority living in cities by 2035. These prospects raise important concerns about the continent's ability to provide appropriate economic opportunities and social services.² Whether Africa is able to provide the environment for sustained, value-adding investment will be decisive if the continent is to set itself on a high-growth, developmental trajectory.

Recognising the multi-faceted importance of land in Africa raises many issues. How is land ownership organised in Africa? How is this changing? How can competing claims on land be reconciled with one another? Does the political leadership exist to ensure that these questions are answered successfully?

Taken together, all of this – a far from comprehensive survey – demonstrates that the manner in which land in Africa is allocated, distributed and managed is a critical question, demanding durable policy solutions. Land is an issue that must be properly understood and sustainably addressed.

This is perhaps best expressed with reference to Africa's development: what approach to the continent's land resources can best contribute to the economic growth, the broader social welfare and the modernisation of the continent?

THE AFRICAN PEER REVIEW MECHANISM

This paper interrogates the issues surrounding land in Africa, with an emphasis on the situation in sub-Saharan Africa. To this end, it draws on the enquiries of the continent's innovative governance assessment system, the African Peer Review Mechanism (APRM). Established in 2003, to fulfil part of the vision outlined in the New Partnership for Africa's Development (NEPAD), the APRM seeks to conduct wide-ranging interrogations of participating countries' governance, with a view to identifying both deficiencies and achievements, and prompting reform where necessary. The scope of its enquiries is comprehensive, and interest groups have made good use of it to agitate for their causes. This makes it a uniquely insightful instrument for examining complex and multifaceted subjects and the dynamics associated with them, especially by comparing similar issues in different countries.

2 Corrigan T, 'Dividend or Disaster: Africa's Growing Population', SAIIA (South African Institute of International Affairs), 13 July 2015, <http://www.saiia.org.za/opinion-analysis/dividend-or-disaster-africas-growing-population>, accessed 22 July 2015.

BOX 1: WHAT IS THE APRM?

The APRM is a process encouraging African societies to analyse their problems, assess their progress towards improved governance and promote effective reform. As of November 2015, 35 countries have voluntarily joined.

To participate in the process, a country's government will sign a Memorandum of Understanding with the continental APRM authorities indicating its willingness to undergo review and its commitment to the process. Domestic institutions will be established to facilitate an assessment of governance in the country. The results of this review will be incorporated into a Country Self-Assessment Report (CSAR), along with a draft National Programme of Action (NPOA), the latter being a measure to remedy shortcomings. This is followed by a visit to the country of a Country Review Mission (CRM). This is a delegation of respected scholars and experts who will conduct an independent study of the country and produce their own report. They will be led by a member of the Panel of Eminent Persons, which is a small body of highly respected Africans who are responsible for managing the process across the continent. A draft Country Review Report (CRR) is submitted to the country by the panel and its secretariat for comment, recommendations are put to the participating country, and the country is expected to amend its draft NPOA accordingly.

Important to note is that the APRM's inquiries are structured around adherence to a set of international and continental standards and codes, which in turn relate to a questionnaire. It demands an examination of the country's performance in four broad thematic areas: democracy and political governance; economic governance; socio-economic development; and corporate governance. (The original questionnaire, finalised in 2004, was revised and an updated version – incorporating several issues absent from its predecessor – was published in 2012.)

The final CRR will be produced by combining the previous reports – principally the CSAR and the results of the CRM's discussions and investigations. It will be presented to the Forum of the Heads of State for discussion and final review. This body consists of the leaders of all the participating countries. It tends to convene on the margins of AU summits (although not all AU members participate in the APRM). Once the country has been reviewed by the forum, it must agree to deal with the various problems that have been identified. Other states undertake to assist the country in its efforts, and to take action if the country does not try to deal with these issues. Finally, the country reports annually on progress in implementing the NPOA, and prepares itself for subsequent reviews (which are meant to occur every two to four years).

This report examines 10 countries through the CRRs produced by the APRM, namely Burkina Faso, Ghana, Kenya, Mozambique, Nigeria, Rwanda, Sierra Leone, South Africa, Uganda and Zambia. This is a diverse set of countries, with differing histories, economic structures and levels of development. As such, they offer a respectable overview of the land issues confronting the continent as a whole – as well as possible suggestions for remedying problems.

It needs to be noted that these CRRs were produced over a protracted period, stretching back to the first review – that of Ghana – in 2005. Conditions may have changed in the years following the publication of the various CRRs. While this paper is sensitive to this, its primary focus is on identifying key issues related to land on the continent as a whole, rather than on providing a detailed up-to-date analysis of the circumstances in the 10 countries. Thus it stresses the issues as they are related in the CRRs, on the assumption that while there may have been some movement in specific contexts, the issues themselves remain relevant for Africa as a whole.

For the APRM, land is of prime importance. Not only does the APRM questionnaire explicitly prescribe enquiries into the governance and use of countries' land resources, but in each of the reports produced thus far land has also emerged as a key issue – encompassing both problems to be addressed and opportunities to be exploited. The APRM reflects a perspective on land as – in the words of one activist observer – an 'access mechanism'.³ It provides people with the means to perform an extensive array of activities, whether this is the use of soil for cropping or pasturage for livestock, or whether it provides opportunities for prospecting for subsoil riches or the space for making physical investments. The Uganda CRR sums this up well, and frames the importance of land issues for Africa.⁴

There is no doubt that land is very important in Africa for several reasons, including social, political and economic development, as well as sustainable resource management. Other integral land issues on the continent are growth and poverty reduction; governance, political organisation and conflict; and migration and demographic developments. For the majority of poor people, their land is their livelihood. Most people in Africa depend on land as a resource for living. However, in Africa, land is not just another commodity or a means of subsistence. It is much more than this – it combines being a factor of production with its role as family or community property, a capital asset and a source of cultural identity and citizenship. All the interrelated social, institutional and political factors involved in land make it an asset different from all others.

LAND IN CONTEXT: ACCESS AND OWNERSHIP?

It is notable that the APRM questionnaire refers to the 'use' of and 'access' to land, rather than its ownership.⁵ This is revealing: ownership of land – particularly in the sense of private, individual freehold title – is not universally held in Africa. Rather, landholding in Africa has been shaped by various historical currents: claims on land based on pre-colonial settlement, clan membership, Western-style property rights introduced during the colonial era, 'traditional' or 'customary' rights recognised (or awarded) by colonial authorities

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- 3 Adams M, *Land: A New Paradigm for a Thriving World*. Berkeley: North Atlantic Books, p. 27.
 4 Panel of Eminent Persons, APRM (African Peer Review Mechanism), *Country Review Report of the Republic of Uganda* (Uganda CRR), APRM Secretariat, January 2009, p. iv.
 5 Questionnaire, 'Chapter 6: Broad-based Sustainable Socio-Economic Development', Objective 1, Question 1, Indicator (c), p. 75; *Ibid.*, Question 2, Indicator (d), p. 76; *Ibid.*, Objective 3, Question 1, Indicator (b), p. 82.

and codified in written law, and later land arrangements introduced or modified by governments in the post-colonial era.⁶

In practice, hybrid regimes have emerged, in which customary landholding systems exist alongside statutory systems, with considerable overlap between the two.⁷ The Burkina Faso CRR notes in a comment broadly applicable to most other African countries that ‘[t]he complexity of the land issue stems from the coexistence of modern and customary systems and even Islamic influence at times. This is difficult because modern land legislation is based on the model of private property, while the customary system is based primarily on accumulated property rights.’⁸

The CRRs provide an overview of these regimes; each of them combines features of the customary and statutory, and bears the imprint of their unique histories. Cumulatively, they provide insights into the complexities that these regimes engender.

Some of the countries accord a particular primacy to the state in matters of land. In Mozambique, land is owned by the state, with land concessions being granted for periods of 50 to 100 years. It cannot be sold or mortgaged, and transactions in land concessions require government approval – although greater property rights are recognised in respect of improvements on land such as buildings.⁹ Mozambique also grants a role to customary law and traditional leadership in land allocations.¹⁰ Land titles may be held individually or communally, and the law recognises verbal claims as the basis for a land right.¹¹ In Nigeria, legislation dating back to the 1970s vests all land in the state, with state governors responsible for administering allocations in rural areas and local government doing so in rural areas.¹² However, the influence of traditional leaders remains strong, enabling them to exercise a great deal of ‘informal but effective’ control over land issues.¹³

While the Rwanda CRR says relatively little about landholding systems, the state exercises a dominant custodial role over the country’s land. Registered statutory ownership and

6 See, for example, Kajoba GM, ‘Land Use and Tenure in Africa: Towards an Evolutionary Conceptual Framework’, Council for the Development of Social Science Research in Africa, 2002.

7 See Cotula E (ed.), *Changes in ‘Customary’ Land Tenure Systems in Africa*. London & Rome: International Institute for Environment and Development & Food and Agriculture Organisation, 2007.

8 Panel of Eminent Persons, APRM, *Country Review Report of Burkina Faso* (Burkina Faso CRR), APRM Secretariat, May 2008, p. 250. (‘Accumulated property rights’ refer to rights in land that have been conferred by tradition and usage, rather than by formal purchase and registration.)

9 Panel of Eminent Persons, APRM, *Country Review Report of the Republic of Mozambique* (Mozambique CRR), APRM Secretariat, June 2009, pp. 195, 207.

10 *Ibid.*, p. 283.

11 *Ibid.*, p. 284.

12 Panel of Eminent Persons, APRM, *Country Review Report of the Federal Republic of Nigeria* (Nigeria CRR), APRM Secretariat, June 2009, p. 305.

13 *Ibid.*, pp. 339–340.



