

Guidelines on Prevention and Addressing Land-Based Conflicts in Africa

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Chapter 1

Contextualization of Land, Ethnicity and Conflict in Africa

1.1 Introduction

Land issues in Africa are complex and intertwined with geo-political, economic, social, cultural, ecological and demographic factors. The patterns and practices of colonization, the tenancy of indigenous value systems, and economic organizations have, over the years, resulted in varied land governance regimes related to land tenure, use, control and management. Furthermore, identity - as a site of belonging manifested through socio-economic class, gender, religion, geographic location, ethnicity, and nationality – is a strong factor in determining access to, use, and control of land and its resources. In times of intense competition over land, group identity is often activated and instrumentalised as a tool for mobilization of ethnic claims over land resulting in conflict against other groups. Given the centrality of land in securing livelihoods and entrenching power and identity, the competing interests on land (ethnic or otherwise) lead to multiple claims and conflicts which, if not addressed holistically and from their roots, tend to be cyclic.

The Framework and Guidelines on Land Policy in Africa (F &G) shows that although the continent has systematically liberalized political participation over the last decades, the struggle for land and natural resources remains one of the constant factors fuelling instability in Africa. Furthermore, the colonial legacy, unequal access and control of land, global commercial interests in minerals, and climate change continue to expose many ethnic groups to violent conflicts, displacements, forced evictions and death. In most of Africa, these conflicts perpetuate an ethnic dimension not only because of historical factors related to settlement patterns over time, but also due to how communities relate to land as the single greatest resource, women's land and property rights, identity, political legitimacy, spirituality and memory. In Africa, the relationship between ethnic identity, gender and insecure land rights is complex. These complexities and the resultant space for discord can be easily marshalled to mobilize communities to make claims over land, justified or not. Consequently, when addressing strategies for prevention of land-based conflicts and the restoration of peace and security on the continent, the nexus between land, ethnicity, identity and women's land rights cannot be ignored.

In this chapter, we explore the nature of ethnicity, as a form of identity, and the causality it can play out in land-based conflicts. After discussing ethnicity as a marker of identity and its heterogeneity on the continent, we show that it can become a political tool for violence, democratic instability and patronage, including land conflicts.

1.2 Ethnicity marks identity

***Guideline 1:** Undertake curricula reforms in educational institutions to capture the diversity of experiences of the African people and increase intercultural understanding, learning and sharing. The management of ethnic diversity is a source of wealth, harmony and social and economic transformation and can contribute to prevention against violent conflict.*

Human beings carry many identities. They can be classified based on profession, gender, political orientation class, religion, geographical region, or ethnicity. These classifications shape the world through transmission of certain values and cultures. In Africa, land is intricately connected with ethnicity. Therefore, to disregard ethnic identities would be ignoring the values, institutions and guiding norms of communities. We understand ethnicity as a form of identity and a state of consciousness that is informed by political, economic, cultural, social, and historical forces as well as practices of exclusion and inclusion. It is, therefore, a real and constructed socio-cultural phenomenon. In addition, it is a marker of similarity and difference which distinguishes one group from another based on some generally understood social and cultural criteria. These criteria could be stable or shifting depending on contexts. Moreover, ethnicity is an identity, which is the product of the human mind and an interpretation of the social environment with the purpose of organizing the world and its peoples.

As an identity, ethnicity has both subjective and objective attributes. At the subjective level, individuals are assigned (or assign themselves) identifications and affiliations to groups based on interpretations of perceived common features. Therefore, communities that have much in common linguistically, culturally, spiritually and socially could define themselves as different ethnically. At the objective level, ethnicity is based on some distinct characteristics shaped by social forces and power relations. In Europe, for example, ethnicity is linked to poverty, language and regional location while in Latin America and the Caribbean it is associated with regional location and racial distinctions. In Africa, ethnicity is associated with identity based on ancestry, shared culture, historical experience, regional location and language.

1.3 Ethnic Identity and nation-building

One approach of viewing ethnic identity is to link it to political instability, national mistrust, violent conflicts and weak national identity. Another approach, however, is to view ethnic identity, in its social form, as playing a positive role in post-colonial social transformation. In the latter view, ethnicity is part of the undeniable social plurality of Africa on which political pluralism could be based. Nonetheless, it cannot be denied that strong and exclusionary ethnic identities can weaken the state and undermine nation-building processes due to competition over power, resources and unfair treatment of other identity groups.

Whatever the case, ethnic identity should not be ignored but harnessed in nation building. This will happen if communities feel treated with dignity and participate actively in decision making through their chosen representatives and mechanisms. In many ethnic groups throughout Africa, there are socio-cultural institutions that have legitimacy and can be mobilized to increase intercultural understanding and sharing, peace building, social cohesion and economic well-being. Additionally, although ethnic formations may operate from rather narrow confines of membership, they can play a role in inclusive political participation, defence of human rights, protection of land rights and nation building. When ethnic groups are imbued with the spirit of mutual respect, trust and cooperation, they can be a resource for social and economic transformation.

1.4 Ethnic heterogeneity

Guideline 2: Design and entrench initiatives and programs that advance social integration, pan-Africanism and the common history, destiny, heritage, respect for ethnic and religious diversity and consciousness of African people to prevent conflicts based on mistrust or competition for power.

Most states in Africa are characterized by ethnic diversity, with some states recording over 40 differentiated ethnicities, which relate with land in various ways. The extent of the diversity is often contested for at least two reasons. First, there is the issue of aggregation resulting from the nuances and fluidity of cultural features, linguistic marking and historical experiences, especially among closely related communities. Given the denseness of socio-cultural proximities, it is sometimes difficult to determine where one ethnic group begins and ends. In some situations, ethnicity is marked through clan cleavages and others as racial differences.

The other challenge relates to the perspective adopted in defining the term ‘ethnicity’ itself. One could, for example, define ethnicity as an unchanging, fixed, primordial form of belonging aggregated through cultural and linguistic particularities, including ‘self-identification’. In that case, ethnic identities resulting from the colonial encounter and post-colonial alignments would not be accounted for because they are more recent. In contrast, ethnicity could be viewed as a malleable and flexible sense of belonging, which co-exists with other forms of identities and can be activated by communities (living in a given geographic location) to achieve certain goals. The salience of ethnic identity therefore depends on its instrumentalization to achieve social, economic or political benefits for in-group members.

Becoming a member of an ethnic group begins at birth and is strengthened (or weakened) through cultural and social processes. It is never complete, however, because ethnic boundaries can shift due to different social, cultural and political factors. For example, a supra-ethnic grouping could emerge, or a minority ethnic group assimilated when different ethnicities invoke their similarities to make arguments towards a unified ethnic identity. So far, the perspective adopted in defining ethnicity has direct implications for policy formulation and understanding of the complex intersection of land, ethnicity and conflict.

1.4.1 Reasons for ethnic heterogeneity

Ethnic heterogeneity is a consequence of many factors including latitude and temperature; pre-colonial Bantu migrations; the slave trade; colonialism, and low levels of urbanization. Populations tend to be dense in warm tropical environments, which are prevalent in certain parts of the continent. These environments are ideal for food production and in pre-colonial times, inhabitants tended to settle instead of migrating to other parts. In the process, communities with shared languages, cultures and histories emerged and became unique due to distance and isolation from each other. Lifestyles and relationships with land solidified on the basis of ecology, with drier areas being inhabited by pastoral communities and areas with abundant rainfall attracting agricultural communities. To ensure order, local systems of land governance, political organizing, economic activities, social well-being, co-existence and resource sharing evolved and communities were sustained.

The earliest recorded endogenous human expansion in Africa took the form of what has become known as the Bantu migrations. This shaped the pre-colonial settlement patterns.

However, the advent of slave trade disrupted these settlement patterns. The trans-Atlantic slave trade unfolded as part of the rise of mercantilism in the Fifteenth Century and the Western imperial/colonial desire to expand overseas markets. This contributed to the underdevelopment of Africa in at least five ways. First, strong young people who would have advanced commerce, agriculture and culture were shipped away. Second, it intensified competition among African kingdoms and stalled agricultural and commercial activities, leading to the disintegration of the kingdoms of Oyo, Benin, Dahomey and Yoruba. Third, it increased mistrust between coastal and hinterland communities because certain coastal communities were actively recruited as guides for the slave traders. Fourth, some kingdoms, seeking to join the trade, built powerful armies which disrupted settlement patterns and increased community dispersals. Fifth, some empires expanded their territories and paved the way for British expansion to the hinterlands in the Nineteenth Century. The dispersal of communities during the slave trade also took place in other parts of Africa. In the Indian Ocean trade, slaves were captured in East, Central and Southern Africa and sold to Arabia, Brazil, China, India, Iraq and Mauritius to work in sugar plantations. A major consequence of slavery was weakening of ties and minimizing trust between communities. The effects of the dispersal of Africans on the continent and globally are still alive today.

Ethnic fractionalization initiated by the slave trade, gained root with colonialism. The colonial regimes promoted and politicized ethnicity in two ways, Firstly, the “divide and rule” approach, by providing incentives to cultural leaders to promote ethnic differences. Secondly, the system of ‘indirect rule’ adopted in the colonial project of cost sharing with the colonial power had immediate consequences on ethnicity. To reduce bureaucracy the empire created large states bringing together diverse communities that had not previously interacted with each other. However, the net effect of this consolidation of communities was the development of states that were ethnically diverse.

In addition, colonial governments drew arbitrary boundaries and split up ethnic groups across countries because they used straight lines to divide the continent. These lines did not consider pre-existing socio-political formations or traditional land use patterns. At least 177 ethnic groups were divided across two or more countries at the Berlin Conference. The Malinke of West Africa are among the most partitioned people in Africa, split into six different countries – Senegal, Guinea, Guinea-Bissau, Mali, Cote d’Ivoire and The Gambia. Other erstwhile homogenous ethnic groups that were arbitrarily separated across borders by colonial boundaries in the region include: the Ewe between Togo and Ghana; Vai between Liberia and

Sierra Leone, and the Hausa between Nigeria and Niger. The same trend ran through other African Regions. Third, the colonial governments created supposedly homogenous geographical locations or “reserves” in Kenya, South Africa and Zimbabwe to minimize opportunities for communities to interact and organize themselves politically. In some cases, new ethnic identities were created with the geographical splits and imposition of chiefdoms. Moreover, internal migrations were restricted except where it was necessary for the provision of cheap labour.

Although most of Africa’s populations live in rural areas with most of them being female; population density is high and growing in urban areas. Over the years, the emergence of cities and new settlement patterns has created new dimensions of urban ethnic diversity. Although the pace of urbanization has been slow, with high population growth and scarcity of land in rural areas, it is now a growing reality and new manifestations of ethnicity are emerging as urban migrants find commonalities among themselves, especially in informal settlements. Rapid urbanization has a negative effect on peri-urban land use and community land adjacent to towns and cities.

The colonial economy was founded on dispossession of land, forcible peasantization and proletarianization. Taken together, these inimical colonial practices provoked labour migrations into plantations, mines and factories. While this phenomenon of labour migrations was expected to be accentuated in East and Southern African Countries like Kenya, South Africa and Zimbabwe that experienced intensive settler colonialism accompanied by dispossessions and displacements, the reality on the ground indicates that even such regions as West Africa and Central that were turned into peasant trade colonies, did not escape forced labour migration to plantations. Cameroon, Nigeria and Sao Tome et Principe are illustrative. Indeed, the advent of the capitalist market economy not only disrupted existing social formations but also produced new market-determined identities among landless people such as mineworkers, farm labourers, and domestic workers. Forced labour also brought people of diverse ethnic identities into contact in the mines, farms and factories.

1.4.2 The tenacity of ethnic identity

Ethnic identities are tenacious and unwavering. At independence, many African leaders advocated for a Pan-African agenda and deliberately suppressed ethnic-based sub-nationalisms because ethnic diversity was perceived as a hindrance to the consolidation of the state and the nurturing of an inter-ethnic identity based on the nation-state. National

integration was the preferred route of national development. Inspired by the spirit of the inter-ethnic liberation struggle against colonialism and buoyed by modernist theories which had argued that ethnicity is a 'false consciousness' and would disappear or fade with industrialization, modernization and urbanization, the political leaders of the 1960s invested, at least in the initial stages, in building national identity as a layer of identification. But at every stage, ethnic identity seemed to be gaining salience with the struggles over land and resource extraction, electoral democracy and globalization.

Currently, ethnicity remains a vital part of life as individuals and communities' angle for space, self-interest and opportunity in land-based resources. There are unwavering communal and particularistic attachments to local languages, cultural symbols, and ethnic identity. Therefore, an accommodative approach, rather than a repressing or replacing one, is preferable in the management of ethnicity in Africa.

1.5 Politicization of Ethnicity

In many African countries, social ethnicity has been politicized due to several factors. First, the processes of empire building, nation building and state formation under colonialism entailed naming of a people, making land claims and expressing power and control. The formation of ethnicities, initiated prior to colonialism and entrenched under colonial rule, has served different interests across the continent during the post-colonial period. Such interests have often had land as a factor.

A key issue relates to the nature of African nationalism which was expected to create African nations out of various ethnic groups, but emerged as ethnic movements predicated on ethnic mobilization. Because the rise of anti-colonial African nationalism entailed taking overpower from the white colonialists, it inevitably provoked ethnic competition rather than production of pan-ethnic national identity. It is, therefore, not surprising that even post-colonial nation-building projects were compromised by a deep failure to translate anti-colonial nationalism into pan-Africanism.

In many African countries, land ownership shifted hands from white minority colonialists to the political elite and the dominant ethnic groups in charge of the post-colonial state. The secessionist aspirations in some countries and claims of autochthony in others, which have led to land related conflicts, are a consequence of strong feelings of violation of community land rights on various levels. The politicization and codification of ethnic identity (through

naming, registration and fixing community boundaries) to enable colonial governability, particularly in the use of the 'divide and rule' strategy, has continued to increase mistrust and create tensions between ethnic groups in Africa. Where ethnicity became politicized under colonialism the effects are felt to this day. Communities, which were co-opted by colonial rule, tended to benefit from infrastructural development, education, military recruitment and access to political power. Other groups were marginalized and denied resources and political presence.

The colonial practice of creating group status or favouring one ethnic or cultural group over others configured power dynamics and created inter-group acrimonies. Favoured groups also had direct access to or control of important resources (including land/natural resources) which allowed them to enrich their group members, at the expense of non-members, and to define policies in their favour. The legacy of this distinction in colonial strategy and its impact on state building after independence largely explains the politics of patronage, politicization of ethnic groups and violence (both structured and overt) prevailing in many countries in Africa.

Pastoral communities also felt the politics of exclusion across Africa. Because colonial rule was driven by resource extraction in agriculture and mining along railway lines, pastoralist communities were denied access to education and economic opportunities on account of their ecology. This exclusion continued even after independence. Currently, pastoralists in many countries on the continent are least educated and therefore do not occupy positions of national leadership crucial for land policy formulation and implementation in centralized regimes.

