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LAND PROJECT, RWANDA

**REVIEW OF RWANDA'S LEGAL FRAMEWORK FOR LAND IN
RELATION TO THE FRAMEWORK AND GUIDELINES FOR LAND
POLICY IN AFRICA**

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EXECUTIVE SUMMARY

As part of the five-year Rwanda LAND Project, the Project reviewed Rwanda's legal framework on land to assess its conformity to the 2010 Framework and Guidelines on Land Policy in Africa, the development of which was sponsored by the African Union Commission, the UN Economic Commission for Africa, and the African Development Bank (the AU Framework).

In many significant areas, Rwanda's legal framework governing land is in step with (and in some cases extends beyond) the principles set out in the AU Framework. In other areas, the legal framework for land falls short due to: the absence of guiding principles; gaps and inconsistencies within the legislation and across sectors; and a focus on legislation designed for the country's future at the potential expense of the present population. The findings are set out in relation to the six components of the AU Framework:

1. Centrality of land in development. Rwanda's legal framework includes attention to the two areas called out in the AU Framework: 1) recognition of the legitimacy of customary land systems and institutions; and 2) strengthening the land rights of women. For purposes of first registration, the 2013 Land Law puts customary land rights on an equal footing with rights obtained through operation of formal law and recognizes the equivalence of land accessed and transferred under formal and customary methods. The success may be transitory, however, because land transfers must be registered and the fees imposed are prohibitively high for much of the population, creating the potential for non-compliance, which would dilute the value of rights held by the poorer landholders and undermine of the accuracy of the land register.

The legal framework governing women's land rights affirmatively recognizes equal rights to land regardless of sex and some degree of self-determination over land rights through election of a marital property scheme. However, the protections granted to spouses under these laws do not reach those in customary marriages and polygamous relationships.

Overall, Rwanda's legal framework appears to operate on a premise that once land is registered, customary law is no longer relevant. The AU Framework does not contemplate such a wholesale and abrupt transition. Especially in areas where social norms govern the behavior and expectations of individuals and families, a more evolutionary and nuanced approach is more likely to support all members of the population through the lengthy process of social change.

2. Mainstream land in poverty reduction programs. Rwanda's legal framework has a number of provisions designed to support land access and tenure security for those who are poor and marginalized. However, the legislation lacks any overarching statement of principle regarding the role land can play in poverty alleviation. Perhaps as a result, poverty alleviation objectives are not as integrated into the legal framework as they might be. The consequences are multiple:

- Some of the beneficial impact of provisions protecting and strengthening the land rights of poor people may be lost because they are not prioritized in relation to the rights of other actors;
- Decentralized decision-making on land allocations is less likely to further national strategies until experience and capacity increases;

- Land-based investments and projects may lack appropriate attention to EDPRS2 priorities, such as enabling graduation from extreme poverty through on and off-farm income generation activities; and
- Missed opportunities to develop and promote Rwanda as a global leader in profitable, socially- and environmentally-responsible investment in land.

3. Support for agriculture as engine of growth. The 2013 Land Law supports the kind of variety of tenure arrangements that the AU Framework identifies as critical to sector growth, especially in land-scarce conditions. Long-term, renewable leases allow time for investors to profit from development of essential infrastructure, and short-term leases increase land access for marginalized farmers and promote productive land use. However, while the legal framework has the scaffolding to support the engagement of smallholders and community members in commercial agriculture projects, there is currently no requirement or incentive for a project promoter to do so. Absent such inclusion, agricultural investment is unlikely to fulfill the agricultural productivity and poverty alleviation objectives that are linked in EDPRS2.

4. Support and manage non-agricultural land uses. Rwanda's legal framework for land is a valuable tool to promote profitable, socially and environmentally-responsible investment and development, if used to its full potential. The land tenure systems and flexible instruments like leases and contracts give officials a number of different tools to negotiate project terms and conditions that balance the interests of the State, private investors and developers, and the population.

5. Protect natural resources and ecosystems. The AU Framework prioritizes protection of the continent's rich biodiversity and valuable ecosystems. Rwanda's legal framework for land establishes the foundation for the kind of land governance system necessary to manage the protection and sustainable use of its limited land. However, the legal framework lacks an overarching statement of principle on the topic. The omission appears to limit the overall ability of the legal framework for land to further legislative support for the preservation and sustainable use of land, leads to some inconsistencies and ambiguities in various provisions, and to some degree restricts the development of appropriate secondary legislation.

6. Develop effective land administration systems. Rwanda's legal framework for land includes all of the elements identified by the AU Framework as supporting an effective system of land administration. Further work on developing a Rwanda's land information system is designed to establish and maintain clear, accurate, and easily accessible information on the country's land. The legislation is based on principles of accuracy, efficiency, and reliability that are intended to support tenure security and a vibrant land market. Legislation at all levels increasingly includes protections for the public against arbitrary, discriminatory, or otherwise inappropriate exercises of governmental authority relating to land. Various references to the administrative review process are somewhat inconsistent from instrument to instrument and in some notable cases, such as the 2013 Land Law itself, are absent altogether. However, as legislation is revised, the system for administrative review appears to be evolving, which may reflect a growing GOR awareness of the need for a broad-based system to support government accountability in administrative action.

The framework is designed for decentralized management of land. However, to a significant degree, current legislation fails to provide necessary guidance for achieving national priorities in land allocations, land leasing, use of swamp land, and other land governance activities. Absent that guidance, decentralized authorities lack the

information to make decisions designed to help achieve strategies such as those set out in the EDPRS2.

Recommendations. The following are recommendations arising out of the review of the legal framework for land in relation to the AU Framework and designed to extend Rwanda's already significant progress:

- 1. Include statements of purpose and guiding principles in all legislation.** A statement of principle regarding the role of land in the alleviation of poverty will be particularly useful in: setting priorities for land allocations where there is pressure to develop a market-driven, investor-friendly environment. A statement of principles regarding the protection and sustainable use of land can assist in increasing the efficiency and effectiveness of procedures to govern the selection of land for development, preparation and use environmental and social impact assessments, creation of mitigation plans, and monitoring and evaluation of projects.
- 2. Conduct targeted research on the impact of extending protections granted spouses in civil marriages to those in customary marriages and develop a policy position.** More information is needed before the government can develop a policy position on the issue of land rights and customary marriage. Research should be conducted to obtain a better understanding of the individuals impacted by the gaps in legal protection, the extent of the trend toward civil unions, the range of possible options for addressing the gaps, and other considerations.
- 3. Require land-based projects to address national objectives for rural development, poverty alleviation, on and off-farm income generation, and support for graduation from extreme poverty.** The legal framework does not actively support the meaningful participation of smallholders, women, poor and marginalized people, and other rural residents in land investment and development programs. Requirements for social impact assessments in addition to environmental assessments and community consultations may assist in identifying the needs and opportunities within local communities. In addition, the legal framework can support particular initiatives designed to help ensure local communities benefit from development, such as prioritizing a percentage of land allocations for community-based enterprises and projects that include the kinds of smallholder aggregation farming models and supporting markets and infrastructure envisioned in the EDPRS2 and Strategic Plan for the Transformation of Agriculture.
- 4. Formalize and institutionalize a system for administrative review within the land sector.** Rwanda can help continue to build its international reputation for accountable, transparent government action by creating a single process for administrative review that is applicable to all sectors and all levels of government action. A process developed within the land sector might serve as a pilot for the kind of government-wide system of administrative review essential to a middle-income country.
- 5. Develop tools to implement land legislation and provide training on their use.** The legal framework for land will, in large measure, be implemented through to use of contracts, leases, application forms, public notices, templates for assessments, procedures, decision-making systems, and checklists. Those documents must be accessible, enforceable, consistent with the governing law, and harmonized horizontally and laterally. The tools should be created, piloted, and refined based their effectiveness and input from officials and other stakeholders using the tools.

6. Use a central governance body to manage land allocation, expropriation, and use. A central governance body with authority over land allocation, leasing, land assignment, swamp land use, and land expropriation can help ensure effective and efficient control over the use of GOR land. As experience with the decision-making processes grows and capacity within local and specialized bodies increases, authority can be decentralized.

7. Draft regulations to govern the requisition and confiscation of land. To date, none of the orders appears to focus on the procedures for determining what land may be requisitioned and confiscated, the procedures for making the determinations and for the lessee to challenge decisions, requirements to assign requisitioned land, and so forth. Such regulations are necessary to ensure that the government officials responsible for land requisition and confiscation exercise their judgment in accordance with the law and with recognition of the often competing interests involved.