Photo: http://dapa.ciat.cgiar.org/what-happens-to-the-50-most-important-global-crops-with-climate-change/4108174637_c66c685666_o/

Small landholder farms in the Ugandan Highlands

customary tenure coexist, although the government encourages owners to formalise their rights with written titles.¹⁴ Land has historically been governed under a fragmented set of systems, with the CRR commenting that Rwanda's land legislation had to consolidate the 'scattered' laws on the issue.¹⁵ A unique feature is that Rwanda has attempted to make provision for former émigrés to acquire a portion of their erstwhile property upon returning to Rwanda.¹⁶

In most of the countries, combinations of ownership systems are recognised. In Burkina Faso, the government had declared a monopoly of all land in the 1980s. The idea of private property in land was reintroduced in the 1990s, and reform measures were underway to try to improve tenure security, for example by issuing certificates of ownership.¹⁷ However, traditional leaders and customary systems continue to exercise a strong influence on access to land tenure – indeed, these institutions appear to be reasserting themselves strongly after having been suppressed during the so-called 'revolutionary period'.¹⁸

Ghana has a 'peculiar and complex' system of landholding.¹⁹ The Ghanaian constitution defines three types of landholding: public lands, which are owned by the state; stool lands,

14 Rurangwa E, 'Land Tenure Reform: The Case Study of Rwanda', paper presented at the Conference on Land Divided: Land and South African Society in 2013, in *Comparative Perspective*, University of Cape Town, 24–27 March 2013.

15 Panel of Eminent Persons, APRM, *Country Review Report of the Republic of Rwanda* (Rwanda CRR), APRM Secretariat, June 2006, p. 82.

16 *Ibid.*, p. 120.

17 Burkina Faso CRR, *op. cit.*, p. 250; IRIN (Integrated Regional Information Networks), 'Is land reform working in Burkina Faso', 18 September 2013, <http://www.irinnews.org/fr/report/98781/is-land-reform-working-in-burkina-faso>, accessed 5 August 2016.

18 Burkina Faso CRR, *op. cit.*, p. 373.

19 Panel of Eminent Persons, APRM, *Country Review Report of the Republic of Ghana* (Ghana CRR), APRM Secretariat, June 2005, p. 123.

which are held in trust for communities by traditional authorities; and privately owned lands, which are owned by individuals.²⁰

In Sierra Leone, land is held under two systems: in the west of the country under an English-style freehold title system, and in the rest communally, under customary law.²¹ There have also been some ad hoc arrangements to enable development initiatives, such as large-scale investment in agriculture.²²

In Uganda, landholding is governed by three systems. The mailo system has its roots in a colonial-era agreement between the colonial authorities and the Kabaka of Buganda.²³ Under the mailo system land was granted to various notables in Uganda, and functioned as a form of freehold for its owners – although with certain restrictions, such as preserving the rights of tenants. Communal land ownership is subject to customary laws, with land held by a community or under the stewardship of a traditional leader. Freehold and leasehold landholding are regulated by law.²⁴ The legislation governing land (the Land Act of 1998) has been described by some as an attempt to strengthen freehold rights at the expense of other systems.²⁵

In Zambia, a combination of state ownership and customary tenure is used, with the latter said to account for some 94% of the country.²⁶ Zambia lacks a comprehensive land policy. A draft policy was produced in 2006 but at the time of writing it had not been finalised, although work on it was ongoing.²⁷

Kenya and South Africa are somewhat special cases among the countries under review. Although both recognise differentiated systems of landholding, they have long-standing traditions of statutory, freehold titling. Indeed, post-independence Kenya (unusually among its peers) actively continued the colonial-era policy of converting customary rights to formal, private ownership.²⁸ The CRR points out, however, that at the time of writing Kenya lacked a clear land policy, resulting in a ‘very complex land management and administration system’.²⁹ Numerous laws governed land, sometimes in contradiction to one another.³⁰ The drafting of a National Land Policy in 2009 and subsequent legislation was intended to remedy this.

20 *Ibid.*, p. 79.

21 Panel of Eminent Persons, APRM, *Country Review Report of the Republic of Sierra Leone* (Sierra Leone CRR), APRM Secretariat, January 2012, pp. 314–315.

22 *Ibid.*, p. 316.

23 The Kabaka of Buganda is equivalent to the king of the Buganda kingdom, a subnational entity within Uganda.

24 Uganda CRR, *op. cit.*, pp. 265–266.

25 Foley C, *A Guide to Property Law in Uganda*, UN Human Settlements Programme, 2007, p. 12.

26 Zambia CRR, *op. cit.*, p. 262.

27 Communication from Zambia Land Alliance, 23 October 2015.

28 ARD Inc., *Kenya Land Policy: Analysis and Recommendations*, USAID, 2009, p. 7.

29 Panel of Eminent Persons, APRM, *Country Review Report of the Republic of Kenya* (Kenya CRR), APRM Secretariat, May 2006, p. 24.

30 *Ibid.*, p. 245.

The South Africa CRR says little about land ownership regimes, limiting its focus to the country's land reform programme. Statutory ownership (in other words, landholding governed by formal legal processes and institutions, encompassing both private, freehold ownership and state ownership) is arguably the dominant form of landholding in the country, although it is estimated that between 17 and 20 million people (well over one-third of the country's population) live in areas under customary landholding.

While these 10 countries' land regimes certainly demonstrate the coexistence of customary and statutory ownership, they also demonstrate that the boundaries between these are in practice fluid. For example, the Zambia CRR notes that the influence of traditional leaders often intrudes into urban centres, resulting in unplanned developments.³¹ Even in South Africa – with arguably the most developed regime of statutory ownership and private property – recent government initiatives to revise the country's landholding system with a view to driving more aggressive land reform have had to factor in the role of traditional leaders. Indeed, the relevant minister ran into considerable resistance from traditional leaders in response to a bill that would vest development functions in democratically elected municipal governments – to which he responded that they would be consulted as 'de facto owners of the land'.³² This in turn has been criticised by activists arguing that hereditary powers should not undermine rural people's rights as citizens. This case illustrates that complex and competing systems of landholding, of interests and of political considerations complicate land policy in Africa.

Modes of landholding are an important contextual issue, informing a string of critical questions germane to land in Africa.

LAND AND DEVELOPMENT

Breaking Africa out of its long-standing developmental deficit, securing an environment for value-adding economic activity and giving its people the opportunities for prosperity have long occupied a privileged place in thinking around the continent's political economy. It is this drive to develop, more than anything else, that has informed the continent's various development initiatives – such as the Lagos Plan of Action in 1990, NEPAD in 2001 and latterly, Agenda 2063. For this aspiration to development to be realised, land will inevitably have a diverse set of critical roles to play.

LAND AND AGRICULTURE

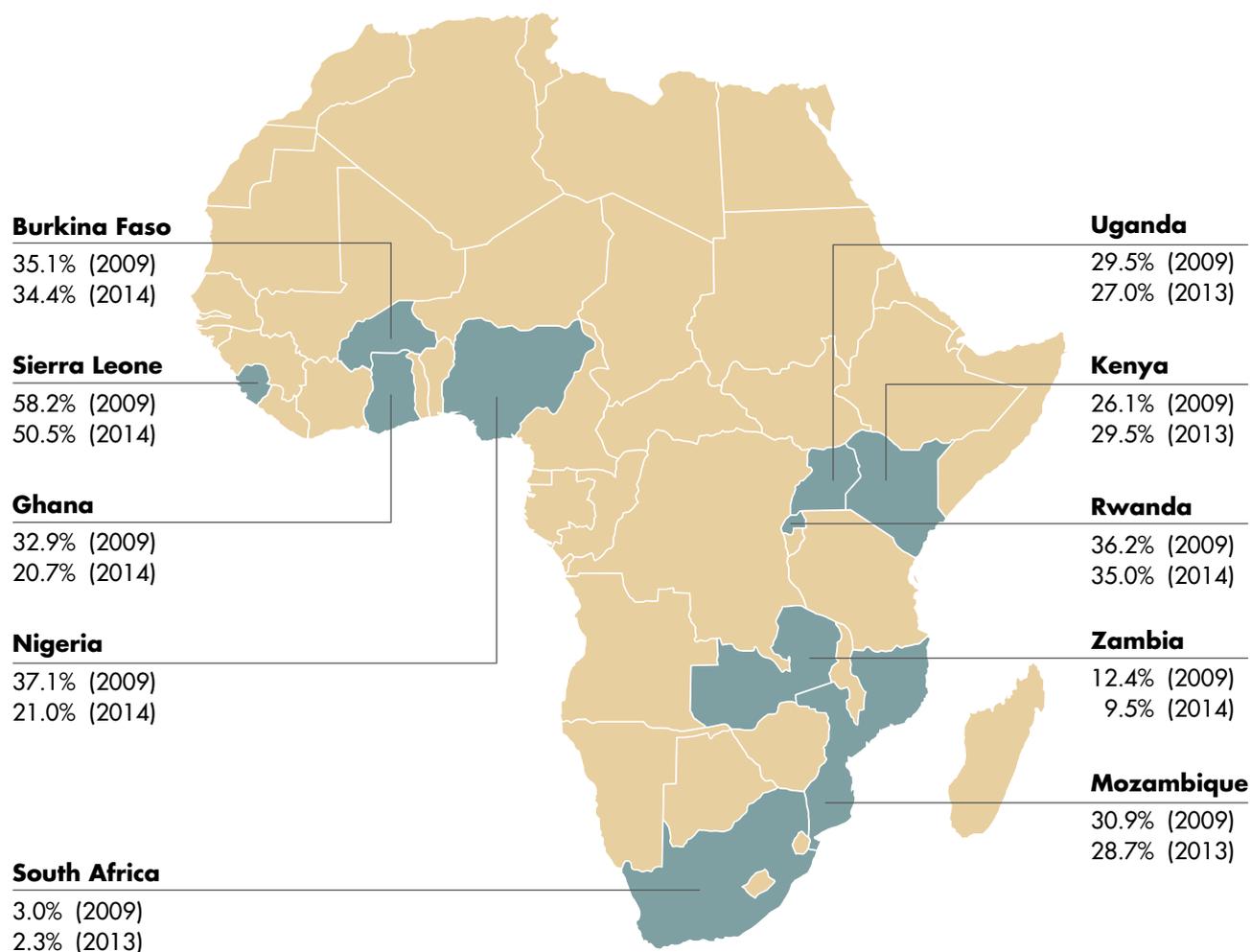
Any conversation about the economic role of land in Africa is likely to reflect intuitively on agriculture. No activity is more directly and intimately bound to land, and it occupies an

31 Panel of Eminent Persons, APRM, *Country Review Report of the Republic of Zambia* (Zambia CRR), APRM Secretariat, January 2013, p. 85.

