African Union

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Economic Commission
for Africa

Background Document

LAND POLICY IN AFRICA:
A FRAMEWORK TO STRENGTHEN LAND RIGHTS, ENHANCE PRODUCTIVITY AND SECURE LIVELIHOODS

Land Policy in Africa:
A Framework to Strengthen Land
Rights, Enhance Productivity and
Secure Livelihoods

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Abbreviations and acronyms

ADR	Alternative dispute resolution
AfDB	African Development Bank
APRM	African Peer Review Mechanism
AMU	Arab Maghreb Union
AU	African Union
AUC	African Union Commission
CAADP	Comprehensive Africa Agriculture Development Programme
CEN-SAD	Community of Sahel-Saharan States
CILSS	Permanent Interstate Committee for Drought Control in the Sahel
COMESA	Common Market for Eastern and Southern Africa
CSO	Civil society organization
CPR	Common property resource
DFID	Department for International Development (UK)
DRC	Democratic Republic of Congo
DREA	Department of Rural Economy and Agriculture (AUC)
EAC	East African Community
ECA	Economic Commission for Africa (United Nations)
ECCAS	Economic Community of Central African States
ECOSOC	Economic and Social Council
ECOWAS	Economic Community of West African States
FAP	Food and Agriculture Organization of the United Nations
FDI	Foreign direct investment
GDP	Gross domestic product
GIS	Global information system

GPS	Global positioning system
ICT	Information and communications technology
IGAD	Intergovernmental Authority on Development
ILC	International Land Coalition
MDG	Millennium Development Goal
M&E	Monitoring and evaluation
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental organization
PAPLRR	Pan-African Programme on Land and Resource Rights
PRSC	Poverty Reduction Support Credit
PRSP	Poverty reduction strategy programme
REC	Regional economic communities
RMC	Regional Member Countries (AfDB)
SADC	Southern African Development Community
SAKSS-SA	Strategic Analysis and Knowledge Support Systems Network for Southern Africa
UNCCD	UN Convention to Combat Desertification

Executive Summary

The African Union's (AU) perspective is that agriculture and land are central in the social and economic development of the continent and that rights to land are fundamental to the participation of all people including women and disadvantaged sections of society in the development process. Africa's development remains dependent on agriculture and exploitation of natural resources, yet agriculture and livestock production are largely carried out by smallholder farmers under increasing pressure of scarce land resources managed under unsecured customary land ownership. African governments are seeking to address tenure insecurities to promote sustainable rural and urban development, and to address inequalities in land ownership between different social groups.

The various programmes within NEPAD, the New Partnership for Africa's Development, (including CAADP, the Comprehensive Africa Agricultural Development Programme) as well as national development plans, strategies and programmes of many African countries, all point to the importance of achieving a structural transformation as a means of attaining meaningful economic development that provides employment and hence reduces poverty. The African Union Commission (AUC), Economic Commission for Africa (ECA) and African Development Bank (AfDB) have pledged to work together in support of Africa's economic and social development, which includes assisting African governments in their quest to achieve a structural economic transformation that not only provides employment and reduces poverty, but also ensures good governance of natural resources to ensure peace and security, and overall sustainability over time. Sound land policies which guarantee secure land access and clear property rights are a critical ingredient in achieving sustainable structural transformation which in most cases must begin with progress in developing the agricultural sector.

The AUC and African Heads of State are committed to providing a conducive environment for economic growth, poverty reduction and equitable, sustainable development. In this context, the quality of governance of land and natural resources is an important factor, and accordingly, better performance of land policies and institutions is required to deliver development goals. Land reforms must equitably address the needs of all land users, including smallholder farmers, the private sector, women, the urban poor

and slum dwellers, in a context in which, increasingly, land is no longer readily available, and there are rising pressures and tensions stemming from competition for this valuable resource. In fostering social stability and good governance, land policies need to give recognition to customary patterns of land holding, and provide fair compensation in cases of expropriation of land for public good, while also responding to economic opportunity. Equitable and transparent land distribution is also a prerequisite for social and political stability at community and national levels in every country.

African governments are increasingly aware that they must take the lead in land policy and reform, since political interests are at stake. A diverse array of approaches to strengthening land rights is now emerging, and there are valuable lessons to be shared between governments, civil society groups and land professionals.

This issues paper was prepared for the High-Level Consultative Workshop convened by the AUC, ECA and AfDB, under the leadership of the AUC, in order to begin the process of developing a land policy and land reform framework for African nations. The paper is intended to provide the basis for the development of a platform document to be prepared by the workshop's organizing partners. With this in mind, it provides an analysis of the key issues, challenges and lessons learned at different levels and based upon the outcomes of recent forums on African land issues, so as to assist the workshop in the articulation of a shared vision and rationale for the development of an Africa-wide policy framework and related guidelines.[11]

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1   Following the workshop, the organizers envisage a process whereby the initial platform document is validated and subsequently developed into a comprehensive framework for action through a series of regional consultations with AU member states, regional economic coordination organizations, and civil society, culminating in an Africa-wide meeting to finalize the framework, to take place before September 2007.

Part I

1. Land issues in Africa

1.1 Overview: the importance of land rights for Africa's development

Land lies at the heart of social, political and economic life in most of Africa. Land and natural resources are key assets for economic growth and development. Most African economies continue to rely heavily on agriculture and natural resources for a significant share of GDP, national food needs, employment, and export revenue. At the same time, agriculture, natural resource use and other land-based activities are key to the livelihoods, income and employment of the majority of Africans, and land is the basis of shelter in urban and rural areas. In addition, land has major historical, cultural and spiritual significance.

Although land may once have seemed an almost inexhaustible asset in Africa, population growth and market development are creating mounting pressure and competition for land resources, especially close to towns and cities, and in productive, high value areas. While Africa's predominantly customary land management systems are under pressure, formal land tenure and management systems introduced in the colonial period have generally very limited coverage.

In practice, land rights claimed and allocated by the modern State often conflict with the land tenure practices of ordinary people. As a result land tenure and shelter are insecure for many Africans in both urban and rural areas, while the fact that property rights are frequently weak or unclear creates a major obstacle to investment both large and small. In addition, land remains extremely inequitably distributed in the former white settler economies of Southern Africa, with the majority of rural people excluded from access to the most productive and valuable land. Reliance on land as a principal source of livelihoods and as a basis for economic development in Africa is likely to persist for the foreseeable future. Reductions in poverty must therefore build primarily on the agricultural sector, while clearer structures of property rights can provide a foundation for structural trans-

formation of Africa's economies. In addition, where land has been inequitably distributed since colonial times, more equitable patterns of land ownership can contribute to higher levels and broader based patterns of economic growth.

Land policy therefore needs to secure the rights of all land users and serve the multiple goals of equity, poverty reduction, income growth, economic efficiency and sustainable environmental management. Land policy in Africa thus faces the twin challenges of:

- Providing a sound basis for strengthening property rights so as to facilitate investment and the generation of economic opportunities; and
- Guaranteeing security of access to land for the rural and urban poor as a basis for improved food security and secure livelihoods.

1.2   Critical issues in land policy development

To meet these challenges, land policy development will need to address several critical issues.

1.2.1   State sovereignty over land

The first of these relates to the role of the State in ownership and administration of land resources. Throughout Africa, colonial authorities routinely appropriated radical title to their respective sovereigns under the fiction that indigenous law knew of no property in land hence conferred as ownership to the land resources occupied by African people. Whether the colonial power was British, German, French or Belgian, land in Africa was passed to their respective imperial majesties simply by dint of political control. This fiction was everywhere enacted into law thus enabling colonial authorities to grant absolute or other land rights to foreign settlers and companies.

These laws were not changed after independence with the effect that apart from being a regulator and manager of land resources, the State is, with the exception of South Africa, owner and landlord of vast areas of prime land and natural resources such as forests, water, wildlife and minerals.

Contemporary research indicates that the vesting of radical title in the State has been widely abused through rampant land grabbing and neglect of critical land resources. Policy development must re-examine this juridical position to determine whether the State should hold title to land directly in addition to the police power it exercises over its use.

1.2.2   *Confronting unequal distribution of land resources*

The next is to confront the persistent impact of relations created by colonial rule and economy. An important aspect of this was the creation of structural inequalities based on access to, use and control of land resources. While under colonialism prime agricultural and urban land resources were appropriated to foreigners, their descendants and investment companies, control over these issues has passed on substantially to political elites, their appendages and multinational corporations. This is a particularly serious problem in South Africa, Namibia, Zimbabwe, Malawi, Angola, Kenya and Côte d'Ivoire. In South Africa, 13.7 per cent of the population controlled 89 per cent of the land, in Namibia 11.1 per cent controlled 43 per cent and in Zimbabwe 0.8 per cent controlled 49 per cent. Continued inequality in land distribution together with the resentment this engenders, has become a serious risk to stability and security in many countries. Although attempts have been made to address these issues in a number of countries including Kenya, Zimbabwe, Mozambique and South Africa, these have not been fully effective.

An important consequence of this skewed distribution of land resources is that the number of people who are land poor in rural and urban areas has increased. Indeed the persistent failure by the State to address this issue is a major threat to the development and maintenance of sustainable livelihoods among the rural and urban poor.

Land policy development must confront this injustice by committing governments to design and implement comprehensive reforms directed at the redistribution of land resources, the enhancement of the rural and urban economy and the strengthening of participatory land management processes. This must also include the provision of the support services infrastructure necessary for the promotion of these economies.

In addition to these problems of Southern Africa, research reveals growing inequalities in land access in various countries across the continent,[2] with land becoming increasingly scarce, plot sizes diminishing and land competition growing in some cases, such as Rwanda. Elsewhere, urban elites invest increasingly in peri-urban and rural land. Customary leaders dominate informal land markets, and the State reserves land and allocates private concessions for logging, game ranching, tourism and other purposes. This leads some to identify a "new land question" in which land-related citizenship issues regarding the nature of ownership and the rights of indigenous groups, migrants, women and youth have come to the fore.[3]

1.2.3   Confronting the duality of property systems

Although early post-independence reforms did little to stimulate or rationalize this duality, State control of land resources under customary management increased as these were routinely expropriated to "public" purposes with little or no compensation or reparations.

Throughout Africa, colonial powers imported European systems of civil and common law for their own purposes, to guarantee settler interests in land. These were operated alongside continued customary management of land by indigenous African people, frequently co-opting traditional leaders and Chiefs to colonial rule by granting them administrative powers over so-called communal areas. Within these areas, responsibility for land management was pressured to vest in local chiefs and village headmen, and in turn to family heads and individual household members.

In Kenya, for instance, the government introduced a unified system of property rights based on an imported European model, through programmes of land registration and titling. However, these proved at best only partially successful, and although customary law was hardly acknowledged in national legislation, it continued to dominate land management in practice,

2   Data analysed in the study by T.S. Jayne et al. (T.S. Jayne, T. Yamano, M. Weber, D. Tschirley, R. Benfica, D. Neven, A. Chapoto and B. Zulu, *Smallholder income and land distribution in Africa: implications for poverty reduction strategies*, Michigan State University, USA, 2002) show growing land inequalities in Kenya, Rwanda, Ethiopia, Mozambique and Zambia in the 1990–2000 period.
3   Adebayo Olukoshi (CODESRIA), *Property rights, investment, opportunity and growth: Africa in a global context*, Keynote Paper for the conference on *Land in Africa: market asset or secure livelihood?* London, November 8–9, 2004.

particularly in rural areas and amongst poor and marginalized groups. More recently, some countries have come to recognize the integral role that customary law plays in social and economic life, and its equivalent status to formal law as a legitimate source of land rights. As a result, local systems of land rights or deeds documentation have begun to emerge. However, African nations continue to grapple with the coexistence of customary and imported tenure systems, symptomatic of the "bifurcated power"[4] of the colonial State, and the question of how, in practice, the legal and institutional divide between these tenure systems can be bridged, still remains.

Despite their extent and legitimacy, customary systems of tenure are under strain because of demographic pressure, land scarcity and competition, growing urbanization, inter-group and wider civil conflicts, breakdowns in customary authority, and pluralistic systems of law. African governments are generally not fully able to resolve the problems of conflicting tenure rules, exacerbated by multiple layers of legislation and responsibilities for land allocation, which lead to widespread uncertainty, insecurity, and disputes, restraining investment and land development.

1.2.4 Improving land tenure security

Partly because of that duality but also due to ambiguities in land rights systems under both regimes, it is important that policy development should seek to strengthen land tenure security so as to ensure a favourable climate for investors (both local and foreign). This will in turn lead to high levels of economic growth and   poverty reduction.

Business activities of all kinds require access to physical space. However, in many countries investing in capital-intensive activities is frustrated by a lack of clearly defined land rights. Secure property rights provide not only the necessary certainty to do business but also, when held in the form of transferable land titles used as collateral, enable access to credit and contribute to the development of financial systems. Experiences and studies in Africa by the AfDB have shown that inappropriate land tenure arrangements continue to hamper effective entry into agribusiness by the private sector, including individual farmers and medium- to large-scale operators.[5]

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4   Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of the Late Colonialism* (Princeton, New Jersey, Princeton University Press, 1996).

5   African Development Bank, Framework Paper *Addressing Land Tenure Issues in West and*

Secure access to land also facilitates investment by the poor in farm production or small-scale business, enhancing self-employment and food security, and providing sources of livelihoods, a low-cost social safety net, and ultimately the basis for structural economic transformation rooted in broad-based participation in development.

Successful structural transformation will mean that African economies will rely less and less on agriculture as the main source of employment and contributor to gross domestic product (GDP), as other sectors contribute more to the economy in *relative* terms. In *absolute* terms, however, agriculture will continue to grow and contribute to the economy. Indeed increased productivity in the agricultural sector should be a starting point in such a structural transformation given that the majority of people are currently employed in agriculture, and given the sector's importance to the economy.

Historical lessons, for instance from the Far East in the early 20th century, and from North Africa in the mid-20th century, suggest that the take-off of economic growth results from building a positive, reciprocal relationship between agricultural and rural income growth, and the gradual expansion of urban industrial and service sectors. As rural producers generate the produce to feed a growing urban work force, rural incomes and purchasing power also rise, stimulating demand for industrial and consumer goods. As rural people become better off, they are also healthier and make greater investments in educating the younger generation, providing more skilled human resources for economic development.

Land policies and reforms can facilitate these changes by providing more secure land access both for small-scale farmers and for Africa's emerging corporate agro-enterprise. Whereas there might be fewer people in agriculture as they move to other sectors of the economy, the profile of the African farmer will also change as farming systems become more market-oriented, more intensive, and in some cases larger, making greater use of modern inputs and technologies including irrigation. As rural economies develop and diversify, employment opportunities in agriculture, agro-processing and service sectors will expand and fewer people will need to farm and own their own land. Recent experiences of diversifying rural economies in India demonstrate the important complementary role of even very small

Central Africa (ADF/BD/IF/2004/104, 2004).

household plots, when well-used, in providing household food needs, better nutrition, supplementary incomes, and financial security, particularly for women, in circumstances where seasonal or longer-term wage labour and labour migration are the principle income sources.[6] Remittances from urban sector jobs provide important sources of investment in small-scale domestic enterprise in agriculture, agro-processing or trade.

Secure land access for rural people can also complement and facilitate industrial growth, as it did in the case of South Korea, by enabling household food production, on which urban workers rely, to hold back the growth of real wages and help maintain the competitiveness of emerging industries.[7] In addition, as demands for land as the main source of income and subsistence for rural people decrease, new forms of agro-enterprise and land ownership become possible, for instance, cases where women's cooperative groups own land and produce new alternative cash crops. Where there are opportunities for agribusiness and high value crop production, partnerships between rural communities and the corporate sector become possible, for instance, through out-grower schemes in which small farmers do not need to give up their land, or equity sharing schemes as in experiments in South Africa, where workers or indigenous land claimants hold shares in high value enterprises, instead of working their own plots. On a broader scale, as local economies transform and grow, recent experiences in Latin America and southern and Eastern Europe show how participatory and negotiated territorial planning can help shape economic development to meet rural social needs. Although fewer people work and own the land, they can still retain a sense of territorial ownership over the development process and of cultural identity, linked to the land.

Although there is no single blueprint solution, sound and equitable land policy plays a critical role in facilitating changes such as these. It is increasingly implied that agricultural development planning, suitable land tenure and access arrangements, and local economic development strategies must be worked out hand in hand. At the same time, a progressive improvement

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6   T. Hanstad, R. Nielsen, and J. Brown., 2004, *Lands and Livelihoods: Making Land Rights Real for India's Rural Poor*, FAO Livelihoods Systems Programme Paper (Rome, Italy, FAO, May 2004); Haris Gazdar and Julian Quan, 2004, *Poverty and Access to Land in South Asia* (DFID/RSPN/NRI, May 2004).
7   Gillian Hart, *Disabling Globalisation: Places of Power in Post Apartheid South Africa* (Scottsville, South Africa, University of Natal Press, 2002).

in the quality and completeness of cadastral and land information databases is required to facilitate planning and land use change, and to ensure that the land claims and economic needs of the poor and vulnerable are not ignored in the process of structural economic transformation.

African governments have often focused on the need to attract foreign direct investment (FDI) through advantageous tax regimes, rather than the promotion of local enterprise. Despite its importance, however, growth in FDI has remained slow while at the same time there are risks that the drive for foreign investment can facilitate alienation of land from indigenous rights holders and lead to concentration in private and sometimes unproductive hands. Nevertheless, improving the investment climate is also vital to Africa's own private sector, composed largely of family farms and small- and medium-scale enterprises. A major challenge is to mobilize domestic African capital formation and investment,[8] which involves overcoming a series of barriers constraining the investment climate, including market access, political risk and uncertainty, access to technology, bureaucratic inefficiency and corruption. Investors, both large and small, need assured rights to the land and property in which they invest, yet the time periods required to register property in Africa are amongst the highest in the world, with costs ranging from 5 per cent to 35 per cent of property values.[9] Although investors do not necessarily require full freehold property rights in order to do business, alternatives in the form of secure tenancies, concessions and leases, or locally documented and legally protected customary rights, generally more suitable for small investors or family farmers, are not widely available. Renewable leases of up to 99 years generally prove adequate for most forms of foreign investment, including perennial crops, although not all countries offer leases of this length.