Conclusion: Rwanda as global leader in land investment. Rwanda's continued attention to the legal framework will be time well-spent. The pressure on Rwanda's land and the drive to build a market-driven economy that provides for all its citizens places Rwanda at the center of the global attention on large-scale land investments. To date, few African countries have developed and consistently and successfully implemented plans for good governance of its natural resources, including land. Rwanda is an ideal candidate to be a global leader. The country has a clear vision set out in EDPRS2 and other policy documents. The administrative structure of the land sector continues to develop. The sector has a high level of capacity in its central governing body and a well-conceived structure for decentralized support. The sector has proved its ability to design and execute programs, and the country continues to invest in its legal framework. Rwanda is, in short, perfectly positioned to become a global leader in promoting profitable, socially and environmentally responsible investment in land.

1.0 INTRODUCTION

The five-year Rwanda LAND Project seeks to strengthen the resilience of Rwandan citizens, communities, and institutions and their ability to adapt to land-related economic, environmental, and social change. The project has two main components:

1. Increased capacity of local Rwandan institutions to generate high-quality evidence-based research on land related issues and Government of Rwanda (GOR) laws and policies; and
2. Increased understanding of land laws, policies, regulations, and legal judgments on land-related issues by GOR officials, local civil society organizations, research institutes, and citizens.

During the second year of operations, the project's GOR counterpart prioritized reviewing key pieces of land legislation. During a meeting between LAND project and Rwanda Natural Resources Authority (RNRA), the group agreed to divide the activity into two tasks: 1) reviewing land-related draft laws and regulations to address their legal soundness and implications; and 2) drafting new regulations provided for in the 2013 Land Law. In addition, the group agreed that the LAND project staff would review Rwanda's legal framework on land to assess its conformity to the 2010 Framework and Guidelines on Land Policy in Africa, the development of which was sponsored by the African Union Commission, the UN Economic Commission for Africa, and the African Development Bank (the AU Framework).¹ This is the report of that review.

The review included consideration of the following legislation and draft legislation, to the extent relevant to the principles contained in the AU Framework:

1. National Land Policy, 2004;
2. Law No. 43/2013 of 16/06/2013 Governing Land in Rwanda (2013 Land Law);
3. Draft Law relating to Expropriation in Public Interest, 2013 (Draft Expropriation Law);
4. Draft Law on Matrimonial Regimes, Family Donations, and Successions, 2013 (Draft Succession Law)²
5. Draft Law governing Surveying Profession in Rwanda, 2013 (Draft Surveying Profession Law)
6. Presidential Order determining the Functioning and Powers of the Registrar of Land Titles, 2013 (Registrar Order);
7. Ministerial Order No. 001/2008 of 01/04/2008 determining the Requirements and Procedures for Land Lease (2008 Land Lease Order)³;
8. Ministerial Order No. 008/16.01 of 13/10/2010 Establishing the List of Swamps, their Limits, and Regulating their Management and Use (Swamp Land Order);
9. Draft Ministerial Order determining Modalities of Land Registration, Its Procedures, and Modalities of Cancellation of Land Registration, 2013 (Draft Land Registration Order);

¹ Framework and Guidelines on Land Policy in Africa. 2010. Addis Ababa: AUC-ECA-AfDB Consortium. Available at: <http://rea.au.int/en/sites/default/files/Framework%20and%20Guidelines%20on%20Land%20Policy%20in%20Africa.pdf>

² While not within the legal framework for land, the Draft Succession Law has authority over several of the most common ways in which women access land and we have, therefore, included the law in our analysis.

³ The references are to the existing Order, which includes land allocation, leasing, and the assignment of land. The report also discusses the proposed Presidential Order on Land Allocation and Leasing and proposed Ministerial Order of Assignment of Land, which were prepared by the LAND Project.

10. Draft Ministerial Order determining Modalities for Sub-Leasing of Agricultural, Livestock and Forest Land, 2014 (Draft Sub-Leasing Order); and
11. Draft Ministerial Order determining Responsibilities, Organisation, Functioning of District Land Bureau, 2013 (Draft District Land Bureau Order).

This report is organized as follows:

- Section 2 provides a summary of the principles in the AU Framework that are designed to guide the development of land policy in Africa;
- Section 3 reviews the extent to which Rwanda's legal framework for land conforms to those principles;
- Section 4 summarizes the findings and makes some recommendations; and
- Section 5 concludes.

2.0. SUMMARY OF AU FRAMEWORK PRINCIPLES

The 2010 AU Framework is the result of a joint project undertaken by the African Union Commission, the UN Economic Commission for Africa, and the African Development Bank. These entities supported a five-year consultative process to create a framework and guidelines to assist member countries in the formulation and implementation of land policies. The process included extensive inputs from regional economic communities and individual experts from East, West, Central, and Southern Africa.

The resulting AU Framework is designed to guide African countries by articulating the role that land policy can play in supporting critical national and regional objectives, including: social stability, economic growth, poverty alleviation, and protection of environmental resources. The AU Framework is designed to encourage countries to undertake systematic consideration of land and the environment in policymaking, and to recognize the value of integrated approaches to development strategies that impact land rights and interests. To that end, the AU Framework articulates six broad principles to inform the development, content, and implementation of land policy in member states:

1. Recognize the centrality of land in development;
2. Mainstream land in poverty reduction programs;
3. Make agriculture an engine of growth;
4. Manage land for other, non-agricultural uses;
5. Protect natural resources and ecosystems; and
6. Develop effective land administration systems.

The review in Section 3 below looks at each of the AU Framework's six principles in turn, and considers the extent to which the legal framework for land, and especially the 2013 Land Law, are consistent with and further those principles. The discussion identifies some gaps and opportunities to align Rwanda's legal framework even more closely with the principles contained in the AU Framework. In addition, the discussion considers the thematic areas and priorities set out in the GOR's Economic Development and Poverty Reduction Strategy (2013 – 2018) (EDPRS2) and the extent to which the legal framework for land supports that strategy.

3.0 REVIEW OF LEGAL FRAMEWORK FOR LAND

In many significant areas, Rwanda's legal framework governing land is in step with the principles set out in the AU Framework. In the years following the genocide, Rwanda's policymakers recognized the extent to which land access and tenure security were critical to maintaining long term social stability and promoting economic growth. National initiatives took up land issues systematically and comprehensively; most prominently, legislation promoted development of institutions of land governance and a comprehensive land information system founded on nationwide land registration. In other areas, such as ensuring that land access and development promote poverty alleviation and social and environmental responsibility, the legislative framework is less well developed.

Organized under each of the AU Framework's six principles, the review below highlights some of the achievements and suggests areas for future attention.

3.1 Centrality of land in development

The AU Framework promotes a holistic perspective on the role of land in national development, encouraging recognition of the inherent links between land and other sectors and development processes that impact land access, use, and stewardship. The AU Framework identifies two specific areas where attention to land issues can help achieve broader development objectives: 1) recognition of the legitimacy of customary land systems and institutions; and 2) strengthening the land rights of women.

Consistent with the AU Framework's approach, Rwanda's 2004 National Land Policy and 2013 Land Law recognize land as fundamental to the country's development objectives. The National Land Policy notes the extent to which the country's future was tied to its ability to manage its land, and the 2013 Land Law highlights the GOR's authority to manage the country's land "in the general interest of all with a view to ensuring rational economic and social development" (Article 3). The Land Law's focus on securing land rights and supporting the productive use of land is calculated to support achievement of these objectives. Both the Land Policy and Land Law also include protections in two areas that the AU Framework identifies as critical to the national progress of member states: customary rights and women's land rights.

3.1.1 Recognition of customary land system

The 2004 Land Policy recognizes land rights based on customary law (§5.1.3). For purposes of first registration, the 2013 Land Law puts customary land rights on an equal footing with rights obtained through operation of formal law; under the law, those holding possessory rights based either a customary or formal system are emphyteutic leaseholders (Article 5). The 2013 Land Law also recognizes the equivalence of land accessed under formal and customary methods, including gifts, inheritance, and exchange (Article 10), and the right to transfer land rights by those methods (Article 21). The legislation's recognition of customary rights is consistent with the principles set forth in the AU Framework and places Rwanda within the small group of African countries successfully formalizing customary land rights through its program of systematic land registration.