32 Makinana A, 'Amakhosi fight for their turf on land development applications', *City Press*, 2 July 2015, <http://www.news24.com/SouthAfrica/News/Amakhosi-fight-for-their-turf-on-land-development-applications-20150702>, accessed 6 January 2016.

important position in African economies. The magnitude of this, based on data supplied by the various countries, is illustrated in Figure 1.

FIGURE 1 CONTRIBUTION OF AGRICULTURE TO GDP, 2009 AND 2013/14



Source: African Economic Outlook, 'Data from the Country Notes – Burkina Faso, Ghana, Kenya, Mozambique, Nigeria, Rwanda, Sierra Leone, South Africa, Uganda, Zambia', <http://www.africaneconomicoutlook.org/en/statistics/>, accessed 17 August 2015

While the proportional contribution that agriculture makes to African economies is declining overall – largely because of the relatively more rapid growth of other sectors of the economy, such as mining and construction – it remains a mainstay of Africa's economies. It is important to note that the large contribution of agriculture to GDP partly denotes the developmental problems that Africa has faced. Across the world, the contribution of agriculture to countries' economies tends to wane as they develop. This is

the case even in developed countries in which agriculture remains a large and important industry. By way of comparison, agriculture accounts for just 1.4% of the US' GDP and 2.5% of Australia's,³³ although this is a vibrant and productive sector in both countries.

Nevertheless, a strong case can be made that the contribution of agriculture to Africa's economies is underappreciated. It is likely to be an area in which Africa could possess a considerable comparative advantage relative to other regions, and that, if properly stimulated, could be a major force for growth and development. A study of Malawi, Mozambique and Zambia reached the following conclusion:³⁴

Agriculture's performance and its contribution to the region's economic development has traditionally been undervalued, since it is measured using information about harvests and the sale of raw materials, mainly crops and livestock. As a result, the backward and forward linkages with agro-industry, the services and trade sectors, and, in general, the rest of the economy, are undervalued. The value added generated by these linkages throughout the economy does not appear in the basic agricultural statistics of most countries.

The potential of agriculture to be a driver of economic development in Africa is widely recognised, not least on the continent itself. As part of the NEPAD Initiative, the AU has established the Comprehensive Africa Agriculture Development Programme, a broad framework that aims to foster growth and innovation in the agricultural sector. Over time, this is hoped to spur increased output, more efficient production processes, employment, food security and environmental protection.³⁵ Similar themes have been taken up by other bodies and analysts.³⁶ Moreover, some 60% of the world's uncultivated land is in Africa. Demands for agricultural products both on the continent and internationally present an excellent opportunity for Africa's producers, provided the environment is conducive.³⁷ Collectively, they reflect a widespread consensus that African agriculture must 'modernise'.

These sentiments are reflected in various ways in several of the CRRs. The Kenya and Rwanda CRRs set out a broad-brush exposition of the problems facing the countries' agrarian economy – problems generally applicable to circumstances elsewhere. Rapidly rising populations cannot easily be accommodated on land available for cultivation. As a result, farms are shrinking in size as ever more people try to access land, and opportunities

33 World Bank, 'Agriculture, value added (% of GDP)', <http://data.worldbank.org/indicator/NV.AGR.TOTL.ZS>, accessed 2 August 2016.

34 Mucavele FG, 'True Contribution of Agriculture to Economic Growth and Poverty Reduction: Malawi, Mozambique and Zambia Synthesis Report', Food, Agriculture and Natural Resources Policy Analysis Network, 2009, p. 15.

35 See CAADP (Comprehensive Africa Agriculture Development Programme), <http://caadp.net/>; NEPAD (New Partnership for Africa's Development), *Agriculture in Africa: Transformation and Outlook*. Midrand: NEPAD, 2013.

36 See, for example, KPMG, *Agriculture in Africa*, KPMG Africa, 2013.

37 Bissek C, 'Africa's farms could feed the world', *Financial Mail*, 8 May 2014, <http://www.financialmail.co.za/features/2014/05/08/africa-s-farms-could-feed-the-world>, accessed 26 January 2016.

to bring new land under cultivation are limited.³⁸ The Mozambique CRR, similarly, speaks of the need to increase agricultural production to guarantee food security.³⁹ Indeed, small-scale African agriculture – what is frequently, if not entirely accurately, termed ‘subsistence’ agriculture⁴⁰ – has tended to be marked by relatively low levels of productivity. The chief strategy for meeting land demand has been ‘area expansion’, cultivating hitherto uncultivated territory. But there are limits to this, as not all land is suitable for cultivation and there are competing imperatives such as maintaining ecosystems and habitat for wildlife.

The availability of land and the security with which it can be held is a crucial factor for agricultural investment. A major part of the solution is to transform the continent’s agriculture – to improve its productivity, with a view to increasing yields on the available plots of land: the ‘transformation of the agricultural sector from subsistence farming into a more dynamic entrepreneurial activity’.⁴¹ This is recognised in the Ghana⁴² and Rwanda CRRs.⁴³

It is, however, prudent to recognise that agriculture in Africa is not homogenous. A basic distinction is often drawn between smallholder, typically family-operated farming, producing for its own subsistence and limited trade; and more sophisticated commercial farming, producing predominantly for the market. To the latter might be added the growing presence of foreign agri-businesses investing in sizable commercial operations. The CRRs, for the most part, appear to confine their analyses to the smallholder element.

Little is said about commercial agriculture in the CRRs. The South Africa CRR describes commercial agriculture in that country as ‘thriving’,⁴⁴ while the Nigeria CRR comments that agriculture requires more than land access. ‘The dimensions and prospects of farming opportunities are crucially influenced by labour, capital, marketing facilities and marketing policies. Attention should be paid to these issues as well.’⁴⁵ The latter point – the need for efficient and effective non-land inputs – is arguably central to any endeavour aimed at supporting commercial agriculture and enhancing the possibilities for more productive, commercialised farming among smallholders.

The accompanying phenomenon of foreign investment in land also receives little specific attention, with a minority of the CRRs confining themselves to scattered observations about the issue. For example, the Ghana CRR notes that foreigners are prohibited from

38 Kenya CRR, *op. cit.*, p. 232; Rwanda CRR, *op. cit.*, pp. 30, 33.

39 Mozambique CRR, *op. cit.*, p. 241.

40 For the most part, African farmers will produce with the intention of trading at least some of their produce, even if they intend to consume most of it. Pure subsistence agriculture – disengaged from markets – is very rare.

41 Ghana CRR, *op. cit.*, p. 123.

42 *Ibid.*, p. 123.

43 Rwanda CRR, *op. cit.*, p. 110.

44 Panel of Eminent Persons, APRM, *Country Review Report of the Republic of South Africa* (South Africa CRR), APRM Secretariat, May 2007, p. 265.

45 Nigeria CRR, *op. cit.*, p. 340.

owning land, although they may be able to lease it.⁴⁶ The Kenya CRR observes that non-citizens face arduous procedures to gain access to agricultural land and recommends that these be codified into clear guidelines to smooth this process.⁴⁷ The Zambia CRR notes that an ‘emerging issue’ is foreign buyers’ purchasing land in that country from traditional leaders.⁴⁸ Elsewhere on the continent, the acquisition of land by foreign interests has proven equally, if not more contentious. For example, a deal to lease tracts in Madagascar to the South Korean firm Daewoo Logistics was a significant factor precipitating the 2009 coup in that country.⁴⁹



Photo: World Bank Photo Collection, <http://www.africanfarming.net/crops/agriculture/nigeria-wins-us-22-million-contract-to-improve-mechanised-farming>

Nigeria signed a \$22mn contract to supply 400 tractors for farmers in the country in 2013

Interestingly, while foreign investment in industry, infrastructure or services tends to be viewed as a boon to Africa’s future, this is less the case in respect of land. The views expressed particularly by activist groups are frequently ambivalent about the benefits that this brings.

Certainly, large-scale investments in agriculture can be extremely disruptive to the lives of smallholders and surrounding communities. (This is not unique to Africa, but has been a long-standing part of agrarian change.) The acquisition of large tracts of land may

46 Ghana CRR, *op. cit.*, p. 79.

47 Kenya CRR, *op. cit.*, pp. 172, 182.

48 Zambia CRR, *op. cit.*, p. 262.

49 BBC News, ‘Madagascar leader axes land deal’, 19 March 2009, <http://news.bbc.co.uk/2/hi/africa/7952628.stm>, accessed 25 August 2016.

dispossess landholders, or alter long-standing market conditions or access to common resources. As the Zambia CRR observes: 'Large scale investments are a real cause for unrest as they often displace residents of those areas. In the absence of a resettlement policy and without any compensation scheme in place, many citizens inhabiting areas targeted for investments will swell the ranks of the urban poor.'⁵⁰

Smallholders may also find themselves entering into agreements they do not fully understand, or attempting to defend their customary or informal land rights against interlocutors with far superior resources, legal representation and political influence. The grievances that this can generate are arguably accentuated when such investments involve alien people and where the products are destined for export. Much of the criticism of such deals has focussed on these dynamics.⁵¹ (It should be borne in mind that investments in fields other than agriculture – such as mining or logging – can also have adverse impacts on farming communities and on the quality of the land and environment on which they have traditionally depended.)