Lastly, the use of ethnicity as a source of self-affirmation and collective agitation in the protection of community rights during the colonial period and liberation struggles was tantamount to ethnic politicization. However, on the verge of political independence, when the common grievances that had united diverse ethnic groups into mass nationalist movements lost relevance, most nationalist leaders in their pursuit of power, reverted to mobilization of ethnicity by amplifying 'self/other' distinctions. In the process, the nationalist agenda was undermined in many African countries. In some cases, leaders consciously repressed ethnic consciousness in favour of a national identity.

Ethnic groups particularly have continued to utilize ethnic consciousness to form social welfare organizations as well as solidarity networks that have effectively resisted land dispossession and land grabbing by both colonial and post-colonial elites. This

consciousness can be utilized for conflict-sensitive land policies, social cohesion and inclusive development.

1.6 Ethnicity, settlement patterns and conflict

Guideline 3: Develop policies, legislation, regulations and practices that protect Africa's diversity in land-based resources environments and ecosystems so that they are productive and thriving with climate resilient economies and communities. Additionally: Build systems and legal safeguards to limit the abuse of ethnicity by leaders for the acquisition of power and resources through an accentuation of self/other dichotomies.

Colonialism introduced the phenomenon of African reserves, squatters and amplified autochthonous claims to land, and invented migrant labour through introduction of taxes, mining and cash crop farming. Economic activities under colonialism led to demarcation and marking of ethnic territories and fragmentation of ethnicities as Africans became sources of cheap labour on settler farms and mines. Apartheid enhanced labour control based on rural migrant labour, coming from 'reserved' areas known as Bantustans/Homelands in South Africa. In many countries, a combination of dispossession, displacement and the introduction of taxation led to in-migrations and laid the basis of the modern urban squatter phenomenon. Pass Books were used to limit labour circulation and inter-ethnic contact. Some countries that were less endowed with natural resources became labour reservoirs for farms, mines, and factories. Migrant labour and its relation to land in the host communities is a major concern, especially within the context of autochthonous claims to land and the rise of xenophobia and insider/outsider dichotomies. Internal intra- and inter-state migration is important and healthy for the continent. States have a responsibility to support the interaction of African people on the continent and manage their settlement to avoid land-related conflicts.

Land and ethnicity intersect as conflict drivers on multiple fronts and within particular historical, governance, social, economic and environmental contexts defined by territory, language, socio-economic status and land-based resources. For example, where predominantly crop-producing communities live alongside largely grazing communities, conflicts tend to occur over competition for pasture, crops and water points. Conflicts could also occur between grazing communities or between farming communities. They may also occur where communities are displaced from their homes and settle elsewhere within their own country or in neighbouring states.

By shifting from viewing ethnicity as a 'problem' hampering development in post-colonial

Africa to a new perspective of harnessing it to solve conflicts, it can form a strong basis for solidarity, networks, cooperation, and unity. Most conflicts affect rural populations where expressions of ethnic identity, indigenous cultures and institutions are most manifest. These expressions of identity—in the form of language, ritual, and community decision-making structures—can be harnessed and made tools for social transformation, peace building and social harmony. Because most of the political divisions and fault-lines of conflict manifest along ethnic, gender and regional lines, ethnicity should be viewed as constitutive of the social plurality of Africa and a legitimate social basis for political pluralism and democracy. This approach would ensure that traditional land governance institutions that are situated in communities and have legitimacy within the ethnic group are empowered and buttressed by national constitutions and legislative frameworks.

1.7 Conclusion

Ethnic identity cannot be wished away in the design of land governance systems, which advance inclusive development, peace and security on the continent. If well managed, it can be a source of harmony and richness in communities. The diversity of land use practices and governance institutions can be managed through dialogue and consultations. The state can be a facilitator in this process. For example, a minimization of the dichotomies between modern and traditional land governance mechanisms would pave the way for resolving issues related to access, control and ownership of land and its resources. Traditional leadership and dispute resolution mechanisms that respect human rights and uphold the rights of women can be empowered legally and financially to minimize and resolve intra- and inter-ethnic conflict.

Chapter 2

Land Based Conflicts in Africa

2.1 Introduction

Many African countries in the post-colonial era have experienced, or are experiencing, diverse, intensive and complex violent political and armed civil conflicts which may be a result of struggles for power, disagreements over state legitimacy and governance practices, weak state institutions and ethnic competition over resources. These conflicts have contributed to the problem of Internally Displaced Persons (IDPs) and transnational refugees. In some instances, these broader conflicts consequently shape the land questions and conflicts -through resettlements, rehabilitation and de-mining policies in communities affected by intense armed conflicts. Alternatively, the broader political and armed conflicts erupt due to past violent competition over access to land and natural resources and the broader socio-political contestations ushered in by prevalent ethnic inequalities. These conflicts influence the country's relations within its society, other African states, and the international community at large.

Land based conflicts refer to heightened social disputes involving at least two parties in situations where land is a subject of competition among various ethnic groups, as an economic asset; political territory; identity and community's social legitimacy. The root causes of these competing interests over property rights to land may include the right for ethnic groups or individuals to use the land, to manage the land, to generate income from the land, to exclude others from the land, to transfer it, and the right to claim compensation for it should it be taken compulsorily from the owner or beneficiary. That is, the conflicts emanate from disputes related to boundaries, inheritance, ownership, land uses, multi-allocation or sales. These land-based conflicts could be between individuals, group of individuals and/or communities; between these and the state; and between these and other external forces including investors. Such conflicts over land and natural resources in Africa are increasing, thereby causing multiple social, economic and political disruptions in the process. This is not surprising given that land and natural resources are highly desired by individuals, communities, traditional authorities, national governments and international investors.

The extensive involvement of global commercial interests through international agencies and

international governments in the form of conquests, expropriations, exploitation and other legal land investment-related deals from the pre-colonial, colonial to the post-colonial times has complicated the land-based conflicts in Africa. Therefore, geo-political, economic, social, cultural, spiritual, ethnic, demographic and global forces continue to inform and fuel land-conflicts pitching ethnic groups against each other. The colonial legacy policies of subdivision of ethnic groups is, in part to blame for current conflicts, but with widespread private ownership of land and its titling, declining arable land, population growth, urbanization, and the shrinking of land available for pastoral and indigenous communities, tensions over land have consistently erupted into violent clashes between communities or even nations.

Adopting sound land governance policies that eliminate weak administration systems, addressing legal pluralism, and entrenching a participatory and inclusive approach through involvement of important stakeholders that include subnational groups like the Civil Society Organizations (CSOs), minority groups, women's groups and local communities can contribute to preventing or resolving land based conflicts. To maximize chances of preventing conflicts, it is necessary to develop dispute resolution mechanisms that address disputes and grievances before they escalate into full-blown conflicts. Where there are conflicts already, stakeholders need to understand the complex root causes and triggers, identify the nature or type conflict in order to maximize the chances of implementing the most effective mechanisms to resolve them. This chapter, however, focuses on identifying the root causes of land-based conflicts in Africa, their triggers and guidelines for prevention and resolution.

2.2 Root Causes of Land-Based Conflicts in Africa

***Guideline 1:** Enhance inclusive land governance strategies and practices to address power relations between communities and the state, and investors in land through participatory processes in order to prevent or minimize land-based conflicts. The inclusion of CSOs, minority groups, youths, women's groups and local communities in these strategies would contribute in promoting social equity.*

***Guideline 2:** While observing best practices on land governance, prioritize local community land use norms and practices and protect legitimate interests of the community of users to minimize land-based conflicts and improve agricultural production.*

***Guideline 3:** Enhance the knowledge of stakeholders in land to understand the complex root causes and triggers of land-based conflicts and to identify the nature or type and stage of conflict in order to maximize the chances of implementing the most effective dispute resolution mechanisms.*

Land conflicts have numerous, complex root causes and manifest in multiple ways. As a

result of this complexity, it is sometimes difficult to differentiate between the root causes of land conflicts and triggers of such conflicts. This section identifies root causes (both structural and proximate) of land-based conflicts in Africa, after which we move on to highlight the triggers of such conflicts.

Weak Land Governance Institutions and Authorities and Elite Capture of the State:

Institutions and authorities charged with land governance tend to be weak and prone to abuse by powerful political elites. Lack of title deeds, landlessness and informal settlements are signs of weak land governance institutions. Since political authority automatically confers authority over land, political elites can seize large-scale land-based investments (LSLBIs), public and community land.

Exclusionary Politics in Land Ownership Processes: Settlement patterns tend to be ethnically particular and driven. As a result, certain groups and ethnic communities enjoy better facilitation, access to and ownership of land because of political connections and a patronage system. Competition leads to strong ethnic sentiments around land and identity. Prevalent gender inequalities in Africa also leads to exclusion of access to and ownership. In resolving and preventing land-based conflicts, important stakeholders that include the following; subnational groups like the CSOs, minority groups, women's groups tend to be excluded. Excluded groups harbour resentment, and militias may eventually emerge.

Corruption: When land is acquired corruptly, communities lose their livelihoods. The struggles between powerful public officials/investors and communities can lead to violent conflict. As Africa discovers more natural resources in areas owned by communities, more violent conflicts are likely to occur.

Political Disputes over Trans boundary Natural Resource in Africa: Trans boundary political disputes between countries over land and natural resources has made the exploration, production and marketing of transnational resources difficult in Africa. These cause conflicts over freshwater resources, trans boundary pastoral mobility, minerals, oil and gas. This can also lead to the occupation of land by armed foreign groups or foreign powers or political tensions over transnational resources and contribute to the problem of refugees and IDPs.

Land Scarcity, Population Pressure, Climate Change and Environmental Degradation:

Demographic pressure through increasing human and livestock populations exerts great stress on land and natural resources, leaving many youths unable to access land and secure

livelihoods. Environmental (land and natural resources) degradation due to prolonged poor land management and overuse and overharvesting of land and natural resources exacerbates land degradation and desertification, which severely affect the livelihoods of communities. This is particularly the case with pastoral and fishing communities. Population pressure, combined with the effects of climate change, like prolonged droughts, desertification and environmental degradation intensify land scarcity. Landlessness in communities leads to uncoordinated land acquisitions, unchecked land degradation, and a depletion of forest cover.

Ineffective Land Administration and Information Systems: This leads to a few reliable land documents available, with no digitalization and high prevalence of fraud. Lack of documentation of customary land heightens chances of abuse by political elites. Insecurity of tenure is rife in this environment. Illegal allocation of public and community land is common leading to tension between private and community ownership of land. This usually orchestrates unplanned expansion of urban areas resulting in the creation of informal settlements. In communal areas, boundary disputes between pastoral communities tend to remain unresolved.

Legal Pluralism: The co-existence of overlapping systems of partly contradictory customary versus statutory property rights with ineffective arbitration mechanisms engenders conflicts between individuals and communities, especially farmers and pastoralists, and the state and communities in peri-urban and resource rich regions. Chapter 6 deals extensively with issues pertaining to legal pluralism.

Poverty and Inequality: This causes high inequalities in access to land and security of tenure, food security and low levels of education. This is caused by historical discriminations against poor and marginalized communities, especially pastoralists, fishing and coastal communities. With the increasing commercialization of land and land prices, poor individuals and communities who could not afford land prices suffer debilitating land access restrictions.

2.3 Triggers of Land-Based Conflicts

The above stated causes of land related conflicts are usually triggered or exacerbated by the factors that are outlined below. Triggers feed into the causes of a conflict and fuel community response, thereby igniting a conflict.

Demographic Pressure on Land and Natural Resources: The increase in human and livestock population pressures exerts great stress on land and natural resources. Increased

competition for land leads to constant conflicts. Unutilised or under-utilised land by (sometimes absentee) owners may be invaded.

Unregulated Urbanization: Rapid urbanization in Africa due to increasing population growth caused by a number of reasons that include conflicts and war situations in rural areas and the search for better livelihood opportunities, coupled with local authorities' failure to provide formal urban housing, result in the mushrooming of informal settlements that triggers various conflicts over land in urban and peri-urban areas.

Natural Disasters: These include drought, floods and landslides and can suddenly reduce areas with fertile lands, forcing people to migrate to other areas as a result of displacement and loss of land. This may result in interferences with the land rights of communities where the migrants attempt to settle..

Capture of State Land Institutions and Instruments: Capture of state land institutions and records for political purposes can lead to sudden institutional change that can catalyse land conflicts. Powerful political elites can grab land to use it as a reward for political patronage, loyalty and political identity in the pursuit to retain or acquire political power. In such cases, access to land is used as a bait to incite and manipulate communities to unleash violence on perceived non loyal communities. Nativism, regionalism, indigeneity, autochthony or 'the politics of belonging' can be used to exclude certain ethnicities or racial groups from accessing land thereby causing conflicts over land.

Armed Conflict and Political Instability: Armed conflicts in some parts of Africa lead to the rule by armed gangs, illegal natural resource exploitation and anti-social activities (criminality). Communities in affected areas flee, leading to internal and cross border migrations, and IDPs and refugee problems. Political instability fuelled by power or leadership struggles, disagreements over governance and legitimacy, weak state institutions and ethnic rivalries also have a tendency of triggering land conflicts of massive proportions. Ethnic rivalries between identity groups can lead to nation state fragmentation which can trigger land-based conflicts.

Competition over Land Use Rights between Ethnic Groups: In a number of countries, competing claims to land resources for livestock grazing and agricultural projects often leads to deadly conflicts between pastoralists and farmers. While the expansion of farmers into grazing land has been generally accepted, the migrations of pastoralists has been frowned

upon. Competition over family land, especially where gender inequality is prevalent, can also lead to inter-generational violence or conflicts over land.

Demarcation/Reservation of Land for State Uses: Many African countries inherited or created new areas that they reserved for conservation, environmental protection, forest parks, national parks and game reserves. This has created major sources of conflict between the state and communities who consider such areas as theirs to use for livelihoods, social, cultural and spiritual interests.

Large Scale Land Acquisition for Commercial Purposes: State facilitated large-scale land acquisition can dispossess entire communities of their land livelihoods. The Guiding Principles on Large Scale Land Based Investments (LSLBIs) were developed to guide African governments towards responsible, viable and inclusive LSBIs that outline clear guidelines identifying varying responsibilities of investors and institutions. LSBIs can be beneficial if they enable local communities' access to productivity enhancing technologies, mechanisation, irrigation, agro-processing, and market access.

Sudden Changes in Communities (Livelihood Shocks): Sudden livelihood shocks in communities that restrict the livelihood options of community members like a sudden restriction of access to key resources such as water, expiration of land leases and contracts, expiration of a contract of an important moderating figure in a community and the arrival of external forces seen as interfering in the affairs of a local community can lead to open conflicts. The discovery of natural resource endowments by the state can also lead to forced resettlement of communities, leading to violent conflicts over land ownership.