The success, however, may be transitory. The 2013 Land Law requires registration of all land and, thereafter, the land rights recognized and registered are subject to the requirements of the formal law. The 2008 Ministerial Order determining the Modalities of Land Registration requires registration of most transfers of interests in land, including transfers by sale, gift, inheritance, assignment, and mortgage. Leases and sub-leases for five years or more must be registered.⁴ Thus, while the formal law recognizes the validity of what have historically been considered legitimate and valid land transfers under customary law, with land registration customary law is subsumed by the formal law, and most land transfers must be registered in order to be recognized as legal.⁵

The registration requirement may create a significant barrier to the recognition of land rights obtained by transfer because of the fees imposed. Fees apply to registration of land transfers, regardless whether the land rights were obtained under customary or formal law,⁶ and the current fees are high.

As an example, the fee for registering a land sale is reported to be RWF 28,700 (about US\$ 42)⁷—an amount that would be prohibitive for much of the population. The experience with the fee assessed for obtaining a copy of the registered lease during first registration suggests that even very low fees may inhibit compliance. In the course of the registration program, the government recognized that the relatively modest fee of RWF 1000 (about US\$1.50) was a barrier to the poorest people collecting their new leases, and the government responded with a fee waiver.⁸ The fee for registering a land sale is 28 times the fee assessed for the copy of the registered lease, and a significant level of noncompliance can be predicted.

The fees for registration of land transfers have the potential to undermine the achievement of nationwide registration: if poorer sections of the population fail to register land transfers, the land register will become dated and lose the validity and credibility that is critical to tenure security. Moreover, because people will continue to transfer land, an informal market in land may emerge, creating (or perpetuating) parallel systems.

Parallel formal and informal land markets harbor significant inefficiencies and can entrench poverty and inequality. Land held by the poorer and more marginalized members of society is most likely to be transferred on the informal market, where the unregistered land is likely to have lower value than the registered land transacted on the formal market. In short, parallel land markets will dilute the value of land registration for those poor and marginalized individuals who were among those who were most likely to benefit from land registration.⁹

⁴ Ministerial Order No. 2/2008 of 01/04/2008 determining Modalities of Land Registration, articles 4 - 5.

⁵ Under the current 2008 Order determining Modalities of Land Registration and the pending draft order, registration is either compelling or conclusive evidence of a land right. See Draft Ministerial Order relating to Land Registration in Rwanda and discussion in USAID-Rwanda. 2014. Review of Draft Ministerial Order relating to Land Registration in Rwanda. Kigali: USAID-Rwanda Land Project.

⁶ Common land transactions are those related to inheritance, or gifts and exchanges. The authors have been unable to verify the current fees for registration of those types of transfers.

⁷ US\$1.00 = RWF 679 (12 July 2014). A land sale requires a notarized sale agreement (RWF 5,700) and registration of the transfer of rights (RWF 23,000). The World Bank. 2013. Doing Business: Registering Property in Rwanda. Washington DC: The World Bank.

⁸ Polly Gillingham and Felicity Buckle. 2014. Rwanda Land Tenure Regularisation Case Study. Evidence on Demand. Hertfordshire, UK: HTSPE. This finding is discussed more fully in Section 3.2.2

⁹ See generally discussion in The World Bank. 2003. Land Policy for Growth and Poverty Reduction. Washington D.C.: The World Bank, Chapters 2 - 4.

With the significant achievement of nationwide land registration behind them, policymakers are understandably anxious to capitalize on the positive outcomes, including the potential for a self-sustaining Land Register. However, based on income, about half the population lives below the poverty line, and most will likely be unable to pay fees that are set at rates designed to support the Land Register. A more graduated approach to the transition to a sustainable land administration system may help ensure that the formal law and evolving systems continue to recognize, protect, and strengthen the land rights of all Rwandans beyond first registration.

3.1.2 Strengthening women's land rights

The legal framework governing women's land rights in Rwanda is among the most progressive in Africa and reflects a substantial achievement.¹⁰ The 2013 Land Law affirmatively recognizes equal rights to land regardless of sex and some degree of self-determination over land rights through election of a marital property scheme (Article 4).¹¹ Moreover, a few of the provisions in the 2013 Land Law appear designed to help ensure that these principles of equality are recognized in practice. For example, the 2013 Land Law requires prior consent of all interest holders in land before transfers (Article 22), allocation of land to those denied land due to historical reasons (Article 67), and specific recognition of certain groups as holding customary rights to land (Article 66).

Rwanda's 2013 Draft Succession Law applies the principle of equality to the primary methods through which women access land—marriage, inheritance, and intra-family transfers. The Draft Succession Law, for example, requires spousal consent for family donations of community property (Article 27) and requires equal treatment of male and female children in a variety of circumstances. Other laws, such as the Draft Expropriation Law, implement the principle of equality through requirements like those that protect the rights of spouses to receive compensation for land takings. Various subordinate instruments include similar support for gender equality with relation to interests in land. The 2008 Land Lease Order, for example, requires identification of the interests of spouses in land allocations and leases (Article 6) and the ability of single women and men to hold land rights without interference (Article 51).

However, as many observers have noted, the protections granted to spouses under these laws do not reach all Rwandan women.¹² In keeping with Article 26 of the Constitution, the 2013 Land Law and the subordinate legislation only recognize marriages of individuals who have monogamous, civil unions. For those who are in such unions, the laws and orders protect spousal land rights in accordance with a couple's chosen matrimonial property regime. Those married in accordance with customary or religious law (but not civil law), or those in polygamous relationships are outside the scope of the legal protections.¹³

¹⁰ See discussion in Aparna Polavarapu. 2014. Providing Meaningful Land Rights for the Women of Rwanda. *Yale Human Rights and Development Journal*. 14:1, 105-154, E. Daley, Rachel Dore-Weeks, and Claudine Umuhiza. 2010. Ahead of the Game: Land Tenure Reform in Rwanda and the Process of Securing Women's Land Rights. *Journal of Eastern African Studies*. 4:1, 131-252, and John Leckie. 2013. From Policy to Action: Promoting Equitable Land Ownership in Ethiopia and Rwanda. CGIAR (66% of women hold land individually or jointly with husband).

¹¹ As noted in the discussion that follows, the Constitution and Land Law only recognize civil marriages.

¹² Polavarapu, 2014; Santos et al, 2012; Daley et al., 2010.

¹³ There is one exception. Article 39 of Law No. 59/2008 of 10/09/2008 on Prevention and Punishment of Gender-Based Violence provides community property rights for informal spouses in the event an informal spouse decides to marry another person in a civil union. However, the provision, which survived a Supreme Court challenge, is limited in application. See detailed discussion in: Ndongiza, Madina, Dr. Fidele Masengo, Christine Murekatete, and Anna Knox.

Estimates of the number of women affected by the failure to extend protections to spouses in customary marriages and polygamous relationships vary. A recent study reported that 27 percent of women and 34 percent of men surveyed identified themselves as in customary marriages, and five percent of women and 10 percent of men surveyed identified themselves as in polygamous relationships.¹⁴ A study conducted in 2011 that was focused on the potential impact of land registration reported that 22 percent of married women interviewed were in customary marriages.¹⁵ The 2005 Demographic and Health Survey reported that 12 percent of women were in polygamous relationships.¹⁶ Based on these estimates, current legislative protection conditioned on civil marriage may be failing as much as 30 percent of Rwandan women.

As a practical matter, the protections of the Draft Succession Law, Land Law, and subordinate land legislation like the 2008 Order on Land Leasing, only reach the population of women who: 1) have an opportunity to elect to enter into monogamous, civil unions instead of informal unions;¹⁷ 2) have a reasonably good understanding of their rights and how those rights are impacted by the nature of their relationship with their intended husbands; 3) and have the power to bargain effectively with their intended husbands regarding the desired marital property regime. In other words, the legal framework regarding marital property rights is designed for a population that has some degree of legal knowledge, access to government offices, and enjoys some degree of equality in their personal relationships. While a growing percent of the population may have these qualities, the work of civil society organizations and researchers suggests that evolution in knowledge and status has not reached everyone. Social change takes a long time. Community norms are persistent and tend to perpetuate male control of assets, including land. Even educated women may continue to have limited ability to assert their rights within traditional family and community structures.¹⁸

2013. Assessment of the Legal Framework Governing Gender and Property Rights in Rwanda. Kigali: Rwanda-USAID LAND Project.