Resentment will likely be compounded when foreign investments and attendant abuses are perceived to enjoy the protection of the government. While not addressed with specific reference to land, the Zambia CRR captures a flavour of this by recording frustrations at the perceived favouritism shown to foreign investors – evocatively alleging that they 'entered the country through State House'.⁵²

These concerns suggest Africa has good reasons to be cautious in welcoming investment in land. But this is not say that foreign land ownership should be rejected. It holds the potential for significant foreign currency earnings, infrastructure development and technology transfer.

There is also a recognition that elevating the level of agriculture will not be sufficient to drive the growth and employment creation that Africa craves. Opportunities for off-farm economic activities – mining, industry and services – need to be pursued aggressively to provide alternatives, particularly for Africa's youth.

This means, in turn, that space must be available for developmental purposes – although, here again, the CRRs do not discuss land availability for non-agricultural purposes in any detail. Such remarks as are made on this issue are couched in very general terms. (Perhaps this is because other factors, such as the availability of credit, skills, urban

50 Zambia CRR, *op. cit.*, p. 82.

51 Cotula L *et al.*, *Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa*. London & Rome: International Institute for Environment and Development, FAO (Food and Agriculture Organization) & International Fund for Agricultural Development, 2009; Kachika T, 'Land grabbing in Africa: A review of the impacts and possible policy responses', 2010, <http://www.oxfamblogs.org/eastafrica/wp-content/uploads/2010/11/Land-Grabbing-in-Africa.-Final.pdf>; Smalley R, 'Large Scale Commercial Agriculture in Africa: Lessons from the Past', Future-Agricultures and Institute for Poverty, Land and Agrarian Studies Policy Brief, 65, February 2014.

52 Zambia CRR, *op. cit.*, p. 214.

planning or appropriate business policy, loom larger than specific considerations about land.) Thus, the Zambia CRR calls for ‘reform’ to make land available for investment and entrepreneurial activity.⁵³

URBAN LAND

Scattered throughout a few of the CRRs is an issue of growing importance for the continent – urban land. As the bulk of Africa’s population becomes urbanised over the next 20 years, its rapidly growing cities will need to manage rising demands for both residential and industrial land, as well as for social services and infrastructure. It will also have to contend with social pressures, as residents and businesses compete for land. This warning is sounded in the South African and Zambian reports.⁵⁴ From an economic point of view, establishing a properly functioning, predictable system of land allocation and landholding is critical. As one observer succinctly phrases it: ‘Urban economies that are not built on a stable land market are themselves unstable.’⁵⁵

As the Nigeria CRR notes,⁵⁶ landholding in cities tends to be subject to statutory regulation to a greater extent than in rural parts, enabling – in principle – formal titling according to prescribed procedures. The Nigeria CRR also points out that this differentiates urban landholding systems from their rural counterparts. Administrative systems, as is pointed out in relation to Mozambique,⁵⁷ are also more accessible and efficient in urban centres than in rural ones.

Formal titling might be an appropriate avenue in this context. One review of available evidence suggests that formal titling ‘makes sense’ where customary law no longer holds sway; where strong tensions between different groups cannot be mediated by existing institutions; in re-settlement areas; and where intense competition for land exists, such as high-value urban property.⁵⁸ Some combination of these is likely to constitute the environment in the continent’s urban centres.

However, despite the case that can be made for titling, it is important to recognise the practical limitations. While formal titling may be gaining prominence in cities, it remains far from universal. According to urban planning expert Stephen Berrisford, Africa’s cities have generally failed to create a ‘virtuous cycle of urban land governance’ – one in

53 Zambia CRR, *op. cit.*, p. 262.

54 South Africa CRR, *op. cit.*, p. 190; Zambia CRR, *op. cit.*, p. 99.

55 Berrisford S, ‘Getting land governance right in sub-Saharan African cities: More than land administration’, in Napier M *et al.*, *Trading Places: Accessing land in African Cities*. Somerset West: African Minds, 2013, p. 90.

56 Nigeria CRR, *op. cit.*, p. 305.

57 Mozambique CRR, *op. cit.*, p. 213.

58 Toulmin C, ‘Securing land and property rights in sub-Saharan Africa: The role of local institutions’, in Biggs T & D Satterwaithe (eds), *How to Make Poverty History: The Central Role of Local Organisations in Meeting the MDGs*. London: International Institute for Environment and Development, 2005, p. 45.

which, crudely put, the state puts in place a regulatory system that creates certainty for investment, which generates tax revenue, which is then reinvested in improving regulatory structures and physical infrastructure, which in turn creates more value, sustaining the cycle over time.⁵⁹ Poor regulatory frameworks, weak institutions, uneven application of rules and informal landholding, among other things, make such a system unviable in most of the continent's cities.⁶⁰



Photo: <http://www.urbanafrika.net/news/informal-settlements-keep-growing-south-africas-mother-city-0/>

Informal settlement in Cape Town, South Africa

One perspective on the role that land plays in urban (and generally non-agricultural) investments is provided by the World Bank's *Doing Business* data. This offers a detailed comparative picture of the state of the business environment in most of the world's economies. The ease with which businesses can register property is an important part of this. It also gives a flavour of the challenges faced in creating the virtuous cycle to which Berrisford refers.

59 Berrisford S, *op. cit.*, pp. 77–78.

60 *Ibid.*, pp. 79–80.

| Country or region | Procedures (number) | Time (days) | Cost (% of property value) |
|-------------------------------|---------------------|-------------|----------------------------|
| East Asia & Pacific | 5.2 | 77.9 | 4.5 |
| Europe & Central Asia | 5.4 | 23.1 | 2.7 |
| Latin America & Caribbean | 7.0 | 63.3 | 6.1 |
| Middle East & North Africa | 6.1 | 31.3 | 5.7 |
| OECD ^a high income | 4.7 | 24.0 | 4.2 |
| South Asia | 6.4 | 99.5 | 7.2 |
| Sub-Saharan Africa | 6.3 | 57.2 | 9.1 |
| Burkina Faso | 4.0 | 67.0 | 12.3 |
| Ghana | 5.0 | 46.0 | 1.1 |
| Kenya | 9.0 | 72.0 | 4.3 |
| Mozambique | 6.0 | 40.0 | 6.9 |
| Nigeria | 12.1 | 69.6 | 18.6 |
| Rwanda | 3.0 | 32.0 | 0.1 |
| Sierra Leone | 7.0 | 56.0 | 10.8 |
| South Africa | 7.0 | 23.0 | 6.2 |
| Uganda | 11.0 | 43.0 | 2.6 |
| Zambia | 5.0 | 45.0 | 13.6 |

a Organization for Economic Cooperation and Development

Source: World Bank, *Doing Business*, 'Registering property', <http://www.doingbusiness.org/data/exploretopics/registering-property>, accessed 5 September 2016

Table 1 shows that, perhaps surprisingly, sub-Saharan Africa performs modestly well in global comparisons – at least in some respects. The average number of procedures required for such transactions is 6.3 – fewer than those required in South Asia or Latin America. In terms of the time taken to complete such a transaction, an average of 57.2 days are required. The equivalent of nearly two months, this places a significant burden on business operations. However, it also points to notable advantages over most other developing regions – suggesting that property registrations take place slightly faster in sub-Saharan Africa than in Latin America and the Caribbean, and far more so than in East Asia and the Pacific or South Asia. However, Africa performs poorly on the cost of such transactions, with costs averaging 9.1% of the value of such property (excluding illegal payments). This is the highest of any region of the world. And it is likely to be a roadblock to investment – by both local and foreign entrepreneurs – in Africa's economies. It is also likely to constitute a disincentive to formalising property rights.

There is considerable variation among the countries of the sub-Saharan region, with each displaying its own peculiarities. Nigeria, for example, imposes numerous procedures, takes over two months to complete a transaction and costs nearly 19% of the value of the property – an onerous burden on investors. Uganda requires 11 procedures, but completes them in a relatively short time and at a modest 2.6% of the property value. Rwanda manages to process its transactions quickly and cheaply – at 0.1% of the value of the property, it ranks as one of the cheapest in the world. The Rwandan example points to the positive impact that concerted reform can make on administrative systems.

At present, the use of formal processes in land acquisition and property protection is increasing, but severe capacity constraints on the part of Africa's local governments make envisaging a complete conversion to this system in the short term unrealistic. In the meantime, many of the mechanisms for acquiring and enforcing urban landholding rights are informal – sometimes through money or loyalty to local potentates – and are likely to remain so for the foreseeable future.⁶¹

UN-Habitat's most recent report on the state of the continent's cities – published in 2014 – argues for a gradual, cumulative process of formalisation, coupled with recognising informal systems and adapting them to the demands of contemporary circumstances:⁶²

Housing and land demands in the sub-region's cities should be met through a mix of informal and formal sector governance measures and institutional capacity would need to be developed to cope with innovative governance frameworks. Mixing marginal formal systems and dominant informal ones, for example, may aid transition towards full formal land and home ownership and acquisition in the longer term.

IDENTIFYING BARRIERS

For Africa to achieve its developmental aspirations, the overall environment for land-related business must be improved. The CRRs show that this is widely recognised. Interestingly, and not unpredictably, they reflect a widespread continental consensus that the overarching insecurities and ambiguities surrounding land ownership must be dealt with. As the Mozambique CRR observes: 'Land is an important economic asset that can be used to transform society from subsistence to market economy and the rights thereto can determine the degree of husbandry or utter neglect.'⁶³

61 UN-Habitat, *The State of African Cities 2010: Governance, Inequality and Urban Land Markets*, 2010; UN-Habitat, *The State of African Cities 2014: Re-imagining Sustainable Urban Traditions*, 2014.