Ineffective Land Dispute Resolution Mechanisms: In areas ravaged by land conflicts already, lack of effective land dispute resolution mechanisms tends to fuel fresh conflicts. In post conflict areas, the unexpected of large numbers of refugees and IDPs can cause fresh conflicts if mechanisms of reducing vulnerability are not effective. Effective dispute resolution mechanisms imply having capacity to formulate and implement the right solution to a land conflict at hand, or which is likely to occur. Dispute resolution mechanisms are dealt with extensively in Chapter 5.

2.4 Conclusion

It is important to recognize that land and natural resources are central to Africa's socio-economic development. These strategic resources attract many conflicts that have numerous

complex causes and manifest in multiple ways. This chapter identified the following root causes of land-based conflicts in Africa: weak land governance institutions and authorities and elite capture of the state; exclusionary politics in land ownership processes; ineffective land administration and information systems; population pressure; climate change and environmental degradation that intensify land scarcity, poverty and inequality; legal pluralism and corruption. Flashpoints that could trigger or exacerbate a land conflict include the following factors; demographic pressure on land and natural resources, chaotic urbanization, natural disasters, capture of state land institutions and instruments, armed conflict and political instability, competition over land use rights between identity groups, reservation of land for state uses, large scale land acquisition for commercial purposes, sudden changes in communities and lack of effective land dispute resolution mechanisms to address conflicts at hand. A source of great concern is that while land-based conflicts are increasing in Africa, the pace of resolving them is very slow.

Chapter 3

Legal pluralism and land-based conflicts in Africa

3.1 Introduction

Legal pluralism is the existence of multiple or alternative forms of normative orders (or legal systems) in a society. It is a common phenomenon in Africa due to the coexistence of customary, religious and formal or statutory laws.

Statutory law is based on written laws, acts of centralized (including judicial precedents) or decentralized government agencies. Although statutory law changes over time through amendments, it can nonetheless be regarded as a unitary body of law.

Customary law is unwritten, dynamic rules and local practices managed by traditional authorities. Each ethnic community in Africa has its own customary law, and in rural areas, most land conflicts are managed through customary and religious laws and practices. However, the socio-economic transformation and agro-industrialisation in rural Africa, has contributed to the distortion and in some cases the erosion of customary laws which are increasingly under pressure to give way to statutory law.

In parts of Africa, religious laws play a major role in governance. In some countries, religious philosophies have entered directly into customary or formal law while in others, religion has influenced the philosophy of law making. This is the case in personal law matters such as marriage, burial, inheritance and divorce. In others, religion is unconsciously referred to in dispute resolution and in some religious law is equal to state law.

Often, the relationship between State law, on one hand, and customary and religious laws, on the other, is determined by the status of the latter in the formal legal system. However, this varies across Africa, ranging from full or partial recognition to non-recognition of customary and religious laws.

Colonialism significantly aggravated the phenomenon of legal pluralism in Africa, considering that in the pre-colonial era, each ethnic group had its own customary legal system, some overlapping in the same territory. Thus, colonialism introduced a variety of European laws to facilitate the effective administration and control of the colonies. The

European-styled laws were grafted onto the already existing customary and religious laws, thus allowing multiple legal orders to coexist. This has often been a cause of land conflict between competing sets of rights and obligations emanating from the plural normative orders.

This chapter discusses how legal pluralism is a reality, and both an opportunity to peaceful coexistence in Africa, and a source of land-based conflicts. It provides recommendations on how African countries can align and coordinate multiple legal systems.

3.2 Legal pluralism and land governance in Africa

Legal pluralism impacts on land governance -the political and administrative structures and processes through which decisions concerning access to and use of land resources are made and implemented including conflict resolution. This is because, legal pluralism allows the multiple normative and institutional frameworks that control how different people access, control and transfer land to coexist, as discussed in Chapter 8.

Statutory/formal land tenure is based on written laws, regulations and documents generated by government institutions such as certificates of ownership and title deeds. It does not recognize the multiple values of land and the multiplicity of interests and at times there is lack of awareness of the statutory land tenure systems in rural Africa.

Customary land tenure is flexible, legitimate, governed by customary law and inclusive. Basically, it emphasizes two aspects: first, the communal ownership of land and access by each member of the community and second, the existence of multiple rights in which several groups or individuals collectively enjoy rights over a piece of land.

Coexistence of the two tenure systems implies *de jure* state ownership of land and *de facto* authority of traditional institutions which causes overlaps and conflicts, especially when coordination of the two legal systems is weak.

In some cases, legal pluralism has occasioned a duality of economic relationships that is manifest in systems of land tenure based on principles of European-styled property law and a largely neglected regime of customary property law; a structure of land distribution characterized by large holdings of high potential land contrasting with highly degraded and fragmented small holdings; an autonomous and producer controlled legal and administrative structure for the management of the European sector, as opposed to a coercive control structure for the African areas; and a policy environment designed to facilitate the

development of the European sector of the economy by under-developing its African counterpart.

3.3 Legal pluralism and land-based conflicts in Africa

***Guideline 1:** Recognise customary and religious laws and practices as sources of law within the context of equity and address legal and institutional prejudices against their application. This includes recognising land tenure pluralism and the roles and responsibilities of traditional and community-based land administration/management institutions.*

***Guideline 2:** Secure land rights across the legal systems and strengthen linkages between statutory and customary/indigenous land tenure systems.*

***Guideline 3:** Develop the stakeholders' capacities to remove existing contradictions and inconsistencies in different laws that have negative consequences on women's land rights. Equally, there is need to raise awareness of local land institutions and increase their gender responsiveness.*

3.3.1 Legal pluralism, customary and religious legal systems

Legal pluralism presents Africans with an opportunity for choice between different normative orders in legitimizing their claims to land. With legal pluralism, claimants can assess the opportunities and risks in one legal system compared to the other. It avails multiple laws and land administration institutions that can be harnessed positively either by land dispute resolvers (both formal and informal) or, more importantly, by actors to promote land governance in Africa.

The use of customary laws and institutions gives emancipatory power to local actors. In rural Africa and where state institutions are weak, customary institutions are used as local power brokers, decision makers, gatekeepers to the formal system and custodians of customary laws, norms and practices. On their part, formal institutions avail certainty since they are state-backed through state instruments and machinery, such as land registries and issuance of title deeds.

Whereas customary and religious laws continue to play a pivotal role in land governance, the level of recognition varies across countries, ranging from full or partial recognition to non-recognition in others. Moreover, the application of customary and religious laws is sometimes limited by statutory law, which tends to subordinate them, and sabotage their evolution and utility in land governance.

Since customary law is not codified and is dynamic, it is subject to multiple interpretations by

traditional authorities and formal courts which tends to occasion conflicts. Likewise, it is not uncommon to find religious authorities ruling on land disputes allegedly on the basis of Islamic land property rights principles, where in fact the decisions are made following local practices.

Additionally, jurisdictional conflicts arise regarding the applicable law in dispute resolution, between formal and customary law, but also in cases where litigants belong to different ethnic backgrounds.

Therefore, when customary laws and practices, and customary land management and administration institutions are excluded in land decision making, land governance is negatively impacted. Moreover, community land rights end up not being adequately protected, creating perceptions of exclusion in land decision making.

3.3.2 Legal pluralism, overlapping and conflicting land rights

Legal pluralism occasions overlaps and conflicts between community and private land rights. Often, the state-backed land rights are regarded as superior because of the occasional activation of state instruments and machinery. Therefore, land conflicts arise between people with competing user rights grounded in the plural legal orders, for example: between pastoralists and farmers; hunters and gatherers and the State; pastoralists and the State; traditional fishermen and the State; pastoralists and investors.

Land-based conflicts also arise when customary authorities, who claim customary rights over land, become involved in illicit practices, selling land they are supposed to hold in trust, to non-group members or to the state, causing landlessness.

Land conflicts arise also whenever there are multiple sales and double allocation of land titles by different institutions all legitimised to do so. In these cases, conflicts can arise either when customary authorities, claiming customary rights, sell State land; or when governments sell State land over which communities are claiming customary rights but the government refuses to recognise.

In urban and peri-urban areas in Africa, statutory and other informal land rights tend to overlap and contradict each other. This situation occasions conflicts whenever there are evictions of semi-legal settlers (those who violate building regulations) from state, private or common property; illegal settlers (those who have no legal rights to the property) from the

state, private or common property; or illegal evictions by state officials acting without mandate on their own behalf.

Land tenure pluralism allows people to choose the legal framework that provides them with the best claim to land, a process known as ‘forum shopping’. This way, people pursue different paths to legitimise claims to the same parcel of land and increase their chances of gaining from the contestation. Ultimately, ‘forum shopping’ in these cases causes uncertainty, confusion and land-based conflicts.

3.3.3 Legal pluralism, customary land tenure and conflict

Statutory law tends to regard formal tenure, and in particular private property, as superior to customary land rights. The effect of this has been to denigrate customary land rights’ systems and suppress and sabotage their evolution. Customary land rights are thus marginalised when defining land rights and setting up land administrative and management frameworks causing conflicts between state-based and customary-based land rights.

Moreover, customary land rights are usually ignored when defining national parks and game reserves, forest reserves, conservation areas and when defining land suitable for commercial investment. Additionally, during land adjudication and registration processes, imported concepts of property law tend to ignore legitimate rights to community land, and this becomes a source of conflict.

Further, increased privatisation of community land to pave way for extractives, sedentarization, population growth, urbanisation, LSLBI and expansion of crop farming, communities such as pastoral communities find themselves under immense pressure to find grazing land with consequent violent intra- and inter-ethnic conflicts.

3.3.4 Legal pluralism, land administration and conflict

The existence of plural land tenure systems means that there is prevalence of multiple land administration and management systems. However, the exclusion of traditional land administration institutions in land decision making, and failure to mainstream them in land administration creates a multiplicity of authorities. This is common in rural, urban and peri-urban areas in Africa, where there exist different actors with authority to control, manage and transfer land multiple times. This creates conflicts as different communities define their land rights differently.

When customary land rights and customary land administrators are not involved in land mapping, adjudication, registration and land use planning for their areas, problems such as multiple allocations of the same parcel of land, dual planning and land use conflicts are bound to arise.

However, there is a resurgence of interest in traditional/local land administration institutions across Africa as decentralisation of land management becomes institutionalised. This is because the land administration institutions, including dispute resolution mechanisms at the local levels, are more acceptable and accessible than the formal ones.

3.3.5 Legal pluralism, gender and conflict

The intricate web of overlapping and at times conflicting rules, regulations and practices co-existing in legally pluralistic societies has a gender dimension. More often, women are penalised in their access, use and control of land and land-based resources by the ambiguities created by legal pluralism, yet they constitute an overwhelming majority of local land users across Africa.

Moreover, the system of patriarchy is, at times, reinforced and cemented by statutory law to deny women their land rights by conferring title and inheritance rights upon male family members.

In personal law matters, the equal rights of women to inherit and bequeath land or co-own matrimonial land are not guaranteed. Moreover, in land administration and generally in decision making, women are not adequately represented.

For their physical safety and survival, women therefore tend to avoid confrontation and maintain social relations with families, communities or ethnic groups. This is because conflicts always exacerbate pre-existing tenure insecurity and exclusion of women originating from structural economic, social and cultural constraints.

Therefore, women may resort to customary and religious sources of law and dispute resolution mechanisms whenever they are more responsive to their land rights in practice. However, statutory laws may be occasionally better at incorporating gender equality principles and give higher recognition to women's land rights, particularly with regards to inheritance.

3.3.6 Legal pluralism and land dispute resolution mechanisms

Just as for the legal frameworks, most African countries have a plurality of dispute-resolution mechanisms that can be categorized as statutory, customary and religious (Chapter 5 has discussed the diverse dispute resolution mechanisms in Africa). Be that as it may, conflicts arise when the various dispute resolution mechanisms adopt divergent jurisprudential views to land rights.

3.4 Conclusion

The chapter shows that, whereas legal pluralism has allowed people to legitimise their land rights within the different normative orders, and can give emancipatory power to local actors, it is also a source of land-based conflicts. Contradictions may however emerge between statutory and customary law and practices of different ethnic groups, which must be addressed to safeguard against potential land conflicts. There is, therefore, need to implement the three (3) guidelines set out in the chapter so as to prevent land-based conflicts resulting from some of the negative aspects of legal pluralism.

Chapter 4

Impact of Land Based Conflicts on Livelihoods and Productivity

4.1 Introduction

Land-based conflicts with ethnic overtures continue to undermine the ability of African nations and people to maximise their livelihoods and productivity. Livelihoods are broadly understood as the means through which households obtain and maintain resources -physical, human, natural, social, financial, or political- necessary for their individual and collective survival. It is basically what households do to meet their needs and survive as well as recover from livelihood shocks.

A significant number of Africans derive their income from a single source or hold all their wealth in the form of just one asset (and in most cases, land). In addition, it is estimated that 60% of ethnic groups in Africa derive their livelihoods from farming, livestock production and related activities; all land-based resources. The extractives (oil, gas and minerals), forestry, commerce and wildlife conservation (tourism) are some of the other main livelihood options in Africa. Conflict over land can lead to short or long-term impacts on these livelihood options as well as the productivity of land.

This chapter highlights the key impacts of land-based conflicts critical for livelihoods and productivity while embedding mitigation guidelines to minimise the impacts of conflicts.

4.2 Impact of land-based conflicts on key Livelihoods in Africa

Guideline 1: In recognition of the need to prevent and manage land-based conflicts, African governments should put in place policy and legal frameworks that secure community land rights, livelihoods and assets.

Guideline 2: African governments and other stakeholders should undertake regular research on the impact of land-based conflicts on communities and disseminate the findings to relevant African Union platforms, mechanisms and other stakeholders to facilitate development and implementation of effective national and cross-border land-based conflict prevention, management strategies and programmes.

The impact of land related conflicts on livelihoods and productivity are often short or long term. Displacements of populations and loss of land, including tenure rights is a short-term impact of land conflicts on livelihoods. On the other hand, high levels of malnutrition and

poverty are the long-term impacts of land conflicts on livelihoods. In this section, we delineate some of the consequences of conflict on livelihood and productivity.

4.2.1 Impact of land-based conflicts on livestock production.

Africa is home to about 70% of the world's pastoralists. Livestock production is one of the major livelihood activities in Africa, especially in the Sahel, Horn of Africa and Southern Africa. Records indicate that a large portion of land in Africa is devoted to pastoral land use, which produces the bulk of meat and milk requirements of rural and urban populations. Many African livestock keepers practice nomadic and semi nomadic modes of livestock keeping which require huge swathe of lands, including long-distance seasonal migration in search of water and pasture. Livestock production also straddles national borders and is dependent on seasonal variation of rainfall and grazing patterns. This explains why conflicts in pastoralists' areas in Africa are also cross-border in nature.

Except for the Great Lakes region, most of the conflicts in Africa (Somalia, Sudan, Central African Republic, Burkina Faso, Mali, Nigeria, Niger and Ethiopia) take place in pastoral areas and involve pastoralists as fighters, casualties, refugees and internally displaced people. Huge infrastructure projects like mechanised irrigation, wildlife conservancies, game reserves and or parks and the respective states policy of "sedentarization" put additional strain on livestock keeping. Community grazing areas are lost to these mega projects, resulting to increased land-based conflicts.