¹⁴ RCN Justice & Democratie. 2013. Accès des femmes à la terre au Rwanda: Vers l'égalité? Bruxelles: Justice & Democratie. These percentages appear to be based on the entire group of respondents (versus married respondents) These percentages are consistent with those reported in Abbott, Pamela and Frank Alinda. 2012. The Impact of Land reforms on Women's Economic Empowerment, cited in Jones-Casey, Kelsey, Laura Dick, and Alfred Bizoza. 2014. The Gendered Nature of Land and Property Rights in Post-Reform Rwanda. Kigali: Rwanda: USAID Rwanda LAND Project. A large percentage of the women in customary marriages may be prevented from marrying because they are not of age: the 2005 Demographic and Household Survey found 19% of married women reported being married before they were 18, and the median age for first marriages was 20.7 years old. Institute National de la Statistique du Rwanda (INSR). 2006. Rwanda Demographic and Household Survey 2005. Calverton, Maryland USA: INSR and ORC Macros.

¹⁵ Daniel Ayalew Ali, Klaus Deininger, Marguerite Duponchel, and Loraine Ronchi. 2012. How Land Tenure Regularization Can Contribute to Agricultural Growth in Rwanda. Washington DC: The World Bank.

¹⁶ National Institute of Statistics in Rwanda and ORCM. 2006. Rwanda Domestic and Household Survey, 2005. Calverton, Maryland: INSR and ORCM

¹⁷ It is also important to recognize that some percentage of the women in customary marriages were married before the legal age of consent. Even if the legal framework recognized customary marriages, it is unknown if the definition of a customary marriage would extend to those where one or both spouses are under age.

¹⁸ Indeed, a recent study concluded that despite knowledge of their legal rights to share decision-making and to consent to property transfers, many women continue to lack meaningful participation in decision-making over marital assets such as land and financial decisions. K. Jones-Casey, Laura Dick, and Alfred Bizoza. 2014. The Gendered Nature of Land and Property Rights in Post-Reform Rwanda. Kigali: Rwanda: USAID Rwanda LAND Project. RCN Justice & Democratie, 2013 reports that only 30% of women surveyed reported that they had actively consented to land sales. See also Thierry Hoza Ngoga. 2012. Empowering Women through Land Tenure reform: The Rwandan Experience. A paper presented at the Expert Group Meeting, UN Women, June 25 – 27, Geneva; Rwandan Women's Network. 2011. Experience of Women in Asserting Their Land Rights. Rome: International Land Coalition; Daley et al., 2010; and USAID-Rwanda. 2009. Community Legal Assistance Pilot Program. Burlington, VT: ARD, Inc.

The trend appears to be for more Rwandan couples to enter into civil unions.¹⁹ However, women who enter into civil marriages are perhaps more likely to be those that have less need of the protections. Because men may view the rights granted women in a civil union to be gained at the expense of the rights traditionally asserted by men, some men will oppose civil unions. Women who are able to negotiate for formal marriage are likely to have some bargaining power within the relationship already and are, therefore, not those most needing the protections.

In summary, the legal framework for land includes recognition of customary rights and women's land rights. The legal framework supported customary rights in first registration process, and the high percentage of jointly titled land²⁰ evidences the GOR's ability to implement formal law protecting the rights of women.

To some extent, the legal framework's shortcomings in this category are perhaps a consequence of the country's aspirations. The 2004 Land Policy pronounced customary law "obsolete," and, after first registration, the legal framework gives little recognition for the operation of customary law and traditional systems. A few provisions, such as the ability of an individual to lodge a caveat based on an undocumented claim under Article 61 of the 2008 Land Registration Order, allow for assertion of rights based on an interest acquired under customary law. In general, however, the legal framework appears to operate on a premise that once rights are formalized, such as through land registration, or there is an opportunity to formalize rights, such as through civil marriage, customary law is no longer relevant.

The AU Framework does not contemplate such a wholesale and immediate transition. Rather, without directing any particular result, the AU Framework notes the legitimacy of customary institutions and the challenges countries face in blending tradition and modernity in policy and practice. The AU Framework thus recognizes some continued legitimacy of customary rights, which new institutions will incorporate. Especially in areas of social norms governing the behavior and expectations of individuals and families, this more measured, evolutionary, and nuanced approach is more likely to support all Rwandans through the lengthy process of social change.

3.2 Mainstream land in poverty reduction programs

The AU Framework calls for countries to create policy foundations that support increased access to land and tenure security for poor and marginalized groups. The AU Framework encourages countries to undertake tenure reforms to increase economic opportunity. The AU Framework also promotes the inclusion of pro-poor priorities in policies and development programs to balance the impact of market-driven systems and orientation.

As discussed in this section, Rwanda's legal framework has a number of provisions designed to support land access and tenure security for those who are poor and marginalized. However, the legislation lacks any overarching statement of principle regarding the role that land plays in poverty alleviation. There is no guiding vision for how land will support related EDPRS2 goals, such as rural development and the graduation from extreme poverty. Perhaps as a result, poverty alleviation objectives are not as integrated into the legal framework as they might be. The consequences are multiple. For example:

¹⁹ RCN Justice & Democratie, 2013.

²⁰ As of March 2012, 83% of private land was jointly titled in the name of husband and wife. T. H. Ngoga, 2012 at 5.

- Some of the beneficial impact of provisions protecting and strengthening the rights of poor people may be lost because they are not prioritized in relation to the rights of other actors;
- Land-based investments and projects may lack appropriate attention to EDPRS2 priorities, such as emphasizing on- and off-farm income generation activities;
- Decentralized decision-making on land allocations is less likely to further national poverty alleviation strategies until experience and capacity increase; and
- Missed opportunities to develop and promote Rwanda as a global leader in profitable, socially- and environmentally-responsible investment.

This section identifies areas in which the legal framework for land creates the kind of foundation the AU Framework envisions and areas where the legal framework can help accelerate the reduction of poverty, as envisioned by the EDPRS2.

3.2.1 Land access

Many of the 2013 Land Law's provisions and the subordinate legislation support land access. The laws:

- Permit alienation of leased land;
- Limit freehold parcels to five hectares;
- Promote allocation and assignment of land in the private domain of the State; and
- Allow subleasing.

Together and in combination, the legislation can assist in making land more available to those with limited resources by limiting large holdings, encouraging the transfer of land, and creating opportunities for low-cost entry points for those with a relative surplus of labor.²¹

To the extent that such provisions create opportunities to access land, however, the opportunities are, in most cases, available to everyone. In practice, however, procedures allowing unregulated access can have the perverse effect of limiting access for some. For example, land allocations are often awarded through open competition or selection from multiple applications.²² Although facially neutral, these kinds of selection procedures will likely favor those who have the greatest resources, experience, and sophistication.

Perhaps recognizing this procedural bias against the poorer and more marginalized members of society, the 2013 Land Law obligates land officials to assist certain disadvantaged groups with land access. However, the law does not provide any guidance on how land officials should balance that obligation with potentially competing interests in promoting investment and development of targeted enterprises. What percentage of land allocations should serve the needs of disadvantaged groups for land access? What types of projects and project components will satisfy a pro-poor requirement? Especially in a market-driven environment such as sought by Rwandan policymakers, the legal framework will likely need to include some specific guidance and supporting procedures to achieve poverty alleviation objectives.

²¹ World Bank, 2003.

²² See 2013 Land Law, Article 17.

The thematic areas and priorities in EDPRS2 provide structures through which the legal framework for land can integrate poverty alleviation into land access policies and procedures. For example, under EDPRS2, the private sector is tagged to help increase the agricultural productivity of smallholders through, for example, development of aggregation farming models and linkages between private enterprise and public programs (Section 3.0). However, the legal framework does not yet include requirements for components of project design and business plans. Guidance can be contained in subordinate legislation, but before such explicit legislation can be drafted, there must be a clear and adequate policy foundation expressed in the enabling laws.

3.2.2 Tenure security

Several of the components of the legal framework are specifically designed to establish and strengthen tenure security. Most prominently, the 2013 Land Law grants long-term emphyteutic leases to those in possession of land, whether acquired under customary law or otherwise (Article 5). First registration provided a high percentage of holders of land interests with documented rights, including spouses in civil marriages,²³ some percent of spouses in customary marriages, co-owners, and some with subordinate interests. Most of those in possession of land, regardless of social status and economic circumstances, received the benefit of the legal provisions. Some exceptions are discussed below.

The legal framework also provides opportunities for subleases of agricultural land and temporary assignments of land, which can increase tenure security for the lessee.²⁴ Subleasing is a means by which lessees can help ensure productive use of their land when they are unable to use it themselves—either because they cannot afford the inputs or because they are engaged in more productive activities, such as off-farm employment. Subleasing and other land rental options are an established means by which populations can transition away from livelihoods based on farming or survive economic and environmental shocks without sacrificing their asset base.²⁵

Other types of provisions, such as those that recognize easements for passage and prohibit blocking water access (Article 38), help maintain the value of land. Including such provisions in the legal framework can help more marginalized members of the population make productive use of their land and avoid the costs of defending their rights of land possession and use on an individual basis.

