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Economic Commission for Africa

# Land Policy in Africa:

## Southern Africa Regional Assessment







African Union



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Bank



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for Africa

# Land Policy in Africa: Southern Africa Regional Assessment



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## Abbreviations/Acronyms

ADRA	Acção para o Desenvolvimento Rural e Ambiente (Action for Rural Development and the Environment)
AfDB	African Development Bank
AU	African Union
AUC	African Union Commission
CAMPFIRE	Communal Areas Management Programme for Indigenous Resources
CBNRM	Community based natural resources management
CEDAW	Convention for the Elimination of all forms of Discrimination against Women
CPR	Common property resources
DANIDA	Danish International Aid Agency
DNTF	Direcção Nacional de Terras e Florestas
DRC	Democratic Republic of the Congo
e.a.p.	Economically active population
ECA	Economic Commission for Africa
ECE	Economic Commission for Europe
FAO	Food and Agriculture Organization of the United Nations
GDP	Gross domestic product
GIS	Geographic information system
GPS	Global positioning system
HDI	Human Development Index (United Nations Development Programme)
ICT	Information and communication technology
MLRPIS	Malawi Land Reform Programme Implementation Strategy
NGO	Non-governmental organization
REC	Regional economic community
RISDP	Regional Indicative Development Strategic Plan (SADC)
SADC	Southern African Development Community
SGC	Direcção dos Serviços Geográficos e Cadastrais
SPGC	Provincial Office of Geography and Cadastre
UNDP	United Nations Development Programme

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## Executive Summary

Southern Africa is one of the most well endowed regions in the continent in terms of mineral and natural resources. However, the region is facing serious environmental challenges such as land degradation, deforestation and water stress in specific areas.

The population of Southern Africa is estimated at 185 million people (Democratic Republic of Congo not included). The population is growing rapidly, mainly in urban areas. The rapid urbanization rate is challenged by the need to develop relevant socio-economic infrastructure. In the absence of effective response from the state and local government, informal settlements are mushrooming in urban and peri-urban areas across the region.

The colonial legacy continues to exert a profound influence on land issues in Southern Africa. The entire region was affected by the consequences of colonial land policies such as legal dualism. In addition, former settler colonies in the region suffered massive land dispossession. Accompanying the history of land dispossession was the imposition of hierarchal, inequitable and racially discriminatory land tenure systems. Therefore, key land policy challenges in the region include re-establishing national sovereignty over the land and redressing unequal and race based land distribution. The protection of the commons against land-grabbing and privatization are also major land policy challenges in most countries in the region.

Southern Africa is known as the epicentre of the HIV/AIDS pandemic in Africa and the world. In most countries in the region, the HIV/AIDS prevalence ranges from 12% (Tanzania) to more than 33% (Swaziland). The pandemic has clear impacts on land use, food and tenure security. In affected households, financial resources are diverted from agricultural production to pay for health care and funerals, leading, in some cases to the abandonment of farmlands.

Since the 1990s, the end of apartheid in South Africa, the demise of the socialist system in other countries in the region and the advent of more market-friendly economic policies have driven an intensive process of land policy reform across the region. National land policies are in place in some countries while others have just developed them. The land policy develop-

ment process is far from being uniform: some countries are considered as models in terms of participatory processes while others followed top-down approaches.

Generally in the region, land is vested in the state. Consequently, the state possesses extensive powers over the land held and used by people under customary law. However, the ongoing land policy development trends give greater recognition to customary tenure systems, even if the development of effective land management systems which protect the rights of local people remains a major challenge.

However good land policies may be, they will be rendered useless if the implementation systems and institutions are not functioning. The implementation process falls under the domain of land administration, a domain where the capacity of countries in the region is very low. The situation is also highly contrasted within the same country as well as within the region. For example, Mozambique is widely regarded as an example of best practice for the implementation process of the 1997 land law, but there are strong concerns about the weakening of local land rights as a result of the awarding of land concessions in certain areas. The fallout from the manner in which Zimbabwe's fast track land reform programme was carried out since 2000 continues to reverberate through whole the region.

Independent of the individual countries initiatives the Southern African Development Community (SADC), as a regional organization, has established a *Land Reform Support Facility*. This facility aims to provide support to member states in the formulation and implementation of land policies and programmes in line with their national development priorities. The facility has conducted an assessment of land issues in member states and developed a five-year phased programme that started in 2007 and covers the following four major areas: policy formulation and implementation; capacity building; information and communication; and research.