The direct impact of land related ethnic conflicts on livestock production include the loss of livestock and deteriorating quality of livestock as livestock are moved to places deemed relatively "safe" and away from the "enemy". This then leads to overgrazing and environmental degradation. Other impacts include the spread of livestock diseases when livestock from different areas are forced to graze in the same locality because of conflict. The conflicts also lead to poor nutrition levels in the communities owing to decreased supply of meat and milk as livestock are raided, killed, moved to safe spaces that are often far from families are blamed on conflicts. Children, women and the elderly are in most cases affected by the worsening nutrition levels as men move with livestock.

4.2.2 Impact of land conflicts on crop farming/production

Agriculture forms a significant portion of most economies of African countries. It contributes towards major continental social, economic, and political priorities. Conflicts have a huge

impact on local and national food security through disruption of agricultural production and marketing, reduced investments in agriculture especially by private sector and deterioration of land and infrastructure that supports crop farming.

During land-based conflicts, crops are destroyed, farmers are displaced or in some cases dispossessed of their lands. During and or after conflicts, displaced persons are often forced into small spaces deemed relatively safe, leading to land pressure, overuse and degradation with severe impacts on quality and quantity of crop production. Under such circumstances, farmers are forced to shift to agricultural activities with short-term yields and lower profitability.

4.2.3 Impact of land conflicts on forest-based livelihoods

Forests are key sources of livelihoods for communities living in or near forests such as hunter-gatherers. Land-based conflicts can adversely affect these communities by depriving them the opportunity to access forest-based resources such as timber, honey, wild animals for food, fruits, tubers and traditional medicines.

The short-term impacts are temporal loss of natural habitat; loss of means of subsistence (hunting sites) and land dispossession. The long-term impacts of conflicts include deforestation, climate change and a threat to the existence of the forest peoples, following loss of their natural habitats.

4.2.4 Impact of land conflicts on Extractives (oil, gas and minerals)

Africa is home to about 30% of the world's mineral reserves, 10% of the world's oil, and 8% of the world's natural gas. This extractive potential has increased demand for more land and land rights in Africa, in what the AU has termed as the "new scramble" for Africa's land resources. Despite of this potential, poor governance of the extractive sector and land-based conflicts has contributed to the phenomenon of resource curse.

Local communities which have high expectations from extractive projects, also end up losing their sources of livelihoods when conflicts erupt. They are displaced and lose local jobs, tenders, contracts and humanitarian assistance. Moreover, in the event of conflicts, communities are not compensated by government for lost land, resettlement of displaced people, reparations for environmental damage. Instability makes it difficult for the population affected by conflict to receive its share of revenues accruing from extractive operations.

4.2.5 Impact of land conflicts on large-scale infrastructure projects

Land-based conflicts can arise when land allocation for big infrastructure projects are done without adequate public participation. These land conflicts are often associated with ethnic tensions and also arise when compensation for loss of land and livelihoods is grossly inadequate; or in case of unfulfilled promises to communities. Displacements also lead to demographic shifts that threaten or redefine local ethnic identities and threaten human rights and contribute to the loss of customary land rights.

Certain land-based development projects require skilled labour that is often lacking in the local communities hosting the projects. When community members fail to benefit from projects that have displaced them from their grazing or farming lands, they may sabotage the projects, including targeting “foreign” workers and workers from other regions of the same country.

Generally, huge infrastructure projects trigger inter-ethnic or group contestation over the potential threats and benefits accruing from the projects. Where such projects fail to take place or stall due to conflicts, the anticipated benefits to the community are missed, further reducing the livelihoods that the community was expecting from such projects.

4.2.6 Impact of land conflicts on Marine based livelihoods

The marine ecosystem that includes water bodies, mangrove forests, wetlands, coral reefs and the fishing industry, is a source of livelihoods for millions in African countries endowed with marine resources.

For instance, the fishing industry accounted for 1.3% of the total African GDP in 2011 and provided employment to over 12 million people (58% in the fishing and 42% in the processing sector). Fishing is the main source of livelihoods for millions of people in coastal areas, around lakes and rivers in Africa. When its potential is fully harnessed, fishing can be a key economic activity contributing significantly to the economic development of the continent.

Land contestations continue to bedevil the fishing community and industry in Africa. There are conflicts over marine boundaries in the sea, lakes and other water bodies. Many fishing communities are organised around ethnic identities and often, they are not in position to determine marine boundaries: what they see is a mass of water. The same occurs in lakes and rivers that are home to most of the fish in the continent. Therefore, conflicts over boundaries,

access and control of marine resources have compromised the inability of these communities to develop and utilize these resources to eke sustainable livelihoods.

Whenever there is conflict within fishing communities or between national and sub national authorities, and fishing communities, coastal areas and river shores become inaccessible for fisher folk. Those whose livelihoods depend on night fishing are also affected by conflict since authorities often ban night fishing on security grounds. Fishing infrastructure such as fishing boats, processing and refrigeration systems are vandalized, destroyed or stolen. The cumulative effect of these marine based conflicts is reduced fishing translating to reduced fish-based livelihoods, which affects all the fishing chain right from the fisherman to the salesperson in the local stores, supermarkets and even international markets, further reducing foreign exchange flow to the continent.

4.2.7 Impact of Conflicts on Special Eco-Systems

Land-based conflicts affect the sustainable development and utilisation of the special ecosystems including national parks, wetlands and biodiversity reserve areas. Conflict affects the movement of wildlife, aggravates the problem of encroachment to national parks and conversion of wetlands into other unsustainable land uses. This situation results in the deterioration of the special eco-system services including sustainable water supply, biodiversity conservation and destruction of attraction points for tourism development.

However, in some few cases, the results of the relationship between conflict and natural resource generation of degradation are mixed. For instance, forests in the Great Lakes region have been decimated by illegal logging in the absence robust forest governance. However, wildlife and forests have flourished in countries where huge swathes of land were off-limit due to conflict. Overall, the costs of inability and restrictions to access special ecosystems for purposes of livelihoods because of conflicts rank far below the benefits accrued from “flourishing forests and wildlife” as mentioned.

Guideline 3: *African governments, development partners, private sector, continental institutions, civil society and other stakeholders should undertake sensitisation and advocacy initiatives to ensure free movement of people, commerce. Likewise, they should cooperate and coordinate their joint efforts to increase livelihood options, improve productivity and diversity the sources of income by actualising the objectives of the Continental Free Trade Area (CFTA).*

4.2.8 Impact of Conflict on Trade and Commerce

Commercial trade for the purposes of this Guideline includes formal and informal trade and other commercial activities in the continent such as small-scale shops, value addition chains, manufacturing, banking, insurance and tourism.

Trade and commerce support the livelihood of millions in the continent. The drawback is that these investments and accruing livelihoods are sensitive to conflicts and political instability, including land related conflicts. When large scale conflicts occur, markets are made inaccessible, sources of raw materials for manufacturing and other light industries are reduced, the entire product value chain, including value addition and transportation is affected.

During conflicts, the private sector also claws back on further investment. The banking and small micro-enterprise (SME) sectors suffer when community and private investments they funded are destroyed by conflicts. In many countries, land title is used as a collateral for accessing credit facilities. Land based conflicts erodes the sanctity of land titles, making some lending institutions avoid using land documents as collateral. During conflict, these drawbacks constrained commerce and trading, closure or downsizing of commercial activities, loss of jobs, underemployment, reduced incomes and poor livelihoods.

4.2.9 Impact of Conflicts on Community Assets

Land based conflicts have led to destruction of community physical, human, social, financial and natural assets. Physical assets such as schools, health, water facilities, roads, home, farm equipment and bridges, amongst others, are often destroyed, vandalized or abandoned during conflicts. Other community assets such as land, forests, livestock, water sources (natural assets), labour, skills (human assets), wages, savings, credits (financial assets) and ethnic networks, professional associations, cultural institutions and religious groups (social assets) are also victims of land-based conflicts.

Restoring destroyed assets takes time and leads to diversion of resources that could be used to provide critical public services. The result is less food and constrained livelihoods, which may again trigger a subsequent round of protests and conflicts.

Guideline 4: Governments, development partners and other stakeholders need to support diversification of African economies to reduce pressure on land-based livelihoods, open up new investments and job opportunities for the youth. This will cumulatively drain the swamp of radicalization and armed insurgencies in various parts of the continent.

4.3. Impact of Land Based Conflicts on Productivity

For the purposes of this Guideline, productivity refers to the ability of an individual, group or community to produce a good or render a service in a cost effective and timely manner. The higher the productivity the higher the volume, quantity or output of goods and services produced or rendered.

Access and adoption of technology and innovation is key in enhancing productivity and cumulatively securing community livelihoods. This explains why in May 2016, the UN Commission on Science and Technology selected “*The role of science, technology and innovation in ensuring food security by 2030*” as a key theme for global development. Technologies can help combat diseases/pests and enhance crop and livestock productivity. In addition, improved storage, transportation and innovations in both crop and livestock production will enable governments to meet its food consumption

Conflicts inhibit productivity in several ways. Human labour is lost either through death, injuries, displacement or redundancies when people are cut off from their livelihoods. In particular, women and girls are usually not in a position to graze livestock nor engage in other economic activities due to high levels of insecurity, further marginalizing them and lowering their productivity.

When farmlands are not properly utilized either by way of few working hours or inaccessibility of equipment, technology and innovations because of conflicts, the productivity of that land is constrained. All these factors lower the productivity of the African people, their assets and livelihood options in general. Appropriate and affordable technological innovations are required to improve quality of lives in marine, fisheries and livestock production.

4.4 Conclusion

Land based conflicts have constrained the ability and capacity of the African governments and people to fully realise their economic potentials, enhance their livelihoods and productivity. Key economic and livelihood sectors such as agriculture (crop farming and livestock keeping), fishing, commerce and extractives have been the most affected by conflicts. Since a significant proportion of African populations depend on these land-based sectors for their livelihoods, any land-based conflicts, or any other type of conflict for that matter, will have devastating effects.

Prevention and management of land-based conflicts are the surest way for the African governments, AU and other stakeholders to enhance livelihoods and improve the productivity of land and other eco-system based livelihood activities. Africa as a continent has the potential to feed itself, improve the standards of living and export surplus the most likely it will be able to prevent and manages the myriad of land-based conflicts in the continent. The urgency to embrace technologies to improve production systems and livelihoods in Africa is important.

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Chapter 5

Women Land Rights and Conflict

5.1 Introduction

This chapter shows the key land-related challenges faced by women in conflict and why it is important to protect women's land rights for conflict prevention, mitigation and recovery. After giving an overview of the key relevant frameworks, the chapter provides guidance on how to protect women's land rights in conflict-affected contexts and how to ensure that women, irrespective of their ethnic group, are empowered to have a prominent role in preventing and addressing land-related conflicts in Africa.

Women have a strong relationship with land in Africa. They till the land, produce most of the food, take care of homes for themselves and their families and are active in their communities. Yet, it is estimated that less than ten per cent of women in Africa own land and the land injustices they experience are often culturally deep-rooted and highly localized. Unequal power dynamics at household and community levels, discriminatory family practices related to inheritance, socially prescribed gender roles, unequal access to justice, patriarchal and male dominated institutions and land administration processes, traditional norms and local tenure relationships serve as barriers to women's land tenure rights even during times of peace.

Land conflicts only make these inequities worse. Women – and their children – are disproportionately affected by conflicts that they often had little role in creating, as they are thrown into the crisis in an already insecure land rights environment. Ethnic affiliation, that can provide an important safety net for women at times of peace, often weakens when women are displaced or face an increased threat to their lives at times of conflict when rape is used as a weapon of war and ethnic manipulation.

5.2 Land rights' challenges faced by women in conflicts

It is useful to note that women living in the African continent are not homogeneous. Ethnicity, age, religion, marital status, type of marriage (monogamy, polygamy) and head of household variously affect the laws and social norms that propel or hinder their use of land.

Therefore, before conflicts flare up, women already find themselves in a disadvantaged position. Discrimination in marriage, inheritance, legal status or resource distribution result in the fact that many women cannot access, use, control, make profit, change or own land. In customary settings, their rights often depend on their relationship with male relatives and their ability to make decisions about land use and utilisation of the income generated from land-based activities is minimal.

Ethnic affiliation, particularly in rural areas, can protect women's user rights as long as the relationships with male relatives hold and group's norms are followed, but it does not offer a secure enough protection when such relationships cease to exist, especially if women are from a different ethnic group. Women's rights over land are often curtailed when relationships she engages in are threatened or cut. This is particularly problematic, as women often become the only family providers when men are away, missing or killed at war. Even when social norms allow it, women also face difficulties in accessing land and property in cities and through the formal land administration system, as their financial capacity is lower, and they have less access to credit than men.

During conflicts the challenges increase as women, many living as heads of households, often acquire additional responsibilities without receiving extra help. Further, when they live in displacement, women face several layers of discrimination that can make their lives more difficult: as a woman, as displaced or refugee, as a widow, as a single mother, as member of ethnic or religious minority, as poor, as non-literate or speaking a different language, as deprived from her family or community ties and the protection of their ethnic groups. As women and children account for over two thirds of war refugees and displaced persons, their specific needs must be high in the agenda for action.

In conflicts, women face five types of land rights' challenges. First, they lack access to safe and adequate housing or shelter, which leads to increased exposure to physical and gender-based violence and health risks. Second, they lose access to farming grounds or space to exercise an economic activity which leads to food insecurity, poor nutrition, poverty and inability to access other essential services as education and healthcare. Third, they experience loss or inability to access land documents and civil documents. Civil documents are equally essential for securing land rights as they are prerequisites for proving one's identity and relationship with land-holding relatives (e.g. to secure land use rights or inheritance), getting land documents (e.g. lease or tenancy agreements), and accessing justice.

Fourth, in conflicts, women have even more difficulties in accessing justice to protect their land rights than at times of peace; not only do they struggle to find the time, money and courage to approach the courts or the other justice mechanisms available, but insecurity and other disruptions make it more difficult for them to travel to the locations where justice is administered. Lastly, refugee and displaced women face further obstacles in accessing land because of their legal status, language barriers, and difficulties in receiving information on their land rights and how to protect them. These challenges impact women's ability to take part in decision-making processes related to the prevention, mitigation and resolution of conflicts generally and land-related conflicts specifically.

5.3 Protecting women's land rights for conflict prevention and recovery

The protection of women's land rights is essential for conflict prevention and recovery. Women's contributions in ensuring family and community food security and the relationship between food insecurity and conflict are well recognized, creating a strong consequentiality between women's land rights and conflict prevention.

During wartime, violations of housing, land and property rights are used as an instrument of war for ethnic cleansing, changing the demography of conflict-affected areas and as a way of securing resources and support from militia fighters. Therefore, protecting the land rights of women and men before and during conflicts not only reduces the suffering of the affected individuals but also acts as a deterrent and a prevention measure of conflicts themselves.