The framework has some weaknesses. First, almost all of the benefits of the provisions strengthening tenure security are contingent on registration of the underlying lease, land transfer, and often the subordinate interest in land. Accordingly, if registration is financially feasible and the processes comprehensible and efficient, the legal framework provides landholders with the identified benefits, including some degree of security.²⁶ If, however, the registration process is not accessible because of the fees charged or procedural barriers, marginalized landholders in particular may not benefit from the

²³ As notes in section 3.1 above, the protections do not extend to spouses in customary marriages.

²⁴ See, for example, Article 26 of the 2013 Land Law regarding documentation of a sub-lease of agricultural land and the provisions of the Draft Ministerial Order on the same topic.

²⁵ The World Bank, 2003. Land assignment is, for the lessee, a type of forced sublease. Under Rwanda's assignment of land, the government temporarily seizes unproductive or degraded land and transfers use to someone better able to make the land productive. The lessee retains the underlying rights to the land, and can apply for repossession and regain control of the land (Articles 56 - 57).

²⁶ International Finance Corporation and the World Bank. 2013. Doing Business: Registering Property in Rwanda. <http://www.doingbusiness.org/data/exploreeconomies/rwanda/registering-property> (accessed July 11, 2014).

framework. Indeed, they may be disadvantaged because: their unregistered rights may be ignored and lost to the government or someone able to pay the registration fees; the value of their land may decrease; they may not be entitled to compensation in the event of land expropriation; and they may be subject to penalties.

As noted in Section 3.1, affordability of fees was an issue in the program for systematic first registration. The program did not impose a registration fee but did originally charge lessees RWF1000 (about US \$1.50)²⁷ for the lease document. A study of the registration process found that as of June 2012,²⁸ only 42% of leases had been collected.²⁹ Based on survey information, the researchers surmised that the fee charged, fear of taxation, and the queues at the land office were all factors contributing to the low rate of collection. However, following implementation of a program waiving the fee for the poorest households,³⁰ the researchers reported that the collection rate for the exempted group increased to 99%.³¹ The result suggests that the cost of the document was likely the primary (if not sole) factor preventing households from obtaining the full benefit of registration.³²

The impact of the fees on registration indicates a high sensitivity to cost of registration processes. As noted in the earlier discussion, if those who are economically and socially marginalized do not register their land transfers, the integrity and accuracy of the registry may be compromised and undermine the tenure security of those who obtain land through transfers.

Second, as also discussed in Section 3.1, the benefits of marriage do not extend to those who are not in civil unions.

Third, provisions setting standards of land productivity may potentially lead to dispossession of poorer and more marginalized individuals, especially those who may lack the resources to meet land productivity standards. As discussed below, the risk is most pronounced where: 1) opportunities for subleasing and renting out land are limited; and 2) there is no system for meaningful review of agency action, or the system is inaccessible.

The Land Law requires landholders to use land in a productive way, in accordance with the nature of the land (Article 39). Specific productivity standards apply, including cropping or grazing least half of agricultural plots, maintaining sustainable use by protecting the land from erosion, and developing planned infrastructure within a proscribed period (Article 41). Failure to meet productivity standards over a period of three years “for no sound reason”³³ may result in land requisition and, potentially, confiscation (Article 52; Article 58).

²⁷ Rwanda measures poverty using a non-monetary household consumption scale. In 2012, average household consumption was RWF 123,891. National Institute of Statistics Rwanda. 2012. *The Evolution of Poverty in Rwanda 2000-2011*. Kigali: GOR.
http://eeas.europa.eu/delegations/rwanda/documents/press_corner/news/poverty_report_en.pdf.

²⁸ The program ran from a pilot period that began in 2008 through 2012.

²⁹ Gillingham and Buckle, 2014.

³⁰ Ministerial Instructions No 7/2010 MINELA of 20/08/2010 related to Fees Paid for Systematic Land Registration.

³¹ In contrast to this conclusion, there are reports that a large number of leases have yet to be collected but the authors have been unable to confirm that.

³² Gillingham and Buckle, 2014.

³³ Presumably, “sound reason” would include factors beyond the control of lessees, including illness and disability. However, the phrase is not defined and there are no regulations to guide land officials in application of the standard in particular cases.

Under the customary law of many African countries, land rights were tied to land use. Individuals and households accessed land based on their membership in a tribe, clan, or other grounds, and rights to a particular parcel often required clearing the land.³⁴ Many customary tenure systems required community members to use the allocated land to the satisfaction of the local traditional leader. If the leader believed the land was not appropriately used, the leader would reallocate it to another community member.³⁵

The formal legal frameworks of many African countries set standards of land use by leaseholders of state land that are similar to customary law: lessees must develop and use the land in accordance with the terms of the lease, and failure to do may result in loss of the land. Specific standards can help encourage the productive use of land, prevent land speculation, and limit the arbitrary exercise of government discretion.³⁶ In countries such as Tanzania, the standard is broadly worded: the lessee must keep the land in a good state, and if the lessee is using the land for agriculture, he or she must meet community standards for land use practices.³⁷ In contrast, in Botswana, the government reserves the right to repossess the land if it is not used as intended within one year of occupancy.³⁸

From a comparative standpoint, Rwanda's standards are consistent with standards and timeframes set in some other countries for use of land. But there is very limited information available on which to assess the reasonableness of the standards for poorer Rwandans or how officials have applied the standards in practice. Some requirements, such as the obligation to prevent soil erosion, may be onerous for small holders and poor farmers.³⁹ However, the Third Integrated Household Living Conditions Survey reported that an estimated 80% of agricultural land was protected against soil erosion, and a survey conducted relating to the land consolidation program found that most farmers (whether in the program or not) undertook measures to prevent soil erosion--findings that suggest the requirement is not overly burdensome.⁴⁰ However, more information is needed before any firm conclusions can be drawn regarding the reasonableness of the standards set in the legislation and the impact of the standards on particular groups, including those who are poor and marginalized.

That recognized, even if the timeframe and standards for productivity are reasonable, households can always experience periods of low productivity, environmental and economic shocks, and other events that restrict their ability to meet the productivity standards. In addition, household labor may be better allocated to off-farm opportunities in some cases.

³⁴ IFAD. 2013. *Access to Land in West and Central Africa*. Rome: IFAD.

³⁵ *Ibid.*

³⁶ The World Bank, 2003.

³⁷ Village Land Act, 1999.

³⁸ Town and Country Planning Act, 1977 (governing use of commercial and residential lots).

³⁹ Some respondents interviewed made this statement during discussions reported in Jones-Casey et al., 2014. In Ali et al., 2012, the survey found that 55% of parcels had water and soil conservation structures.

⁴⁰ Rwanda National Institute of Statistics. 2012. *Third Integrated Household Living Conditions Survey*; see also National Institute of Statistics. 2010. *EICV3 Thematic Report (78-87% of land protected against erosion)*; USAID-Rwanda LAND and University of Rwanda. 2014. *An Assessment of the socioeconomic and environmental impacts of the Land Consolidation component of the Crop Intensification Program in Rwanda: Preliminary Research Findings*. Kigali: USAID-Rwanda LAND

As noted above, the legal framework provides for subleasing land, which is a common method of coping with periods of limited resources and transitioning to off-farm employment.⁴¹ Opportunities to sublease land allow households that are unable to meet productivity standards, or who have more lucrative off-farm options, to rent out their land to those who are in a better position to use the land. Ideally, the lessee obtains some rental income from the land in addition to retaining the long term rights to the land. On the sub-lessee's side, Ministerial Order No. 001/14 governing subleasing protects the sub-lessee's rights in the event of the sale or inheritance of the subleased land.

Subleasing protects lessees from dispossession under the productivity standards of the 2013 Land Law. In the event of an environmental or economic shock or disaster, however, options to sublease land may be limited; in that case, the lessee is left to defend the lessee's land against requisition. The 2013 Land Law presumably prevents the requisition of land in that circumstance because the productivity of land is adversely affected for "sound reason" (Article 52). To date, however, there are no regulations governing the requisition and confiscation of land, and "sound reason" is undefined. Landholders are left vulnerable to the discretionary (if not arbitrary) exercise of authority of government officials.