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8   Adebayo Olukoshi (CODESRIA), 2005, *Property rights, investment, opportunity and growth: Africa in a global context*, Keynote Paper for the conference on *Land in Africa: market asset or secure livelihood?* London, November 8–9, 2004. Olukoshi contends that Africa's greatest mistake has been to seek universally applicable models transferred from elsewhere, that decisions about property rights are not purely economic in view of their social, political and cultural aspects, and that excessive emphasis on formalizing property rules is diversionary and irresponsible, shifting attention away from the unfavourable terms of trade and extensive use of subsidies in the North which constrain African smallholders' development, and from the ongoing agrarian reforms which are necessary to avoid reinforcing an unjust status quo.
9   World Bank, Doing Business 2005: Removing Obstacles to Growth (Washington, DC, The World Bank, 2005).

Irrespective of tenure type, namely imposed or indigenous tenures, there exist comparable categories as well as ranges of incidents, as demonstrated in Table 1. In the above regard the critical element (issue) in the inquiry regarding tenure in Africa is not the nomenclature or even the tenure type, but rather the degree of tenure security, which in turn has a direct bearing on the nature and extent of State support and recognition.

Table 1. Principal forms of land tenure in Africa

Form of tenure	Main features	Examples	Prevalence
Freehold	Absolute title to land, including the rights of use, control and disposal, guaranteed and backed by the State. May be held by groups but more often by individuals. Derived from English common law but with equivalent forms of property rights in civil law.	Commercial land holdings under freehold title in South Africa, Namibia and elsewhere; Smallholder land titles created in Kenya, or upgraded from customary rights by land commissions in Niger.	Not prevalent in rural Africa except where created for settlers during the colonial period, or by express allocation of freehold rights or titling programmes by independent States. More common in urban areas.
Leasehold	Long but limited term rental contract (typically 25, 50 or 99 years) on land belonging to the State or private owner; A form of land title backed by the State, and often transactable on the market.	Land concessions for commercial purposes in Mozambique; leases issued by government to customary land users in Rwanda; urban plots in Ghana under lease from customary authorities; tobacco estates leased by government in Malawi.	More common in Africa than freeholds, especially where all land belongs to the State which allocates land on a leasehold basis or creates leasehold title as a means of formal registration of customary rights.
Tenancy	Short-term rental contracts usually between private individuals. May or may not be regulated by formal law.		
Certificates, licences and permission to occupy	Simplest forms of documentation granting land rights issued by the State or other owner; generally temporary and insecure.	Permissions to occupy as yet not upgraded in South African townships.	Widespread but with variable forms of documentation from public and especially private/customary land owners in African cities.
Adverse possession	Secure property rights recognized in law as a result of land occupation over a number of years.	One form of legally protected customary rights under Mozambique's 1997 Land Law.	Not common.

Form of tenure	Main features	Examples	Prevalence
Squatting	Unlicensed informal occupation, usually on public land (should be distinguished from undocumented land occupation permitted by customary owners.		Widespread in African cities; less common in rural areas.
Customary rights: - Group/communal - Family - Individual	Legitimate land rights derived from kinship with or inheritance from members of a land holding group who have established rights historically by clearance or kinship. Customary rules for land access vary widely. Rights held in perpetuity and may be transactable but not on a permanent basis, or not without permission of the group or a customary authority.	For instance, in Ghana rights are considered to be vested in the traditional land holding group, or extended family under a chief. Legal status of individuals' rights may be contested or unclear. In Uganda and Niger customary rights are recognized in law and have equal status to freehold.	The predominant form of African land holding, but with varying degrees of freedom to utilize and dispose of land at individual, household or village level according to custom. Where land availability is sufficient, non-farm and unutilized land generally held under Common Property according to customary rules. Customary rights recognized in law in an increasing number of countries but documentary coverage limited.
Derived customary rights: -Sharecropping -Tenancy -Gifts and grants -Loans, pledges and mortgages -Seasonal rights	Rights transferred under customary rules to non-rights holders including women and other family members, community members seeking additional lands and to outsiders, notably migrants. Usually but not necessarily temporary and restricted in character. Originally non-monetary but increasingly monetized.	Various forms of tenancy and sharecropping as in the West African cocoa belt; unregistered customary leases in peri-urban Ghana; seasonal access arrangements between agriculturalists and pastoralists or between indigenous population and migrants.	Very frequent means of land access in customary systems. The predominant form of land access for women, junior family members and migrants. Seasonal land access arrangements common between pastoralists and settled farmers, or sequential use by different pastoral groups.

1.2.5   Land issues in agriculture

The dualistic approach to tenure systems resulting from colonialism in some African countries has had a marked effect on land administration practices. Disproportionately greater State support was given to areas characterized by received forms of tenure, particularly freehold and leasehold. Hence infrastructure to ensure greater accessibility of markets, institutions and structures for extension support and land management, together with facilitated access to credit, have been a common feature of these tenure systems at the expense of indigenous tenure systems. Since in many countries significant proportions of the land mass remain under indigenous forms of

tenure, State and other support for agricultural activities operating in these tenure systems must be a key consideration of land policy reform.

In spite of prevailing erroneous stereotypes about agriculture on smallholdings, smallholders make an immense contribution to agricultural output, generally holding land under customary tenure systems. In order for the full potential of an efficient smallholder agriculture sector to be realized in Africa, emerging policy must make a strong contribution towards dispelling predominant negative stereotypes about smallholder agriculture. These revolve around inefficiency, subsistence and low productivity as a consequence of insecurity of tenure.

In addition to secure land access, Africa's smallholders require better access to credit, appropriate improved technologies and markets, including both physical access and organizational support. While these factors may in many cases pose greater constraints than land tenure, adequate guarantees of land rights security form a critical part of the enabling environment for smallholder farming, in order to facilitate access to credit services (which must adapt to forms of documentary evidence of ownership other than the traditional land titles) and protect small farmers' interests, as gradually improving infrastructure and technology lead to increasing land values.

In most discussions on the importance of land to agriculture, there is a primary emphasis on farming. This has had the effect of obscuring the prevalence of other land-related sources of livelihoods and economic development such as natural resource harvesting and processing. A policy framework that intends to maximize the prospects for agricultural development must integrate these other factors more centrally. In many countries rates of urbanization may ultimately have serious implications for smallholder agriculture as long as this sector is perceived as having poor economic prospects.

In practice, smallholders make an immense contribution to agricultural output, generally holding land under customary tenure systems. African agriculture faces many challenges in a globalizing world with increasing competition and barriers to both local and global markets. The difficulties are particularly acute for smallholders. Cheap foodstuffs produced by heavily subsidized farmers are dumped in Africa's domestic markets, displacing local produce, which is unable to compete. In European and US

markets imports from Africa are facing rising barriers through imposition of new standards and regulations by governments and private sector actors. Smallholders, although central to the agricultural economies of most African nations and very responsive to new markets and opportunities, are unable to guarantee production at sufficient scale, quality and regularity to meet the needs of global markets dominated by supermarket chains. Despite the advantages of agribusiness in terms of market integration, smallholder farming makes efficient use of labour, generates the bulk of produce in many countries for domestic and regional markets, especially for food crops, and, in the absence of widespread industrialization, provides a critical source of employment and the foundation of food security.

Other challenges to agriculture include constrained productivity due to poor land use and resulting degradation. The growing competition in the use of agricultural land from other sectors including mining and urban development is also an important factor.

Within the New Partnership for Africa's Development (NEPAD), the Comprehensive African Agricultural Development Programme (CAADP) aims to achieve and sustain a 6 per cent annual growth rate in agriculture, through investments in high productivity commercial farming for both small- and large-scale farmers. Since this is likely to have an impact on existing land use rights, the programme will need to find ways to address tenure and equity issues at the local level.

1.2.6 Land issues in the environment

More than 20 per cent of Africa's vegetated lands are classified as degraded, and 66 per cent of these lands are moderately to severely degraded, with the worst affected areas being along desert margins. This deterioration of land quality is likely to intensify over the next 30 years on account of population growth and increasing climate variability.[10] Land degradation affects the poor most severely because they are forced to cultivate marginal lands that also tend to degrade more rapidly. Soil erosion in turn leads to sedimentation, pollution and eutrophication of water bodies, as well as smothering of aquatic habitats and changes in biodiversity. Land use and management, including tenure systems, thus have important consequences on the environment, apart

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10   *Africa Environment Outlook*, UNEP, Nairobi, 2002, p.221–222.

from affecting agriculture-dependent food security and access to non-timber forest and woodland products. Good conservation/husbandry can reduce the amount of land needed for both subsistence and commercial agriculture and also protect ecosystems.

Sound management of resources and appropriate technology are necessary accompaniments of sustainable land tenure systems. In this regard, renewable energy alternatives to lessen reliance on biomass for domestic energy would be beneficial to conservation of woodlands. The increased shift to biofuels could encourage the cultivation of trees beneficial as carbon sinks, while at the same time reducing the emissions from the use of fossil fuels. These emissions increase the amount of carbon dioxide in the atmosphere, contributing to global warming and the attendant extreme weather events such as floods and droughts. Such a shift would also play an important role in catchments protection; ensuring water quality and the regulation of river flows; and prevention and reversal of soil loss and that of biodiversity through habitat protection. Climate change also potentially affects human health primarily through an increasing range of disease vectors like mosquitoes that bear malaria and dengue fever. The causes and effects of environmental issues in Africa are given in Figure 1.

Figure 1. Environmental issues in Africa: causes and effects
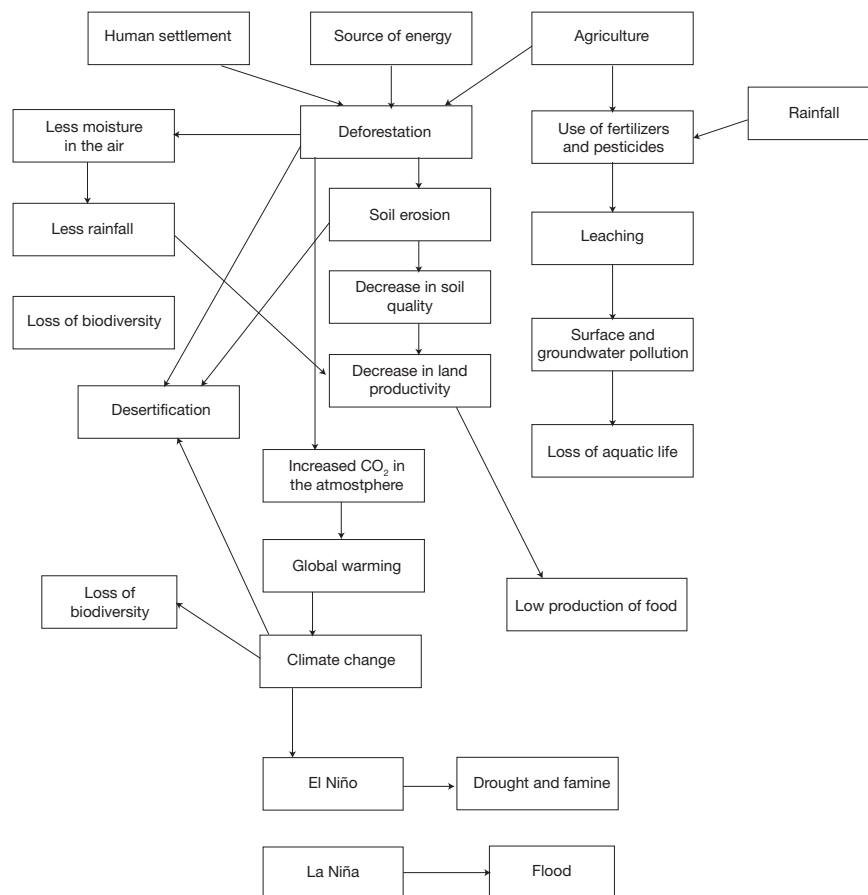
1.2.7 Sustaining the commons

Africa's common property resources (CPRs) comprise forests, wetlands, fisheries, ponds, rangelands wildlife, biodiversity colonies and ritual grounds, among others. Many of these are either held by the State or by communities under some form of collective customary management. CPRs are particularly important for the poor and for regulation of overall eco-climatic balance; they therefore require sustainable management. In recent times pressure to privatize CPRs has increased in many countries.

In many cases, the breakdown or absence of management rules creates a situation of unregulated access by multiple users, leading to unsustainable levels of use and degradation. Although some see the disappearance of the commons as an inevitable part of economic progress, access to common land is often critical for poorer groups, who rely on them for their daily livelihoods and as fallback resources in times of stress.

1.2.8 Managing pastoral land use

Over 40 per cent of land in Africa is devoted to pastoral land use, which produces the bulk of meat and milk requirements of rural and urban populations. This is particularly the case in the Sahelian region, the Horn of Africa, Botswana and northern parts of Kenya, Uganda, Tanzania and Namibia where pastoralism is the predominant economic enterprise.

Since mobility and flexibility are key to the sustainability of pastoralist livelihoods and production systems, pastoral peoples need assured rights of access to grazing and water over extensive areas. Resource scarcity due to pressure from agriculture, periodic drought and public policy neglect has led to restrictions on pastoral mobility and conflict between pastoral groups and their more sedentary neighbours. This has tended to spill over across national and regional boundaries.

The design of policy options to maintain and strengthen pastoral economies through clear regimes of pastoral tenure will be necessary if these conflicts are to be managed and pastoral livelihoods enhanced.

1.2.9 Land and urban development

Currently, high and increasing population growth and market development are creating mounting pressure and competition for land resources, especially in urban and peri-urban areas. Available figures indicate that by 2001, almost one-third of the world's urban population (924 million people) lived in slums. The figure is projected to increase to 2 billion by 2030. Majority of the people, amounting to 43 per cent of the global urban population, lived in developing countries. Indeed sub-Saharan Africa had the largest proportion of the urban population living in slums in 2001, in excess of 70 per cent.[11] According to the

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11   Anna K. Tibaijuka (UN-Habitat), Statement on the occasion of the 4th forum of local

United Nations Environment Programme (2002), Africa's urban population is expected to increase from 37.9 per cent in 2000 to 54.5 per cent by 2030.[12]

The growth of cities and towns creates upward pressures on land values in peri-urban areas, and rising insecurity for those living and working there. In addition, the outward advance of the city leads to displacement and dislocation of dwellers in the peri-urban interface resulting in loss of livelihoods. Within urban areas, informal settlements are usually not recognized by the State and squatter communities have no access to basic services. Rights to land and housing occupied for many years are frequently swept aside when more powerful interests seek to acquire and develop urban land, forcing the poor to create new informal settlements. However, city governments are increasingly recognizing the need to strengthen rights for slum dwellers, as a means to bring them more effectively into the urban economy, ensure better provision of water and sanitation, and ensure the rule of law, and commitments to improve the lives of slum dwellers are enshrined in the Millennium Development Goals (MDGs).[13] Africa's urban poor generally obtain land through informal transactions based on customary practice, systems often tolerated by governments but rarely benefiting from formal backing and regulation. Accordingly, alternative and lower cost forms of land rights documentation are required which regularize occupation in established informal settlements and build on the efficacy of customary based land delivery so as to provide tenure security, while facilitating access to credit and services in urban areas.[14]

1.2.10 Land and gender

The concept of gender relates to the perceived and actual qualities and behaviours of males and females in relation to each other in society. Gender roles and expectations are often rooted in existing gender power relations. In most of Africa, gender relations are largely informed by a patriarchal orientation and the subjugation of the rights and status of women in relation to those of men. In this regard, women face dis-

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authorities for social inclusion of Porto Alegre, Barcelona, 7th May 2004.

12   UNEP, Africa Environment Outlook: past, present and future perspectives (UNEP, 2002).

13   MDG 7, target 11 includes "a significant improvement in the lives of at least 100 million slum dwellers"—the one MDG target indicator that explicitly mentions security of tenure.

14   See Anna Kajumolu Tibaijuka, Security of tenure in urban Africa: where are we now and where do we go from here? Paper for the conference on Land in Africa: market asset or secure livelihood? London, 8–9 November 2004; and Safe as Houses? Securing urban land tenure and property rights, Insights in Development Research No.48 (ID21, DFID/IDS, University of Sussex, Brighton, October 2003).

crimination under both customary and formal systems of land tenure, as a result of culturally embedded discriminatory beliefs and practices (or their pervasiveness), and male control of inheritance systems. Customary practices regarding land are particularly adverse for women, who rarely have full rights to land but must negotiate as secondary claimants through male relatives—their father, brother, husband or son. Succession and inheritance rights remain problematic, since a woman usually cannot inherit the matrimonial home on the death of her spouse. Women's rights are affirmed in several African nations' constitutions, but in most cases, entrenched and discriminatory social practice overrides constitutional provisions. While legislative reform is needed to strengthen women's property rights (for instance through provision for spousal co-ownership, opportunities to hold land in their own right, and prevention of sale of family land in the absence of agreement by both husband and wife) and to improve inheritance rights, wider action is needed, including education advocacy and legal literacy work.