Secure land rights – of women and men – lead to more socially and economically stable societies and are therefore a key pre-requisite for countries to emerge from conflict. They are a cornerstone of recovery after conflict. The protection of land rights strengthens the relationship between people and institutions, and this is an important state building and peace building factor, which is particularly crucial in fragile contexts and countries emerging from war.

In addition, women play a key role in stabilising the society after conflicts. Although often underplayed in conflict recovery narratives, women's contribution is key for social reconciliation and peace building efforts after a war. Consequently, any access to land helps women to survive conflict, reduce exposure to physical violence and other rights' violations, alleviate the protracted humanitarian vulnerability, and jump start the journey towards recovery and self-reliance, including meaningfully contributing to social reconciliation.

5.4 Relevant frameworks for women's land rights

There is no shortage of international frameworks protecting women's rights, including land-related rights that do not distinguish – and therefore include – conflict affected contexts. Some of the most relevant for the African continent are: the African Charter on Human and Peoples' Rights (1986); the Protocol to the Charter on the Rights of Women in Africa (2003); the Solemn Declaration of Gender Equality in Africa (2004); the Framework and Guidelines on Land Policy in Africa (2010) and the Declaration on Land Issues and Challenges in Africa (2010); a the Nairobi Action Plan on Large-Scale Land-Based Investments in Africa(2011), and Africa Agenda 2063 which offers an opportunity to support women's access to land by focusing special attention on the protection of the rights of smallholder farmers, a category composed to a large extent of women.

Internationally, the key ones are the Universal Declaration of Human Rights (1948), the Declaration on the Elimination of Discrimination against Women (1967), the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979, and the Indigenous and Tribal Peoples Convention (1989). Other more recent, non-binding international frameworks highlighting the importance of access to land for all and for women are the Voluntary Guidelines on the Responsible Governance of Tenure of Lands Fisheries and Forest in the Context of National Food Security – and the related Technical Guide on Governing land for women and men, the Sustainable Development Goals, and the New Urban Agenda.

Less guidance is found on women's (and men's) land rights in conflict-affected contexts, with the exception of the Principles on Housing and Property Restitution for Refugees and Displaced Persons, also known as the Pinheiro Principles (2005) and mostly focusing on land restitution, and the 1951 Convention Relating to the Status of Refugees, which imposes obligations on host states to guarantee a range of rights relating to immovable property. A key framing document is also the United Nations Security Council Resolution 1325 (2000) on Women, Peace and Security that goes beyond the prevailing narrative of women as victims of conflicts to reflect on women's contributions to the survival of families and communities and to peace building; as well as Resolution 1889 (2009) which calls for further strengthening of women's participation in peace processes and the development of indicators to measure progress on Resolution 1325. Lastly, the Guidance Note of The Secretary-General on "The United Nations and Land and Conflict" (2019) provides elements on how to address

women's land rights in conflict settings. At national level, these international frameworks interact with state laws, customary and religious laws and community practices in the legal pluralistic regimes common to the African continent and further described in Chapter 6.

The following section builds on the above frameworks and goes a step further to provide guidance on how to protect women's land rights in conflict contexts and ensure that women are empowered to play a more active role in preventing and addressing land-related conflicts in Africa.

5.5 Protecting women's land rights in conflict situations

***Guideline 1:** Focus on land use rights' solutions that provide immediate land tenure security that can be incrementally strengthened over time, while more durable solutions are being developed and negotiated.*

***Guideline 2:** Facilitate individual and collective land use agreements and remove the legal and administrative blockages that prevent women from accessing and using land.*

***Guideline 3:** Create information and support centres to help on land and land-related issues.*

The magnitude of the task of protecting women's land rights in conflict can be judged by the slow progress being made on this in times of peace. Nevertheless, the pressing urgency justifies a call for increased and coordinated efforts of all stakeholders on this important priority.

During conflicts, stakeholders need to do a joint assessment of the threats and solutions to land conflicts and land tenure – both individual or collective - that can benefit the larger number of women in the shortest time possible and offer enough protection from eviction and other hazards through relatively simple processes and at limited costs. The risks posed need to be evaluated and mitigated and mechanisms for an incremental improvement developed from the onset and negotiated among displaced and host communities and other key stakeholders.

Displaced and refugee women often face legal and administrative blockages in accessing, using, renting or owning land and, due to formal or customary laws and practices. Efforts need to be made to ease such constraints and find solutions that are locally acceptable. Great success has been witnessed in contexts where individual or collective land use agreements have been facilitated or brokered by stakeholders that are trusted by both parties – those who own and control the land that can be defined as host communities and those who need it

during conflict such as the displaced. This is particularly true in case of women. Examples of successful facilitating or brokering partners are governments, local governments, traditional rulers, international organisations, faith-based organisations, civil society organisations and others, depending on the contexts. The signature of multi-party agreements is encouraged, as it gives a higher level of security to the tenure agreement reached.

This includes support with information about land tenure options, civil documentation (e.g. identity cards and marriage certificates) and access to justice (including provision of legal assistance, counselling, representation and mediation support). Women should be supported in the process of retrieving or reconstructing their land documents, if they had them, and ensuring that restitution and return processes are non-discriminatory. Innovation and technology can facilitate this.

With a longer term perspective towards conflict prevention and recovery, women's land rights should be better protected in the laws and in the practices, gender-discriminatory inheritance and personal laws should be revised, the registration of marriage contracts – especially with the inclusion of information on land and property regimes – should be promoted. Legal and administrative reforms of the land sector should be enacted, as expensive, complicated and gender-blind land administration practices effectively prevent women from using land administration services and accessing land disputes resolution mechanisms. Women's access to credit and microfinance needs to be increased and, overall, women need to participate more actively in the land sector, as land professionals and decision makers.

5.6 Empowering women to play a more active role in preventing and addressing land-related conflicts

***Guideline 4:** Collect and analyse gender-disaggregated information on positive and negative conflict dynamics and data on issues related to women's access to land.*

***Guideline 5:** Promote women's participation in peace negotiations, land conflicts resolution mechanisms, and land-related commissions.*

Women are disproportionately affected by conflicts. Nevertheless, women should not only be seen as victims, but also as peacemakers, peace-builders, negotiators, key stakeholders in the prevention and resolution of conflicts, including land-related conflicts. Both land and conflict are traditionally male dominated domains, and therefore this is no easy challenge. Nevertheless, to address systemic discrimination and inequalities, women need to be part of

decision making in the different spheres of power and at different levels, including on land as a productive asset, and their role needs to be better appreciated and promoted.

The ability to meaningfully prevent and address conflicts in Africa will depend on the effectiveness and the ability to analyse and understand gender-specific aspects of conflict and peace, including the land-related dynamics. There is the need to know more about the role of women in conflicts, peace negotiations and peace building in general. While women's contribution to the social domain is known, gender contextual analyses acknowledging women's contribution and role in the society as political actors are scarce. Conflicts analysis often focus on causes affecting conflict dynamics negatively. The positive role of women and women's groups, and other stakeholders', in the prevention, mitigation and resolution of conflicts and in the social reconciliation efforts needs to be better researched and reflected upon, to fully harness its transformative potential. Mainstreaming and systematically taking into consideration gender-related indicators in land-related processes and early warning systems needs to be promoted.

Women have an important role to play in implementing post conflict recovery, peace agreements and therefore women's grievances and needs must be better addressed during the negotiations, if they are to be an active part of their implementation. Women should occupy positions of power and be included in the structures and processes for conflict prevention, management and resolution, and post-conflict reconstruction programmes at all levels. This includes the structures and processes ensuring the protection of refugees, returnees and displaced people and their land rights. It also includes women's participation in land claims and land restitution commissions and other land sector processes, from which they are often excluded.

5.7 Conclusion

Women's land rights are both a condition and a result of women's empowerment and increased participation in decision-making, including in conflict affected contexts. The prevention and resolution of land-related conflicts, which have a major implication on violent conflicts in Africa, cannot be effective without the improvement of the overall condition of women and the protection of their human rights and land rights at times of peace and of war.

Chapter 6

Prevention and Management of Land Conflicts

6.1 Introduction

Land-related disputes and conflicts have been on the increase throughout Africa and prevention and/or management of these is crucial to peace and sustainable development of the Continent.

A *dispute* arises when two or more people or groups who perceive their needs, interests or goals to be incompatible, communicate their view to the other person or group. Disputes lead to a variety of responses, some *interest-based* (e.g. negotiation, mediation), some *rights-based* (e.g. litigation), and others *power-based* (e.g. use of force, threats, violence). When disputes are not addressed properly, escalatory responses can increase tension, and this may flare into violence, which is then seen as a conflict.

A *conflict* often involves at least two parties who disagree over the distribution of material or symbolic resources or perceive their underlying cultural values and beliefs to be different. The origins of conflict can also lie in the social and political make-up and structure of society.

Thus, a differentiation is made between a conflict which is much larger, often not necessarily obvious, phenomenon common to all human societies, while disputes are more focused, articulated expressions of difference over particular resources, needs and interests.

Regularly occurring disputes (over a certain area of land) could be a symptom of a much deeper grievance in which individuals or communities are entangled. Intervention processes can be targeted at different levels: resolving or settling disputes (e.g. through adjudication or mediation of the claims of two families over a piece of land); or, addressing the often much larger underlying issues (e.g. consultations involving feuding communities). Restorative processes attempt to heal the damage that was caused by the conflicting parties.

As elsewhere in the world, conflict is dynamic, interactive and constantly changing. Commonly identified stages of conflict escalation and de-escalation include formation, escalation, crisis and endurance, improvement and de-escalation, settlement or resolution, and

finally reconstruction and reconciliation. Violent responses can be encountered in the escalation and crisis stages of the conflict, particularly where land resources are concerned. As a result, land disputes/conflicts require an adequate and efficient system to handle them. A robust land dispute/conflict prevention, resolution and management system is crucial for effective land administration and management.

Countries have set up land disputes resolution mechanisms at national levels. Also, many customary, traditional and informal systems of dispute resolution exist, and there are also institutions to address conflicts at regional and continental level. Unresolved disputes may result into open conflicts which may overspill national borders.

6.2 Classifying Land Dispute Resolution Mechanisms

Various dispute resolution mechanisms exist in Africa which are used to mediate or resolve conflicts over land and natural resources. These can be classified as formal or informal, legal or extra-legal, consensual or non-consensual, religious, traditional or community based and so on. This chapter looks at state based, ADR, traditional and religious-based land dispute resolution mechanisms.

6.3 State based land dispute resolution mechanisms

State based land dispute resolution mechanisms include courts, tribunals, commissions and administrative bodies.

(a) Litigation in State Courts

Litigation is a formal process where disputes are heard in courts established by the state. There are different types of courts, that is regular and specialised. The decision-maker is a judge appointed by the State. In most common and civil law jurisdictions, the judge determines the dispute by the application of technical rules of evidence. Contesting parties, who may be represented by a lawyer, present evidence to the judge who, after weighing the evidence makes a binding decision. This may be appealable to a higher court.

Specialised land courts go by different names: Land Dispute Courts, Land (and Housing) Tribunals, Environment and Land Courts, and so forth but their objective is the same: to deal explicitly and exclusively with land-related conflicts, thus reducing the burden on general courts and speeding up determination.

Litigation in courts suffers a number of challenges including corruption, limited number of judges, undue prolongation, high cost, rigidity due to application of technical rules of procedure, inaccessibility in rural areas, focus on retributive justice as opposed to restorative justice, lack of expertise in handling community disputes etc.

(b) National Commissions

In some countries, national human rights and national land commissions have a mandate to manage land conflicts including historical land injustices. Others, such as the Ombudsmen, have the mandate to deal with land governance.

Guideline 1: African governments should put in place policy and legal frameworks that encourage, insulate and facilitate the use of Alternative Disputes Resolution (ADR) mechanisms (including traditional, customary and religious-based ones) in land conflicts to facilitate speedy, socio-culturally acceptable and cost effective access to justice; though they should not violate human rights. The states should also provide mechanisms for enforcing ADR resolutions as well as room for appeal.

6.4 Alternative Dispute Resolution Mechanisms

Alternative Dispute Resolution Mechanisms (ADRM) refer to all dispute resolution mechanisms employed outside court. These range from negotiation, conciliation, mediation, to arbitration. ADR processes are preferred mechanisms for solving land disputes because they are cheap, accessible, flexible, informal, expeditious, foster relationships, and the outcome is a win-win scenario. Some of the processes are culturally appropriate, inclusive and designed to manage intra or inter-ethnic tensions or facilitate intra and inter-ethnic reconciliation and healing especially after long drawn conflicts like the land-based conflicts prevalent in Africa.

Because of the potential of ADR mechanisms to amicably resolve land conflicts in Africa, expeditiously and at a low cost, some governments have already put in place mechanism to encourage and promote the use of ADR. Negotiation, mediation and arbitration are briefly discussed in the next sections.

6.4.1 Negotiation

Negotiation is an amicable method for resolving land conflicts where parties to the conflict directly discuss with each other by working out a compromise that they are willing to abide by, including enforcing the resolution, using available social, political and customary remedies to resolve the dispute. Unlike mediation, arbitration or adjudication, there is no

intervention of third parties. In many African communities and sub-national institutions, negotiation is the pre-eminent mode of dispute resolution that is widely practiced across the continent.

In resolving land-based conflicts, negotiation can lead to brokering a ceasefire if the dispute cannot be immediately resolved. It also allows the parties to reflect on the compromise option in preparation for follow up negotiations that will cumulatively broker peace. This is a common practice where communities, sometimes with the tacit approval of the authorities, come together to negotiate grazing, and watering rights during the dry spell; and migratory routes for livestock and the people or in resolving boundary disputes. It is a handy mechanism when solving herder-farmer conflicts or negotiating with governments for purposes of compensations or benefits accruing from planned or executed large infrastructure projects, including the extractives.

Where a settlement cannot be reached by negotiation, other methods of dispute resolution, like mediation and litigation are encouraged and often resorted to.

6.4.2 Mediation

Mediation is a popular method of resolving land disputes in Africa. It happens where the conflicting parties cannot continue with direct negotiations. In those instances, the services of a third party, a mediator are sought to help the parties dialogue and find a compromise (solution).

Mediation is commonly and successfully used in resolving conflicts over access to grazing resources, water resources, traditional grazing reserves, and land compensations to pave way for infrastructural projects or solve conflicts over use of agricultural lands.

6.4.3 Arbitration

Arbitration is a method of dispute resolution whereby the parties to the dispute agree to submit their dispute to the binding decision of a neutral third party known as the arbitrator. Parties to the dispute are bound by arbitration when and where they submit into an arbitration agreement that is in most cases written.

In terms of resolving land disputes and in following up with African traditions and cultures, the disputant to the land or land use dispute first acknowledge that there is a conflict that they have been unable to solve. The disputants then agree to submit to an arbitrator or arbitrators

to solve the dispute. In most cases, the arbitrator is a respected local chief, religious leader, neutral government official, where the parties doubt anyone from their communities would arbitrate fairly. The disputants agree on the arbitrator and promise to submit to the outcome of the arbitration.