# I. Introduction

## I.1 Background

This assessment of land policy issues in the Southern African region reviewed “regional specificities and realities on the ground” as part of the process of consultation and reflection informing the development of a “Land Policy Framework for Africa”. An earlier draft of the assessment was discussed at a Consultative Workshop on Land Policy in Southern Africa involving member states and other stakeholders from the Southern African Development Community (SADC), which was held in Windhoek, Namibia, from 29–31 August 2007. This assessment was revised in light of the discussions at the workshop.

The Africa-wide Land Policy Framework is a joint initiative of the African Union Commission (AUC), the United Nations Economic Commission for Africa (ECA) and the African Development Bank (AfDB), working in collaboration with regional economic communities (RECs) and other partners. The road map for the development of the policy framework and accompanying guidelines outlines eight main steps in the process:

- a) A Continental Consultative Workshop held in Addis Ababa, Ethiopia, from 27–29 March 2006, at which an Issues Paper that summarized major land policy issues in the continent was discussed;
- b) An African Experts Task Force Meeting in Addis Ababa from 26–28 July 2006, at which the earlier Issues Paper was revised and transformed into a draft background document, *Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods* (the “Background Document”), which is being circulated to AU member states for comments;
- c) An expert group meeting to spearhead a process for the development of land policy/administration benchmarks and indicators, 3–4 May 2007.
- d) Regional assessments within each of the RECs, of which this report is the first;
- e) Regional consultations in each REC, at which member states and other stakeholders will discuss the Background Document as well as their regional assessment reports, in order to highlight regional

issues that need to be reflected in the final policy framework and guidelines;

- f) An African Experts meeting to refine and develop a report on the draft Framework and Guidelines for consideration by African Ministers responsible for land issues;
- g) A Meeting of African Ministers responsible for Land to examine the Experts' Report and prepare recommendations on the draft Framework and Guidelines;
- h) A Summit of Heads of State and Government, at which the Minister's Report and Recommendations will be reviewed, leading to a draft Declaration on a Land Policy Framework and Guidelines for Africa;
- i) The adoption of a Declaration on a Land Policy Framework and Guidelines for Africa by the African Assembly of African Heads of States and Government.

## **1.2 Importance of land issues for economic development**

Land lies at the heart of the economic, social and political life of most African countries. Most countries in the continent rely heavily on agriculture and natural resources for economic development. At the same time, other land-based activities such as mining, tourism and urban development are key to the livelihood, employment and income of rural and urban populations. Reliance on land as a principal source of livelihood and as a basis for economic development in Africa is likely to persist in the foreseeable future.

However, land in Africa is not only an economic asset; it has major historical, political, cultural and spiritual significance. Good governance of land and natural resources contributes to conflict prevention, consolidation of peace and public security.

## **1.3 Scope of this report**

This report is a component of the fourth step in the implementation of a road map that began with the Continental Consultative Workshop in March 2006 and will culminate in the adoption of a final Declaration on land by the African Assembly of Heads of State and Government. It provides a com-

parative perspective on issues within the SADC<sup>1</sup> region, while drawing out regional specificities in relation to the continent more generally. The report draws on the background document of the AU-ECA-AfDB Land Policy Initiative, *Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods* (AU-ECA-AfDB, April 2007), and also uses a wide variety of sources, mostly accessed via the Internet. The Terms of Reference that guided the development of the assessment are attached as Appendix 3.

From the outset it needs to be recognized that although there are important regional commonalities as a result of geography, history and efforts to deepen economic integration (especially since the establishment of SADC in 1992), there are also significant differences among individual countries within the region. Thus, it is not possible to develop a “one-size-fits-all” set of policies, and both national and regional policy frameworks need to be sensitive to variation in local conditions. Selected socio-economic data for each of the 13 countries covered by this assessment are summarized in Appendix 1 to illustrate this point. Country-level differences that need to be considered as the region takes forward land policy development and implementation include those relating to: ecology; demography; economy, including agriculture; levels of urbanization; existing land tenure systems, and historical specificities; the political dispensation; and cultural factors (for instance the difference between matrilineal and patrilineal societies). The SADC region includes two very distinctive Island States (Mauritius and Madagascar), while different histories of colonialism have left different legacies in terms of legal systems and land distribution and administration. The SADC regional economic community incorporates some of the poorest countries in the world. However, in terms of the Human Development Index (HDI) developed by the United Nations Development Programme (UNDP), in 2005 five countries (Botswana, Mauritius, Namibia, South Africa and Zimbabwe) were classified as falling within the “medium human development” range. Country size also varies enormously; in the larger countries there may be significant internal regional differences related to environment, culture and local history.