In addition, the spread of HIV/AIDS further weakens land rights and livelihood options of widows and orphans. Efforts by afflicted African families to cope with the pandemic include abandonment, distress sales and renting out of land. Widows and orphans can lack the capacity to work the land, and may be forcibly dispossessed when male relatives die.

Securing women's sustainable access to land requires a coherent reform of policies and practices, from the constitutional (where this has not yet been addressed), to the community and ultimately—and perhaps most importantly—the household level.

1.2.11 Land and HIV/AIDS

HIV/AIDS has emerged as a serious development challenge across much of Africa. HIV/AIDS is characterized by debilitating consequences through disruption of the availability of labour and diversion of financial resources towards medical uses. The time and resource constraints (financial and labour related) frequently experienced by those affected by HIV/AIDS compromise their ability to make productive use of their landholding. In this way HIV/AIDS has implications for agricultural productivity. This incapacity means that HIV/AIDS can have a negative impact on the ability of those

affected to access and retain land. This impact is generally greater in the case of vulnerable groups in communities, for instance widows, divorced women, youth and orphans.

These effects at the household level have implications at community level.

HIV/AIDS has the potential to increase the extent of the operation of informal land markets. This is primarily the result of households trying to derive benefits from their landholdings at a time when the landholding family may not be in a position to cultivate the land itself. These transactions can take the form of land rentals or, in more extreme cases, distress sales.

HIV/AIDS has the effect of reducing the effectiveness of land administration institutions at community, provincial and national levels due to loss of valuable personnel (through death), recurrent illness and absenteeism of other staff leading to dissatisfaction on the part of clientele requiring the services of these institutions. Staffing issues are widely acknowledged to be gradually affecting institutional capacity (experience) and memory, particularly in Southern African countries where HIV/AIDS prevalence rates are particularly high. The resulting limitations in the capacity of institutions can have far-reaching implications. For instance, reduced capacity to address and resolve disputes presented to conflict resolution institutions has implications for increased and escalating land-related disputes. Land policy frameworks can support the mitigation of these and other effects of HIV/AIDS on land by acknowledging the significance of HIV/AIDS as a development challenge and incorporating the necessary provisions.

1.2.12 Land institutions

In the land sector, as in other sectors, institutional effectiveness demands strong public sector and administrative institutions which are transparent, predictable and accountable to the people, as well as legal and regulatory frameworks that encourage and protect civil society. However, current land institutions and practices are strongly embedded in the history and culture of African countries, dating back to pre-colonial, colonial and post-independence periods. Land administration institutions are tasked with judicial, regulatory, fiscal, cadastral and conflict resolution functions, but their roles are generally restricted to land under formal tenure arrangements, of-

ten comprising little more than two per cent of the land.[15] These institutions often fail to deliver on their mandates, and do not function well as a result of weak technical and human capacities, as well as outdated equipment and their limited spatial coverage. They also suffer from vested interests, rent-seeking behaviour and corruption, compounded by the practice of using land as a tool of political patronage. Land title registration can take from 6 months to 10 years or more in some countries, as functions are frequently split between multiple government agencies and departments, which mostly have conflicting and unclear mandates.

An important objective of land policy reform should be to comprehensively restructure institutions for land administration so as to achieve decentralized, transparent, effective and efficient delivery of land administration services that satisfy customer requirements and which, over the long term, would be self-sustaining. Public land agencies also need to be decentralized and work in closer collaboration with local government to deliver land services closer to the users, building on local innovations by informal and customary institutions such as local documentation and witnessing systems which have arisen in the absence of effective coverage by the State.

1.2.13 Land in post-conflict reconstruction and conflict avoidance

Conflict is widespread in many parts of Africa, and security is fundamental to development and poverty reduction. Struggles for control of territory and natural resources and the power and revenue they yield, are frequently at the root of these conflicts. Furthermore, competition for access to land between social groups serves to inflame ethnic tensions that are susceptible to political manipulation. Countries in conflict are unable to resolve land policy issues, and conflicts generally lead to the seizure of land resources by armed groups, and to displacement of large numbers of people who require temporary land and shelter as refugees in neighbouring States or as internally displaced people.

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15   African Development Bank 2005; Clarissa Augustinus and Klaus Deininger, 2005, Innovations in land tenure, reform and Administration in Africa. Paper presented at the UNDP ILC conference Land Rights for African Development: From Knowledge to Action, 31 October–3 November 2005.Coverage of cadastral systems is higher in some cases, around 15 per cent in Kenya and Uganda. Although the greater part of the surface area is covered in South Africa and Namibia, the communal areas where the majority of their populations live are largely excluded.

Post-conflict settings frequently involve overlapping sets of land claims, as in Rwanda, where cycles of civil conflict produced successive waves and associated groups of long-term refugees and returnees in need of resettlement. A similar scenario unfolded in Mozambique in the early 1990s at the end of the civil war when former Portuguese land owners returned, seeking to regain their property which had been nationalized at independence in 1975. At the same time, returning Mozambican nationals, previously displaced by the civil war, also sought to reclaim their previous landholdings. More recently, disputes emanating from competing land claims in post-conflict Angola are said to be rife, and have led to cycles of settlement and expropriation.[16] Rationalizing the land resource by addressing overlapping post-conflict land claims is particularly complex in situations where land disputes were a contributor to the conflict in the first place, as has been the case in Sudan. Post-conflict situations where landholding is an important consideration require the development of land policies that provide a clear framework for the adjudication of competing claims. The case of Mozambique and the recognition that it gave to customary and existing occupational rights can be cited as best practice in this regard.

Reconstruction and reconciliation processes require the disentangling and negotiated settlement of these claims. The establishment of legitimate institutions governing access to land for resettlement of migrants and refugees has become very important, as are questions of land restitution. Following conflict, the rebuilding of land institutions and the revision of outdated legal frameworks are important steps in the restoration of governance and creation of an equitable basis for long-term and sustained development.

1.2.14 Land policy implementation

Land policy implementation, comprising a comprehensive programme of land reform and legislative development, remains the single most important policy challenge in Africa. During the last decade, a large number of African countries have gone through processes of land policy change, leading in some cases to comprehensive legislative reforms and to institutional change. In most cases these processes have involved a greater or lesser

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16   R. Palmer, OXFAM and land in post conflict situations in Africa: examples from Zimbabwe, Mozambique, South Africa, Rwanda and Angola. Paper for ACTS conference on Land Tenure in Africa, November 2004.

degree of stakeholder consultation and public debate, and considerable study often organized through appointment of presidential commissions of enquiry into the necessary reforms. Most national land policy reforms undertaken in the last decade recognize the legitimacy of customary land rights and provide for some form of registration, and a role for local and community-based institutions in land management, alongside that of the State. Gender equality is also now high on the policy agenda. Policy making has sought to balance, in different ways, imperatives for social justice and sustainable livelihoods, with the stimulation of rapid economic growth. This latter objective has tended to persuade policy makers of the benefits of individual land title on the received colonial model. The new policies differ, however, in the instruments and arrangements adopted to interface customary and formal tenure, in particular concerning the extent to which they seek the registration of rights to land, and the empowerment of decentralized institutions in the management of land rights at the local level. It is important, therefore, that policy implementation strategies, programmes and mechanisms be clearly defined, debated, costed and internalized as an integral part of approved land policies.

In almost all cases, African nations have had to rely on donor assistance to undertake land policy reform processes, and subsequently for implementation. In a number of countries the practicalities and the often very high costs of institutional change have not been properly considered, and particularly where policy has prescribed creation of new local institutions for land rights management, implementation has been stalled for lack of financial resources. This paper returns to these issues and to those involved in management of donor support and interventions in Part II, in setting out the basis for a framework of action, after referring to some of the principal lessons learned in African land policy processes to date.

1.3 Regional variations and challenges

Although, as indicated below, these issues are already being tackled in policy development in many countries, there may be regional variations and challenges requiring collective initiatives at those levels. An attempt to isolate these is set out as an Appendix to this paper.

2. Lessons learned from policy and technical experience[17]

2.1 The overwhelming presence of the State in land matters must change

Throughout Africa, the State remains the primary owner, landlord, manager and auditor of land resources. While this is the product of Africa's history, research now indicates that the overwhelming presence of the State in land matters is a serious impediment to efficient and sustainable use. This is compounded by the fact that the State often does not have the capacity and resources to perform all these functions. Land policy reforms in many countries are now questioning this historical legacy. Reforms being explored include systems of divestiture and privatization of land services delivery, the strengthening of community land governance systems and the re-vesting of radical title to land in citizens or local community organs at large. This would free the State to concentrate on policy formulation, standard setting, monitoring and auditing of broad land sector operations.

2.2 Land rights registration

Twenty years ago, much emphasis was placed on formal land titling programmes, which have proved slow, expensive, difficult to keep up to date and hard for poor farmers to access. Evidence has shown that land titling has been expensive, difficult and generally inappropriate. Indeed, titling and registration may generate conflicts rather than resolve them. Recently, much progress has been made in testing new approaches to securing land rights. Pilot cases from the field show how rights can be recorded at much lower cost, in simple ways, for example in Ethiopia, Mozambique and Benin. Equally, in some places, titling and registration may be much less important than working to strengthen local institutions with responsibility for managing land rights and related disputes. Building on local knowledge and existing land management practices at local level are critical ingredients, and systems of land rights documentation can be gradually refined over time. The costs and techniques of land administration also need to

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17   The summary of lessons learned is based substantially on the findings of the conference on *Land in Africa: market asset or secure livelihood?* London, 8–9 November 2004.

match the value of land. Computerization of land records and the use of new technologies, such as geographical positioning systems (GPS) to automate land survey and demarcation, and geographical information systems (GIS) for comprehensive parcel maps and an aid to spatial planning, can all help bring down costs and streamline administration processes. However, technology in itself can be no substitute for locally legitimate processes to allocate and record land rights, approve land transactions and adjudicate disputed claims.

2.3   Customary rights

Although customary land rights differ from formal rights in their origins and forms of documentation, they can be equally secure and therefore deserve proper recognition in law. The dualistic legacies of colonial rule must be overcome through equitable, consensual policies and coherent new legal frameworks incorporating a plurality of forms of tenure that secure property rights for rich and poor alike, recognize secondary and collective rights and avoid the pitfalls of drives for comprehensive individual titling.

2.4   Land administration institutions

In many countries, the ultimate ownership of land remains in government hands, with land allocated administratively, rather than through the market. This brings serious risks of rent-seeking and corrupt behaviour. Progressive institutional change in land sector agencies needs to be integrated into wider processes of public sector reform. Government land agencies need to provide businesslike, customer-oriented services, with the flexibility to recover their own administrative and technical costs from those users able to pay, and to determine appropriate staff incentive packages. Experience indicates that this sort of institutional renewal can often only be achieved by taking land agencies out of the civil service. Reforms are needed not only at central government but also at lower levels including local government and village level institutions. Institutional strengthening means developing better checks and balances, to make structures accountable both upwards to central government and also downwards to the people it is meant to be serving. For land, it means establishing open processes, with publicly accessible land registers and information about how land is being allocated.

2.5   Decentralized local bodies

Many countries have adopted new land laws and policies in recent years that provide for greater decentralization in land management and administration. The decentralization trend is being developed through a large variety of models and approaches, some enhancing the roles of newly built local-level institutions, while others are increasing the role granted to customary chiefs, mainly in land conflict management. Examples of such decentralization processes include Botswana's land boards, Uganda's district land boards and sub-county land committees, Namibia's communal land boards, Tanzania's village councils, Niger's local land commissions and Ghana's decentralized deeds registries and pilot customary land secretariats.

Rights can be secured at different levels, including the individual or family and at collective levels, such as the village or clan. The State plays a fundamental role in managing or facilitating the process, and this is best done in a decentralized way, in partnership with local institutions, including traditional and customary institutions where adequate checks and balances are in place. The recent shift towards decentralizing government has been valuable as a means of taking land administration closer to the field and linking it to tenure practices with which communities are already familiar. The lessons gained from experience show that formal land administration services can be provided at different levels but they will more effectively document the land rights that are recognized as legitimate locally, if they are organized at district level. In addition, formal land administration services need mechanisms to interface with and support land management arrangements at the very local level, which might be provided by the lowest levels of local government, by village councils, traditional councils, customary authorities or local secretariats, based on customary practice and backed by simple manual systems of documentation and witnessing. The better understanding which results from land administration at the local level allows governments to tailor approaches to different settings, and for upgrading of rights and systems over time. In some places, the registration of rights may be systematic, with all land in a given village or area being adjudicated and registered at the same time. There are advantages to such a method, as it is more efficient and less liable to fraud. In other cases, registration is done on demand, leading to a patchwork of registered and unregistered land. A shift away from blueprint solutions allows for solutions appropriate to the context.

2.6   Safeguarding the commons

Research indicates that Africa's CPRs are under severe threat. Between 1990 and 2000 Africa lost more than 7.8 per cent of its forest cover, numerous wetlands dried up or were invaded by private development projects, and water resources in lakes and river basins became heavily polluted. Land policy reform and programmes must therefore include practical strategies to safeguard these resources. While it is desirable that the State should continue to hold and manage some of these resources, it is equally desirable to engage local communities and a wide range of other stakeholders in their protection and management. This will facilitate more responsible consumptive utilization and conservation. Administrative structures for CPRs, therefore, need to be democratized and decentralized.

2.7   Managing pastoral lands

Programmes for settlement of pastoralists and those aimed at substituting pastoral production with private group ranching schemes have generally proved unsuccessful. Pastoralist livelihood systems have demonstrated considerable resilience in arid and risk-prone environments. More successful approaches, such as *Conventions locales* for resource management in the West African Sahel, provide frameworks for negotiation and agreement between different groups with interests in a common resource. Production from extensive common land and household farm plots forms an integrated livelihoods system for many rural communities, yet land registration has failed to cater for common resources, or worse, allocated individual private rights to former common property. In practice, the management of the commons works well when two factors come together: the establishment of secure legal rights for local communities over the common resources on which they depend; and support to enable those communities to manage these resources in an equitable and sustainable manner. Registration should concentrate first on securing customary community domains, and proceed incrementally to address the management needs of the common resources, including those utilized by different users, before formalizing private property rights of individuals and groups.[18]

18   Liz Alden Wily, The commons and customary law in modern times: rethinking the orthodoxies. Paper presented at the UNDP/ILC conference on Land Rights for African Development: From Knowledge to Action, 31 October–3 November 2005.

2.8   Land disputes

Registered and documented land rights are not secure if they are under dispute and litigation. In a number of countries such as Ghana and Tanzania, widespread land litigation and large backlogs of land cases in the courts are significant barriers to investment and land development. These problems stem from complex sets of legislation and administrative rulings dating from colonial times, and from the existence of multiple channels for land allocation, which legitimize conflicting claims. While legislation needs to be simplified and harmonized, the judiciary continues to play an important role in interpreting the law. Action needs to be taken urgently to resolve outstanding cases and claims and avoid recourse to litigation in the future. This requires viable systems of alternative dispute resolution (ADR) able to deliver settlements rapidly, not dependent on the courts but linked to the formal judicial system where these alternative channels are exhausted. ADR systems can include independent paralegal mediation and adjudication services and dedicated land tribunals. At the local level these tribunals can be based on customary systems of dispute resolution, under the aegis of traditional authorities or councils of elders. Importantly, ADR systems need to exist locally, and to accept oral testimonies and community witnesses so as to be accessible to ordinary land users, and to provide recourse to appeal to higher levels. In supporting local land management systems, sound and locally accepted processes for dispute resolution, supported by simple documentation systems, can offer people a better guarantee of security than investing solely in land registration systems, which are often unable to capture the full range of established customary rights and transactions and can prove difficult and costly to keep up to date.

2.9   Market assisted land reform

Efforts to redistribute land and settle historic injustices in Southern Africa have moved slowly and Zimbabwe's experience demonstrates that frustration and disillusionment can provoke land invasions, undermining the rule of law and leading to political and economic instability. The South African Government's target of redistributing 30 per cent of white-owned farmland by 2015 will not be achieved at the current rate of progress. The principles of "willing seller, willing buyer" and grant and credit packages for market-based land acquisition by landless groups have proved unsuitable for poor

landless farmers and unable to deliver land transfers at scale. Rural land restitution has also moved slowly as landowners have been unwilling to give up land. Although partnerships with the private sector may be needed to manage high value enterprises on redistributed land, more proactive approaches by the State are likely to be needed, within the rule of law, stepping in to acquire land and redistribute it to beneficiaries and land claimants, while land taxes levied on large and unproductive land holdings can create incentives for landowners to accept compensation and return the land. Donor support for the land redistribution process has slackened and needs reinvigorating. Given the strong historic responsibility for current inequities in land ownership, there are strong arguments for some of these costs to be borne by the donor community.

2.10   Post conflict reconstruction

Sound and equitable land policies can be a tool for promoting social stability and reducing the risks of conflict in a number of different ways. Establishing a new, accountable basis for managing access to land is a key element of institution building in post-conflict settings. In a variety of situations, such as in Rwanda, and more recently in the Democratic Republic of the Congo (DRC), land disputes and localized land scarcity have been a cause of ongoing conflict.[19] A recent conference on conflict and land tenure in Africa[20] found that substantial attention to building capacity for land dispute resolution is needed to help rebuild social cohesion in countries recovering from and at risk of conflict. Approaches need to be locally legitimate and not imposed from above. Civil society organizations (CSOs) also have an important role in mobilizing community involvement and providing independent checks and balances. Furthermore, there is the need for better dissemination and application of international policy and procedural guidelines for meeting the widely neglected land needs of internally displaced people, and for careful examination of the treatment of land issues in ongoing peace processes, supported by research and local knowledge. A constructive strategy—developed by the Food and Agriculture Organization of the United Nations (FAO) and applied in Angola and Sudan—is to pursue negotiated territorial settlements at local level to unravel and resolve overlapping and

19   Chris Huggins and Jane Clover (eds.), *From the Ground Up: Land Rights, Conflict and Peace in Sub-Saharan Africa* (ACTS, Nairobi, 2005).
20   *Report of the conference on Land Tenure and Conflict in Africa: Prevention, Mitigation and Reconstruction* (ACTS, Nairobi 9–10 December, 2004).

competing sets of land claims, and to ensure adequate temporary access to land and shelter for refugees and returnees, pending long-term solutions. These processes have been coupled with processes to set the basic elements of a conflict-sensitive land policy and new land institutions in place.