The 2008 Land Lease Law and Draft Order on the Assignment of Land both provide avenues for a lessee to seek review of government action. In some cases, court review is also possible. However, even where provisions are designed in accordance with best international practice, few poor people are in a position to appeal an administrative action in formal court. Thus, accessible and meaningful administrative processes are essential. Hearing officers must be well advised on government policies and priorities, in addition to the applicable law. In addition, adequate remedies must be available. More information is needed to assess whether the procedures for review are supporting accountability and serving to ensure that the legislation is being implemented as intended and the outcomes of its implementation are predictable and desirable.

3.3 Support for agriculture as engine of growth

The AU Framework promotes the development of systems that are conducive to the effective management of land for agriculture. The AU Framework recommends adoption of tenure systems that help guarantee returns on investment and clarification of property rights to support the potential for increased revenue. The AU Framework also encourages development of robust systems for the transfer of primary and secondary land rights as a means to expand opportunities for a range of users to engage productively in agriculture.

Rwanda's national strategies recognize the critical role of agriculture in the country's continued development. Modernization of agriculture and intensified production is one of the six pillars of Rwanda's Vision 2020, and agriculture is also one of four priority sectors in the EDPRS2 that are considered capable of promoting a high level of economic growth and reducing poverty.

The 2013 Land Law supports the kind of variety of tenure arrangements that the AU Framework identifies as critical to sector growth, especially in land-scarce conditions. Long-term, renewable leases allow time for investors to profit from development of

⁴¹ The World Bank, 2003. See also Ministerial Order No. 14/11.30 of 21/12/2010 determining the Models of Land Consolidation and its Productivity, which specifically recognizes the use of subleasing to support lessees who are unable to invest labor and other resources in their land for a period of time.

essential infrastructure, like the expansive irrigation systems, production facilities, and transport systems required for intensified production. In some cases, infrastructure development may qualify landholders (including foreigners in some cases) for freehold rights (Article 6)—a significant incentive for investors.

The Land Law also permits the minister responsible for agriculture to implement land consolidation plans to support greater production (Article 30),⁴² and Rwanda's land consolidation program appears to be achieving the desired objectives. In a recent study of the program, 70 percent of land consolidation program participants reported that their yields increased. Sixty-nine percent of those in the program reported that, overall, the program had a positive impact on their livelihoods.⁴³

The 2013 Land Law also allows for relatively short-term assignments of requisitioned land to third parties. The GOR manages land assignments and absent special provisions, the selection process may generally favor larger and more sophisticated farmers because they will have the resources to rehabilitate degraded land and step into an existing project that may be failing due to insufficient investment or expertise. However, larger enterprises are also less likely to be interested in short-term arrangements, leaving some potential opportunities for small farmers.

Phase III of the Strategic Plan for the Transformation of Agriculture in Rwanda looks for an increasing role for the private sector in agricultural development and production.⁴⁴ Many of the agricultural projects described in the Strategic Plan—such as private irrigation development, satellite farms, and consolidated land leasing—are designed to work through local farmers. As noted above, EDPRS2 also targets the private sector for building the capacity of small farmers through new smallholder aggregation farming models and supporting infrastructure.

The legal framework provides some support for this vision with land allocations for projects and opportunities for subcontracting. In both cases, leases can control the terms of land use and any sub-lessees. That control gives developers the ability to manage their projects according to their business plans and profit models—a feature that is likely to be attractive to private investors. In addition, the 2013 Land Law allows subleases to be registered, and requires registration of subleases of five years or more (Article 26), which may be useful support for obtaining financing. From the sub-lessee's standpoint, the draft Ministerial Order determining Modalities for Subleasing of Agriculture, Livestock and Forest Land gives them some protection against arbitrary treatment and eviction, which enhances their tenure security and encourages greater investment in the land and production.

⁴² Alfred R. Bizozza and Jean Marie Havugimana. 2013. Land Use Consolidation in Rwanda: A Case Study of Nyanza District, Southern Province (focused on factors affecting adopting of the strategy), *International Journal of Sustainable Land Use and Urban Planning*, Vol. 1:1, 64-75, at 74.

⁴³ University of Rwanda. 2014. An Assessment of the socioeconomic and environmental impacts of the Land Consolidation component of the Crop Intensification Program in Rwanda: Preliminary Research Findings. Kigali: USAID-Rwanda LAND. The study also reported that when asked about the last seven days, 66.5% of respondents in the LUC reported they experienced food security problems; a slightly higher percent (67.9%) of those not in the program reported a problem. The researchers note that when respondents were asked about food insecurity on a month to month basis, they reported no food shortages or lack of money to buy food. The researchers noted that food security tends to follow agricultural seasons and they conducted the survey during the lean season, possibly accounting for high numbers of respondents in both groups reporting food insecurity of the last 7 days.

⁴⁴ ROR, Ministry of Agriculture and Animal Resources. 2013. Strategic Plan for Transformation of Agriculture in Rwanda. Phase III, Draft 1. Kigali: ROR.

In summary, the legal framework for land appears to provide a solid foundation for the agricultural sector, with tenure systems that can support a range of participants and activities. Rwanda has gone beyond the AU Framework by recognizing the significant role that agriculture can play in rural development and graduation from extreme poverty.

Again, however, while the legal framework has the scaffolding to support the engagement of smallholders and community members in commercial agriculture projects, there is currently no requirement or incentive for a project promoter to do so, or, indeed, for a government official even to raise the issue with prospective project developers. Absent such efforts, agricultural investment is unlikely to fulfill the agricultural productivity and poverty alleviation objectives of EDPRS2.⁴⁵

3.4 Support and manage non-agricultural land uses

The AU Framework anticipates the need for policymakers to address land issues in planning for large-scale development relating to urbanization and predicted growth in manufacturing, mining, tourism, and energy sectors. Large-scale projects can have negative impacts on local communities and natural resources without providing equivalent benefits. The AU Framework encourages policymakers promoting these kinds of development to create and implement strategies to protect against or mitigate potential adverse impacts on local property rights, social welfare, and the environment.

Many of the same provisions in Rwanda's legal framework for land that support agricultural intensification also promote non-agricultural development.⁴⁶ The variety of tenure types, clarity and accessibility of land information, and efficient processes of land allocation support investment in large-scale projects such as urbanization and infrastructure development. Consistent with the AU Framework's caution, Rwanda's legal framework includes some recognition of the tension between the development of land and natural resources and the interests of the affected population.

The Draft Expropriation Law is a primary example. Grounded in the constitutional prohibition against taking private property except in limited circumstances, the Draft Expropriation Law sets out the requirements that the land acquisition must be in the "public interest," and the state must fairly compensate the landholder for the loss of property (Article 3). The 2008 Land Lease Order is another example of an effort to balance competing interests. While the mining sector has its own legal framework, the 2008 Land Lease Order notes that rights to land under emphyteutic leases and contracts of assignment are subject to the right to conduct exploratory and exploitation mining activities. The Order grants mining interests access and use rights to leased land on a pro rata basis. At the same time, however, the Order also grants the landholder a right to claim an injury to his or her interests as a result of the mining activity and seek compensation, including the right to other land (Articles 19 and 50). That kind of balancing of interests within the legal framework helps support land access and tenure security for landholders while simultaneously providing investors and project developers with the flexibility to operate where opportunities emerge.⁴⁷

⁴⁵ The Draft Order governing the use of swamp land, which was prepared by the LAND Project for RNRA's consideration suggests a governance structure and procedures designed to support socially and environmentally responsible use of the swamp land.

⁴⁶ This report did not extend to sub-sector legislation governing mining.

⁴⁷ Effective implementation of the legislation is, of course, essential to ensuring that the population receives the benefit of the legal framework. Reports suggest that implementation has been a challenge. See e.g., An Ansoms. 2013. Large-Scale Land Deals and Local Livelihoods in Rwanda: The Bitter Fruit of the New Agrarian Model. *African Studies Review*. 56:3, 1 – 23.

The Draft Expropriation Law also includes a process by which officials must consider the impact of the proposed land use and project on the environment and broader community. The proposed procedures for land acquisition and development require officials to confirm receipt of some form of environmental statement and evidence of community consultation (Article 11). As the LAND Project's review of the draft law noted, the management of potential adverse impacts could be improved with: 1) a more detailed assessment requirement that is consistent with the 2005 Environmental Law; and 2) collection and assessment of more comprehensive information, specifically social impact.⁴⁸ Likewise, the procedures for land allocation and the issuance of emphyteutic leases, currently governed by the 2008 Land Lease Order, would be strengthened by requirements for social impact assessments, identification of potential adverse project impacts, community consultations, and mitigation measures. It is through those kinds of components that the vision of rural development and graduation from extreme poverty that is set out in EDPRS2 can be realized.