Because the comparative country data are not always consistent in terms of the year of collection and reporting as well as the reliability, scope and ex-

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<sup>1</sup> The Democratic Republic of Congo was not included in the study. It was included in Central African assessment.

tent to which statistics have been rounded off, a general caution is required about interpreting the statistics that are cited in the text. These figures are best regarded as broad indicators of current conditions, for comparative purposes, rather than as precise measures of the situation on the ground for each country at exactly the same time.

The report is organized as follows:

- Chapter 2 provides contextual background on land issues in the region.
- Chapter 3 reviews key issues and challenges for land policy to address in the SADC region.
- Chapter 4 reviews the process of land policy formulation in the region.
- Chapter 5 discusses land policy implementation and administration across the region.
- Chapter 6 draws out lessons from the process of both policy formulation and implementation.
- Chapter 7 provides a “needs assessment” with regard to human capacity and institutional and financial resources.
- Chapter 8, the conclusion, highlights key issues arising from the SADC regional assessment that should be taken forward in the development of the African Land Framework.

## 2. The Context of Southern African Land Issues and Policies

### 2.1 The Political and Economic Context of Land

The land questions facing Southern Africa vary mainly according to the different forms of colonization experienced, particularly the degree of settler expropriation of land, as well as the diverse contemporary political, economic, social and environmental experiences facing the SADC region. The evolution of national land policies and reforms varies in relation to these diverse contexts, although some common experiences and challenges have led to some similar responses.

The SADC region comprises 14 countries with diverse political, social, cultural and economic histories, and varied contemporary development trajectories. The majority of the countries were colonized under direct or indirect British rule. Two countries (Mozambique and Angola) were colonized by the Portuguese; Mauritius and Madagascar by the French; the Democratic Republic of the Congo (DRC) by Belgium; Namibia first by Germany and then by Apartheid South Africa; and South Africa itself was colonized in the 15<sup>th</sup> century by Dutch settlers and later by the British. Colonial diversity introduced a variety of official European languages, cultural orientations, political and administrative systems and economic interests, which were grafted on to a diverse range of polities, linguistics and cultural practices, and socio-economic development systems. The settlement of Europeans, including their direct control of land and engagement in agriculture varied among the countries, such that half of the nations were settler colonies.

Independence from colonial rule was staggered over time and many nationalist struggles focused on land and related sovereignty issues. During the 1960s nine of the countries (Botswana, DRC, Lesotho, Madagascar, Malawi, Mauritius, Swaziland, Tanzania and Zambia) gained independence through negotiated settlements. The remaining countries were decolonized after protracted armed liberation struggles, beginning with Angola and Mozambique in the mid-1970s, followed by Zimbabwe in 1980, and later Namibia (1990) and South Africa (1994). Thus, the processes of nation building, including political reconciliation, the establishment of independent political systems, definition of policies and development strategies and the building

of administrative capacities were staggered. The countries that gained independence last have only recently begun to confront a variety of political and constitutional reforms, including land reforms. This diverse political development entailed a variety of approaches to land policy and administrative systems, and trends in the control, access to and utilization of land by the state, foreign settlers, other migrants and indigenous communities.

The importance of land to economic development in the SADC region is underlined by the fact that over 70 per cent of the population derives its livelihood and incomes mainly from farming and related activities, primarily as self-employed small-scale farm households. Yet overall agricultural productivity levels are low and the dependence on food imports is high.

The agriculture sector contributes to less than 20 per cent of the gross domestic product (GDP) in most of the countries. Economic diversification in some countries, particularly towards mining and tourism, reduces dependence on farming. The development of the industrial and service sectors is higher in South Africa and Mauritius. Agriculture contributes less than 5 per cent of GDP in South Africa, suggesting that while the land question in general remains important, the critical land issues are non-agricultural.

Yet urbanization in some of the countries (Mauritius, South Africa and Zambia) hovers above 40 per cent, emphasizing the growing importance of demand for land to meet urban housing needs for a significant population of poor urban residents. It is estimated that the informal settlement population of South Africa is more than 4.5 million, while Mozambique has over 70% of its population of about 25 million in need of decent housing. Urban land supply is far from meeting the official demand.