2.11 Land policy implementation

Africa's recent experiences imply that land policy and legislative reforms, and the practical institutional foundations for implementation can take 10 years or more. Shortage of funds and technical capacity to manage reforms, and the fact that land reforms can take time to deliver visible benefits may dissuade governments from investing scarce resources in land reform processes. Donor funding modalities may not be supportive, however, and governments need to manage these carefully in order to apply them successfully to land reform. Short-term project funding tends to have narrower objectives and may undermine the creation of national capacity, while successive project interventions can lead to a stop-go cycle of support with changing emphasis and objectives. However, medium-term budget support coordinated through ministries of finance may be directed to other sectoral priorities with closer linkages to poverty reduction strategy programmes (PRSPs) and more direct impacts on the attainment of the MDGs, in part due to the limited lobbying power of sectoral land ministries. Budget support to "business as usual" sectoral programmes is likely to be ineffective in producing the kind of policy and institutional changes required. For these reasons, African governments and donors alike need to devise mechanisms to support land policy reform and implementation in line with the centrality of land issues in strategies for sustainable economic growth, ensure adequate coverage in national planning and strategy processes including PRSPs, and establish medium-to-long-term programmes to support policy change and development of appropriate institutions. Ideally these should be based on political consensus and benefit from cross-party support, given the limitations imposed by four-to-five-year electoral cycles and the reluctance of governments to effect radical changes as elections approach. Land reform programmes should also receive sustained, combined support from international donors, directed to the specific processes of change and the institutions where reforms are under way.

2.12   Stakeholder participation

CSOs can play an important role in providing checks and balances on government decision making and the implementation of land policy. Because land issues involve political choices, broad public debate of the options at stake is essential. Drawing up new legislation is usually not the first thing to be done. Rather, government needs to engage with different parts of society to understand diverse interests and priorities. Taking time to consult effectively and following a flexible calendar are essential to build confidence between government and people. Political leadership and key statements matter a lot in providing assurance about the process to be followed, which will likely take several years. The importance of land rights across and within African societies highlights the need to support development of civil society actors and networks with knowledge of land issues—national, Pan-African and global.

2.13   *Capacity building*

A wealth of practical experience is now emerging in Africa, and learning lessons between countries provides ideas and experience from which to build. Although some regional and subregional land networks exist, they lack secure institutional bases, and mechanisms for shared learning are absent. As a result, the lesson learning that has taken place has been largely dependent on sporadic donor support, and the efforts of international research institutions. Capacity in different fields, including legal, technical and socio-economic aspects of land reform, needs to be built through national research and training institutions, organized into strong and effective regional networks.

3. State of land policy and land reform in Africa

3.1 Addressing land issues

A large number of African nations are actively addressing land issues through processes of policy reform and implementation. While a number of countries have received donor assistance to do so, in many cases they do so without substantive assistance or opportunities for guidance based on experience from other African States, and from successful cases in other regions.

Broadly speaking, the substantive content of land policy includes the following:

3.1.1 Policy process

Public debate on the key features of policy should precede comprehensive land reform. Typically this may involve publication of a policy discussion paper following the investigations of a commission of enquiry, which should have consulted with the principle stakeholder groups in different regions of the country. Commissions of enquiry and policy steering groups should be interdisciplinary and inter-sectoral in character and have strong civil society and independent expert advisory support, not dominated by land sector institutions themselves, who often have vested interests and whose roles and mandates may need to change. The policy paper should identify the key areas and options for reform.

Despite the need to gain clarity in advance on the principle policy issues, detailed policy formulation, legislative reform when necessary and institutional change need to take place in parallel, through a phased and iterative process, rather than on a sequential linear model. The overall stages can be set out in a road map for reform with clear milestones to which the key stakeholders subscribe. The road map should avoid detailed prescriptions and timetables for institutional change, unless it is very clear that these are feasible and the costs can be met. However, fundamental changes in institutional arrangements (e.g. the merger of land agencies, creation of new land agencies independent of the civil service, and formalizing the status, mandate and authority of new bodies such as local level land boards or

village level and customary land secretariats) will most likely require new legislation to clear the way for practical implementation.

Once the general lines of policy and proposed legislation are in place, there is a role for piloting or for phased implementation. These pilots require careful monitoring of any new institutional arrangements, processes and technical systems before undertaking detailed design, or finalizing legal regulations prescribing new administrative procedures.

3.1.2 Substantive content

In line with the issues and the lessons set out above, the substantive content of land policy which land policies in African countries are seeking to address include:

- **Poverty reduction**
  Provision of secure land access through a diversity of forms of tenure so as to facilitate economic opportunity and livelihood security for all land users; access to land for vulnerable groups, and in some cases, programmes of land redistribution to the landless poor; improvements in land delivery; and security of tenure for the urban poor.

- **Overcoming the dualistic legacy of colonial land law**
  Legal recognition and protection of legitimate customary rights; provision for some form of demarcation and registration of customary rights, including community and common lands; a role for traditional authorities and customary institutions in land management and land dispute resolution; restitution of alienated lands to rightful owners and land redistribution to adjust inherited and racially inequitable land holding patterns.

- **Clarification of property rights as a basis for investment**
  Strengthening property rights as a basis for economic development and poverty reduction through investment and land development; land access opportunities for commercially oriented farmers and national investors; and clarification of land access opportunities for foreign investors to facilitate greater FDI.

- **Gender equality and equity**
  Joint spousal ownership and women's rights to own and inherit land property; spousal and family consent for land disposals by household heads; and women's representation on land management bodies.

- **Reform of government land agencies**
  Clarification of institutional mandates and roles and establishment of businesslike and customer-oriented land agencies; modernization of survey procedures, land information and cadastral systems; streamlining of land titling procedures; better documentation of land transactions to support development of formal land markets; improvement of revenue collection and cost recovery for land-related services; and creation and empowerment of decentralized land management agencies such as district land boards, village and customary land secretariats.

- **More effective land dispute resolution and avoidance of land conflict**
  Harmonization of land laws and repeal of outmoded or contradictory legislation so as to reduce conflicting claims; introduction of systems of ADR and use of customary dispute settlement mechanisms to reduce the pressure on the formal courts; action to reduce backlogs of land cases in the courts; elimination of multiple channels for land allocation; development of negotiated mechanisms and conventions to reduce stakeholder conflicts over natural resources and common land; and settlement of historical claims and grievances of traditional land holding groups.

- **More sustainable environmental and natural resource management**
  Land use planning and management to support sustainable environment and natural resource management; improvements in urban land management; and harmonization of land with natural resource/environmental legislation, including rights to timber, mineral and biological resources and the duties of good land resource management.

In addition to linking land law and policy to environmental and natural resource management, a further set of issues which need to be addressed outside the land sector itself are those of harmonization

and integration of land law and policies with the wider development context, notably questions of law and policies governing: FDI and investment; agricultural strategies; urban planning and management; and inheritance and matrimonial law.

3.2   The range of solutions

The specific solutions, approaches and institutional arrangements differ from case to case. The extent to which countries have adopted new legislation, the approach taken to realize legislative change and the specific effects also varies. The degree of practical implementation of new laws and policies is highly dependent on the budgetary and human resources available; these are often very limited according to the extent to which former colonial regimes developed land institutions and skilled professionals, and how far these have been maintained since independence.

African nations can be clustered according to the status of ongoing land policies and reforms:

- Countries engaged in ongoing policy processes to determine the direction of change and beginning legislative reforms;
- Countries which have recently adopted new land policies and laws and have embarked on implementation;
- Countries addressing land issues in a post conflict context;
- Countries with a long-standing history of land reform which no longer seek comprehensive change; and
- Countries without ongoing or proposed programmes of land policy reform.

Without seeking to comprehensively categorize countries into these groupings, the information in Table 2 summarizes some of the key developments, issues and challenges in countries that are currently addressing or have recently undertaken significant land policy and land reform processes.

Table 2: Selected countries undertaking land policy, legislative and institutional reforms[21]

Country	Key developments	Current issues and processes
Benin	1994 Rural Land Plan (Plan Foncier Rurale) Decree.	Land Policy founded on village level land use planning and decision making, which facilitates subsequent land administration. Benin now addressing policy on urban land tenure and territorial planning.
Botswana	Has operated a system of decentralized land boards since 1970. Policy Review 2002 and Draft Land Policy 2003.	Refocusing land policy on urban areas now that more than 50 per cent of the population is urbanized; further development in local management of customary land.
Côte d'Ivoire	1999 Land Law enshrining the 1998 Plan Foncier Rurale (Rural Land Plan).	Rural Land Plan provides policy on land administration, and has evolved into a decentralized management approach involving systematic registration of ownership rights and secondary rights held by tenants and migrants. However, policy did not provide for resolution of tensions between long-term migrants and nationals over ownership rights, leading to wider ethnic conflict.
Ethiopia	1993 and 1997 Land Laws.	1997 law enables each State to develop its own decentralized land policies and laws; being actively pursued in Tigray and Amhara National Regions.
Ghana	1999 Land Policy aims to improve State land administration and recognizes role of customary authorities in land management. Multi donor supported Land Administration Project assisting with legal and institutional reforms.	Comprehensive legal and institutional reform proposed to create a new single State land agency; piloting of Customary Land Secretariats; measures to clear large backlog of land cases from the courts and introduce ADR systems.
Kenya	Draft Land Policy 2006, Land issues addressed by 2004 Constitutional Review.	Government committed to legislative and institutional reforms, including decentralization and eradication of multiple channels for land allocation. Progress is linked to progress of wider constitutional reform.

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21 Principal source: Liz Alden Wily, *Governance and Land Relations: a Review of Decentralisation of Land Administration and Management in Africa* (IIED, London, 2003).

Country	Key developments	Current issues and processes
Mozambique	1997 Land Law enables demarcation and titling of community lands, requires negotiation of investors with communities to access land and establishes local land tribunal system accepting oral evidence.	Implementation slow and difficulties with absence of unified cadastral database. Implementation now being tackled through a donor supported Community Land Fund in three provinces, providing resources for land demarcation and economic development projects.
Mali	2000 Land Law (Code Domanial et Foncier) and 2001 Pastoral Charter (Code Pastoral) 2001.	Decentralization of land management and administration under way; Following regional analysis of tenure practices, national inventory of pastoralist rules and customs and examination of existing legislation, the Code Pastoral empowers pastoralists to manage their own lands and recognizes customary tenure; under gradual implementation.
Namibia	1995 Commercial Land Act 1998 Land Policy and 2002 Communal Lands Reform Act.	Accelerated redistribution of commercial farmland under way though compulsory purchase of "excessive" land holdings and first refusal on land purchases by the State, supported by a system of land taxes; newly decentralized land administration systems being introduced for urban and rural communal areas, controlling and ratifying land allocations by chiefs.
Niger	1993 Rural Code decentralizes land administration to Land Commissions at commune level, with planning and decision-making powers including transformation of customary land allocations into ownership rights through registration.	Popularization campaign in 1994 and 11 Commissions set up by 1998 with official and elected representatives and guidelines systematically issued. The legal framework provides assurance for incoming farmers in their agreements with traditional land owners, allowing them to make long-term investments for sustainable agriculture. A supplementary decree (1997) provides for pastoralist home areas (terroirs d'attache).
Rwanda	Land Policy 2003, Land Law 2004.	Seeks to develop a comprehensive system of registration of land rights, land administration by local government at district level, and dispute resolution using indigenous mechanisms, plus resettlement for returnees and compensation for those losing land. Road map for systematic implementation under development with donor support.

Country	Key developments	Current issues and processes
South Africa	Land Policy Framework (1994) and Green Paper (1996). Wide range of subsequent legislation including Restitution of Land Rights Act (1994), Communal Property Associations Act (1996) and Extension of Security of Tenure Act (1997). Communal Land rights Act 2005 transfers responsibilities for management of communal lands to traditional authorities or other local bodies.	Pressures to speed up settlement of rural land restitution claims and increase land distribution. Current programme (LRAD) aims to stimulate the emergence of new small-scale commercial farmers. Mechanisms needed for management of communal lands given lack of institutional capacity and land information systems.
Tanzania	National Land Policy 1995 and 1999 Land Act and Village Land Act; latter devolves power and responsibility for land allocation and management to Village Assemblies.	Widespread implementation frustrated by lack of financial resources and institutional capacity. Strategic Plan for Implementation drawn up in 2005 following stakeholder consultation makes a number of policy and practical proposals, including establishment of decentralized land administration support services, land administration infrastructure, and District Land Boards, and greater emphasis on gender equity. Strategy calls for investment independent of the Medium Term Expenditure Framework.
Uganda	In the process of land policy formulation to rationalize principles enshrined in the Constitution. 1998 Land Act introduced Customary Land Certificates and decentralized system of District Land Boards, Local Committees and Tribunals.	Piecemeal implementation due to high costs and insufficient budgetary resources for hierarchy of decentralized institutions created by the law. Retrospective development detailed land policy guiding implementation of the law.
Zimbabwe	1990 Draft National Land Policy; 1992 Land Acquisition Act (20:10) subsequently amended; 2005 Constitutional Amendment Act No.17.	Under the Constitutional Amendment Act No. 17: 5,256 farms gazetted for resettlement became State land; the State is able to acquire agricultural land for any purpose; and the powers of the courts were restricted to matters of compensation for acquired agricultural land, becoming unable to challenge land acquisitions. Under the fast track land reform programme over 150,000 families have so far been resettled on almost 5,000 former commercial farms.

4. Capacity issues

4.1 Land administration

With a few exceptions in cases where land institutions were more highly developed in the colonial period, the capacity of State land institutions is generally weak and restricted to the administration of formal property rights, usually only a very small fraction of the full range of interests in land. Technical and human resource capacity building is a significant element in donor assistance to the land sector in Africa, and there are fundamental needs to extend the coverage of cadastral systems and accessible land registration and documentation procedures. However, the need is not simply to build capacity for business as usual, but to re-orient capacity and expertise in developing appropriate land administration systems so as to meet the needs of land users as a whole and assist with national development. This is a long-term endeavour requiring considerable strategic planning and institutional change in the context of wider public sector reforms. Considerable legal reforms, management skill and political will are required to overcome institutional resistance to change and craft the development of effective, reformed institutions, while technical and human resource capacity must be built incrementally over time. Importantly, capacity needs to be built at the local level, not only for government institutions but also for customary, community-based and private sector organizations, which under current trends in African land policy, can expect to assume growing responsibilities for land management in partnership with the State.

4.2 Implementation processes

African governments also face challenges in the high level leadership and coordination of land policy change processes, because complex, cross-sectoral and potentially controversial issues are involved, and because until new policies and legislation come into effect, they are required to maintain existing institutions and services. Governments often rely on external technical assistance which can be poorly integrated into the national context and may involve attempts to introduce inappropriate and unsustainable technical systems and procedures, reliant on recurrent external advice and inputs. Consequently, Africa needs to grow its own capacity to manage policy, institutional and technical change, supported initially by external expertise. Lesson learning, whether from neighbouring countries or other

regions, will be important. This is an area where Pan-African and regional support facilities can potentially assist by providing appropriate high-level expertise and leadership support.

4.3   Higher education

Africa will need to develop its own centres of excellence in land policy, tenure and management in order to supply the knowledge and expertise necessary for the implementation of new land policies and development of land institutions to support African economic development and renewal of governance systems in the 21st Century. These tasks will require growing pools of trained professionals with technical, developmental and policy skills related to land, able to operate in public and private sectors and in civil society. Higher education and research institutions are also needed to provide empirical knowledge and analytical, technical and developmental skills to governments and other stakeholders to inform land policy and its implementation. Currently, the capacity of African education and training institutions is weak and training provision relies substantially on international centres of expertise, is relatively high-cost and not sufficiently focussed on the distinctive needs of African countries. There is scope to expand the role of African research and higher education institutions in partnership with the regional economic communities (RECs) and with national and international sources of expertise, to develop regional centres of excellence. These in turn would need to support satellite national institutions in providing more systematic research and training to meet the human resource needs of national agencies and civil society for both technical and developmental skills in land matters. To achieve this, a concerted and long-term effort to invest in the capacity of African training institutions in land policy and related technical and developmental areas will be needed, with partnership and support from international centres of expertise.

4.4   Capacity of civil society

Government and intergovernmental bodies, and foremost in this regard, the African Union (AU), now acknowledge the important complementary role of civil society actors in the development of the continent and its countries. However, capacity in civil society is highly variable across African countries and often weak. Even where civil society is quite well developed and en-

gaged in matters of governance and access to justice, activity does not necessarily extend to land issues. The existence of non-governmental organization (NGO) capacity at national level does not necessarily reach down and give voice to concerns at the community level. In addition to advocacy, civil society has important roles in facilitating consultation on land policy issues and delivery of land services and technical assistance at community level in partnership with government. This is particularly important to bridge the gaps between policy and implementation and in achieving wider development impacts from land policy reforms. Across Africa, however, national NGOs, CSOs and regional NGO and CSO networks need greater capacity to engage more effectively in land policy processes, and to assist with implementation. In particular, strengthening the capacity of organizations active in rural areas is urgently required. Dimensions for consideration with respect to capacity building may include ensuring that appropriate *policies* are in place; providing sufficient *funds* to implement policies*;* employing professional *personnel* in sufficient numbers to undertake a wide range of tasks; equipping staff with appropriate *skills* and *expertise*, via a range of in-house training programmes; s*tructuring* the institutions to ensure efficiency and effectiveness; streamlining *systems* and *procedures*; *managing* programmes and projects effectively; and building systems (e.g. monitoring and evaluation) to maximize *learning from experience* and the inevitable mistakes that will be made.[22] Financial and technical support to civil society capacity in all of these areas merits inclusion in regional and subregional frameworks for land policy.