62 UN-Habitat, 2014, *op. cit.*, p. 116.

63 Mozambique CRR, *op. cit.*, p. 214.

This view is further reflected in a study emerging from an extensive process of consultation piloted by the AU, the African Development Bank and the UN Economic Commission for Africa:⁶⁴

For land to play its primary role in national and regional development in Africa, attention will need to be focused, as a matter of urgency on the state of land administration systems. There are two aspects to this issue, namely; the state of land rights delivery and the efficiency and efficacy of the laws, structures and institutions for land governance. Both aspects are in dire need of reform.

These two aspects – the state of land rights and the administrative environment – together constitute an excellent conceptual framework for looking at what the APRM reveals about the impact that land governance regimes have on Africa’s environment.

LAND GOVERNANCE REGIMES

A repeated problem is that the systems of land tenure do not lend themselves comfortably to investment. They are, as has been alluded to above, often complex, frequently informal, and provide unsatisfactory protection to the continent’s landholders. This is spelt out in the Nigeria CRR, in a manner that speaks for other countries:⁶⁵

There was a general view that the land tenure system is a serious barrier to investors, who need large tracts of agricultural land to do large-scale farming. This belief suggests that it is necessary to change the land laws in order to release land for commercial farming and other large-scale businesses in the private sector. This would boost production and wealth creation initiatives, thus promoting socioeconomic development.

In Mozambique, the lack of private ownership rights to land – as well as the practical difficulties in transferring improvements on land, and the administrative complications around transferring rights in (particularly) rural land – has proven a major disincentive for investment by the private sector. Perhaps most importantly, ‘people cannot use land as collateral to secure a loan which tends to constrain economic activities, especially in agriculture’.⁶⁶ The Sierra Leone CRR also points to the difficulties of using land as collateral – and, linked to this, the inability of financial institutions to take possession of land in the event of default – given the prevailing modes of landholding.⁶⁷ In a similar vein, the Burkina Faso CRR notes that title deeds are not in widespread use, and thus financial institutions cannot use land as collateral.⁶⁸ Furthermore, the complexity of land tenure systems can complicate transactions to acquire land. In Ghana, for example,

64 AU Commission, AfDB (African Development Bank) & UNECA (UN Economic Commission for Africa), *Frameworks and Guidelines in Land Policy in Africa: Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods*. Addis Ababa: AUC, AfDB & UNECA, 2010, p. 20.

65 Nigeria CRR, *op. cit.*, p. 305.

66 Mozambique CRR, *op. cit.*, pp. 183, 284.

67 Sierra Leone CRR, *op. cit.*, pp. 316, 317.

68 Burkina Faso CRR, *op. cit.*, p. 250.

transactions might demand consultation with several sets of stakeholders,⁶⁹ resulting in unexpected costs and unforeseen delays. The Ghana CRR further reports that several stakeholders expressed concern about the ability of traditional leaders to adjudicate land and associated inheritance issues, suggesting that its customary law needs to be properly codified.⁷⁰

A closely related issue concerns the policy choices made by governments in pursuit of growth and development. Invariably, the operative concern is attracting investment, and investors are likely to seek access to land. This is especially the case in respect of agricultural and extractive investments. This brings into focus countries' macro-level priorities, their developmental aspirations, the modernisation of their economies, the opportunities for generating foreign exchange and the rights and interests – indeed, the very livelihood – of individual landholders. For the latter, small-scale landholders, whose land may not be titled and whose avenues of recourse may be severely limited, this is not simply a matter of economics, but raises questions of their rights and entitlements as citizens.

The Burkina Faso CRR notes that on irrigated lands, policy gives preference to public investment, while 'smallholders get very little consideration'.⁷¹ Investors have been hailed as a major force for development, helping to spur innovation among the country's small farmers, but have also been criticised for having introduced agricultural techniques that are unsuited to the environment.⁷²

The Nigeria CRR records similar concerns, focussing on the inadequate compensation that landowners are offered when their land is expropriated by the state – something that can be done for the greater public good, which includes making land available for such activities as mining. Critics charge that this does not amount to fair market value.⁷³ Similar concerns are expressed in relation to Kenya,⁷⁴ Sierra Leone⁷⁵ and Uganda.⁷⁶

REVISITING PROPERTY RIGHTS

If inadequate property rights are a problem for Africa – with the current circumstances failing both to encourage new investment and to protect established holdings – the question arises as to how this can be remedied. The CRRs are fairly vague on this, although their overall tenor suggests that 'stronger' regimes of property protection should be encouraged.

69 Ghana CRR, *op. cit.*, p. 86.

70 *Ibid.*, p. 18.

71 Burkina Faso CRR, *op. cit.*, p. 250.

72 *Ibid.*, p. 373.

73 Nigeria CRR, *op. cit.*, p. 305.

74 Kenya CRR, *op. cit.*, p. 62.

75 Sierra Leone CRR, *op. cit.*, p. 114.

76 Uganda CRR, *op. cit.*, pp. 135, 179.

These contentions echo the influential arguments of the Peruvian economist Hernando De Soto. In *The Mystery of Capital*,⁷⁷ published in 2000, he argues that millions of people in the developing world are hindered in creating wealth because they lack the formal property rights over their assets that would enable them to seek the protection of the legal system and that enable them to use assets as capital. He estimated that in 1997 the value of unregistered urban property in Africa stood at some \$580 billion, and of unregistered rural landholdings at \$39 billion, a combined sum of close to \$1 trillion.⁷⁸ The implication was that there are substantial resources in the hands of Africa's people, but that these cannot be leveraged without giving them suitable legally recognised title. It also makes it difficult to approach the legal system for protection. This theme has also forcefully been taken up by *The Economist* journalist Robert Guest in his book *The Shackled Continent*.⁷⁹

In what appears to be a direct recourse to these arguments, the Zambia CRR says:⁸⁰

Formal property titles help promote the transfer of land, encourage investment and give entrepreneurs access to formal credit markets. But a large share of property in developing economies is not formally registered. Informal titles cannot be used as security in obtaining loans, which limits financing opportunities for businesses. Many governments have recognised this and started extensive property titling programs. But bringing assets into the formal sector is only part of the story. The more difficult and costly it is to formally transfer property, the greater the chances that formalised titles will quickly become informal again. Eliminating unnecessary obstacles to registering and transferring property is therefore important for economic development.

This approach has been the subject of some trenchant criticisms. These typically stress that formalisation may not promote economic activity by poorer people, as their assets do not constitute sufficient capital to promote meaningful lending. Conversion to a titled system can itself be an expensive process. Titling may even promote insecurity of tenure, if more powerful interests are able to secure formal legal title over land that is occupied and used on a non-statutory basis.⁸¹

77 De Soto H, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. London: Black Swan, 2000.

78 *Ibid.*, p. 33.

79 Guest R, *The Shackled Continent: Africa's Past, Present and Future*. London: Pan, 2005, pp. 73–86.

80 Zambia CRR, *op. cit.*, p. 192.

81 See, for example, Cousins B *et al.*, 'Will Formalising Property Rights Reduce Poverty in South Africa's "Second Economy"? Questioning the Mythologies of Hernando De Soto', Programme for Land and Agrarian Studies Policy Brief, 18, October 2005; P & DM (Graduate School of Public and Development Management [University of the Witwatersrand]) & Development Bank of Southern Africa, 'Are Hernando De Soto's Views Appropriate to South Africa?', P & DM Occasional Paper Series, 1, October 2007; Nyamu-Musembi C, 'Breathing Life in Dead Theories about Property Rights: De Soto and Land Relations in Rural Africa', Institute of Development Studies Working Paper, 272, October 2006.

What this might suggest is that while security may be provided through formal titling, it may be inadvisable as a general approach. Sensitivity to local context is more prudent, as is an appreciation of the limits of administrative capabilities (which are discussed below). An arguably more fruitful approach would be to attempt to integrate existing property rights mechanisms into a broader landholding and land management regime, with a focus on enhancing the important functional dimensions of landholding, such as security of tenure for residents and businesses. In the words of economist Dr Camilla Toulmin:⁸²

Given that formal land-titling programmes have proved to be slow, expensive and often biased in favour of richer groups, simpler methods to secure land and property rights are urgently needed. These must also be tailored to each particular local context. Some recommended elements include: strengthening local institutions for rights administration and just dispute resolution; identifying secondary rights and securing access for tenants, women, migrants and herders; using a phased approach that focuses first on priority areas such as where rapid commercialization threatens poorer groups' access to land and where commons need conserving or protecting; introducing simple written contracts with agreed basic terms; and establishing property registers to serve as a base for property taxes that can provide the revenue for services.

Indeed, across the continent, various systems have emerged to extend tenure security without granting outright freehold (although little of this is reflected in the CRRs). One example is the system of *petits papiers* in Madagascar. Since traditional rule has been weakened and is no longer in a position to control land allocations, landholders have taken to recording their transactions in writing, and having these 'certified' by local authorities.⁸³ Another example is the land boards in Botswana. These have been operating for decades, having largely assumed the role historically played by traditional leaders in allocating land (although traditional leaders may be involved in their work). They do not grant freehold title, but do attempt to provide land on a rational and transparent basis.⁸⁴

A further example is Ethiopia's land certification programme. This has operated since the late 1990s, and involves an extensive programme of certification. Among its key features are decentralisation – local land administration committees carrying out most of the work – community participation and gender sensitivity. (Land parcels are allocated to husbands and wives.) Once again, the aim is to extend land use rights rather than full title – but research points to significant gains in investment after the certification process.⁸⁵

82 Toulmin C, *op. cit.*, pp. 52–54.

83 Kleinbooi K, *Review of Land Reforms in Southern Africa 2010*. Belville: Institute for Poverty, Land and Agrarian Studies, 2010, p. 21.