In addition, a well-designed, legislated decision-making process can give officials the information necessary to help prevent all types of proposed projects (including those focused on social welfare objectives) from causing adverse impact. In this regard, Rwanda's legal framework for land is a valuable tool to promote responsible development. As opposed to simple application of a land use plan, a legislated system for decision-making gives the government an ability to tailor projects to specific circumstances.⁴⁹ Officials can use the different land tenure systems and legal tools like leases and contracts to design and negotiate project terms and conditions that balance the interests of the state, private investors and project developers, and the population on a case-by-case basis.

In all cases, accessible procedures for meaningful review of administrative action by all interested parties are essential. As noted in prior sections, various administrative review procedures are currently contained in some laws and some subordinate legislation. The somewhat fragmented references do not have the benefit of an overarching statement of principle governing administrative review. Such a statement of principle would assist in institutionalizing the review process across all government actions with relation to land and help build Rwanda's reputation for transparency and governmental accountability⁵⁰ in a critical and highly visible sector.

3.5 Protect natural resources and ecosystems

The AU Framework includes the need for strong systems of land governance to help protect and ensure sustainable use of Africa's forests, grasslands, water, and coastal and marine ecosystems. The AU Framework recognizes that countries such as Rwanda, with high population density and intense pressure on land, must actively manage multiple competing land uses and conservation interests.

National policy and strategy documents, including Vision 2020 and EDPRS2, recognize that environmental sustainability and prudent use of natural resources are essential to

⁴⁸ See discussion in the Review of the Draft Law on Expropriation in the Public Interest, prepared by the LAND Project in April 2014 and under review by RNRA.

⁴⁹ The proposed systems, which was created with input from RNRA, is set out in the various draft orders prepared by the LAND Project.

⁵⁰ See e.g., Transparency International, 2013 Corruption Perceptions Index. <http://cpi.transparency.org/cpi2013/results/#myAnchor1> (Rwanda was number 49 of 177 countries and 3rd of the African countries ranked from highest perception of clean government functioning to most corrupt).

the improvement of livelihoods for current and future generations. The national strategy calls for mainstreaming environmental sustainability into productive and social sectors.⁵¹ Rwanda's legal framework for land establishes the foundation for the kind of land governance system necessary to manage the protection and sustainable use of its limited land. To date, though, the legal framework lacks the kind of organizing principles contained in the national policy statements.⁵² The omission appears to limit the harmonization of the legal framework for land with the environmental legislation and to restrict the legislative support for the preservation and sustainable use of land.

In contrast to the 2005 Environmental Law, the 2013 Land Law does not have an overarching statement on environmental protection and sustainable land use.⁵³ Instead, the Land Law relegates "the modalities of protection and sustainable use of land" to a planned order of the Prime Minister without an accompanying statement of principle to guide development of the approach and procedures (Article 28). Similarly, while the 2013 Land Law requires creation of standards to govern the use, development, and management of protected swamp land, the law offers no clear guidance on the core principles that those standards will support (Article 19). The National Land Policy has a section devoted to swamp land⁵⁴ and sets out a handful of requirements, such as the need for adequate planning and an environmental impact statement before development of swamp land. However, the Land Policy does not include the kind of overarching statement of principle that would allow policymakers and other stakeholders to extrapolate new standards or rules from the principle.⁵⁵

Perhaps because it lacks articulation of a guiding principle or approach on the sustainable use and protection of land, the provisions supporting sustainable use and environmental protection in the 2013 Land Law appear prone to some degree of inconsistency. For example, applicants for assignment of requisitioned land under emphyteutic lease must demonstrate that they can conserve land in addition to using it productively (Article 54). However, lessees seeking repossession of land need only show the plan for land use. Similarly, applicants for assignment of land held by the State and other governmental organs that is not under emphyteutic lease need only show the ability to use the land productively (Article 55); there is no clear requirement for sustainable use or conservation of the land.⁵⁶

In other areas, provisions of the 2013 Land Law are somewhat ambiguous. The English version of Article 37, for example, requires contracts with the State to include "special conditions regarding conservation and exploitation of land in accordance with the

⁵¹ GOR. 2011. Green Growth and Climate Resilience Strategy: Rwanda. National Strategy for Climate Change and Low Carbon Development. Smith School of Enterprise and Environment; Dr. Matthew Warnest, Eng. Didier G. Sagashya, and Dr. Emanuel Nkurunzia. 2012. Sustainable Land Use Management in Rwanda. Paper presented at FIG Working Week Conference, 6-10 May, 29012, Rome.

⁵² The Constitution grants the right to a safe and healthy environment, and imposes an obligation on the State and all persons to protect the environment (Article 49). The Constitution does not, however, include a proclamation regarding land use and development.

⁵³ In contrast, the 2005 Environmental Law, which also governs aspects of land management, has examples of such principles, including guaranteeing Rwandans "sustainable development which does not harm the environmental or the social welfare of the population" and supporting "rational conservation and use of the environmental and natural resources" (Articles 1 and 7).

⁵⁴ The 2004 Land Policy and other legislation, such as the 2005 Environmental Law use the term "marshland," which includes swamp land.

⁵⁵ The Draft Order regarding the use of swamp land that was prepared by the LAND Project references express and implied principles from several sources to form a foundation for the order.

⁵⁶ The 2005 Environmental Law may impose requirements if the land use is deemed to be a project within the ambit of that law.

intended use of land.” At least in the English version, it is unclear from the phrase, “special conditions,” whether the requirement applies to all State contracts or only those where the land is deemed to require particular attention.

Authority over the protection of land and land uses is also governed by the 2005 Environmental Law and the Rwanda Environmental Management Authority (REMA). However, the extent of shared authority is not well defined and, at least as reflected in the laws, lacks coordination. For example, the Draft Expropriation Law references the 2005 Environmental Law in its preamble, but the descriptions of the environmental assessments for projects referenced in the two laws are dissimilar enough to raise questions as to the relevant standards, their application, and their enforcement. The 2013 Land Law also references the 2005 Environmental Law in its Preamble, yet there is no apparent connection between the principles listed in the 2005 Environmental Law, which include sustainable use of land, and the provisions of the 2013 Land Law. In short, it is unclear how the references to the 2005 Environmental Law are intended to impact the interpretation of the 2013 Land Law and the Draft Expropriation Law, or guide development of subordinate legislation.

The AU Framework notes that, particularly in the area of the environment, some countries have adopted environmental legislation that lacks harmonization with the existing legal framework for land, natural resource management, and other sectors. The result can be a fragmentation and duplication of authority and competition among governmental bodies. A further troublesome outcome of the lack of harmonization is an attendant lack of implementation and enforcement of standards designed to protect the environment and support sustainable use of natural resources. Rwanda’s vision of environmental protection and sustainable use--as presented in the Constitution, Vision 2020, and the 2005 Environmental Law--is unequivocal and echoes the AU Framework. Rwanda’s legal framework for land should be equally articulate in its commitment to those principles.

3.6 Develop effective land administration systems

The AU Framework promotes development of effective land administration systems with functioning land rights delivery system, comprehensive legal frameworks, and decentralized land governance bodies. Rwanda’s legal framework for land includes all of the elements identified by the AU Framework as supporting an effective system of land administration. Rwanda’s land information system is designed to establish and maintain clear, accurate, and easily accessible information on the country’s land. The legislation is based on principles of accuracy, efficiency, and reliability that are intended to drive the processes and procedures of registration. Land rights and transfers of land interests are required to be documented, and deadlines are set for routine administrative actions.⁵⁷

The 2013 Land Law revised the decentralized delivery system for land administration to operate through District Land Offices and Land Committees, managed by the central governance body responsible for land (Articles 32 – 33). Under the 2014 Ministerial Order on the Functioning of District Land Bureaus, the ambit of bureau authority is limited to tasks best accomplished by local officials, such as monitoring land surveys, preparing land documents for registration, and monitoring land valuation (Article 2). As various instruments are revised, they incorporate the revised land administration

⁵⁷ See the 2013 Land Act, the Draft Order on Land Registration, and Draft Order determining the Functioning and Powers of the Registrar of Land Titles.

structure. For example, the Draft Expropriation Law references the use of Land Committees to manage the process of land acquisition for projects. Rwanda is also creating the kind of supporting governance structures contemplated by the Framework, such as the planned Institute of Land Surveyors.