5.   Knowledge and knowledge gaps

Information and knowledge management are emerging as key supportive tools required to support the development initiatives of African States. To date, advances in this regard have been made in the area of disaster preparedness, particularly in drought-prone countries. Government and non-governmental inter-sectoral information networks have also been established to strengthen the impact of development initiatives through collaboration and access to information. An example in this regard in the Strategic Analysis and Knowledge Support Systems Network for Southern

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22   B. Cousins Comments on the Communal land rights bill (B67-2003) (Cape Town, South Africa, PLAAS, University of Western Cape, November 2003).

Africa (SAKSS-SA) which is being established to produce an inventory of institutions involved in rural poverty analysis within the agricultural sector in support of the NEPAD CAADP. Further advances in the field of knowledge management are required to assist governments and other agencies to assess how their development programmes can more effectively contribute to meeting the MDGs relating to development and, in particular, poverty reduction.

Although African nations face common land policy issues in many respects, they do so in different historical, geographical, demographic, social and economic contexts. Policy making needs to be guided not only by better knowledge management, including documentation and dissemination of what has worked elsewhere, but also by better empirical knowledge of national and local circumstances and country- and context-specific analysis of policy options and the implications of policy choice.

Knowledge gaps and issues for further investigation and policy discussions on land in Africa fall broadly into four areas:

i) The nature and policy implications of changing customary land relations

- How customary land tenure and management is changing and how it should be understood in a contemporary context: while there is consensus that customary land management provides a good measure of tenure security and is more legitimate than externally imposed systems, there is also widespread criticism that the idea of "custom" has been invented and manipulated to suit the interests of, for example, colonial regimes, local elites and male household heads. Development agencies and governments can tend to treat "custom" as a static set of principles and practice, whereas in reality customary systems represent the negotiated outcomes of the interplay of diverse interests and evolve rapidly, often blending traditional and modern land administration practice. More needs to be understood about how customary practice is evolving, the driving forces, and the social and economic outcomes in specific cases, before policy either legitimizes or discounts the roles of customary systems.

- The development of growing land inequality in African rural so-cieties: there has been limited study of the dynamics of social and economic differentiation amongst rural land users. However, there is ample anecdotal evidence that land holding and customary land management practice is becoming more inequitable, based on fac-tors such as kinship, gender and proximity to local elites and po-litical power.

ii) The performance and impacts of new decentralized approaches to land management

- Although research has begun[23] to determine the effectiveness of new decentralized approaches to land registration and land rights management, which are many and diverse, wider coverage of the many practical initiatives underway is needed to inform policy and programme development. Research to date has concentrated on rights registration systems and to a much lesser extent on dis-pute resolution mechanisms which are an essential component of land rights management. Among the issues that need to be better understood are questions of the role, legitimacy and viability of indigenous and local community institutions in land administra-tion and management. More systematic comparative studies of de-centralized systems within and between countries would assist in understanding and disseminating good practice.

- Improving land delivery and the utility of intermediate forms of tenure in urban areas, in view of good evidence that low-cost and intermediate forms of title are well suited to the needs of the poor: this requires the upgrading of informal urban settlements and can also benefit from applying customary practices as a principal means of land access in major cities. However, there has been in-sufficient work on how to build constructively on these systems in urban planning, avoid the risks of exclusion of the poor, and how to scale up successful experiments and transfer them to different contexts.

23   Nazneen Kanji, Lorenzo Cotula, Thea Hilhorst, Camilla Toulmin and Wray Witten, *Can Land Registration Serve Poor and Marginalized Groups*? IIED Securing land rights in Africa Research Report 1 (London, IIED, 2005).

iii) The linkages of land tenure and land reforms with economic development

The role of land policy and land reforms in supporting African economic development and transformation needs to be considered in a broad historical context which examines the comparative experiences and growth trajectories of the agrarian, industrial and service sectors in different countries, in terms of employment, incomes, growth of domestic and export markets and the effects that different types of land relations and land reforms have had in facilitating and constraining change. The lessons that these experiences may have for different African nations need to be carefully assessed, in the contemporary demographic and economic contexts, to help identify strategic opportunities for change. In examining feasible ways forward there are also a range of micro-issues that need to be considered, including:

- *Mechanisms for equitable community-investor partnerships for agricultural development; retaining community property rights.* The drive to attract foreign and domestic investment and develop agribusiness in Africa risks displacement of small-scale farmers who could be major contributors to agricultural growth. Consequently, the opportunities and constraints of existing patterns of land holding and different tenure options need to be properly investigated with the full participation of existing land users. Land restitution and redistribution programmes in Southern Africa are also creating demands for new forms of partnerships between local communities and the private sector if the benefits of viable commercial enterprises are not to be lost to radical changes in land use. There is a need for participatory research into practical opportunities for partnership focussed on the location of inward investment and existing commercial farms.

- Links between land policy, land reforms and the opportunities for investment and local economic development. Past research has concentrated on the relative advantages of land titling and customary rights in stimulating agricultural development and facilitating access to formal credit. Although the general conclusion has been, contrary to conventional property rights theory, that land

titling offers no particular advantages for agricultural livelihoods and production, and may even create problems, there has been very little research into the differential impacts of more diversified tenure arrangements on investment and local economic development. This question includes the effects of registering customary rights and different forms of tenancy on investment, both on and off farm. In particular there has been little work on how to facilitate better access to credit, without relying on land titles as collateral for mortgages, and how credit delivery can be improved in an African land tenure environment. Other related, and broader, under-researched topics include the role that tenure reforms and improvements in land access can play in stimulating employment and local and regional economic development, and how to link land policy in practice with agricultural and enterprise development strategies, for instance through participatory and negotiated territorial planning.

- The impacts of land market development and appropriate forms of land market regulation need to be investigated to understand how these markets operate to allocate and redistribute land rights in practice, their social and economic impacts, and the barriers and opportunities for participation in markets by poor and vulnerable groups.

- Land tenure impacts and policy implications of global trade liberalization need to be better understood as agricultural investment in Africa grows and trade becomes more liberalized. The impacts that emerging regional and international commodity markets have on demand for land by different groups, tenure arrangements and land holding patterns need to be better assessed to assist small-scale farmers and entrepreneurs respond successfully to the new challenges, opportunities and constraints up and down the supply chain generated by market development and integration.

iv) Relationships between land tenure, conflict and conflict resolution

- The role of land in conflict and conflict resolution in Africa in light of land competition needs fuller understanding. In particular, the treatment of land rights and territorial claims in ongoing peace processes and the role and repercussions of land dispute resolution and negotiated territorial settlements on the ground require closer examination.

Part II of this paper develops a possible vision for an Africa-wide framework for land policy, and discusses the principle stakeholder interests in a potential Pan-African framework, the opportunities for and constraints to gaining support for and operationalizing such a framework, and a more detailed exposition of its possible content, and the next steps in the process of taking an African land policy framework forward.

PART II

6. Design of a land policy framework for Africa

6.1 The NEPAD context

The New Partnership for Africa's Development (NEPAD), a programme of the AU, "is a pledge by African leaders, based on a common vision and a firm and shared conviction, that they have a pressing duty to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable growth and development, and at the same time to participate actively in the world economy and body politic." The NEPAD programme provides "a new framework of interaction with the rest of the world, including the industrialized countries and multilateral organizations based on the agenda set by African peoples through their own initiatives…" and "anchored on the determination of Africans to extricate themselves and the continent from the malaise of underdevelopment and exclusion in a globalising world."[24]

The NEPAD long-term objectives are to eradicate poverty in Africa and to place African countries, both individually and collectively, on a path of sustainable growth and development and thus halt the marginalization of Africa in the globalization process; and to promote the role of women in all activities. Its anticipated outcomes are: economic growth and development and increased employment; reduction in poverty and inequality; diversification of productive activities, enhanced international competitiveness and increased exports; and increased African integration.

NEPAD includes three major initiatives to address: peace, security and democracy; democracy and political governance; and economic and corporate governance. The programme also addresses a number of priority sectoral areas, including: infrastructure, especially information and communications technology (ICT) and energy; human resources, including education, skills development and reversing the brain drain; health; agriculture; and access to the markets of developed countries for African exports.
Under NEPAD, African leaders take joint responsibility for: strengthening

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24   *The New Partnership for Africa's Development*, October 2001 www.uneca.org/nepad/.

mechanisms for conflict prevention, management and resolution; promoting and protecting democracy and human rights; restoring and maintaining macroeconomic stability; instituting transparent legal and regulatory frameworks for financial markets and auditing of private companies and the public sector; revitalizing and extending the provision of education, technical training and health services, with high priority given to tackling HIV/AIDS, malaria and other communicable diseases; promoting the role of women in social and economic development; building the capacity of the States in Africa to set and enforce the legal framework, as well as maintaining law and order; and promoting the development of infrastructure, agriculture and its diversification into agro-industries and manufacturing to serve both domestic and export markets.

Although the formal programme structure of NEPAD does not make direct reference to land, as this paper has sought to show, land issues are highly pertinent to Africa's economic development, poverty reduction, enhanced opportunities for women, the governance environment, agriculture and conflict resolution. Moreover, land institutions are important components of improved governance arrangements and beneficiaries of strengthened human resources and ICT infrastructure. The objectives of NEPAD merit a supplementary focus on land as a critical issue underpinning African development in the 21st Century. To this effect, AUC has ensured that land is a priority area within the strategic plan (2004–2007).

Under NEPAD, the commitment of Africa's Heads of States to improving the governance environment for economic growth, poverty reduction and equitable sustainable development is reflected in the African Peer Review Mechanism (APRM). The quality of governance of land and natural resources is measurable by the ability of land policies and land-related institutions to deliver on and support these development objectives. Accordingly, submission of African nations' land policies and institutional performance to the APRM is fully in line with its principles and intentions.

Comprehensive Africa Agriculture Development Programme

African Heads of State and Government adopted the CAADP initiative of AU/NEPAD in Maputo in 2003, as a framework for the restoration of agriculture sector development in Africa. The Maputo Declaration on *Agriculture and Food Security in Africa* called on Member States to adopt sound policies on

agricultural and rural development; prepare collaborative bankable projects under CAADP for the mobilization of resources; and to allocate at least 10 per cent of their national budgetary resources to the agricultural sector within five years.[25] In addition, the Sirte Declaration on *the Challenges of Implementing Integrated and Sustainable Development in Agriculture and Water in Africa* reaffirms and complements the Maputo declaration and the CAADP framework. The AUC Department of Rural Economy and Agriculture (DREA) Strategic Plan of Action aims to initiate and promote policies and strategies for developing Africa's agriculture and the livelihoods of its people within this common CAADP framework. The AU also recognizes that sustainable land management depends substantially on secure access to land and clarification of property rights.[26]

A recent AU Conference of Ministers of Agriculture[27] urged the AUC and the NEPAD secretariat to speed up implementation of CAADP and Sirte, and to implement policies and programmes that support small-scale farmers and the expansion of agribusiness activities, including contract farming for smallholder farmers.

6.2   Towards a pan-African policy framework

In view of the emphasis currently given to land policy and land reforms by African governments, the wide range of experimentation and innovation underway, and the commitments of the AU and other pan-African institutions to achieving greater economic growth, reducing poverty, raising agricultural production, improving food security and reducing conflict, there is a clear case

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25   CAADP focuses investments into four mutually reinforcing pillars. Pillar 1 emphasizes the need for expansion of the area under sustainable land management and reliable water control systems; Pillar 2 underlines the need for improvement of rural infrastructure and trade-related capacities and market access; Pillar 3 focuses on increasing food supply and reducing hunger, by accessing improved technology so as to enable small-scale farmers to play a major role in increasing food availability close to where it is most needed; and Pillar 4 is a long-term pillar which focuses on agricultural research, technological dissemination and adoption to sustain long-term productivity growth. (Status of Food Security and Prospects for Agricultural Development in Africa, Conference of African Union Ministers of Agriculture, Bamako, Mali, 31 January–1 February 2006).
26   In addition TerrAfrica provides a multi-partner (countries of sub-Saharan Africa, the NEPAD Secretariat, the UN Convention to Combat Desertification (UNCCD) Secretariat and Global Mechanism, multilaterals, regional and sub-regional organizations, bilateral donors, civil society, and scientific organizations) platform to enable African governments and their partners to "scale-up the mainstreaming and financing of effective and efficient country-driven sustainable land management approaches".
27   Report of the Expert meeting on Agriculture, Conference of African Union Ministers of Agriculture, Bamako, Mali, 31 January–1 February 2006.

for a pan-African framework to assist African nations to address the land issues which underpin these objectives. In summary the rationale for such a framework rests upon:

- **Land as a basis for investment and economic growth**
  - The critical importance of land in supporting the high priorities of food security and agricultural development as a basis for economic growth and poverty reduction, which already benefit from pan-African strategic frameworks.
  - The importance of clear and secure property rights as part of an enabling environment for inward and national investment and for domestic capital formation. Insecure land rights, involving inadequate legal frameworks, leads to disincentives for investment in agriculture and other forms of land development.
  - The rapid pace of urbanization and the urgent need to improve living conditions of and security of tenure in Africa's growing informal settlements.

- **Land as a means for reduction of poverty and inequalities**
  - Widespread tenure insecurity and vulnerability of poor Africans to loss of livelihood assets.
  - Widespread gender discrimination and denial of opportunities for land and property ownership for women, despite their importance as food producers and as entrepreneurs.
  - The unfinished business of post-colonial land redistribution and the need to de-racialize economic opportunity in some countries.

- **The need for better governance of land resources and renewal of land institutions:**
  - The limited capacity and inefficiency of Africa's inherited land administration institutions.
  - The need to overcome the legacies of colonialism and put in place distinctively African forms of tenure security and land management institutions incorporating indigenous customary concepts and principles.
  - The prevalence of disputes and conflicts relating to land in some countries and sub-national regions as one factor underpinning wid-

er civil and military conflict, and the need to address land issues in conflict resolution and reconciliation processes and secure land for refugees, internally displaced persons and returnees.

- ***The potential added value of an Africa-wide approach in generating additional resources and capacity to tackle land issues:***
  - The large number of African countries seeking to address land policy issues, bring about reforms and access sufficient resources for implementation.
  - The uncertainty and variability of donor funding and policies in relation to land in Africa together with the limited emphasis on land matters in the current generation of PRSPs and in the MDGs which provide the principal framework for financial and technical assistance.
  - The lack of capacity in African higher education, training and research institutions to address land issues adequately and put in place robust programmes of human resource development.
  - The value of common policy principles and for benchmarking standards of good practice in land policy and land reform and for greater transparency and accountability in land allocation and management.
  - The opportunities for African countries to learn from each other's experiences of land policy and land reform.

- ***Land policy in relation to environmental management and existing commitments;***

- ***Decentralized land management as a means for broadening and deepening of democracy; and***

- ***Land policy and reform as a means of integration at different levels.***

6.3   Main features of the framework

The main functions and features of a pan-African framework for land policy and land reform is a key topic for debate at the workshop. This paper suggests that they should include:
  - Providing a basis for political commitment by African nations at

the AU level to programmes of common action at REC and national levels for putting in place sound land policies as a basis for sustained economic growth and poverty reduction.

- Gaining commitment of the G8 and the international community in establishing a lasting framework for funding land policy and land reform to support policy processes, legislative change, the roll-out of programmes for tenure security and land access, land institution building, land dispute and conflict resolution, greater voice and capacity in civil society, lesson learning, research and training.

- Developing clear guidelines and benchmarking of good practice for land policy land reforms and the performance of land institutions.

- In the context of CAADP, promoting land policy to underpin agricultural transformation, and ensure the constructive and equitable treatment of tenure issues in relation of CAADP investment projects.

- Promotion of programmes for tenure upgrading to secure urban land rights and access to services, reduce and eliminate forced evictions and support orderly urban growth and development of peri-urban areas.

- Making land policies and the performance of land institutions subject to the APRM.

7.   Role of stakeholders

Land users: smallholder farmers, natural resource users, urban dwellers and investors are the primary stakeholders in land policy and land reform. The poor and smallholder farmers in general lack the organizational capacity and representation to have a significant voice in land policy processes, in contrast to the private sector, represented through chambers of commerce and trade federations. In some cases, such as Kenya and Uganda, NGOs have given voice to and facilitated concerted action by local community-based organizations through national land alliances, and women's organizations have been effective in raising concerns around gender and land. In Francophone West Africa and to some extent in Lusophone Africa, producers and peasant organizations that were formed to defend the interests

of their members have intervened in land debates. There is great diversity amongst small-scale land users, as the principal stakeholder group in Africa's land resource, including men and women, youth and older people, migrants, new settlers, and indigenous groups. In addition, while many poor households seek to establish footholds in both urban and rural areas, emerging urban middle classes are increasingly interested in establishing rural properties for investment and recreational purposes.

National level: sectoral ministries, land agencies and institutions, and local government are the key stakeholders and in many respects the main drivers of land policy development and implementation with interests and responsibilities in land policy and land management as a foundation for economic growth and development. They constitute an important area which contributes to poverty reduction, good governance and sustainable environmental management. As such, alongside the land users themselves, national governments are major stakeholders and beneficiaries of a pan-African framework for land policy.