84 *Ibid.*, pp. 10–14.

85 Deininger K, DA Ali & T Alemu, 'Impacts of Land Certification on Tenure Security, Investment, and Land Markets', Environment for Development, Discussion Paper Series, April 2009.



Photo © Anthony Piaskowy / USAID / CC BY-NC, devex <https://www.devex.com/news/protecting-land-and-community-resources-in-africa-87746>

Women from the village of Abeye, Ethiopia with their land certificates obtained through a U.S. Agency for International Development program

Such examples, should, however, be critically evaluated. Each comes with its own set of caveats. For example, tenure certification that does not confer outright ownership can be fatally undermined if the rights are not respected in practice. Changes in the rights to different tracts of land must be recorded after the initial certification, if these systems are to be sustainable. Moreover, there have been complaints about the functioning of these systems – for example, the Botswana land boards have been accused of favouring the more affluent and politically connected.⁸⁶

Crafting alternative forms of tenure or property rights, then, remains a work in progress. Ongoing thinking and policy experimentation – and policy review – across the continent will be necessary.

⁸⁶ *Ibid.*, pp. 29–30; Kleinbooi K, *op. cit.*, pp. 10–14.

ADMINISTRATIVE WEAKNESSES

While the structure of land governance may present hindrances for economic development, inefficiencies in the administration of these systems can impose another burden. This can have the effect of nullifying in practice what might otherwise be sound policy ideas.

The CRRs demonstrate that this is a widespread malady across Africa. In Ghana and Nigeria, obtaining documentation, such as title deeds, is an arduous process, demanding time and causing frustration – with the Nigeria CRR adding that this is aggravated by widespread corruption. It is not uncommon for officials to demand bribes to supply necessary documents.⁸⁷ In Zambia, processes associated with landholding are complex, move slowly and are overseen by an under-capacitated bureaucracy.⁸⁸ Information on the distribution of land (what portions are owned by the state and what falls under the control of chiefs) is lacking, as are firm boundaries.⁸⁹ Administrative difficulties are likewise noted in the Rwanda CRR.⁹⁰

The Rwanda⁹¹ and Zambia⁹² CRRs also point to the limited access to land administration bureaucracies. Both note that particular applications – registering property in Rwanda, or converting customary to titled land – had to be made in the capital cities. Such arrangements would place a particularly heavy burden on rural dwellers and the less affluent, effectively restricting them from formal property markets or seeking the available administrative protections. In common with many countries in Africa, the Zambia CRR notes that the country is attempting to decentralise these functions to lessen this burden on its rural population.⁹³

In Mozambique, an overhaul of land legislation in the 1990s produced the country's Land Law of 1997. This was a necessary exercise to modernise the country's land administration and to align it with its development aspirations. The process of consultation was praised for being one of the most 'participatory and democratic in recent Mozambican history'.⁹⁴ But while the Land Law established broad principles for landholding, it did not establish clear procedural systems, which has in turn bred ongoing confusion in its implementation.⁹⁵ South Africa's ambitious and politically charged land reform programme has likewise been significantly compromised by capacity problems in the bureaucracy overseeing it.⁹⁶

87 Ghana CRR, *op. cit.*, p. 86; Nigeria CRR, *op. cit.*, p. 305.

88 Zambia CRR, *op. cit.*, pp. 232, 258, 262.

89 *Ibid.*, p. 85.

90 Rwanda CRR, *op. cit.*, p. 128.

91 *Ibid.*, p. 82.

92 Zambia CRR, *op. cit.*, p. 85.

93 *Ibid.*, p. 262.

94 Mozambique CRR, *op. cit.*, p. 51.

95 *Ibid.*, p. 52, 283.

96 Binswanger-Mkhize HP, '????', *African Journal of Agricultural and Resource Economics*, 9, 4, 2014, pp. 253–269.

These administrative deficiencies give a taste of the practical problems that African countries have in actualising their plans. Enhancing the administrative capacity of Africa's states is a critical priority for driving development on the continent. This is recognised by the AU and its strategic partners, the African Development Bank and the UN Economic Commission for Africa. Indeed, they have expressed concerns that the dearth of expertise is at times so severe that the initial capacity to design appropriate policies is absent.⁹⁷

LAND AND GENDER

In order to understand the dynamics of land governance in Africa, attention must be paid to its gendered aspects. There is a growing acknowledgment that the removal of gender barriers to landholding – in practice, providing women with the opportunity to hold land in their own right, rather than through husbands or male relatives – is a matter of justice and citizenship as well as economic sense. Research has shown that women's access to economic opportunities has a disproportionate developmental impact.⁹⁸ Despite this, these gendered barriers remain stubbornly in place.

The CRRs attribute the barriers that women face to the persistence of traditional notions of gender relations, which tend to be underwritten by customary law. Land ownership and inheritance are primarily vested in men and bypass women. This may be the case even when policy or law has granted formal equality to women.⁹⁹ Indeed, the Mozambique CRR points out that many women are not even aware of their rights.¹⁰⁰

The Burkina Faso CRR sets out a list of factors that determine the inferior role of women in landholding. Firstly, the socio-cultural environment places women in a subordinate position to men. Women's access to land is frequently mediated by their husbands, and their use of it tends to be 'provisional' and can be withdrawn. Secondly, the gendered division of labour makes heavy demands on women. Women typically have to perform agricultural labour as well as domestic tasks such as caring for children and fetching wood and water. This allows little opportunity to develop landholdings. Thirdly, women remain largely excluded from economic decision-making and village councils. Land confers status and signifies wealth; not being in possession of it places women outside these processes.¹⁰¹

97 AU, AfDB & UNECA, *op. cit.*, p. 26.

98 See, for example, Open Society Foundation, *Securing Women's Land and Property Rights: A Critical Step to Address HIV, Violence and Food Security*. New York: Open Society Foundation, 2104; Mason KO & HM Carlsson, 'The development impact of gender equality in land rights', in Alston P & M Robinson (eds), *Human Rights and Development: Towards Mutual Reinforcement*. Oxford: Oxford University Press, 2005, pp. 114–132; Quisumbing AR (ed.), *Household Decisions, Gender, and Development: A Synthesis of Recent Research*. Washington DC: International Food Policy Research Centre, 2003.

99 Burkina Faso CRR, *op. cit.*, p. 348; Kenya CRR, *op. cit.*, p. 236; Mozambique CRR, *op. cit.*, pp. 136, 267–268; Nigeria CRR, *op. cit.*, p. 305; Sierra Leone CRR, *op. cit.*, pp. 316, 328; Uganda CRR, *op. cit.*, p. 101; Zambia CRR, *op. cit.*, p. 262.

100 Mozambique CRR, *op. cit.*, p. 136.

101 Burkina Faso CRR, *op. cit.*, p. 349.



Photo © Françoise Umarishavu, <https://www.oneacrefund.org/blogs/tag/partnership/139>

Jacqueline, a farmer in Rwanda, weeds her potato field

In recognition of the need to change the subordinate status of women in relation to landholding, a number of countries have undertaken system reforms in an attempt to enhance opportunities for women. For example, legislation in Sierra Leone, namely the Devolution of Estate Act of 2007, demands that property be equally apportioned between the spouse and children of a deceased landholder and explicitly prohibits the eviction of widows from their homes. This is, however, not always honoured.¹⁰² Rwanda has also reformed its laws to grant women equal inheritance rights.¹⁰³ In the case of Zambia, attempts to overcome the disadvantage that women experience include an affirmative action programme that reserves the allocation of 30% of land for women.¹⁰⁴

Analyses elsewhere of the gendered dimensions of landholding in Africa concur with the evidence in the CRRs. In dealing with this, the critical importance of legislation enshrining equal opportunities for access to land cannot be understated.¹⁰⁵ But it is frequently insufficient. Formal documentation of land ownership is an aspiration to be pursued,

102 Sierra Leone CRR, *op. cit.*, p. 328.

103 Rwanda CRR, *op. cit.*, p. 121.

104 Zambia CRR, *op. cit.*, p. 121.

105 For a discussion of this, see International Women's Human Rights Clinic, Georgetown University Law Centre, 'Women's land and property rights in Kenya – moving forward into a new era of equality: A human rights report and proposed legislation', *Georgetown Journal of International Law*, 40, 2009.

although its impact will in all likelihood be undermined by resilient cultural beliefs and the limitations of state capacity in implementing law and policy. As one study argues:¹⁰⁶

Experience shows that legislative change does not necessarily translate into ‘real rights’, given the resilience of long-standing social norms favouring men’s rights in land. Enforcement of legislation is lacking in many countries. Even where women’s rights are recognized by law, customs often prevent them from taking de facto control of land and other productive assets. The central importance of land in long-established rural hierarchies means that women can be constrained from claiming their rights. Their secondary status, illiteracy, fears about disrupting relationships within the family and cultural norms which associate men with ownership of land combine to make the process a difficult and costly one.