Arbitration is similar to a formal court process. Parties are given chance to present their cases, and witnesses are lined up and cross-examined by the arbitrator or arbitrators. Where there is more than one arbitrator, they normally retreat after hearing the two sides to deliberate and make a determination. The major difference with a court process is the venue; which may be under a tree or riverbank, and often within the contested area; in a relaxed environment, unlike the courts that can be intimidating; and decisions are made pretty quickly.

The other major difference and comparative advantage of arbitration in land disputes especially in Africa is that the process is designed in such a way that it is not vindictive or punitive. The primary goal of arbitration is to promote harmony, integration and reconciliation between parties. This is very important because in Africa, land conflict parties may be communities or ethnic groups. After the dispute is resolved, they will still need to co-exist peacefully. Therefore, restorative justice in land dispute resolution is an important consideration in promoting peace, harmony, reconciliation and a sense of nation hood in Africa.

6.4.4 Traditional dispute resolution (TDR) mechanisms

Africans are endowed with their own institutions, methods, procedures and mechanisms for disputes/conflicts management, since Africa still boasts of rich traditions and cultures. African traditional societies use traditional mechanisms for solving disputes have been observed to use both local socio-political actors and traditional community based judicial and control structures. Traditional social, cultural, political and economic institutions and actors have been the custodian of this knowledge and practice.

Most land conflicts in rural Africa are resolved through traditional dispute resolution mechanisms since they are legitimate, flexible, informal, accessible, culturally appropriate and cheap.

6.4.5 Religious-based land conflict resolution mechanisms

In addition to ADR and TDRs, a number of countries in Africa rely on religious doctrines and

laws to address communal conflicts, including land-based disputes. In most Muslim countries, like Somalia, religious law is equal to formal state law. As such, land conflict resolution is based on the *Shari'a law*, especially at the local communal levels. Thus, to promote the use of religion in conflict resolution, religious laws have been incorporated in some legal jurisdictions in the continent.

Islamic tradition and practices, blending religion and culture, have been regarded by many as widely successful for they not only adjudicate cases, but leave behind a sigh of relief and satisfaction because of the religiosity and spirituality of the mechanism.

6.5 Regional and Continental Institutions

The African Commission on Human and Peoples' rights occupies an important space in the management of land conflicts. For example, it has rendered key decisions as in the case of the Ogoni, and the Endorois people by recognizing their community land rights.

Similarly, the African Court on Human and Peoples' rights plays a key role as a regional court in the promotion and protection of human and peoples' rights in Africa. It delivered a landmark decision in the case of the community land rights of the Ogiek people of Kenya.

Over the years, measures have been put in place by the AU to address, among others, incidences of land-related conflicts on the Continent- for example, the AU set up the Peace and Security Council (PSC), an organ for the prevention, management and resolution of conflicts. The PSC is a key organ of the African Peace and Security Architecture (APSA) whose aim is to promote peace, security and stability in Africa. The Council was established to be a collective security and early warning mechanism with the ability to facilitate timely and efficient responses to conflict and crisis situations. Since its formation, the Council has conducted early warning and preventive diplomacy, facilitated peace-making, established peace-support operations and, in certain circumstances, recommended intervention in Member States to promote peace, security and stability. It has also worked in support of peace-building and post-conflict reconstruction as well as humanitarian action and disaster management.

Individual Member States have also put in place mechanisms for the promotion of peace and prevention of violent land-related conflict, including the use of technology to report early warning signs and to deal with post-conflict vulnerabilities.

6.6 Land Conflicts Management

Resolving and managing land conflicts depends, first of all, on the current stage of its process. It may involve crisis prevention, peace-making, peacekeeping or peace building, each of which requires different tools and different methods of conflict resolution.

Conflict management can be seen at three levels that is: conflict prevention; crisis abatement and post conflict reconstruction.

Pre-conflict phase

A conflict generally starts with an incompatibility between the goals of two or more parties, which has the potential to lead to open conflict. At this stage, the conflict is hidden from general view, although one or more of the parties is probably aware of the potential for confrontation, and there may be low-level tensions.

Many land conflicts linger for years in a state of pre-conflict or early conflict characterised by tense instability and repeated confrontation which, each time, raise the average level of tension.

Intervention should start here, avoiding the potential crisis and finding a realistic solution for all parties. This could be done by uncovering what is hidden behind the conflict by getting bodies like the National Human Rights Commissions or land-related NGOs to document the conflict thoroughly and get it into the public arena for discussion.

Once land conflicts are identified and opened discussion, their settlement can be started. This can involve classical or alternative ways of conflict resolution, special land tribunals, land management measures, special local contracts, land conflict resolution by the victims and land governance.

Depending on the degree of escalation present, the strategies of conflict resolution will be similar to those recommended for land disputes resolution including facilitation, moderation, consultation, conciliation, mediation, arbitration, and adjudication.

Conflict Phase (Crisis)

The second phase of a conflict can go through a number of stages:

- **Confrontation:** The conflict is more open and marked by occasional fighting or other low levels of violence. Each side is looking for resources and supporters. Polarisation between the parties increases.

- **Crisis:** At this level, the conflict is at its peak. When the tension and/or violence are most intense, a conflict can easily flare out of control. There is now rarely any communication between the parties who are fighting with and publicly accusing each other. In worst-case, the different sides are at war.

- **Outcome:** In one way or another, the crisis will end. One party may defeat the other or give in, both parties may agree to negotiate, or third party may impose a settlement. In any case, tension and violence decrease but the conflict is not yet settled.

In conflict phase, communities are against each other and there is no longer peace. The emphasis here is brokering peace (peace-making) as well as keeping the peace (peace keeping).

Post-conflict phase

At this stage, relations have become more normal again. However, if the roots of the conflict have not yet been adequately addressed and if the incompatible goals still prevail, chances are good that the situation will relapse into a pre-conflict.

Having brokered peace, signified by the signing of a peace agreement, actions here are hinged on peace building and confidence building to get the consensus within communities.

It may be important to establish Peace Committees, Truth, Justice and Reconciliation Commissions and to undertake restorative justice. Social reconstruction, such as of damaged infrastructure, may have to be undertaken and this is best carried out with the participation of all the feuding parties. The fact that women and vulnerable communities may have suffered more should be realized when undertaking restorative justice.

6.7 Managing Post-Conflict Land Issues

***Guideline 2:** Governments need to take concrete steps to address post-conflict issues, to enable formerly conflicting parties to live in harmony and to create a situation for sustainable development.*

As countries or communities emerge from violent conflict, they usually face multiple land-related challenges associated with post-conflict reconstruction, rehabilitation, reintegration, resettlement and peace consolidation. Returning refugees or IDPs may find that their land has been taken over by other peoples. Relevant land issues must be clearly understood and given appropriate priority because successful management of these issues can be critical to

stabilisation and building lasting peace efforts.

Property or claims commissions can play a key role in post-conflict situations where processes of reconciliation and property restitution need to be addressed in significant numbers. Local community-based and customary conflict-resolution mechanisms can offer effective and acceptable means of managing many kinds of post-conflict land problems.

Role of governments, public agencies, local and international agencies in post conflict situations is important in providing information and humanitarian support. For example, the African Union Boundary Information System (AUBIS) has developed a comprehensive set of tools that provide reference information about borders in Africa. There is also an increasing body of useful experience that has been accumulated in dealing with post-conflict land issues.

6.8 Preventing Land Conflicts

Guideline 3: Many land related disputes can be foreseen and forestalled. It is important for governments at different levels to develop strategies to promptly prevent foreseeable land conflicts, providing long-term solutions to potential land disputes triggers.

Land-related disputes cannot be entirely eliminated from human society, but their occurrences can be reduced, and their impact minimised by putting in place, the required institutional framework. Preventing or reducing conflicts is possible especially since there are always tell-tale signs of a potential conflict. It therefore makes sense to concentrate efforts to prevent conflicts, since even the best resolution mechanisms cannot undo the damage that conflicts inflict upon society. It is therefore more worthwhile for every government to invest in land conflict prevention measures by putting the right policies in place and ensuring implementation of the relevant policies.

In countries that have such a framework, land conflicts may still occur but in fewer numbers and the rate of those that are peacefully resolved is much higher. Such a framework includes: awareness of land conflict causes and timely development of strategies for their effective prevention; responsible land governance and functioning land administration and management; and putting in place, assessment and monitoring tools.

Many land conflicts can be predicted, and if not avoided, at least mitigated if provisions are made against them in time. It is, therefore, crucial to be aware of those changes and occurrences that have the potential to trigger land conflicts.

Once a potential cause of conflict has been identified, the extent of possible land conflicts and the scope of their social, economic, ecological and political consequences should be roughly calculated and immediately communicated to decision-makers and responsible land management experts at both the central and local level. Land conflict experts should preferably discuss with these decision-makers, which measures should be taken to avoid massive land conflicts.

6.9 The Role of the state in land-related conflict prevention and management

The state plays a crucial role in preventing and managing land disputes and conflicts. Supporting good land governance institutions including line ministries such as those of land and environment; national land commissions; National Human Rights Commissions; Truth, Justice, and Conciliation Commissions; offices of the Ombudsman; Electoral and Boundaries Commissions, can go a long way to prevent or resolve land-related conflicts. Internal security is usually the line of first resort in the case of violent conflicts.

However, the state can contribute to land-related conflicts when they ignore early warning signs of a boiling conflict; when they fail to put the mechanisms of good land governance in place; and where they engage in acts such as evictions or land acquisition without (adequate) compensation.

6.10 Conclusions

In conclusion, it is evident that land-related disputes and conflicts are inevitable, but steps must be taken to prevent their occurring; and to prevent disputes from escalating into conflicts. In addressing disputes and conflicts, ADRs, and customary, traditional and religious based resolution and preventive mechanisms should play a role in keeping the continent peaceful.

Governments have a crucial role in conflict management, and institutions at regional level could be operationalised to foster peaceful coexistence and sustainable development.

Chapter 7

Inclusive land adjudication and registration

7.1 Introduction

Despite pre-and post-colonial efforts to individualise land ownership, large proportions of Africa remain under collective ownership. Most of the collectively held land is communal or under customary tenure. In most cases, such land is unmapped and undocumented. However, land use activities by those interested in such land and the natural resources thereon continue and include human settlement, agricultural farming, grazing, mineral and oil exploration. The development of infrastructure for utilities such as electricity, road, rail and telecommunication services also continue to occur. There is competition for the available water to service households, farming, animal and commercial needs. The competition for land and natural resources, in circumstances where land is unmapped and undocumented, is an optimal environment for conflicts.

This chapter explores how inclusive adjudication and registration could be achieved in order to minimise land and natural resource-based conflicts. It also discusses the best practices of inclusive adjudication and registration during the post-conflict period. By inclusive registration and adjudication, we mean multi stakeholder participation in a process that is based on equity, equality and social justice and which recognises the various forms of land tenure, and proprietary right in a continuum.

7.1.1 Effects and benefits, and the threat of land fragmentation

Land adjudication, the formal process of determining ownership rights to land, is often used to convert communally held land into individual ownership. Once determined, such individual rights are mapped through appropriate surveying techniques, documented and entered in an official register, which is thereafter maintained by government officials.

The documentation of parcels and their ownership provides a basis for the management of the use, transactions and development of land. It makes it possible for landowners to protect and negotiate the use, charge or sale of their land to interested persons, entities or even the state when necessary. Where land parcels have been adjudicated and registered, the state is also able to use the resultant cadastre for planning and taxation. Land adjudication and

registration, therefore, help to clarify and protect land rights, guide development planning and taxation, and promote a land market. On the flip side, privatisation of land provides proprietors with the flexibility to arbitrarily fragment it for sale or inheritance. In some jurisdictions, such fragmentation has ended up grossly undermining the productive capacity of land.

7.1.2 Assuring the full participation of all concerned parties

If not well managed, the determination of land rights through adjudication and the subsequent registration could promote conflict. Such conflicts may be driven by conflicting claims, or the access to previously available land-based resources put under the ownership of one person or persons by the adjudication process. The adjudication process could unintentionally exclude some categories of persons such as women, youth and other vulnerable groups, with legitimate claims to the ownership and use of land. Third land claimants, such as buyers, could also get excluded during adjudication. Such exclusion may later manifest itself as disputes or conflicts.

Moreover, in generating the official record of ownership, mistakes such as multiple entries, omissions of names of persons, or even inadvertent swapping of the numbers of parcels, could also fuel conflict. Boundaries to the land parcels introduced through the adjudication process could also be a source of conflict if not well agreed and maintained. Indeed, adjudication exercises could provoke broad based conflicts between clans or communities where common clan/community boundaries have not been agreed.

The introduction of individual ownership also restricts the free movement of people and animals. Upon adjudication and registration, the movement of people and animals is restricted to the designated public roads and spaces. But in practice, this may not be fully respected. People and animals may seek to traverse through private land. Pastoral communities may also have difficulties keeping out of pastureland that they previously accessed but got converted to private through adjudication. In all these cases, disputes and conflicts may arise from adjudication.

Occasionally, subtle political interests may also inform conflicts during adjudication processes. Land adjudication exercises may have the effect of influencing demographics in favour of or against political actors. In such cases, those who perceive such exercises to be influencing the increase of persons from a different political divide may oppose such exercises by triggering disputes and conflicts through proxies.

7.1.3 Searching alternatives for securing community and pastoral land

Guideline 1: *Enact and implement enabling legislation and regulations that would ensure the recognition, mapping, protection and registration of community owned land for group use.*

Land use and holding capacity renders some land unsuitable for adjudication. For instance, the holding capacity of arid and semi-arid land makes it primarily suitable for pastoral activities. Such activities require the free movement of people and herders. Traditional titling through adjudication would therefore constrain such land use. Such land is hence best managed differently. But land managers still require the location and size documented to be able to secure and manage it.

Based on this understanding, some African countries are trying out innovative methods of managing customary land. To enable the mapping, recording and protection of such land, such countries have developed enabling community land laws, which provide for the recognition and registration of such lands under group ownership. The law provides for the communities to register as groups, which in return assume the management of the land. The groups then have the discretion to apply for a group title or request for adjudication and individualisation of the land. African countries are therefore urged to familiarise with such emerging practices and where possible, to learn and harness the lessons where applicable.

7.1.4 Domesticating international covenants and principles

In undertaking the adjudication and registration of land, states need to take into account existing international covenants and principles relating to the distribution, protection and transfer of tenure rights, among others. In addition, states need to remain conscious that initiatives to adjudicate land, with the attendant benefits and results, are best anchored in national development strategies and plans, as opposed to ad hoc and sporadic approaches. This enables the effective pre-planning and implementation of such initiatives. Such anchor allows states to make policy decisions on the Ministries and agencies to be charged with implementation, source and vote the necessary funds, and to build or pool the necessary multi-disciplinary technical capacity.