Tourism is of growing importance to land distribution and use, especially through nature conservancies, in most of the SADC countries, except in the Island States and the small sized countries (such as Lesotho and Swaziland), and in those countries which recently emerged from armed conflicts (Angola and DRC). On average, around 30 per cent of the land in the region is reserved for nature conservancies, forestry and woodlands in general.

Altogether, however, of the 9,864,142 km<sup>2</sup> of land in the region, only 20 per cent is arable. In the larger sized countries, deserts or semi-deserts occupy a substantial amount of the area. Since the amount of non-arable land is substantial in many of the countries, the growing demand for agricultural land,



especially among small-scale farmers, is focused on a narrow land resource base. However, countries such as Mozambique and Zambia have extensive areas of potentially arable land which is underutilized. Malawi and Mauritius have the greatest degree of land shortage.

The SADC region exhibits wide variations in the level of per capita incomes, ranging from US\$ 80 in DRC to US\$ 3,830 in Mauritius. Up to 70 per cent of the population lives on less than US\$ 2 per day. The HDI also varies widely with countries such as Mozambique (0.390) and DRC (0.391) on the lower end, compared to Botswana and Mauritius which much higher scores (see Appendix 1). These income levels reflect the high dependence of the majority of the largely young population on extensive low output (yield per hectare) farming in a context of weak social protection systems.

The rate of population growth in the region averages 2.5 to 2.7 per cent. The rate of migration to cities and developed rural areas has continued to grow and has become a source of contested land rights in many countries. This emphasizes the importance of land in providing social security for the bulk of the population. The challenges of citizenship and social development in relation to access to and effective utilization of land are expressed in the diverse land needs of varied communities and with varied agricultural practices. Mixed farming is common in most of the countries. The growth of large-scale “commercial” and export oriented farming is also growing alongside the multiple uses of land and natural resources, which the bulk of rural populations depend upon. Variations in customary law and practices related to land control and utilization are also significant, and these in turn shape the diversity of land needs and conflicts, and policy responses required.

## **2.2 Environmental Context of the Land Question**

One of the key environmental aspects of the land question in the SADC region is that, given the limited amount of land suitable for cultivation and grazing in a context where unequal land distribution relegated a growing population of small-scale farmers to marginal areas, there has been growing pressure on land and related resources. Most countries except (South Africa) depend mainly on rainfed cropping, using low levels of fertilizer and applying little manure, leading to rapid soil exhaustion. They face wide-

spread “overgrazing” and experience more frequent droughts and increasing flooding. These and other factors have resulted in the increased degradation of soil and vegetation and related declines in yields and food deficits. Deforestation is reported to grow at 0.5 per cent per annum (UNEP, 2002) mainly due to the expansion of agricultural production on marginal land. The increased siltation of rivers is also of concern in a region where the irrigation potential is not adequately utilized. When the ecosystem and biodiversity are undermined, the livelihoods of the poor suffer most.

Various land use policy measures to enhance the conservation and balanced exploitation of soils and other natural resources have been promoted in the region. However, land shortages, the high cost of most agricultural inputs (such as fertilizer, if it is not subsidized) and irrigation infrastructure, have constrained widespread utilization of related techniques among the rural poor. Where tangible benefits from tourism have been shared with the poor, through wildlife conservancy schemes, beneficial resource management practices have been adopted.

Land redistribution policies, by increasing access to land, particularly where large farms underutilize arable and grazing areas, have the unrealized potential to address part of these environmental issues and promote broader based participation in the beneficial management of biodiversity. Such initiatives require increased investments in and policy support for improved land utilization in various sectors, including resettlement areas. Secure tenures are considered critical to the success of these initiatives.

### **2.3 Unequal Land Distribution and Tenures: A Colonial Legacy**

Angola, Mozambique, Namibia, Zimbabwe, and former apartheid South Africa faced extensive land expropriation and settler occupation. The rest of the countries in the region experienced less expropriation and occupation, yet they also suffered colonial land related domination. This colonial legacy ignited common concerns among the countries to re-establish their sovereignty over land and natural resources. This included the redress of unequal land distribution, reforming their dualistic land tenure systems and improving the administrative and legal capacities to manage land reforms.