LAND AND CULTURE

Land is not merely a resource. It is a profoundly meaningful political and social signifier. A connection to a particular place provides many of Africa’s people with a sense of temporal and spiritual belonging. This is brought out in the Nigeria, Uganda and Sierra Leone CRRs.¹⁰⁷ It also carries significant political baggage. Part of the colonial experience was the abridgement of the control of the indigenous population over their landholdings – whether this involved outright dispossession or being required to produce particular crops or pay taxes for the right of occupation. Regaining control of the land was thus intrinsically tied to resistance to colonialism. Against this background, perceived injustices in landholding and land acquisition have a jarring political resonance. This point is made in the Kenya, Mozambique and South Africa CRRs.¹⁰⁸ It has also been taken up by some of Africa’s churches.¹⁰⁹

The CRRs do not, however, explore deeply the implications of this theme for Africa’s policy choices. The charged social and political significance of land in Africa sounds a warning that policy cannot be based solely on an economic rationale. The anthropologist Prof. Parker Shipton, in his book *Mortgaging the Ancestors*, describes the difficulties experienced by Luo farmers in Kenya who struggle to reconcile a deep cultural attachment to their land and its role as an economic asset – not least the prospect of forfeiting it when they fail to meet mortgage obligations.¹¹⁰

Disregarding historical or cultural attachments to land or landholding systems risks provoking resentment or even resistance; it is certainly likely to strip land policy of

106 UN, Department of Economic and Social Affairs, Division for the Advancement of Women, *2009 World Survey on the Role of Women in Development: Women’s Control over Economic Resources and Access to Financial Resources, including Microfinance*. New York: UN, 2009, p. 44.

107 Nigeria CRR, *op. cit.*, p. 339; Sierra Leone CRR, *op. cit.*, p. 315; Uganda CRR, *op. cit.*, p. 289.

108 Kenya CRR, *op. cit.*, p. 245; Mozambique CRR, *op. cit.*, p. 51.

109 World Council of Churches, ‘Land and spirituality in Africa’, <http://www.wcc-coe.org/wcc/what/jpc/echoes-16-05.html>, accessed 29 July 2016.

110 Shipton P, *Mortgaging the Ancestors: Ideologies of Attachment in Africa*. New Haven & London: Yale University Press, 2009.

its public legitimacy. However, this cannot be taken to mean that culturally grounded practices should be immune from criticism. Indeed, research has demonstrated the central role that exclusionary narratives of identity have played in the conflicts over land.¹¹¹ The criticisms expressed in the CRRs towards the gendered slant in Africa's customary landholding regimes, and the legislative initiatives undertaken to change it, are further testimony to this.

This suggests a need to approach land policy with due sensitivity towards people's traditional orientations, although without deference to it. Leadership by governments and others in positions of respect and authority is important. Africa would be better served by an approach that could draw tradition into a modernising agenda rather than by ignoring or surrendering to it.

A recent example from Zambia illustrates a possible model of this. A collaborative programme, financed by foreign donors and implemented by a group of local non-governmental organisations in the Gwembe, Monze and Solwezi districts, encourages traditional leaders to issue customary landholding certificates. These do not provide full private ownership, but do provide a written record of land allocation, giving landholders a tool to protect their rights to their holdings when others may wish to encroach on them.¹¹²

LAND AND CONFLICT

The centrality of land to livelihood in Africa, and the significant political sensitivities around it, makes it an extremely combustible element in the continent's politics. This has long been the case and is a compelling imperative for well-considered policy choices to deal with it. As one report on land policy notes: 'Since African countries gained independence, land and land-based resources have been the primary source of conflicts fuelling social and political instability.'¹¹³ Some research suggests that the problem is intensifying.¹¹⁴

For the APRM, land has emerged as a common cause of conflict – sometimes destabilising armed conflict. The Uganda CRR observes that land disputes contribute to a range of conflicts. These include the insurgencies in the western and northern regions of the country, tensions between the government and Buganda, and the alienation of particular ethnic groups as a result of land deprivation and competition for landed resources.¹¹⁵

111 Boås M & K Dunn, *Politics of Origin in Africa: Autochthony, Citizenship and Conflict*. London & New York: Zed Books, 2013.

112 Zulu B, 'New models of securing customary land piloted in Zambia', DanChurch Aid, 20 August 2015, <https://www.danchurchaid.org/news/news/new-models-of-securing-customary-land-piloted-in-zambia>, accessed 23 August 2015.

113 AU, AfDB & UNECA, *Tracking Progress in Land Policy Formulation and Implementation in Africa, Background Document*. Addis Ababa: AU, AfDB & UNECA, 2012, p. 3.

114 Peters PE, 'Inequality and social conflict over land in Africa', *Journal of Agrarian Change*, 4, 3, July 2004, pp. 269–314.

115 Uganda CRR, *op. cit.*, pp. 47, 50, 111.

The Kenya CRR draws attention to broader instability in parts of the country, the growth of private militias, trafficking in firearms and so on. These have multifaceted origins, linking land disputes (along with other resource issues) and politicised social cleavages such as ethnicity and geographical origin.¹¹⁶ Similarly, the Nigeria CRR suggests that the ongoing crisis in the Niger Delta may partly be attributable to the perception that the Land Use Act is hostile to the local population's interests.¹¹⁷

In addition, each of these countries also experiences conflicts involving pastoralists and – frequently – settled farmers that in some cases are aggravated by the widespread proliferation of firearms, and often spill across borders. These conflicts stem in part from contestation over resources in arid environments. With the dual drivers of population pressure and environmental degradation, the danger of their intensification is a real one.¹¹⁸

The Rwanda CRR dwells on the potential of land issues to undermine the country's stability – a seminal issue, as land conflict played a role in precipitating the 1994 genocide.¹¹⁹ Noting that the key dynamic is growing population density – which in turn places increasing strain on the available land resources – it adds that the country's land administrative system requires an overhaul, and that creating alternative means of livelihoods is an important complementary measure.¹²⁰ The Rwanda CRR contends: 'The issue of land, long considered the main flashpoint of conflict, could resurface if efforts to diversify the economy to create more off-farm job opportunities to employ the youth, landless, returning refugees and the jobless were to fail.'¹²¹

Reflecting on its historical background, the South Africa CRR terms land a 'potentially explosive' issue.¹²² It has certainly been the subject of much debate, often polarised,

116 Kenya CRR, *op. cit.*, pp. 63–65, 113.

117 Nigeria CRR, *op. cit.*, p. 305.

118 Huho JM, 'Conflict resolution among pastoral communities in West Potok County, Kenya: A missing link', *Academic Research International*, 3, 3, November 2012, pp. 458–468; Mtuku KA, 'Small arms and light weapons among pastoral groups in the Kenya–Uganda border area', *African Affairs*, 106, 422, pp. 47–70; Mtuku K, *Pastoralism and Conflict in the Horn of Africa*. Kenya, London & Bradford: Africa Peace Forum, Saferworld & University of Bradford, undated; Ocan CE, 'Pastoral Resources and conflicts in north-eastern Uganda: The Karimajong case', *Nomadic Peoples*, 24/35, 1994, pp. 123–135; Shettima AG & UA Tar, 'Farmer-pastoralist conflict in West Africa: Exploring the causes and consequences', *Information, Society and Justice*, 1, 2, June 2008, pp. 163–194.

119 Bigagaza J, Abong C & C Mukarubuga, 'Land scarcity, distribution and conflict in Rwanda', in Lind J & K Sturman (eds), *Scarcity and Surfeit: The Ecology of Africa's Conflicts*. Pretoria: Institute for Security Studies, 2002, pp. 52–82.

120 Rwanda CRR, *op. cit.*, pp. 30, 33.

121 *Ibid.*, p. 30.

122 South Africa CRR, *op. cit.*, p. 78.

emotive and heated.¹²³ Land in South Africa is both an economic and a symbolic asset; it has accurately been argued that much of the animosity around land issues arises from the latter. As well as a means of livelihood, land has become a proxy for issues of citizenship, belonging and historical justice.¹²⁴ For this reason, resolving this matter (and similar issues elsewhere on the continent) is unlikely to be achieved properly through technocratic or economic solutions; even though without these it will not be possible to resolve it at all. Rather, it is necessary to negotiate a complex web of political demands.¹²⁵ However, the CRR also warns that populist measures such as ‘land grabbing’ could undermine the agricultural economy.¹²⁶ This in turn would have an impact on food security, economic activity linked to agriculture, and the country’s balance of payments: in other words, it would probably aggravate the problems it was meant to solve, and others as well.

In a number of cases, conflicts have taken the form of land appropriation by powerful people to the exclusion of smallholders. In Kenya, landlessness remains a problem, its political impact aggravated by the fact that a small number of people have been able to capitalise on political connections to take possession of extensive holdings. Comments its CRR: ‘Due to a culture of political corruption and mismanagement, large tracts of land were allocated to politically connected individuals and leaders in the 1980s and 1990s, sometimes at the expense of communities.’¹²⁷ A similar dynamic is identified in the Mozambique CRR, with concerns about the encroachment of politically connected people

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- 123 For a very limited illustration of this, see Myburgh J, ‘The land question revisited (I)’, *Politicsweb*, 24 October 2013, <http://www.politicsweb.co.za/news-and-analysis/the-land-question-revisited-i>, accessed 19 August 2015; Myburgh J, ‘The myth of the “slow pace” of land redistribution (II)’, *Politicsweb*, 1 November 2013, <http://www.politicsweb.co.za/news-and-analysis/the-myth-of-the-slow-pace-of-land-redistribution-i>, accessed 19 August 2015; Cousins B, ‘Land redistribution, populism and elite capture: New land reform policy proposals under the microscope’, *Focus*, 70, October 2013, pp. 11–19; Mngxitama A, ‘Black first! – land first! A revolutionary call’, *City Press*, 13 August 2015, <http://www.news24.com/SouthAfrica/News/Black-First-Land-First-A-revolutionary-Call-20150813>, accessed 19 August 2015.
- 124 Aliber M, ‘The Opportunities and Limitations of the Willing Buyer/Willing Seller Approach to Land Reform in South Africa’, Presentation at Land Divided Conference, 24–27 March 2013; Gibson JL, ‘Land redistribution/restitution in South Africa: A model of multiple values, as the past meets the present’, *British Journal of Political Science*, 40, 1, January 2010, pp. 135–169.
- 125 For example, while using market mechanisms to effect land reform in South Africa has long been criticised, some quarters strongly reject any compensation for white landowners, on the grounds that their landholdings are fundamentally illegitimate. See *News24*, ‘Bill should give back stolen land – EFF’, 25 July 2014, <http://www.fin24.com/Economy/Bill-should-give-back-stolen-land-EFF-20140725>, accessed 19 August 2015. Such demands strike not only at the core economic interests of landholders but also at whether they have a legitimate place in South African society. Such divergent perspectives are not easily reconciled.
- 126 South Africa CRR, *op. cit.*, p. 265.
- 127 Kenya CRR, *op. cit.*, pp. 49, 230.