Some of the existing global and regional frameworks that states need to ensure alignment with while planning and implementing adjudication programmes include *Agenda 2030 on Sustainable Development Goals (SDGs)* (September 2015) and the *African Agenda 2063* (January 2015). The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)*(May 2012) is also a

source of useful principles. *The Framework and Guidelines on Land Policy in Africa* (F&G) (July 2009) also contains some useful guide on context, conflicts and institutional capacity.

Principles to guide the design of adjudication and registration processes will also be found in these frameworks. A participatory and inclusive approach, which is encouraged, strengthens public buy-in, accountability, transparency and sustainability of the projects. The careful adoption of technology to fit jurisdictional uniqueness and circumstances is encouraged. Piloting of projects, to be upgraded if successful, helps with practical lessons. Good documentation, using available technology, is encouraged.

In implementing adjudication and registration based on these instruments, institutions ought to adopt a participatory and inclusive approach, to solicit public consent and ensure accountability, transparency and sustainability of adjudication projects.

7.2 The adjudication as part of the interventions for preventing and mitigating land conflicts

The process of adjudication may be sporadic or systematic. Sporadic adjudication refers to the process by which rights to land and the subsequent documentation are assigned piecemeal. These activities are done on demand, in whichever place or time. It could be triggered by some conflict, demands by groups of people or community. The process can also be used to regularise settlements that emerge sporadically.

In contrast, systematic adjudication, assigns rights to land within a wide zone methodically, moving from one area to another according to a plan. Since they are usually pre-planned, such processes are more efficiently implemented and tend to be cheaper. Most African countries have legal frameworks that guide systematic adjudication.

Some generic procedures define land adjudication processes. These include: identification of the target zone; the application of the relevant national law; appointment of adjudication officials and committees; sensitisation of potential victims through public awareness campaigns; ascertainment of individual rights on the ground; demarcation of the parcel boundaries through survey methods; determination of emerging claims and disputes; and the forwarding of maps and record of owners to the registry for registration.

In a systematic adjudication approach, it helps to pilot projects at small scale, from which practical lessons to inform up scaling can be learnt, for successful project delivery. In all

cases, it is important to implement adjudication processes through legal measures and approaches that prevent or minimise possibilities of conflicts. In addition, mitigate land fragmentation through appropriate national laws and enforcement.

7.3 Improving Land registration

***Guideline 2:** Put in place mechanisms for easy identification of displaced persons and the affected land in the event of conflicts and loss of ownership documents. Have in place affordable and expedient institutional procedures for the replacement of lost land ownership documents.*

Formal land registration and cadastral systems in many African countries cover only a small proportion of the land and properties in a country. Adjudication has therefore, been largely used to increase titling cover in many countries. The records generated from adjudication processes are forwarded to land registries for entry in consistency with national laws.

Adjudication processes have the potential to generate massive volumes of land records, which can easily overwhelm land registries. In such situations, entry errors can occur and drive unnecessary disputes. Managers must therefore pre-think suitable technologies and options for data collection, recording and final transfer to land registry records. Decentralising data collection and recording procedures to the lowest level, and digitising data for easier transfer to the land registry system, and the maintenance and management of such records, would be helpful. States are therefore encouraged to ensure good preparation and formulation of data collection methods, the documentation and eventual management of such data.

7.4 Establishing Modern Land Information Management Systems

***Guideline 3:** Design and implement modern land information management systems to ensure the efficient post-project management of land records, in accordance with the pro-poor, gender responsive and participatory land information system developed model standards. Establish reliable data back-ups to mitigate possible data loses, in case of eventual disaster or conflict.*

The land information such as maps, lists of landowners and parcel attributes generated from land adjudication processes is hard to manage in manual form. Yet good land information management is integral to good land governance. The continuous data collection, processing, storage, dissemination, and retrieval of the land information relating to location, ownership, use, and value, among other attributes, needs to be done rapidly and efficiently.

In many African countries, land record systems are generally inaccessible, slow and expensive to the ordinary user public. The use of modern technology to establish computerised land information management systems (LIMS) to harness the wealth of data generated from adjudication and registration systems, as underscored in the Framework and Guidelines, is therefore encouraged. These LIMS should be innovative and suited to the respective African jurisdictions in regard to context, content, affordability, accessibility, and vulnerability to rapid technological changes. States planning to undertake systematic adjudication will need to give the establishment of such systems advance thought so as to be able to enjoy the full benefits of technology and process efficiency.

Establishing a LIMS requires a systematic approach, a detailed system design, and careful planning of each phase.

The equipment to be used and the accuracies derived must suit the purpose and circumstances. The hardware and software to support the documentation and processing of such data must be compatible to internal systems in the line Ministry within which the data from the adjudication process will be kept and managed.

Free / Open-Source Software versus commercial off-the-shelf software should be carefully chosen based on software maintenance, license payment, system security, and local capacity.

7.5 Securing backup and reconstruction of lost land records

Records generated from adjudication processes form the bulk of a country's land ownership database. This is a most central and important database for any country. States therefore need to ensure that suitable and safe back up mechanisms, along with off-site backup systems, are established in good time.

Moreover, in times of conflict, affected landowners may lose their title deeds or land certificates when fires, water or even damage to property affect their dwellings. Others may be displaced from their legitimately owned land. On getting displaced or losing such vital evidence, the affected people may end up losing their land, being subjected to limiting costs and procedures of obtaining new ownership documents and/or are confronted with land disputes and conflicts. States are therefore encouraged to mitigate these eventualities by establishing mechanisms of identifying such persons and the affected land easily, efficiently and cheaply.

States may also consider the use of enabling technologies, such as satellite imagery, to capture the status of boundaries, land use and settlements on the ground in the affected areas so as to be able to use such evidence to support the reconstruction of land records and the management of any subsequent claims of property loss by the by affected persons.

7.6 Developing land administration systems in post conflict countries

***Guideline 4:** Careful adoption of technology to fit jurisdictional uniqueness and circumstances should inform the planning and implementation since technology helps in the efficient documentation, processing, updating and dissemination of land information.*

Conflicts could distort, or greatly undermine, a country's land records. With no complete and accurate land register, a country cannot effectively manage its land and resources. In such circumstances, mass registration and establishment of a land administration system to ensure secure land tenure is necessary.

In such circumstances, a systematic Land Tenure Registration (LTR) is designed based on simple procedures and guiding principles. These are a public and open process involving the government and the public; the establishment of the right to land acquired by custom or by law; just administration with no discrimination to persons holding land, transparent mechanism for resolving disputes to provide fairness and satisfaction to all sides.

In post conflict situations, governments and donors need to focus early not only on conflict management but also on developing basic land policies to address the underlying tensions over land. Moving into land policy development after cessation of conflicts requires earlier suitable expertise on land tenure to assist governments. The Africa Land Policy Centre, and donor partners, may be helpful in such circumstances. Rebuilding the capacity of governments in land administration and land dispute resolution requires the re-establishment of technical capacity and retraining staff on the basics of land management.

Where land governance institutions are weak or absent, Governments will initially need to resort to innovative approaches, such as the establishment of task forces and special commissions in order to bring together some expertise to focus on land matters.

7.7 Support activities for land adjudication and registration

***Guideline 5:** Establish taskforces and special commissions to focus on land adjudication and registration matters, where land governance institutions have been rendered very weak or are non-existent. It is also vital to monitor and evaluate regularly implemented adjudication and registration, put in place necessary measures to accommodate specific local situations*

and provide necessary support to enable the citizens to adapt.

Adjudication and registration either in normal or conflicts situation, have strong social and economic implications to affected citizens. States should therefore provide for necessary support to enable the citizens to adapt. Necessary measures to accommodate specific local situations must be put in place to ensure that basic social and economic services are available to residents. Regular monitoring and evaluation of the impact of the adjudication and registration, to help the government to make suitable interventions, based on agreed indicators, is necessary.

Adjudication and registration processes are broad, call for public buy-in and require the specialised skills of diverse professionals including social scientists, administrators, economists, agricultural and livestock production experts, communication experts, dispute resolution specialists, physical planners, surveyors, valuers and GIS experts among others.

The adjudication and registration, therefore, need to be supported by broad public awareness campaigns to help in reaching out to the affected persons and key stakeholders. Pre-implementation and continuous pooling and training of experts will need to be done.

States will therefore need to ensure the necessary level of preparedness and networking, to ensure that the pooling and training of the required experts is effectively done.

7.8 Conclusion

State officials, community leaders and other key stakeholders (such as the Civil Society, the Private Sector,) entrusted to land adjudication and registration processes in Africa need to beware that if not well pre-thought and implemented, well-meant initiatives can precipitate different kinds of disputes and conflicts. The adjudication processes must therefore be locally owned and implemented with objectives of equity, equality and social justice.

For the successful implementation of adjudication and registration projects, adequate preparedness with the required level of technical expertise and technology are critical. Good thought should be given to the conditions of the sustainability of the positive achieved results.

Chapter 8

Strengthening Land Governance Institutions and Authorities

8.1 Introduction

The *Framework and Guidelines* provides that “land governance” refers to the processes by which decisions regarding access to, and use of, land are made, the manner in which those decisions are implemented, and the way in which conflicting interests in land are resolved or reconciled. It refers to power and the political economy of land and therefore entails control over land rights. It therefore embraces technical issues, legal issues, politics and the routine practice procedures to land administration and management. Since they influence the distribution of land, a vital resource around Africa, key institutions and actors charged with routine land governance are targets of executive and political power and influence.

State actors with executive and political power could get tempted to use land governance institutions to favour their ethnic kin and cronies during land distribution and management, to the disadvantage of other applicants and users of land. The skewed distribution of land and land based natural resources, is recipe for discontent and conflicts. It is therefore fundamentally important that land governance institutions are strengthened and secure land rights for all achieved. Strong institutions are driven by sound land governance and hence minimise possibilities of conflicts and are also able to manage conflicts should any arise.

The ALPC study on “*Curricula Needs Assessment and Mapping of Existing Training Institutions in Africa*” highlights that key components of land governance include: A legal framework that defines the rules and regulations; An institutional framework that defines the limits of power; Management structures for both private and public urban and rural land ; Instruments for regulating accessibility and use of land; Land information management systems; and Mechanisms for managing disputes and conflict resolution. This therefore implies that land governance institutions should be grounded on sound policies and laws, clear power arrangements, sound land governance, efficient and modern land information management system and the capacity to resolve disputes and conflicts fairly and expediently. This chapter discusses some of the options that can be explored to strengthen land governance institutions and authorities in Africa.

8.2 Land governance institutions and authorities in Africa

***Guideline 1:** There should be adequate capacity building at technical and management levels, including on dispute and conflict resolution, for all land governance institutions at continental, regional and national level. This capacity building should be supported by the establishment of a database of the available professionals at all levels to be maintained by the ALPC for the continental and regional bodies, and by line Ministries of Lands at national level.*

***Guideline 2:** Land governance institutions should harness appropriate technology for the collection, processing and sharing of land information. Such technology should be utilised for the establishment of modern cadastres, and the collection of data on land use, natural resources and settlement patterns, which is useful in the management of pre and post-conflict situations.*

***Guideline 3:** Land governance institutions should ensure gender mainstreaming in their governance structures.*

***Guideline 4:** Land governance institutions at continental, regional and national level should establish effective coordination mechanisms to ensure that there is no overlap in roles, and for optimal synergy and impact in their interventions. This coordination mechanism should inform pre-conflict and post-conflict interventions.*

The powers of land governance reside in statutory, customary and even religious institutions that formulate and implement land policies and laws. Land management and administration organs that implement policies and laws are critical to land governance. And so are the institutions that help in resolving disputes and conflicts where they occur. Oversight and knowledge generation institutions, those that are concerned with monitoring of public institutions to discharge their mandate as required of them, are also very useful land governance institutions. Furthermore, institutions responsible for the training of land sector professionals, and knowledge generation through research, are also useful actors.

Donors too are critical actors in land governance. They ordinarily fund land governance initiatives at the continental, regional, national and local levels. It is also important to note that political and identity motivated violence are common prior, during and after elections, , with consequences such as loss of land ownership documents and/or forced displacements. It is therefore useful to examine options for enhancing the capacity and preparedness of electoral bodies to pre-empt or manage election-related conflicts and displacements.

Overall, we can note that the effectiveness of the land governance institutions can strengthen secure land rights for all ethnic groups. From this overview, it is possible to deduce the range of pertinent land governance institutions and authorities in Africa.

8.2.1 Policy and legislative organs

Key institutions that formulate or influence land policy, guidelines and law at the continental and regional level are the African Union (AU) and the Regional Economic Communities (RECs). These are all closely supported by the African Land Policy Centre (ALPC). At the national level, parliaments, county assemblies, district/local governments impact on policy and law as well. Parliaments and county assemblies also consider and approve budgetary estimates, and exercise oversight authority over implementation.

8.2.2 Land management organs

Institutions and authorities with powers to manage and administer land include line Ministries responsible for Lands, National Land Commissions, state agencies, county/local government authorities. Customary/traditional authorities also have land management roles for land under customary tenure over which they hold power to determine access and use rights.

8.2.3 Judicial organs

Where disputes or conflicts occur, judicial organs such as courts, tribunals or Alternative Dispute Resolution (ADR) institutions, whether state or non-state, get involved. Customary/traditional authorities also resolve disputes in their jurisdictions and can be influential and helpful actors in resolving major conflicts involving customary/community land.

8.2.4 Oversight institutions

Besides parliaments and county assemblies, these institutions assist in advocacy and accountability, thereby keeping state institutions in check. For this discussion, this category is constituted by Civil Society Organisations (CSOs) and professional bodies.

8.2.5 Centres of excellence

Through training and research, centres of excellence source of land governance professionals, and generate knowledge which influences land governance.

8.2.6 Electoral bodies

In some African countries, elections have become associated with the periodic displacement of people and ethnic groups from their legitimate parcels of land. Periodical resettling of displaced people/communities, replacing their lost land documents and/or returning them to their previous land, are key concerns. Electoral bodies lack the mandate, insight and capacity to address both the resultant land related conflicts and matters of resettlement and

replacement of lost documents. However, by effectively carrying out their mandates to organise transparent and credible elections (including effective boundary delimitation), they can minimise elections-related violence and other causal factors of land disputes, such as displacements - which variously impact land rights questions.

8.2.7 Donors

Bilateral and multilateral donors at all levels need to continue funding peace building and conflict resolution initiatives in Africa. And since funding levels for such initiatives are rather low, donor groups are urged to consider the continued upward review of these of budgets.

8.3 Options for strengthening land governance institutions and authorities

Global and continental frameworks such as the “*Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) (Adopted in May 2012)*” and “*The Framework and Guidelines on Land Policy in Africa (F&G) (Adopted in July 2009)*” and “*Land and Conflict: Securing Land and Property Rights for All (UN-Habitat, 2018)*”, highlight some of the key land governance principles. These should inform land governance institutions and authorities in order to ensure public confidence and effective service delivery. These include efficiency, equity, gender equity, justice and rule of law, legitimacy, transparency, consistency and predictability, accountability, sustainability, tenure security, participation and consultation, non-discrimination. The discussion below highlights some additional available options that can strengthen the institutions identified above, to improved their preparedness to pre-empt disputes and conflicts during their routine operations, and to make them able to deal with disputes and conflicts where they occur.