The reviews of various pieces of legislation by the LAND Project note that the legal framework for land often fails to provide necessary guidance for achieving national priorities in land allocations, land leasing, use of swamp land, and other land governance activities. Absent that guidance, decentralized authorities will lack the information to make decisions designed to help achieve strategies such as those set out in the EDPRS2. In addition, the country has not yet had much experience implementing the provisions of the 2013 Land Law and subordinate legislation. For this reason, the reviews recommend that the scope of district authority over land be limited to those areas set forth in the 2014 Ministerial Order on District Land Bureaus; decision-making authority over land allocation and leasing, land expropriation, and land investment should reside within the central body with authority over land and other relevant central level sector authorities (such as agriculture and environment) until there is sufficient experience and capacity to support decentralization.

Legislation at all levels also increasingly includes protections for the public against arbitrary, discriminatory, or otherwise inappropriate exercises of governmental authority relating to land. For example, the Draft Land Surveying Institute Law includes a right of surveyors to appeal a decision by the Institute in court, and the 2008 Order on Land Leasing allows anyone aggrieved by an action of the government to seek administrative review and appeal final administrative action to the judicial system. The Draft Order on Land Registration permits challenges to the decisions of the Registrar of Land Titles in accordance with procedural rules applicable to administrative cases (Article 47).

As stated earlier in this report, the various references to the administrative review process are somewhat inconsistent from instrument to instrument and in some notable cases, such as the 2013 Land Law itself, are absent altogether. However, as legislation is revised, the system for administrative review appears to be evolving, which may reflect a growing governmental awareness of the need for a broad-based and ultimately cross-sector system to support transparency and accountability in administrative action.

4.0 SUMMARY AND RECOMMENDATIONS

Rwanda's legal framework for land has a high level of compliance with several of the principles set out in the AU Framework. The land registration process recognized customary rights, and the legal framework includes specific provisions designed to support the equality of women's land rights in inheritance, marriage, and transfers of land interests. The legal framework encourages investment in land-based enterprises with a diversity of tenure systems and processes to access land for development. The legal framework also supports a land information system that is accurate and accessible. The land administration system has a decentralized design, is institutionalizing the land surveying function, and is establishing a foundation for governmental accountability through systems of administrative review and self-regulation.

The review exposed two broad areas of opportunity for closer connection between the legal framework and principles of the AU Framework: 1) provisions throughout the legal framework to ensure that the principles set forth in EDPRS2 regarding poverty alleviation, rural development, and local livelihoods are not ignored in the push for

development and commercial investment in land; and 2) articulation of principles governing environmental protection and the sustainable use of land to guide land legislation and the development of processes and procedures for land access and development.

The following are recommendations arising out of the review of the legal framework for land in relation to the AU Framework and Rwanda's strategy documents, including Vision 2020 and EDPRS2:

1. Include statements of purpose and guiding principles in all legislation.

Overarching statements of purpose and principle can help ensure that legislative is tailored to achieve objectives, guide the drafting of subordinate and related legislation, create a basis for links among sectors, and assist with legislative interpretation. A statement of principle regarding the role of land in the alleviation of poverty will be particularly useful in establishing:

1. Priorities for land allocations;
2. Fee schedules (and waivers) for land transfers and transactions; and
3. Where there is pressure to develop a market-driven, investor-friendly environment.

A statement of principles regarding the protection and sustainable use of land can assist in:

1. Preparation of appropriate processes of evaluation of applications for land allocations and project proposals;
2. Coordination the efforts of the land and environmental sectors; and
3. Increasing the efficiency and effectiveness of procedures to govern the selection of land for development, preparation and use environmental and social impact assessments, creation of mitigation plans, and monitoring and evaluation of projects.

2. Conduct targeted research on the impact of extending protections granted spouses in civil marriages to those in customary marriages and develop a policy position. The gaps in the legal framework governing the rights of women in customary unions to land are well-documented. Less well reported is information about the individuals impacted by the gaps in legal protection, the extent of the trend toward civil unions, the range of possible options for addressing the gaps, and other considerations necessary to developing a policy position. Research on these and other issues will build additional depth of understanding necessary to develop a policy position on the subject and, if appropriate, create an advocacy plan.

3. Require land-based projects to address national objectives for rural development, poverty alleviation, on and off-farm income generation, and support for graduation from extreme poverty. The legal framework recognizes and strengthens the land rights of women and individuals who came into possession of land under customary law, many of whom are likely to be poor or marginalized. However, the framework is less successful in actively supporting the meaningful participation of these groups, smallholders, and other rural residents in land investment and development programs. Requirements for social impact assessments in addition to environmental assessments and community consultations may assist in identifying the needs and opportunities within local communities. In addition, the legal framework can support particular initiatives designed to help ensure local communities benefit from development, such as prioritizing a percentage of land allocations for community-based enterprises and projects that include the kinds of smallholder aggregation farming

models and supporting markets and infrastructure envisioned in the EDPRS2 and Strategic Plan for the Transformation of Agriculture.

4. Formalize and institutionalize a system for administrative review within the land sector. Rwanda can help continue to build its international reputation for accountable, transparent government action by creating a single process for administrative review that is applicable to all sectors and all levels of government action. A well-designed process for administrative review can help strengthen government performance and the development of constructive relationships between government and the population it serves. The land sector is well positioned to be a leader in developing and institutionalizing a process for administrative review. Several laws and pieces of subordinate legislation contain different types of administrative review. The process would be more efficient and effective if a single system was created and applied sector-wide and linked to the process for judicial review after exhaustion of administrative remedies. The process might serve as a pilot for the kind of government-wide system of administrative review essential to a middle-income country.

5. Develop tools to implement land legislation. The legal framework for land will, in large measure, be implemented through to use of contracts, leases, application forms, public notices, templates for assessments, procedures, decision-making systems, and checklists. Those documents must be accessible, enforceable, consistent with the governing law, and harmonized horizontally and laterally. The tools should be created, piloted, and refined based their effectiveness and input from officials and other stakeholders using the tools. Once finalized, officials using the tools should receive training on their use.

6. Use a central governance body to manage land allocation, expropriation, and use. A central governance body with authority over land allocation, leasing, land assignment, swamp land use, and land expropriation can help ensure effective and efficient control over the use of GOR land. A central body, as opposed to decentralized authorities, is able to ensure that decisions help advance national objectives and priorities rather than purely regional or local interests. A central body can also help promote consistency and predictability in decision-making, which encourages investment. As experience with the decision-making processes grows and capacity within local and specialized bodies increases, authority can be decentralized.

7. Draft regulations to govern the requisition and confiscation of land. To date, none of the orders appears to focus on the procedures for determining what land may be requisitioned and confiscated, the procedures for making the determinations and for the lessee to challenge decisions, requirements to assign requisitioned land, and so forth. Such regulations are necessary to ensure that the government officials responsible for land requisition and confiscation exercise their judgment in accordance with the law and with recognition of the often competing interests involved.

5.0 CONCLUSION

The review of the legal framework for land in relation to the AU Framework provides a useful perspective on breadth of the accomplishments of the legal framework. Rwanda's land legislation reflects almost all of the AU Framework's principles, including supporting a comprehensive and dynamic land administration system, providing a foundation for the national strategy for intensification of agriculture, and strengthening tenure security for all landholders. Gaps exist and there is some risk that the formal legal framework, which

does not fully protect the land interests of the poorer and more marginalized members of the population, may lose its social legitimacy and relevance as time passes. However, such an outcome can be prevented with: 1) additional attention to the legal framework; 2) development of supporting tools and procedures, including contract templates and a process for administrative review; and 3) a period of central control over land processes to ensure that the laws are implemented in a consistent, predictable manner that supports all national priorities.

Rwanda's continued attention to the legal framework will be time well-spent. The pressure on Rwanda's land and the drive to build a market-driven economy places Rwanda at the center of global attention to large-scale land investments. To date, few African countries have developed and consistently and successfully implemented plans for good governance of its natural resources, including land. Rwanda is an ideal candidate to be a global leader. The country has a clear vision set out in EDPRS2 and other policy documents. The administrative structure of the land sector continues to develop. The sector has a high level of capacity in its central governing body and a well-conceived structure for decentralized support. The sector has proven its ability to design and execute programs, and the country continues to invest in its legal framework. Rwanda is, in short, perfectly positioned to become a global leader in governing land in a manner that enhances its productivity, is socially and environmentally responsible, and meets country commitments to poverty alleviation.