In addition, different branches and agents of government have a variety of other interests in land which need to be understood to achieve sound land policies. In most countries, the State retains the right of "eminent domain" or ultimate authority over land within the national territory, including the vesting of ultimate rights to land in the President or the Minister of Land, who hold land in trust for citizens, and rights of compulsory acquisition in the public interest. In some cases these have been extensively used, both by colonial regimes and independent governments, taking large areas into public ownership sometimes extending to sweeping nationalizations. As a result, in addition to ultimate powers over land, the State is also a major landowner, holding land for development, military, environmental conservation purposes and for infrastructure and public service provision. Where all land has been declared State property, a distinction may be made between government land, over which an organ of government maintains direct control, and public land, for which the State generally devolves responsibilities for land management to land users, private individuals or companies through leasehold concessions, and to customary leaders, institutions and communities, through explicit or implicit recognition of their customary rights.

While the State has, as a whole, a legitimate role in land allocation, and in

the generation of revenue from land rents and taxes, these functions are not always conducted transparently. Land allocation may also provide a means of political patronage, and as a result of the State's role in the delivery of land services such as valuation, surveys, registration and issue of titles, there may be opportunities for rent-seeking by government officials. A further difficulty is that the colonial heritage of centralized State land management staffed and controlled by land professionals trained to administer formal systems of property rights creates institutions with bureaucratic and professional interests which are not necessarily aligned with service delivery in support of national development. Responsibilities for different aspects of land policy are frequently split between land ministries and others, including housing, agriculture, environment and justice, all with their own specific interests, while land-related service delivery functions may be divided amongst separate agencies, such as land registries, deeds registries, survey departments and valuation boards. Weak development of the private sector, coupled with low rates of pay and lack of incentives in the civil service, can mean that staff of public sector land agencies are the principle source of expertise to the private sector, and may give priority to private business, undermining effective delivery of public services. All of these factors can lead to resistance to change by land institutions and their personnel.

As a result of decentralization and the need to bring land administration closer to the people, local government has increasingly important interests in land policy and administration, and in the collection of land revenues, although capacity is often weak. In some countries, such as Ethiopia, regional or provincial governments may have devolved responsibilities for setting land policy, and for land use planning according to their circumstances. A growing trend is for decentralization of land management and administration to the district level, for example through the creation of district land boards involving stakeholders from central government, customary and private sectors, alongside local government itself. Clear lines of responsibility and complementary legal mandates are important to ensure that new local institutions do not simply provide additional channels for land allocation, especially where central government retains ultimate powers over land.

7.1   Traditional authorities and customary institutions

Traditional authorities and leaders frequently continue to exercise roles as custodians of customary lands and are therefore key stakeholders in land matters. Traditional leaders or their representatives tend to be active participants in decentralized land management bodies such as district land boards or village land committees where these bodies exist. In many cases they also play important roles in advocacy for the restoration of customary land nationalized by the State or alienated to private investors, and they can be important repositories of knowledge about common property resources and the territorial claims of specific groups. However, their engagement in land policy and reform processes has not always been unproblematic (for instance in Ghana and South Africa), for two main reasons. First, with growing market development land has become a source of revenue, leading to development of financial self-interests by chiefs in land allocation and a blurring of their rights of land ownership and duties of fiduciary control. And second, because of the resurgent recognition of the importance of customary land tenure and land management, land policy represents a key opportunity for traditional leaders to assert and recover political authority and territorial control vis-à-vis the State.

For these reasons traditional authorities may argue for exclusive control and responsibilities over land, which may be undesirable from the point of view of good governance, transparency and accountability to their communities. Where broader customary institutions for land and resource management retain authority, independent of the personal authority of the chief, they can be more effective, for example in land allocation, dispute resolution and territorial negotiation between different groups, providing a strong basis on which decentralizing land reforms can build. Where traditional leaders are organized into national assemblies or Houses of Chiefs their reassertion of authority and demands for control are likely to be more prominent. These institutions also provide opportunities for the interests of chiefs as a whole to be debated and represented, and for negotiation and consultation with the State and other stakeholders.

7.2   Pan-African institutions

7.2.1   African Union

The AU is Africa's premier institution and principal organization for the promotion of accelerated socio-economic integration of the continent, which will lead to greater unity and solidarity between African countries and peoples. The AU is based on the common vision of a united and strong Africa and on the need to build a partnership between governments and all segments of civil society, in particular women, youth and the private sector, in order to strengthen solidarity and cohesion amongst the peoples of Africa. As a continental organization it focuses on the promotion of peace, security and stability on the continent as a prerequisite for the implementation of the development and integration agenda of the Union.[28]

The AUC is the key organ playing a central role in the day-to-day management of the AU. Among others, it represents the Union and defends its interests; elaborates draft common positions of the Union; prepares strategic plans and studies for the consideration of the Executive Council; elaborates, promotes, coordinates and harmonizes the programmes and policies of the Union with those of Africa's RECs; and ensures the mainstreaming of gender in all programmes and activities of the Union.

AU interest in land results in part from its recognition of the importance of agriculture and the need for Africa to utilize its full potential to increase its food and agricultural production so as to guarantee sustainable food security and ensure economic prosperity for its peoples. It is in this context that African Heads of State and Government adopted numerous decisions and initiatives to address the situation, including CAADP and the Sirte Declaration on integrated and sustainable development.

7.2.2   Economic Commission for Africa

Established in 1958, Economic Commission for Africa (ECA) is one of five regional commissions under the administrative direction of United Nations headquarters. As the regional arm of the United Nations in Africa, it is mandated to support the economic and social development of its 53

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28   The African Union in a Nutshell www.african-union.org.

Member States, foster regional integration, and promote international co-operation for Africa's development. It reports to the Economic and Social Council (ECOSOC). The Commission is organized around six substantive programme divisions: Food Security & Sustainable Development; African Centre for Gender & Social Development; Trade, Finance & Economic Development; ICT and Science & Technology; Governance & Public Administration; and NEPAD & Regional Integration. Five subregional offices contribute a subregional perspective to the work programme and support outreach. Drawing on this structure, ECA deploys several modalities and services to support its Member States: policy analysis and advocacy; enhancing partnerships; technical assistance; communication and knowledge sharing; and supporting subregional activities.[29]

The ECA Sustainable Development Report on Africa[30] carries the theme of *Managing land based resources for sustainable development*. The report addresses issues related to the management of agricultural land, common property resources including pasture and forests, as well as water and minerals. The report highlights the importance of secure land rights, sound land policies and participation if land and land resource policies are to achieve the intended outcomes.

A 2004 ECA paper focussing on the links between land tenure, food security and sustainable development in Africa[31] indicates that land is central to rural livelihoods in Africa because secure land access is the main means through which food security can be realized. Although Africa does not require a radical land reform insofar as customary tenure systems continue to provide adequate security, inappropriate land policies constitute a serious constraint to Africa's economic and social development, and the colonial legacy of dual, unequal and hierarchical systems of tenure that African land reforms should address.

The ECA 2005 Economic Report[32] identifies access to land and security of land rights as central to policy efforts and strategies for agricultural trans-

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29 www.uneca.org.
30 UNECA, 2006.
31 Land Tenure Systems and their impacts on food security and sustainable development in Africa. (Addis Ababa, Ethiopia, Economic Commission for Africa ECA/SDD/05/09, December 2004). Available at: www.uneca.org/eca_resources/publications/sdd/land_tenure_systems.pdf.
32 ECA, Economic Report on Africa 2005: Meeting the Challenge of Poverty and Unemployment in Africa (Addis Ababa, Ethiopia, UNECA, 2005). www.uneca.org/era2005 Chapters 4 and 6.

formation, which in turn is critical to economic growth since the majority of Africans—some 270 million—are employed in the agricultural sector, and because of low productivity. In addition, the report finds that securing property rights is important to improve business efficiency and enterprise development, especially for female entrepreneurs who have extremely limited land access opportunities.

7.2.3 African Development Bank

The AfDB is a regional multilateral development finance institution established in 1964 supported by 77 nations (member countries) from Africa, North and South America, Europe and Asia, and engaged in mobilizing resources towards the economic and social progress of its Regional Member Countries (RMCs). Headquartered in Tunis, Tunisia, the Bank's mission is to promote economic and social development through loans, equity investments, and technical assistance. The ADB Strategic Plan 2003–2007 prioritizes agriculture and sustainable rural development, including infrastructure and cross-cutting themes such as gender, good governance, environmental protection and assistance to post-conflict countries.[33] Land fits well into these priorities.

7.3 Regional Economic Communities

RECs are the building blocks for Africa's economic integration. The decisions and initiatives of RECs, therefore, play a critical role in the implementation and coordination of AU/NEPAD programmes. RECs have a mandate to harmonize the activities of Member States, strengthen policy and build technical capacity to pursue regional integration. These RECs are the Arab Maghreb Union (AMU), the Southern African Development Community (SADC), the East African Community (EAC), the Intergovernmental Authority on Development (IGAD) in the Horn of Africa, the Economic Community of West African States (ECOWAS), and the Economic Community of Central African States (ECCAS) in addition to subregional monetary organizations in Central and West Africa, the Common Market for Eastern and Southern Africa (COMESA) and the Community of Sahel-Saharan States (CEN-SAD).

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33 AfDB, *African Development Bank Group Strategic Plan 2003–2006* (Tunis, Tunisia, AfDB, November 2003). www.afdb.org.

Within the mandate of RECS are cross-border issues, development of convergent policies, promotion of regional economic development, integration and investment, commissioning of research on regional development, and technical support and training to Member States. Given the importance of food security in all the subregions of the continent, many of the RECs have now either prepared or are in the process of preparing their strategic plans and priority intervention programmes.

SADC has established a Regional Land Reform Technical Support Facility, in response to common land problems faced by Member States, including racially unequal land distribution, and political difficulties faced in relation to financial and technical support from international donors.

Some other subregional bodies, notably the Permanent Interstate Committee for Drought Control in the Sahel (CILSS), an intergovernmental organization composed of nine member countries—Burkina Faso, Cape Verde, Guinea Bissau, Mali, Mauritania, Niger, Senegal and Chad—have worked actively on land and natural resource management issues in partnership with its Member States. CILSS aims to establish food security and takes a comprehensive, participatory and multidisciplinary approach to development and implementation of strategies to control the effects of drought and desertification, within which tenure security and sound land management play important parts.

7.4   Donor agencies

African nations need assistance in negotiating changing aid modalities to obtain effective support for land reforms, since these are long-term processes that need sustained donor commitments. As such donor agencies, previously in many cases the drivers of land policies and intended reforms in Africa, remain stakeholders in Africa's own land policy agenda. Based on the consensus achieved through recent World Bank and European Union consultative processes, there is a growing and constructive trend for coordinated multi-donor approaches to land sector reform reflected in key documents that have emerged from these institutions in recent years,[34] but there is as

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34   Klaus Deininger, Land Policies for Economic Growth and Poverty Reduction, World Bank Policy Research Report (Washington, DC, The World Bank, 2003); EU Task Force on Land Tenure, European Union Land Policy Guidelines: Guidelines for support to land policy design and land policy reform processes in developing countries Brussels, Belgium, European Commission, 2004). Adopted by EU Council

yet limited experience. Donor financing mechanisms have shifted towards budgetary support for governments agreed through the PRSP framework, but on the whole these have not proved effective in addressing issues of land, property rights and agrarian change, despite their strategic significance for growth and poverty reduction. Land ministries compete for resources with other high profile sectors of more direct concern to governments and donors. Africa's land reforms will involve extensive capacity building, requiring not just finance but also technical assistance, facilitation, stakeholder dialogue and careful monitoring and evaluation (M&E), for which project-based and sector-wide approaches are generally more appropriate.

The MDGs, as the donor-developed global policy framework for development assistance, are themselves silent on the complex processes by which they are to be attained, including how to build sustainable livelihoods, income growth, assets, security and environmental sustainability, all of which are particularly challenging in sub-Saharan Africa. PRSPs and financial and budgetary aid, as the principal current donor instruments designed to help developing countries achieve the MDGs, do not always reflect realities on the ground and the processes through which people can move and remain out of poverty. On current trends, the MDGs will not be achieved for sub-Saharan Africa and poverty will increase.[35]

7.5   Research and training institutions

These are important sources of technical and policy expertise on land matters at national and regional levels, often offering the only independent sources of expertise available to back up national government and civil society by providing evidence-based research outputs and policy options developed within the African continent. However, they frequently suffer from limited capacity, and their ability to train sufficient and competent personnel to meet the staff needs of current and emerging land institutions is extremely limited. A small number of key research institutions have played important roles in networking and cross-disciplinary training in land tenure and natural resource management.[36]

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and Parliament.

35   Millenium Development Goal, Update 2004.

36   Notably PLAAS, the Programme for Land and Agrarian Studies, University of Western Cape, South Africa; GRAF, the Groupe de Recherche et d'Action sur le Foncier, in Burkina Faso; and ACTS, the African Centre for Technology Studies, a CGIAR organization based in Nairobi.

7.6   Civil society

CSOs and NGOs have been important players in land policy debate and advocacy, generally benefiting from a constructive, although sometimes also critical relationship with government. In a number of cases NGOs have formed national land alliances or LandNets, generally in response to national policy initiatives and sometimes as a result of regional network initiatives. Successful examples have used links to the research community and funding and advisory support from international NGOs, to provide important checks and balances on governmental policy processes, facilitating public debate and civil society inputs.[37] Elsewhere, network initiatives have been short-lived and civil society capacity has been weak, without specialist knowledge of the land sector, engaging in policy debate more at the behest of government than to give voice to concerns in civil society.

7.7   Regional networks

There have been two significant and loosely inter-related regional land policy network initiatives in recent years: the Pan-African Programme on Land and Resource Rights (PAPLRR) coordinated by research institutions, and aiming to provide an informed pan-African voice on land issues and influence the overall policy framework, and LandNet Africa, aiming to facilitate policy debate and lessons learning at the subregional level across civil society and government institutions, linking with the RECs, and to support the formation and activities of national land networks. These networks in Africa were initially funded by the Ford Foundation and the UK Department for International Development (DFID) and are now being supported by the International Land Coalition (ILC) as part of its global programme of support to regional and national networks aimed at building the capacity for collective action. However, networks are difficult institutions to sustain due to changing funding priorities and the challenge of consolidating a secure institutional base.

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37   Notably in Kenya, Uganda, Rwanda, Burkina Faso, Angola, Togo and, to a lesser extent, in Tanzania.

8. Opportunities and constraints

There are now significant opportunities for African nations to undertake land policy reforms, given the new awareness of the importance of land to economic development and the growing body of practical experience, but there are also considerable constraints. These include inappropriate institutional frameworks, a lack of skilled human resource capacity, shortages of financial resources, both within national budget and donor aid allocations, contestation over the use of increasingly scarce land resources between development actors, and uncertainties about exactly what type of policies can deliver the right balance between improving livelihoods, protecting the poor and raising opportunities for economic growth and investment. It is these constraints that a pan-African framework on land policy would seek to address. However, before setting out the possible features of such a framework it is worth setting out the different strengths, opportunities, weaknesses and threats that will confront such a framework in gaining African and international support. These are presented in Table 3.[38] Generally speaking, opportunities and risks for the development of an effective framework exist at national, subregional, regional and international levels.

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38   This rapid analysis remains to be validated in consultation with stakeholders, before or during the workshop.

Table 3: Strengths/opportunities and weaknesses/threats of a pan-African framework on land policy

Strengths and opportunities	Weaknesses and threats
Country level	
Many African countries are actively addressing land policy issues.	Lack of long-term strategic planning and lack of budgetary resources for effective implementation.
Strong focus on need for secure property rights to promote investment and economic development.	Drives for agribusiness investment may concentrate land, alienate smallholder rights, and revert to conventional approaches to land titling, according to national perceptions and priorities.
Global policy emphasis on improved governance and elimination of corruption.	Risk that established land institutions resist change due to vested interest and rent-seeking opportunities.
Many African countries have now undertaken policy and legislative reforms and have practical experience in addressing community participation in natural resource and environment management.	New institutional frameworks remain at an early stage without adequate capacity to operationalize good policies and laws.
Recognition that land problems contribute to wider conflict and are important in post-conflict reconstruction.	Lack of evidence that land is a major causal factor in conflict obscures its proper consideration in peace processes; risk that continuing conflict overshadows land reforms.
Regional and subregional levels	
Presence of NEPAD/CAADP as a Pan-African programme for development.	No direct focus on land issues in NEPAD/CAADP and risk that land falls between other funding priorities.

Strengths and opportunities	Weaknesses and threats
Interest by AU/ECA and AfDB consortium in developing a pan-African framework on land policy; development of food security strategies and interest in land policy issues within African RECs.	Relative lack of technical capacity in RECs and pan-African organizations; risk that RECs may be unable to sustain a focus on land or add much value to processes at national level.
Broadly common set of land issues faced by government in sub-Saharan Africa, stemming from dualism of colonial and customary concepts and practices.	Genuine regional differences (different economic context and history of land reform in North Africa; focus on need for land redistribution in Southern Africa; absence of land policy processes in Central Africa) deter countries from a comprehensive pan-African approach.
Widespread experimentation and innovation in land rights management in Africa.	Long-term nature of institutional change; risk that innovations do not receive sustained support and successes are not documented due to changing funding priorities.
Active civil society and research constituencies engaged in land policy across Africa, including regional networks.	Precarious funding base for civil society and research institutions and failures to institutionalize networking efforts.
International level	
Reasonably strong donor consensus on the importance of land policy.	Relative ineffectiveness of current project-based and budgetary support aid models as mechanisms for sustained and coordinated support to land policy and its implementation.
Recognition that agricultural development and secure land rights are an essential basis for local and regional economic development as building blocks for wider growth creates an opportunity for renewed focus on role of land policy.	Risk that failure to achieve the MDGs in Africa lead to continued focus on aggregate national growth and concentration of donor resources on sectors directly relevant to MDG targets and indicators.