8.3.1 Capacity enhancement

8.3.1.1 Continental and regional level

Capacity, at both technical and management levels is the bedrock of good governance. At the continental and regional level, there is need for enhanced technical capacity and management capacity, and funding. Without these, their roles in providing policy guidance and drive the generation of high-level sectoral knowledge through in-depth studies diminishes, with adverse consequences at country level.

8.3.1.2 National level

At the national level, legislative organs require enhanced technical capacity and budgets.

National parliaments should particularly note that the ALPC has developed a training manual suited to their needs. This manual can be harnessed for their trainings. It is also important to appreciate that national parliaments legislate on laws that define administrative, electoral and international boundaries, all of which are prone to disagreements and conflicts. These critical organs must therefore be continuously sensitised on the broad implications of the laws they enact and supported with expertise to ensure that they enact legislations that will minimise conflicts. Such support should include periodic training of related parliamentary committees and their secretariats.

Other institutions that call for enhanced capacity and funding are the judiciary, state institutions, commissions and agencies. The judiciary is particularly key in the resolution of disputes and conflicts. It needs enhanced funding for the establishment of special land courts and tribunals, hiring and training of judges, re-engineering of court rules and procedures and to embrace ADR more comprehensively. Support too should go towards digitising court records and computerising processes for expediency.

Customary/traditional authorities also need capacity enhancement to be able to undertake their land use planning, mapping and documentation. Centres of excellence responsible for the training of land professionals and research also require enhanced resourcing. These institutions will also need to consider reviewing and aligning their curriculum with the curricula guidelines for land governance recently approved by the AU, and currently being piloted through the NELGA network in the five regions of Africa. In all these institutions, the periodic training of technical staff, judges and judicial officers should also be factored.

8.3.1.3 Establish skills database

In considering the skills needed, besides deepening capacities in the traditional areas of planning, surveying, valuation, law and land administration, institutions are encouraged to tap into non-traditional skills such as ICT, social sciences, environmental management, agriculture, economics and dispute resolution. Where such skills are not required full-time, institutions are encouraged to outsource them on a need basis. In this regard, the development of a database of national and international professionals available to national institutions should be developed and maintained. ALPC should develop and maintain the database for international experts from within and beyond Africa, while line Ministries of Lands should maintain national databases.

8.3.1.4 Land management organs to embrace technology

In building capacity, line Ministries responsible for land administration and management should embrace modern technology to enhance the speed and efficiency of service delivery. This would enhance the collection of field information, including in conflict prone and afflicted areas. In this regard, National Spatial Data Infrastructures (NSDI) and Land Information Management Systems (LIMS) are good tools to consider. The use of imagery to help in capturing mass data such as on land use, natural resources and settlements is also encouraged. Such data is useful in managing pre-conflict and post-conflict situations.

8.3.1.5 Electoral bodies to be sensitized and provided with expertise

Electoral bodies call for specific emphasis. Besides organising elections, these organs define electoral boundaries. Managers of these institutions may therefore not be quite conscious that in drawing up electoral boundaries and managing elections, they embrace major issues relating to land and conflict management. They therefore need to be targeted for sensitisation and internal capacity building.

Using the databases established under the Ministries responsible for Lands, electoral bodies can outsource land experts to help them acquire appropriate pre-election cadastral maps/imagery, and subsequent post-election ones, to help in managing land claims and settlement. They should also be able to outsource dispute and conflict resolution experts where required. Using technology, it would also be possible to zone out and keep watch over violence prone areas. In the event of violence, the pre-sensitised conflict management experts would be promptly called in.

8.3.2 Review of policies and laws

Policy and legal frameworks are dynamic. Therefore, they need periodic review to remain responsive to jurisdictional realities. Most land policies have inbuilt review timelines and where there is none, it is logical to assume that reviewing a policy after ten years is good practice. The review of legislation is usually incumbent upon experiences on application, regardless of timeline. Reforming policy and legal frameworks helps to mainstream the principles of land governance earlier highlighted. It is also important to keep in mind the legal pluralism that informs most African countries. In this regard, policy and law-making processes must take into account progressive customary practices that need to be integrated to inform policy and statute law or inform dispute resolution processes.

8.3.3 Coordination mechanism

The various land governance institutions discussed above, including civil society organisations and professional bodies, all work towards good land governance for national development. But their programmes and activities are not always in tandem. Indeed, there are cases cited for conflicts of mandate and roles between some of these institutions. The net result is poor, delayed or no services rendered. In other instances, such overlaps or lack of harmony and synergy undermine national processes and programmes.

It is therefore suggested that a coordination mechanism be established to guide interventions by land governance institutions in order to avoid overlaps and conflicts of mandate and roles, help to ensure optimal synergy and impact in their interventions, including in conflict resolution. This mechanism will also help to share information between institutions, hence minimise replication and cost escalation in the collection of data for the same phenomenon or purpose. Donor groups at various levels should also be encouraged to act in synergy so that they have optimal impact in the application of their funding.

8.4 Conclusion

Land governance in Africa is driven by a wide range of institutions at the continental, regional and national level. The routine operation of these institutions should be informed by the key principles of land governance including: efficiency; equity; gender equity; justice and rule of law; transparency; accountability; sustainability; tenure security; legitimacy; participation and consultation; and non-discrimination. Adherence to these principles minimises opportunities for disputes and conflicts.

Land governance institutions at all levels should be supported to have the requisite capacity, at technical and management level, suitable co-ordination mechanisms and capacity needed for the resolution of disputes and conflicts. Besides the traditional technical skills of planning, surveying, valuation, law and land administration, these institutions should also make efforts to tap into the wide range of skills needed in contemporary Africa. These include ICT, social sciences, environmental management, agriculture, economics and dispute resolution. An enabling database of the range of professionals needed for land governance processes should be established and well maintained, by the ALPC at continental level, and by line Ministries of Lands at country level.

Importantly, legislative organs should be supported with adequate resourcing and technical

capacity in order to comprehend the wider implications of the laws they enact, and to ensure that such laws minimise conflicts. Our judicial system needs to be supported to establish more courts and tribunals, hire and train more judges, and embrace alternative dispute resolution mechanisms. Institutions charged with land management ought to embrace technology for effective and efficient interventions.

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Chapter 9

Operationalisation of the Guidelines

9.1 Introduction

These Guidelines have shown that land-based conflicts in Africa, which often have an ethnic dimension, are a consequence of political exclusion, economic marginalisation and inequalities, social discrimination, weak governance institutions and the perception that existing mechanisms to resolve disputes peacefully are not accountable, inclusive and independent. Prevention of land based conflicts, therefore, ought to address a myriad of factors including entrenching inclusive politics; addressing competition over land and natural resources; managing elections and political transitions in a fair and accountable manner; minimising economic and social inequalities by addressing state capture, manipulation of land-related institutions, corruption and the need for prudent use of public resources; entrenching women's rights; managing patterns of urbanisation; reducing availability of small arms and light weapons; strengthening land governance; and managing identity politics and historical legacies and their effect on land ownership, access and control. Given the complexity of these factors, the operationalisation of these guidelines will require holistic and strategic approaches to conflict prevention and mitigation through multi-sectoral coordination and partnerships at global, continental, regional, national and sub-national levels. Constant monitoring of progress being made in addressing the root causes and publicly sharing the strides would contribute to building confidence that peaceful ways of resolving disputes are possible.

9.2 Management of Change

Land based conflicts lead to political instability, undermine economic growth and subvert social transformation and cohesion. Therefore, embedding land in political and developmental strategies ought to be prioritised. This would involve identifying and assessing the root causes or triggers of conflict, strengthening institutions of governance so that they are able to deal with conflicts, building early warning and response mechanisms and undertaking post-conflict reconstruction in a sustainable manner. Working closely with communities through public participation platforms and utilising information technology to reach the youth would be crucial. States ought to build coherence and coordination on land policy reforms and programs. This would ensure that in the event of conflict the relevant institutions are clear on their roles and entry points. Their interventions should be strategic,

incremental and timely. In terms of approach, land ought to be viewed as part of the solution to peace-building and social cohesion among ethnic groups.

9.3 Global level

International actors ought to contribute to conflict prevention by advocating for an inclusive development agenda and applying context specific approaches to development and land reforms that are sensitive to international standards of human rights, gender, and robust public engagement. Investors on the continent ought to pay particular attention to international instruments that uphold the dignity of all people. They ought to uphold the Universal Declaration of Human Rights (UDHR) and Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention on the Protection of World Cultural and Natural Heritage (UNESCO, 1972); the Right to Food, the Covenant on Economic, Social and Cultural Rights) and the United Nations Declaration on the Rights of Indigenous Peoples and the African Charter on Human and Peoples' Rights, among others, in undertaking land related economic activities.

Moreover, there are tools such as the *Guidelines and Principles on Large Scale Land Based Investments* (LSLBI) developed by the ALPC as well as *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests*, the *Principles for Responsible Agricultural Investments in the Context of Food Security and Nutrition*, and the *United Nations Guiding Principles for Business and Human Rights*, which can be used by international actors in their engagement with land in Africa. The utilisation of these instruments will contribute in minimising the international contribution to land-based conflicts on the continent.

Partner countries, International Non-Governmental Organisations, United Nations Agencies, the G8 and development partners have the responsibility to monitor how international actors uphold the values and principles of human rights and dignity in their land related activities. By upholding these values and principles and being accountable, international actors contribute in conflict prevention and build a peaceful environment for sustainable business activities.

9.3.1 Role of the United Nations

There are many opportunities for UN agencies to operationalise these guidelines and prevent

land related conflicts. Peace operatives, undertaken by the departments that deal with peace and political affairs are expected to create conditions for lasting peace in countries experiencing conflicts, initiate peace building and prevent relapse into conflict. These responsibilities require interventions related to mediation and implementation of peace agreements. In performing its role, the Mediation Support Unit ought to pay attention to land as a source and solution of conflict during its engagement with regional and sub-regional organisations as well as within the UN system.

Equally important is the Peace Building Support Office of the UN as it engages issues related to national resources and women in the UN peace building architecture. Engagement in preventive diplomacy, conflict mediation, peace agreements and transitional justice will find value in these guidelines. Specifically, recommendations related to protection of abandoned properties, and land and property records are relevant here. UN agencies can also collect evidence on land-based conflicts to build the policy and legal frameworks for reforms.

Within the UNDP, land is integrated into programming in rule of law, transitional governance, conflict prevention and the management of extractives. The Guidelines will find a home in UNDP interventions especially with regard to the ethnic dimension of land-based conflicts.

Other global agencies that will find value in the guidelines include UN-Habitat especially regarding conflicts in informal settlements and in its work within the Global Land Tool Network (GLTN). GLTN's work of reducing poverty through land reform, improved land management and security of tenure has a direct bearing in conflict prevention and ethnic mistrust and land-related disputes.

The Office of the High Commissioner for Human Rights (OHCHR) facilitates human rights mechanisms including early warning systems, the rights of indigenous peoples, immigrants, and internally displaced persons. Land is a critical aspect in the execution of the OHCHR mandate.

9.4 Continental Level

9.4.1 Leadership Endorsement of Guidelines

The 2009 AU Declaration on Land Issues and Challenges in Africa, as well as subsequent AU decisions, mandates the ALPC to build capacity and work closely with Member States to

reform inadequate and inappropriate land policies and legal frameworks while strengthening institutions at the continental, regional, national and sub-national levels to implement new policies and legal frameworks. Given the centrality of land in social transformation and the damaging effects of conflicts, the ALPC will provide support to Member States so that the land policy development and reform process is conflict sensitive. For ALPC to deliver on this mandate, continental institutions will need to endorse and champion these guidelines.

9.4.2 Oversight and Policy Guidance

It is expected that the African Union will play a continuous oversight role on implementation of the Guidelines once they are adopted. In doing this, the AU will receive periodic feedback through its monitoring mechanisms and use the feedback to provide any required further policy guidance. Considering the challenges of transboundary natural resources management, it is important that the AU considers developing a “Continental Transboundary Resource Sharing Protocol/Policy Framework” to minimise transboundary tensions and conflicts.

9.4.3 Sensitisation and Lesson Learning

The ALPC will work with land related policy, training and research institutions in their development of tools, capacity development and knowledge generation to ensure that issues related to land-based conflict are incorporated systematically and strategically in policy formulation, learning, knowledge generation and programming.

9.5 Regional Level

At the regional level, Regional Economic Communities (RECs) will disseminate and sensitise their Member States on the importance of the Guidelines to land policy development and implementation. Regional integration - free movement of peoples, goods and services – ought to be strengthened. It minimises interstate tensions, trans-boundary conflicts and insurgencies. RECs, such as IGAD, ought to be strengthened so that they can effectively play their role in peace and conflict. Building a “Trans-boundary Land Governance Framework” which incorporates a dispute resolution mechanism and linked to continental and global platforms would be important in conflict prevention.

9.6 National government

The state is not always viewed as a neutral arbiter in competing land claims and provision of inclusive economic and social development. Therefore, state and nation building are a first step in preventing conflict and peace-building. This is because most land-related conflicts

with an ethnic dimension result from the failure of the state to address the root causes of conflict. National governments in implementing these Guidelines will need to put in place mechanisms for inclusive growth committed to minimisation of inequalities through fair resource distribution. Furthermore, national governments have a responsibility to strengthen land governance state and non-state institutions and to protect the human rights of land users. Weak governance institutions lead to criminality in the land sector, forced evictions, illegal sales, error-laden, non-inclusive and adjudication registration, land grabbing, displacements including through armed insurgency. By building accountable, inclusive, transparent and corruption-free land governance institutions and systems, governments will grow inclusive economies and healthier communities.

Programmes that directly address corruption in the land sector ought to be prioritised by all Member States. Corruption leads to poverty and perpetuates socio-economic inequalities, at times manifested ethnically, which in turn lead to sharp competition over political power and land based resources and ethnic tensions. In some cases, corruption and abuse of power lead to identity groups grabbing land from other groups and forced migrations. Building effective and transparent systems in land administration and management, addressing legal pluralism through inclusive and consultative processes would contribute significantly in prevention of conflict.

The Guidelines have shown that managing ethnic diversity is central to the peaceful co-existence of different identity groups. Encouraging inter-ethnic sharing and learning, working with legitimate land authorities to identify areas of potential conflict and how these could be resolved, and building community-led conflict management systems are key to conflict prevention. Equally important are platforms which increase interethnic cohesion and integration through targeted programs.

9.7 Monitoring and evaluation

The operationalisation of the Guidelines will have a monitoring and evaluation component in order to track progress, challenges and the emerging lessons. This will also help institutions to increase efficiency and effectiveness in their interventions before, during and after conflicts.