on land already allocated.¹²⁸ In Zambia, land allocations are a powerful tool of patronage, all the more so given the critical role of the state as a custodian of the land.¹²⁹

In Ghana, friction has arisen over the conduct of traditional leaders in managing land, a situation associated with the lack of clarity in customary law.¹³⁰ Other observers have noted similar concerns in Ghana – notably, dubious land dealings that disregard the interests of some users and that are sometimes concluded by traditional leaders for their personal benefit.¹³¹

These cases demonstrate the multiplicity of origins of land-related conflicts in Africa. However, they are far from exhaustive. A survey of scholarship on land conflicts by Prof. Urmilla Bob identifies a great many more. These include conflicts within families over inheritance; conflicts between newcomers and established residents; conflicts over proposed land uses; conflicts associated with criminality; conflicts arising from ill-conceived or mismanaged policies; conflicts in post-conflict environments generated by refugees returning to their places of origin; conflicts sparked by environmental degradation; and conflicts reflecting gender inequalities.¹³²

The latter manifestation of conflict – its link to gender relationships – is important and perhaps underappreciated. Research in South Africa suggests that a failure on the part of young men to obtain landholdings and provide for their families (as customary expectations demand) leads to frustration and violence against their partners.¹³³

In conclusion, beyond the human suffering produced by land conflicts, their socio-economic and political implications are profound. Most obviously, they disincentivise economic activity. Agricultural land, for example, is removed from cultivation, productivity is compromised and investments are made riskier. Overlapping with other cleavages, they lend themselves to manipulation by so-called ‘political entrepreneurs’, a course that can prove extremely destabilising. Aligned to this, land conflicts often speak to the failure of countries’ institutions and policies to mediate competing claims and address grievances.¹³⁴

128 Mozambique CRR, *op. cit.*, p. 108.

129 Zambia CRR, *op. cit.*, p. 85.

130 Ghana CRR, *op. cit.*, pp. 17–18.

131 Ayee JRA *et al.*, ‘Local Power Struggles, Conflicts and Conflict Resolution: The Causes, Dynamics and Policy Implications of Land-Related Conflicts in the Greater Accra and Eastern Regions of Ghana’, CODESRIA Research Report, 3, 2011; Hughes AK, Knox A & K Jones-Casey, ‘Customary Leaders and Conflicts of Interest over Land in Ghana’, Focus on Land in Africa Brief, January 2011.

132 Bob U, ‘Land-related conflicts in sub-Saharan Africa’, *African Journal on Conflict Resolution*, 10, 2, 2010, pp. 49–64.

133 *Ibid.*, pp. 57–58.

134 See, for example, Deininger K & R Castagnini, ‘Incidence and Impact of Land Conflict in Uganda’, World Bank Policy Research Working Paper, 3248, March 2004; Odhiambo MO *et al.*, *Impact of Conflict on Pastoral Communities’ Resilience in the Horn of Africa: Case Studies from Ethiopia, Kenya and Uganda*, Reconcile and Food and Agriculture Organisation, February 2012.

But they might well also undermine the prospects for the institutional consolidation and the establishment of effective governance that would be necessary to re-establish durable stability.

CONCLUSION

Africa's 'land' is a concept that embodies both great opportunities and daunting threats. Having experienced some impressive economic growth recently, and having glimpsed the possibilities that this creates for meeting the continent's aspirations, careful and prudent action is required to ensure that in future, land is an asset for development. This will be no simple task. As the Ghana CRR succinctly puts it: 'By and large, the land issue is still considered problematic, sensitive and generally too complex.'¹³⁵

An important preliminary observation is that the issues surrounding land – land tenure, its role in development, its relationship to gender, and so on – are intimately and inextricably linked to one another. To divide them into conceptual categories, as has been done in this study, is analytically useful, but also somewhat artificial. Thus, for example, a failure in land governance may precipitate conflict over the land, which may in turn compromise attempts to develop it, which may have a disproportionately adverse impact on women. Successes and failures in any policy initiative will likely have far-reaching ripple effects.

No issue is more central to establishing a productive and equitable land order on the continent than that of resolving difficulties around tenure. Calls are made in a number of the CRRs for reforms to be undertaken with an emphasis on providing greater security of tenure, particularly to the continent's small-scale farmers. The goal would be not only to ensure protection from eviction or loss of land but also to encourage greater investment and entrepreneurship. The Uganda CRR sums this up well:¹³⁶

Land reform in Uganda should be accompanied by progressive land tenure reforms to counter the general tenure insecurities and land-grabbing processes in the absence of a National Land Policy and Land Use Policy. Institutional reforms will need to be included that defend the poor against land seizures and accommodate those currently excluded from owning increasingly scarce arable land (women, youth and minorities). The reforms should also be able to prevent and resolve conflicts over competing claims to land rights, in addition to ensuring the fair administration of land rights and land use regulations.

To achieve this, it is necessary to 'enhance' the property rights that Africans enjoy. This issue is perhaps most stark in the continent's rural hinterlands, where landholdings tend to be contracted according to customary law, but it is an issue of equal application to Africa's fast-expanding cities. However, the form that such 'enhancement' should take is debateable. The lack of state capacity and inadequate financial resources across the continent underline the limited ability of Africa's states to enforce a strictly formalised

135 Ghana CRR, *op. cit.*, p. 123.

136 Uganda CRR, *op. cit.*, p. 290.

regime of property rights. This is a worthwhile goal, but one that must be pursued with prudence and caution.

As discussed above, there is a great deal to commend in an approach that seeks to ensure secure tenure and property protections by tapping into informal but socially legitimate practices. As one scholar of the Ghanaian experience argues, a state can create a useable system of property rights 'by unearthing the property arrangements emerging in practice, recognizing them and facilitating change without attempting to direct it from above'.¹³⁷

It should, however, be noted that empirical evidence on the effectiveness of alternative land tenure and titling systems is thin. The CRRs barely cover them at all. All options carry the risk of failure as a result of some underappreciated dynamic; the assumption that one experience is necessarily a model for others should be avoided.

In the absence of a system of universal formal titling, the importance of social legitimacy cannot be overemphasised. This demands an openness to various possible courses of action. Indeed, the Mozambique CRR notes that despite the restrictive attitude to private land ownership existing in that country, it is a system accepted by most of the country's people.¹³⁸

This in turn raises the need for any course of policy to be the product of extensive and meaningful consultation. This has often been lacking.¹³⁹ For a system of property rights leaning heavily on its participants' acceptance – as is envisaged here – it is crucial to take into account their concerns and insights.

Despite the promise inherent in the semi-formalised model proposed above, the development of a robust system of formalised property rights and titled landholding is a worthy long-term goal. Ideally, this would create certainty in land markets, helping to encourage investor confidence and bringing the land within a stable and consistent framework of law.

But achieving this requires a significant improvement in the functioning of Africa's states. At present many struggle to implement policy. Some even struggle to form workable policy. Building state capacity in Africa – another goal of the APRM and a precondition for the success of Agenda 2063 – is in the long term an essential element of resolving its land challenges.

Beyond creating a formalised land administration system, capacity for effective state action is demanded in two fields. The first is security. Land conflicts not only hinder development and damage social fabric but, as the case of Rwanda demonstrates, they can also contribute to the escalation of tension to the point where threats to the very integrity of societies emerge. To deal with land conflicts, states need a range of analytic,

137 Blocher J, 'Building on custom: Land tenure policy and economic development in Ghana', *Yale Human Rights and Development Law Journal*, 9, 2006, p. 202.

138 Mozambique CRR, *op. cit.*, p. 51.

139 AUC, AfDB & UNECA, 2010, *op. cit.*, p. 25.

intelligence, developmental and security resources, and the ability to wield them to proper effect. These do not always exist and, in some instances, heavy-handed or partisan security force action may have exacerbated conflicts.¹⁴⁰

The second issue is support. International experience has shown that significant increases in the productivity and earning potential of landed resources are possible with appropriate support services: research, infrastructure, inputs and so on.¹⁴¹ The South Africa CRR notes in this vein that a failure to support emerging African farmers as part of land reform initiatives is undermining their prospects.¹⁴² Most of Africa's countries will struggle to find the resources and expertise to do this. But with the continent chalking up impressive economic growth, an opportunity exists to mobilise resources for this purpose, provided it is accorded sufficient priority. Whether it will have the hoped-for impact hinges on how well these resources can be managed.

In sum, then, the governance of Africa's land resources and the management of the political, social and cultural issues surrounding them are of paramount importance for the continent's future. Properly handled, it could spark a revolutionary change in the continent's fortunes. Mishandled, it could render many of the continent's aspirations stillborn.

140 Mtuku K, *Pastoralism and Conflict in the Horn of Africa*. Kenya, London & Bradford: Africa Peace Forum, Saferworld & University of Bradford, undated.

141 Alliance for a Green Revolution in Africa, *Africa Agriculture Status Report: Focus on Staple Crops*. Nairobi: Alliance for a Green Revolution in Africa, 2013; Nwanze KF, 'A healthy, peaceful and secure Africa is now within our grasp', *The Guardian*, Global Development, Poverty Matters blog, 20 June 2014, <http://www.theguardian.com/global-development/poverty-matters/2014/jun/20/kanayo-nwanze-africa-leaders-deliver-promises>, accessed 19 August 2015.

142 South Africa CRR, *op. cit.*, p. 265.

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