9.   Recommendations

This section sets out a suggested overall scope and content of a possible pan-African land policy framework and the proposed next steps for discussion at the workshop.

The scope and content of the framework would include:

- The core functions of the framework;
- A set of overall guiding principles for the framework to which stakeholders would subscribe, together with a more detailed set of set of possible benchmarks for good practice in land policy formulation, land reforms and their implementation, which Member States would aim to achieve;
- A possible programme structure; and
- Operational and management mechanisms.

9.1   Core functions

In setting out the overall vision of an Africa-wide framework for addressing land policy in Section 6, this paper has suggested that it would have the following principal functions:

- A basis for political commitment by African nations at the AU level to programmes of common action at REC and national levels;
- A platform for gaining commitment of the G8 and the international community in establishing a lasting framework for funding land policy and land reform to support policy processes, legislative change, and the roll-out of implementation programmes;
- Developing clear guidelines and benchmarking of good practice for land policy land reforms and the performance of land institutions;
- In the context of CAADP, promoting land policy to underpin agricultural transformation, and ensure the constructive and equitable treatment of tenure issues in relation to agricultural investment projects;
- Promotion of programmes for tenure upgrading to secure urban

land rights, and access to services, reduce and eliminate forced evictions and generally support orderly urban growth and development of peri-urban areas; and

- Making land policies and the performance of land institutions subject to the APRM, as an important component of strategies to address the broader issues of governance, peace and security.

Some of these functions could translate directly onto the programme structure and operational and management mechanisms. The guiding principles and suggested set of land policy good practice benchmarks, set out in the next two sub-sections, would underpin the programme structure and activities supported at the national and regional levels, and provide a basis for eventual systematic coverage of land policies and institutions by the APRM.

9.2   Principles and benchmarks

The overall guiding principles of the framework would include:

1. Supporting African nations to balance equity and efficiency through land policies that safeguard livelihoods, enable economic growth and foster economic integration. Recognizing that Africa's private sector principally comprises small-scale farmers and entrepreneurs, with a limited capital asset base and access to markets, and vulnerability to the adverse effects of natural disasters and conflict, sound land policy would help Africa to create a favourable climate for both small- and large-scale investment, for poverty reduction and for the poor to contribute to economic growth. This means providing opportunities for all to achieve secure land and property rights, albeit through diverse tenure arrangements, including customary arrangements. Land policy should also facilitate good management of investments and commercial land development in urban and rural areas, to ensure that ordinary African land users do not lose land rights, without provision of adequate alternative arrangements for shelter and means of livelihood. In addition, land policy should facilitate cross-border trade and investment within Africa, and the development and management of important land and natural resources (such as water bodies and wildlife populations) which cross national boundaries.

2. Assisting African nations to build strong, accountable and service-oriented land institutions: Implementation of land policies required for growth and poverty reduction requires institutional renewal, to remodel organizations inherited from the colonial era that are inappropriate to contemporary needs; to eliminate unnecessary bureaucracy, sources of corruption and rent-seeking opportunities which impede the registration of secure property rights and development of land markets; to bring land management and administration closer to the people through decentralization and participation to improve accessibility and responsiveness to local realities; and to enable the effective resolution of land disputes which undermine livelihoods, social stability, and economic development and contribute to wider conflicts.

In applying these principles, the policy framework would encourage African Member States to aim to achieve a set of land policy good practice benchmarks. These benchmarks would underpin programme activities funded and supported through the framework, and against which national land policies and institutions could be assessed.

A set of possible policy benchmarks is set out here for discussion and further development, under a set of headings: protection of land rights; transparency in land management; improvements in land administration; improvements in land access and distribution; land management in conflict and post-conflict situations; and prioritization of land issues in development planning.

Protection of land rights

- Legislative guarantees to protect the security of both customary and formal (freehold/leasehold) land and property rights: equal status before the law of "modern" and customary freehold rights (held by groups or individuals and transferable and inheritable subject to customary norms);
- Commitments to gender equity, through provision for joint spousal title or land rights certificates, women's land ownership and spousal/family consent to land disposals; efforts to end discrimination in inheritance and matrimonial property law, and in customary practice;

- A moratorium on forced evictions and removals without provision of adequate alternative land and shelter;
- Recognition and provision for registration of the land rights of indigenous minority groups;
- Constitutional and legislative enshrinement of the fiduciary responsibilities of the State and traditional authorities in matters of land management, with checks and balances on abuse and recourse to appeal by aggrieved parties;
- Introduction and performance of alternative dispute resolution systems with links to the formal courts and to customary conflict resolution mechanisms; reductions in the incidence of cases of land disputes and litigation; and
- Introduction of negotiated mechanisms for resolving inter-group and multi-stakeholder disputes and management arrangements for access, use, control and benefits of common property resources, including those wholly or partially reserved by the State, allocated to the private sector, and in post-conflict situations.

Transparency in land management

- Fair and transparent rules on land expropriations by the State, and payment of compensation;
- Commitments to the good use and equitable distribution of public land resources;
- Transparent rules and procedures for foreign investors to access land, with forms of tenure and duration of leases appropriate to the investments proposed;
- Provision for monitoring and promoting efficient productive use of privately held land, for example including tax-based sanctions and incentives;
- Transparent and progressive systems of land taxation and the collection and use of land revenues by national, local and traditional authorities; and
- Opportunities for civil society consultation and participation, and for public debate in land policy and law making.

Improvements in land administration

- Existence of programmes for incremental improvements in the coverage of land registration and information systems, to include individual and collective customary rights, and rights derived through customary transactions;
- Commitments to place land administration at the lowest feasible administrative level, and for representation of stakeholders including both men and women in land management and allocation decisions;
- Greater transparency and accountability in land administration; development of "one stop shop" land services; reductions in delays and improvements in volume of registration of land titles and transactions;
- Use of new technology to effectively reduce costs and improve efficiency in land administration and customer service; and
- Pricing of land services (survey, valuation, registration and titling) at reasonable levels in accordance with land values.

Improvements in land access and distribution

- Progress towards a racial pattern of land ownership in line with the racial composition of the population of the country;
- Commitments to the restitution of land alienated from legitimate indigenous occupiers by the actions of the colonial or post colonial State; and
- Programmes and mechanisms for land access by vulnerable groups including women, orphans and youth.

Land management in conflict and post-conflict situations

- Sound and adequate arrangements for provision of land and shelter to refugees and internally displaced people; and
- Attention to land issues and conflicts in national and local level conflict resolution, reconciliation and peace processes.

Prioritization of land issues in national development planning

- Presence and utilization of land-related indicators in monitoring of national development strategies, financial planning and budgeting, and in PRSPs and donor budget support.

9.3   Programme structure

The framework would aim to mobilize funds, advisory and technical expertise for a number of core programmes, rolled out in partnership with the RECs and implemented by Member States. A relatively simple programme structure would assist Member States in achieving the overall policy principles and specific policy and practice benchmarks of the framework though diverse activities according to national priorities. The precise programme structure would depend on the management and operational mechanisms to be developed with the RECs. The following two principle programme components are suggested:

- **A facility to support agricultural development**: The framework could include a facility to develop appropriate land tenure arrangements of CAADP and other agricultural investment programmes for instance in irrigated production, agriculture, agribusiness development and infrastructure, and ensure adequate land access and secure property rights for project participants and beneficiaries. This facility could also support improved land management and rights documentation procedures for smallholder development processes, linked to new technology, credit and marketing initiatives.
- **A facility to strengthen urban and peri-urban property rights**: this would promote innovations in tenure upgrading and urban land management by local government and customary-based institutions, and facilitate land access, resettlement and negotiated solutions for those at risk of displacement by urban and peri-urban land development processes.

Each of these programmes would have built-in mechanisms for mobilizing suitable African and international sources of expertise, and for monitoring, lesson learning and sharing.

In addition a number of cross-cutting facilities or programmes could be established:

- **A land institutions facility**: to support institutional change, development and decentralization in government land agencies;
- **A programme of training and human resources development**: to generate long-term support and capacity building for African higher education and training institutions to develop the human resources required for land policy and land reform in Africa during the 21st century;
- **A research development programme**: to develop an Africa-wide research framework on land to which a variety of research organizations, networks, donors and international institutions can contribute to fill knowledge gaps and support ongoing land policy/implementation processes; and
- **A civil society support facility**: to support advocacy, public debate and consultation in-country and regional networking and lesson learning, and build NGO and CSO capacity to assist governments in land policy implementation.

9.4   Operational mechanisms

In principle, once in place, an African land policy facility would be integrated into the structure of NEPAD.

A core management group comprising representatives of AUC, ECA and AfDB would be established, as both an interim and a longer-term arrangement.

This group would in turn establish a high-level panel of expertise on land policy issues. This could have the following possible mandate (based on similar mandates for AU high level panels on Food Security and Agriculture).

- Serve as a forum and platform for advocacy on the coordination of land policy continent-wide and the establishment of norms and benchmarks of good practice in land policy and the performance of land institutions;

- Provide guidance and advice in rolling out the framework at sub-regional and national levels, promoting strategies for land policy reform and implementation aligned with the principles of the framework;
- Mobilize resources to support the programme structure and facilities of the framework in the context of strategies to improve agricultural investment, economic growth, poverty reduction and good governance;
- Promote and defend Africa's interests at the global level in developing coherent and, as necessary, distinctive African approaches to land policy and land law and tenure institutions; and
- Facilitate the exchange of data between subregions and countries by encouraging and assisting the RECs to develop similar arrangements and develop a long-term funding framework operated by the RECs to assist African nations to address land issues.

Another important function of the management group of pan-African institutions would be to coordinate the application of the African peer review process to land policy. Land policies, legislation and the performance of land institutions should be subject to the APRM, with provision for full incorporation of these aspects in the national peer review process and for periodic stand-alone assessments in finalizing land policies, laws and, based on stakeholder demands and concerns, reviewing the effectiveness of land institutions and existing policy and law.

The management institutions would convene occasional high-level meetings of land ministers, senior officials and independent experts to review the progress and objectives of the framework. These could be linked to the existing meeting cycle of AU/NEPAD in reviewing agricultural development and food security.

Once capacity is in place the management and steering arrangements could be replicated by the RECs which would establish their own expert panels and refine and adapt the principles, policy and practice benchmarks, programmes and facilities of the framework to specific subregional needs. Regular meetings of policy makers, senior officials and opinion leaders on land policy would take place at subregional level coordinated by the RECs, for purposes of steering the development of the land policy facility in each

region, and to exchange information, experience and lessons. There would, however, need to be provision for cross-regional meetings, learning and networking at the pan-African level.

The core management group and the expert panel would provide the principal interface with NEPAD and with the G8 and other donor institutions in negotiating funding for the framework and its programmes. The management group would probably need to establish some interim fund management arrangements, but the longer-term objective would be for funds to be managed and disbursed directly by the RECs. In principle, funds might also be committed within the terms of the framework by donors directly to Member States and recipient institutions (e.g. in the case of research training and civil society institutions). Loan funds to support land policy development and implementation, or specific projects aligned with the principles and programme structure of the framework could be managed and disbursed by AfDB. The suggested urban and peri-urban property rights facility might also be managed in coordination with UN Habitat and the Cities Alliance.

10. Preliminary outline of the land policy framework

I. The Centrality of Land in Africa

A. Geopolitical context
- Africa in the global economy
- Land in global politics
- The new scramble for Africa's land resources

B. Africa's land balance
- Geographic features and ecology
- Changing patterns of land use
- The rural–urban balance

C. Land in economy and society
- Land and economic development
- Land and livelihoods
- Land and social reproduction
- Land, power and politics

D. Broadening the land sector discourse
- From property to economic asset
- A sector-wide approach to policy development

II. Towards a Land Policy Framework for Africa

A. The need for a land policy framework
- Many of the issues are similar
- Countries need to learn from each other
- Regionalization requires harmonization of policies
- Guidelines for management of trans-boundary resources

B. Objective of land policy development
- A basis for political commitment
- Development of benchmarks for good practice

- Development of a framework for regional and continental oversight

C. **Land policy development process**
- Processes vary from country to country
- Broad stakeholder participation a common denominator
- Identifying and addressing resource requirements
- The importance of political commitment

III   Land Policy Issues and Principles

A.   **The nature of the land question**

The context:
Colonial legacies have been perpetuated with the result that fundamental inequalities remain in the land sector. State neglect of the rural poor remains a serious impediment to the organization of secure livelihoods. International commitments enshrined in the MDGs, the NEPAD Framework and national economic policies, call for greater equity, transparency and broad-based participation in the management of the land sector.

Policy principles:
These historical and contemporary injustices need to be addressed through land policy development, land reform and land legislation. Guiding principles for this include equity, efficiency, participation and social empowerment.

B.   **Land in the National Development Framework**

- **Land and poverty**

The context:
Because Africa remains predominantly rural, development of the land sector is central to poverty reduction. In addition, the land sector will continue to generate the land resources necessary for growth in other sectors of the national economy.

Policy principles:
It is important therefore that those who need land for production have access to it in sufficient quantities and quality for productive use. Proper stewardship of land is thus the key for sustainable development.

- **Land, development and social justice**
  Context:
  The most severe incidences of inequity and injustice are still located in the land sector. Land accumulation by the elite is making it difficult to correct historic and contemporary economic marginalization of the poor.

  Policy principles:
  The search for justice and equity must start with an investigation of those injustices and the design of corrective measures. This might include redistribution, restitution, reparations or compensation.

- **Land and governance**
  Context:
  The administration of land resources has an important bearing on the democratic process. Structures governing access, control and management of land are as much about asset stewardship as they are about democratic consolidation.

  Policy principles:
  There is need to integrate land administration and management systems into public and political governance at all levels. Devolution of power or decentralization of the delivery of land services to local land governance institutions is thus crucial if the culture of inefficiency, corruption and wastage is to be eliminated.

- **Land and HIV/AIDS**
  Context:
  The HIV/AIDS pandemic has had a most devastating impact on the land sector. Not only has it led to the abandonment of agricultural activities due to the decimation of the labour force, it has also generated opportunities for asset deprivation, especially in respect of widows and orphans.

Policy principles:
Legislative and policy intervention to ensure the protection of rural assets against distress sales, expropriation and neglect, will be necessary. Apart from efforts directed at the containment of the spread of HIV/AIDS, stability in the land sector will also require the provision of infrastructure and services.

- **Land issues in agriculture**
  The context:
  Land for agriculture is becoming degraded due to poor land uses. In addition there is a gradual reduction in the amount of land available for agriculture in the face of competition from other uses of land. In the context of HIV/AIDS lower usage rates are becoming evident due to loss of labour and shortage of financial resources. Agricultural land use is also dominated by farming, to the exclusion of other uses such as agroforestry.

  Policy principles:
  Land policy should promote sustainable land use and land use planning, enforcement and regulation. The participation of communities in this regard should be promoted. Support services infrastructure should be increased along with the introduction of efficient land use technologies. Indiscriminate encroachment of agricultural land should be minimized by harmonizing sectoral land use; of particular concern in this regard should be the containment of the urban sprawl.

- **Land issues and the environment**
  The context:
  The welfare and quality of human life and society is closely linked the sustainable use of natural resources. Land is a natural resource that requires special attention because in addition to its own importance, land also houses other natural resources. The utilization of land in a sustainable manner has important implications for minimizing its depletion and that of other resources, which it houses, reducing the input of pollutants to the environment.

Policy principles:
Land policy that promotes sustainable interaction with the environment should promote sustainable and participatory approaches to the conservation of biodiversity, combating desertification and conserving ecosystems through sustainable land use practices.

- **Land and urban development**
  The context:
  Africa is rapidly urbanizing. This will lead to increased squalor in the cities, encroachment of agricultural land and serious planning and governance issues.

  Policy principles:
  Planning foresight, aggressive implementation of urban plans, the provision of efficient infrastructure and services and capacity for effective governance will be required. Land policy should direct African cities to take precautionary measures to prevent expensive clean-up later. Land policy should also consider the implications of restructuring and renovation that may be required.

- **Land in post-conflict situations**
  The context:
  Land is the source of conflict in many parts of Africa. Resource competition and displacement are a source of instability, especially in the dry land regions and the Sahel of Africa.

  Policy principles:
  There is need to resolve land conflicts speedily and efficiently through mutually acceptable dispute processing mechanisms. Confidence building among communities competing for scarce land resources will also be necessary to ensure harmonious interaction.

A. **The Critical problems in the land sector**
- **State sovereignty**
  The context:
  Frequently the State is a large-scale landowner, regulator and manager in the implementation of land administration provisions. The

multiple functions of the State in this regard are a source of inefficiency and arbitrariness in the disposal and use of land that is at the disposal of the State.

Policy principles:
The State should progressively divest itself of lands under its ownership and limit its role to one of a regulator, standard setter and auditor.

- **Land redistribution**
  The context:
  Many countries are characterized by inequitable distribution of land as a consequence of historic appropriation of land under colonial regimes and as a result of subsequent appropriation of land by political elites.

  Policy principles:
  The equitable distribution of land is central to the issues of secure livelihoods, social justice, broad-based economic development and human security. While redistribution is frequently disruptive of existing ownership and usage patterns, the design and implementation of land policy should aim to minimize the disruption of the optimum exploitation of the land resource.

- **Duality of property regimes**
  The context:
  Countries on the continent are characterized by dual property regimes with the State showing preference, and generally providing greater support, for received forms of tenure in relation to indigenous forms of tenure. The implication of this has been the undermining of tenure security under indigenous tenurial systems.

  Policy principles:
  There is need for the State to give due recognition for the legitimacy of indigenous tenure systems, provide full support for the development of these systems together with the legislative framework for their evolution.

- **Tenure security**
  The context:
  There is widespread insecurity of tenure arising from conflict of interests among and between users of land and the State, the interaction between received and indigenous forms of tenure, weak land administration institutions, and ineffective conflict resolution mechanisms. Insecurity adversely affects the optimal use of the land resource, negatively affects productivity and ultimately compromises the well-being of the State and its citizens.

  Policy principles:
  Land policy should facilitate equitable access to and security of tenure across all regimes. This may involve the innovative application of approaches that take cognizance of the outcomes (both positive and negative) of previous and ongoing initiatives (titling being an example).

- **Sustaining the commons**
  The context:
  The commons are important to the economy. It is recognized that in many situations the commons are under stress. Some causes include invasion by agricultural communities, desertification and population expansion.

  Policy principles:
  Land policy should seek to strengthen environmental management. International conventions dealing with CPRs should be implemented. The importance of involving communities in the management of CPRs should be highlighted for the sustainable utilization and management of these resources.

- **Managing pastoral land use**
  The context:
  Pastoral lands are under threat from climatic variations, invasion by agricultural communities, attempts at privatization and the absence of a comprehensive legislative framework for their management.

Policy principles:
Land policy should seek to strengthen community institutions re-
lating to pastoral land use. The following should be clarified: ten-
ure regimes for ownership and management, and mechanisms for
resolution of conflicts, particularly trans-boundary conflicts. Bet-
ter technologies relating to pastoral land use, particularly livestock
management, should be encouraged. Strengthening of marketing
systems for pastoral produce should also be encouraged.

- **Land and gender**
  The context:
  Gender discrimination in access to and control of land resources
  remains a serious impediment to development. In a continent
  where land users are predominantly women and children, radical
  steps are necessary to remove these constraints.

  Policy principles:
  Innovative provisions and structures that guarantee equal access
  to land resources will be necessary. This is particularly crucial in
  respect of inheritance of land by women and the protection of the
  trans-generational rights of children.

- **Land administration**
  The context:
  Throughout Africa, land administration systems are in disuse.
  Most of them are corrupt, inefficient, opaque and hostile to the or-
  dinary land user and public. Land administration systems require
  immediate overhaul and reform.

  Policy principles:
  Principles guiding reform should include modernization, acces-
  sibility, transparency, divestiture or devolution of service delivery.
  Land administration institutions and personnel will need to be-
  come more professional.

- **International and regional commitments**
  The context:
  All African countries have signed or committed themselves to the

implementation of international regional conventions and protocols which require them to take measures towards sustainable management of land resources. In addition, there are important land resources which are shared by two or more countries and which therefore require joint management and development.

Policy principles:
It is important that these obligations be fully domesticated and implementation programmes negotiated, designed and operationalized. RECs will need to take the lead in ensuring that this is done.

IV   Land Policy Implementation

- **Programming implementation**
  The context:
  Many land policy documents have been produced across the continent. With a few exceptions such as in Tanzania, Botswana, Namibia, South Africa and Rwanda, the process of implementation has been slow.

  Policy principles:
  African countries must develop realistic programmes and organize resources and capacity for land policy implementation. In addition, the engagement of all stakeholders, especially CSOs and the land using public, must be secured at all stages of land policy implementation.

- **Monitoring and Evaluation**
  Context:
  The absence of M&E of the implementation of development programmes is cited as a contributing factor to the poor achievement of stated objectives.

  Policy Principles:
  Land policy must highlight the centrality of monitoring and evaluation to the process of implementation. Specific provisions must be made with respect to the locus of responsibility, identifiable and measurable indicators and milestones and realistic time frames.

V   Follow-up Strategies

A.   Costing the policy framework
- Financial resource requirements
- Human resource requirements
- Technology and equipment requirements

B.   Resource mobilization and capacity building
- Resource mobilization strategy (incorporating sustainability considerations)
- Development of revenue sources
- Capacity needs and gaps assessment
- Capacity building (through education and training)

C.   The role of continental institutions
- African Union
- African Development Bank
- United Nations Economic Commission for Africa

D.   The role of Regional Economic Communities
- Facilitate the harmonization of policies and legislation
- Coordinate joint action
- Provide political backstopping
- Organize expertise for monitoring and evaluation

E.   The role of national governments
- Initiate land policy development where none exists
- Revise land policy where policy development is in process or already existing
- Oversee development of programmes
- Commit required resources

F.   The role of civil society
- Facilitate popular participation in policy development and implementation
- Complement the efforts of government

G. Engaging development partners
- Identify roles of development partners
- Secure commitments from partners with required competences
- Coordinate relations with and inputs from development partners

APPENDIX 1:

Regional variations and challenges

Southern Africa: Most of Southern Africa—notably South Africa, Zimbabwe, Namibia and Swaziland—underwent extensive colonial settlement and land alienation, leading to the geographical separation of commercial farming areas, characterized by Western notions of property rights, and "communal" areas, on which customary tenure systems predominated. As a consequence, these States continue to grapple with problems of continuing racial inequalities in land holding, a situation which is a potential source of conflict and instability. The communal areas, where African populations were concentrated, were generally located in poorer ecological zones and characterized by overpopulation. As a result, these areas are afflicted by widespread land degradation and are in need of viable systems of land administration for communal lands. White commercial farmers in these countries have slowly had to give up land as a result of agrarian reforms promoted by majority governments. As a result, and because of the drive for expansion by organized agribusiness, particularly from South Africa, the entry of white commercial farmers into neighbouring States, (and even well beyond into East, Central and West Africa) offering investment and seeking to broker arrangements for secure land access with governments and customary leaders, has become a significant feature of land relations in the region.

Angola and Mozambique both underwent armed liberation struggles culminating in emancipation from Portuguese rule in 1975, after which land was nationalized, and former colonial estates became collectivized State farms. External aggression during the apartheid era, linked to internal conflicts, led to massive population displacement and both countries have since faced challenges of resettlement and competition for land between peasant farmers and more powerful interests, including both domestic and foreign investors.

Malawi has very high population densities and as a result faces land and natural resources scarcity and competition, and is highly vulnerable to land degradation and the impacts of drought due to over-cropping on limited areas, and poor natural resource management. Problems were exacerbated

in the 1970s and 1980s by the creation of a leasehold tobacco sector which removed around 1 million hectares of land from customary jurisdiction. Malawi is now seeking to implement a land policy that addresses these problems through a decentralized village-based land management system in which traditional authorities play a clear role.

Early after independence Botswana pioneered a decentralized land administration system through decentralized land boards empowered to validate and register customary rights. Zambia has faced a significant return to the land by mineworkers made redundant from the Copper Belt, leading to land competition and strains in customary land management systems. Throughout the region, customary tenure predominates in rural areas, and traditional leaders retain considerable power over land, particularly in the Kingdom of Swaziland and other countries where they were granted political dominion over communal areas, as part of the strategy of colonial rule. Although new policies are now being put in place most countries face considerable challenges in implementing equitable and decentralized systems of land administration, and in providing secure rights to urban dwellers, especially in crowded communal areas where land is scarce.

The Southern Africa region has been heavily hit by HIV/AIDS which has increased the incidence of landlessness and the loss of family lands, particularly by widows and orphans and households without sufficient resources to work the land.

SADC has established a Land Reform Technical Support Facility, intended to provide access to advice, expertise, training and technical support on different aspects of land reform to Member States from within the region, also drawing on international expertise where required. The Facility provides a mechanism whereby donor resources could be pooled and assistance delivered to individual countries or projects without the need for separate bilateral cooperation agreements, and potentially could also provide financial support to Member States, subject to availability of funds. However, the Facility has been slow to become operational as a result of the restructuring of SADC. In addition, there are a number of national and regional civil society network organizations addressing land and natural resource rights and policies in the region.

Eastern Africa: Eastern African nations are faced with the colonial legacy of dualistic tenure systems and have all gone through some sort of policy process seeking to address this situation. Post-independence Kenya redistributed some of its white commercial farmland and adopted a comprehensive land titling programme which remains incomplete and problematic, and is now reforming its land institutions and management systems.

In the mid-1990s, Uganda emerged from a period of conflict with land issues and the resolution of tenure insecurity and inter-group disputes (particularly severe for pastoral groups and for small farmers in areas where British colonialism made large land grants to Baganda nobles who thereby acquired landlord status). In Tanzania, tenure insecurity was exacerbated by the *Ujamaa* collective villagization process that reorganized rural land holdings and settlements in large parts of the country and sought to extinguish the authority of customary authorities and institutions. In the late 1990s, both Uganda and Tanzania enacted new land laws granting security to customary land holdings, and establishing decentralized land administration arrangements through district and village-based land institutions. Although implementation is now underway, each country has faced serious difficulties in financing and forward planning for the reforms. Uganda moved directly to legislation (due to a Constitutional deadline) without first developing and consulting on a land policy. As a result Uganda drew up a retrospective implementation plan for the 1998 Land Act and for land sector restructuring, which has secured donor support through Poverty Reduction Support Credit (PRSC) and national budgetary support mechanisms. A land policy formulation process is now underway, and land policy issues continue to be hotly debated in civil society, particularly issues of gender, which were not properly addressed by the 1998 Act. Tanzania has also drawn up a strategic plan for implementation of its 1999 Land Laws, which envisages building up a land administration infrastructure, support services and District Land Boards, to back up land management at village level.

Pastoralist land rights and resource are significant issues in all three of these countries and a number of pastoralist groups remain highly mobile across the region, also spreading from the north of East Africa into Sudan, Somalia and Ethiopia. There are sporadic resource access conflicts over pastoral territory, between herders and settled agriculturalists, and ongoing disputes

surrounding the exclusion of pastoralists from rangeland areas reserved for purposes of wildlife conservation and tourism, particularly in Kenya and also in Tanzania.

Rwanda and Burundi both have a legacy of politicized ethnic conflict as well as land scarcity as a result of high population densities, creating considerable challenges for land policy, including the needs for resettlement of returnees and resolution of overlapping land claims, continuing sub-division of very small land plots and land access for youth and future generations. Rwanda is now seeking to address these through implementation of a new land policy and legal framework.

Kenya, Uganda, Tanzania and Rwanda all have active civil society Land Alliances or LandNet chapters, as well as CSOs concerned with gender and land. These networks provide a good basis for civil society advocacy, dialogue and partnership with government, coming together periodically to exchange lessons and address common issues though the LandNet East Africa regional network.

West Africa: Apart from Liberia, all countries in the West Africa sub-region have a colonial past, either as French, British or Portuguese colonies. Under the French colonial policy of assimilation (later changed to association), France governed its colonies in West Africa as overseas provinces of France. The result was that large parcels of land were granted to French individuals and corporate bodies, predominantly for large-scale plantation agriculture. French policy further systematically eroded the status and role of traditional authorities or chiefs, as well as the importance of customary norms. British colonial policy, however, sought to strengthen traditional political structures and authorities and permitted customary rules and tenurial arrangements to co-exist with English principles and norms. Portuguese influence was less widespread, limited to only one State, Guinea Bissau.

Most West African countries rely heavily on land and natural resources as sources of livelihoods and incomes, managed primarily through evolving customary tenure systems. Across the region, customary authorities and chiefs continue to play important roles in day-to-day land management, and in some countries such as Ghana, they retain considerable political influence and formally acknowledge land management roles.

Despite efforts to recognize and register customary rights in countries such as Niger, Benin and Côte d'Ivoire, and incorporate them into common law in Ghana, in a number of other countries of the region governments still provide no formal recognition or protection for customary rights. As a result, overt competition between land claims under customary and formal systems are widespread until States take decisive measures to resolve them. Many of the francophone countries, however, have introduced *Gestion de Terroir* programmes to improve the management of village lands and natural resources, although these have taken a very local focus and proved unable to regulate inter-group utilization of resources on a broader scale. In Senegal and Mali, these issues are now being addressed through the introduction of local conventions at different territorial scales, involving different social groups and village communities, alongside local governments and development agencies in negotiated frameworks for natural resource management and utilization.

Distinctive features of land tenure systems in West Africa include systems of land access through a diversity of customary land transactions and highly developed informal land markets, which have facilitated the evolution of a vibrant, productive small farm sector and extensive migration from the Sahelian to the sub-humid zone. This has led to questions surrounding the security of "stranger" or tenant farmers' rights based on arrangements made with local chiefs and indigenous land holding groups, and the legitimacy of the land disposals they continue to make, in circumstances where land is becoming increasingly scarce. In the case of Côte d'Ivoire, tensions over land and the failure to recognize tenants' rights in land registration exercises were substantial factors contributing to politicized civil conflict. Sierra Leone and Liberia are now emerging from protracted conflicts, fuelled by tensions over access to resources, notably minerals and timber. Equitable land and resource access policies are likely to play a part in sustainable reconstruction.

Coastal regions, particularly in the Gulf of Guinea, are subject to very rapid urbanization, which as well as consuming rural land, creates additional demands for land for food production and horticulture to feed growing urban populations, increasing pressure on and competition for land in these areas.

In the Sahelian zone, pastoral livestock keeping remains a very important livelihood and income-generating activity. Pastoralist, agropastoral, and

settled agricultural groups coexist across the region, but until recently, many countries have not recognized the value of pastoral land use, favouring the development of settled agriculture, leading to localized resource conflicts when inter-group disputes have arisen. Recently, however, Mali, Niger and Burkina Faso have all developed Pastoral Codes—framework laws which enable pastoral communities to establish jurisdiction over home territories, obtain freedom of movement in cattle corridors and negotiate access to more extensive grazing and water resources under the primary jurisdiction of other groups, on which they rely in the dry season.

West Africa has an active LandNet West Africa civil society network and active national networks in a number of countries, including Burkina Faso and Togo. In the Sahelian countries, farmers' organizations are also active players in land debates, and the intergovernmental organization CILSS has been active in fostering lesson learning and convergent land policies.

Central Africa: The Central African countries (Cameroon, Central African Republic, Chad, Congo, DRC, Equatorial Guinea and Gabon) have limited research and data available on land issues, and these countries are not currently undergoing land policy reform processes. In common with the rest of Africa, these countries suffer from the contradictions of colonial land policies and customary tenure practices. The governing framework in Cameroon, for example, is still that of 1974 Land Ordinances, which subordinate the enjoyment of customary land rights to peaceful occupation and effective use of land. However, the reach of formal land institutions in the region is highly limited and customary land holding remains the de facto norm. Customary land and resource use is, nevertheless, widely affected by extensive timber and mineral extraction, which are primary sources of foreign exchange earnings. Some countries of the region, notably those parts of DRC bordering the Great Lakes regions of East and Central Africa, have also been profoundly affected by conflict in which control of territories, people and natural resource revenues have been prime objectives of rival armed groups.

The Horn of Africa: In Ethiopia farm de-collectivization and liberalization of land policy is a distinctive feature of the land policy environment, following the revolutionary Derg government's overthrow of feudalism, nationalization of private farms, and cooperativization of land holdings administered by party-led peasant associations. These were not based on pre-existing in-

digenous groupings, and a radical egalitarian levelling of land access in a number of regions eroded established rights and created problems of land access, undermining productivity for some peasant households. Land policy formulation has now been devolved to Ethiopia's regional governments, which in Amhara and Tigray are now seeking to put in place decentralized systems of land registration. Pastoralism is the principle form of land use in Somalia, southern Ethiopia and large parts of Sudan. The region has also been substantially affected by conflict in Somalia, Ethiopia and Eritrea and most recently in Sudan, which has been subject to waves of population displacement and return. Here, negotiated territorial settlements to facilitate resettlement of returnees and restore the jurisdiction of indigenous groups over land and natural resources in the south, together with the rebuilding of land institutions, are likely to play an important role in reconstruction and reconciliation.

North Africa: North African countries have undertaken major land reforms. Algeria, Egypt, Libya and Tunisia all undertook extensive land reform programmes in the period 1950–1975, achieving significant benefits in favour of peasant farmers, landless workers and pastoral nomads, substantially improving access to European export markets, and reducing the high rates of malnutrition, illiteracy and landlessness which had prevailed in the low-income traditional rainfed agricultural sector. The State-interventionist approaches (supported by high levels of capital investment) adopted by the land reforms included: recovery of foreign-owned lands; ceilings on maximum land ownership (in Algeria and Egypt); and provision of subsidized modern agro-inputs, irrigation water, free extension services and primary education. Although not all expropriated land was redistributed to the poor, and the State became the largest landowner in the region, creating State farms, nearly one million farmers across the region became landowners. Land reform and new land settlement schemes contributed to agricultural growth across the region, inducing technical change, providing beneficiaries with security of tenure, and contributing substantially to poverty reduction. Rapid urbanization, the oil boom and rising domestic consumer demand all contributed to rising agricultural incomes. However, rural workers (as opposed to tenant farmers) were excluded from land redistribution, as were women. Inequality persists in North African agriculture, and as land distribution and rural investment fell away during the 1970s and 1980s, richer farmers and those with larger land holdings came to benefit disproportionately from agricultural services. Large numbers of

landless rural labourers remain, whose livelihoods are threatened by population growth, the falling quality of agricultural land and the withdrawal of State support during the structural adjustment period of the 1980s and 1990s. The arid and semi-arid rangelands fringing the Sahara remain under customary forms of pastoral management. Islamic land law has also had a significant influence on tenure relations in North Africa.[39]

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39 Julian Quan, *The Importance of Land Tenure to Poverty Eradication and Sustainable Development in Africa: Summary of Findings* (Chatham, UK, DFID/NRI, 1997).

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