Settler land expropriation and migrant labour movements were intertwined facets of the region's political economy which was focused on South Africa's agro-industrial, mining and commercial farm enclaves and, to a lesser extent, around smaller enclaves in various other countries. Such migration and settlement, the associated population growth and the settler land monopolies created pockets of extreme land shortage and contested land rights. Uneven development among the nations, races and sub-regions in the SADC region led to highly inequitable income and consumption patterns, persistent marginalization of rural and informal economies, and swelled the ranks of the poor and landless rural and urban populations. The colonial legacy thus etched indelible grievances over land distribution, tenure, land use policies and land governance systems.

Foreign land ownership, while historical in origin, has a contemporary dimension. Since the 1980s the migration by large-scale farmers from South Africa and Zimbabwe to the other countries in the region has increased. These farmers, settled on the basis of leasehold tenure on large landholdings, have established new enclaves of intensive agricultural production and conservancies for tourism. The inadequate social integration of incoming white farmers and the associated uneven development, which repels indigenous populations in surrounding areas, has become a concern in some of the countries. Foreign and absentee land ownership is of general concern in the region, especially in coastal and urban areas.

The maturation of an African elite (black and white in some countries) after independence saw new landholding concentrations. These social forces emerged from earlier nationalist, political and administrative leaderships, "traditional" elites, and new post-independence middle class elements. Differential access to land and the growth of land concentration has emerged from "below" through social differentiation and from "above" through policy, building on historically defined unequal structures and contemporary accumulation structures. Post-colonial rural differentiation and growing landlessness or land shortages, have tended to drive competing demands for redistributive land reform policies between the classes.

Beyond unequal race, class and foreign land ownership issues, the exclusion of some social groups from access to adequate land precipitates various other land conflicts. The marginalization of the "first peoples", such as the San/Bushmen in Botswana and the Herero in Namibia, has become contentious. Women's access to and control of land within this legacy is inadequate

and constrained by various customary and statutorily defined patriarchal social relations. The land rights of farm workers (including women) who toil under severely exploitative relations of production and social reproduction in large-scale farms are generally non-existent. Some of these perverse social relations, which originated from pre-colonial and colonial society, have become entrenched in the male-dominated central and local state power structures.

Accompanying land dispossession was the imposition of hierarchical, inequitable and racially discriminatory land tenure systems, pitting statutory (freehold and leasehold) tenure against customary tenure. Statutory tenure, with its privileged legal protection and administrative support, was allocated to settlers within restricted land markets, while customary tenure was subordinated and distorted through dualistic systems of land administration and other negative social policy interventions. Competing property rights systems, which undermine broad based access to and control of land, were thus entrenched.

Soon after independence various attempts were made in most countries to develop freehold land tenure systems and land markets, building upon earlier colonial experiments. Some of these systems and markets were carved out of customary land tenure areas which were accordingly reduced in hectareage. However, the major tenure conversion process has led mainly to increased numbers of large leasehold estates and a few enclaves of freehold landholdings, except in Namibia and South Africa where extensive freehold tenure remains.

Neo-liberal investment policies and foreign landownership in many countries has increased the pressure for private land tenure property regimes. The agriculture, tourism and mining sectors have been a prime target of such investment which expands the concentration of land and resources control, and absentee landownership. This model of private property rights has increased the trend of land concentration; it has marginalized the rural poor from their own landscape and undermined the sustainability of their livelihoods. Growing urban homelessness has been exacerbated by expanding urban land markets in most primate cities.

## 2.4 Land Use Policies: Agriculture and Development

Colonial policies imposed discriminatory land use regulations between the two tenure systems (statutory tenure and customary tenure). This included regulations related to environmental conservation and agronomic practices which fuelled widespread resentment. The selective provision of investment incentives to and infrastructure for agricultural production, including water development, led to uneven land development, investment and productivity, while limiting the opportunities for the majority to participate in land related economic enterprises. Such preferential resource allocations have created wrongly the impression that large-scale farming is generally the only feasible trajectory for agricultural development in Southern Africa, relegating smallholder farming to fend for itself. This colonial legacy continues to distort and bias land policies towards land market and agricultural large-scale or export agriculture, to the detriment of the livelihoods of the poor.

Post-colonial macro-economic stabilization processes, externally oriented trade liberalization and deregulation of domestic markets have continued to constrain the scope and pace of improved land utilization towards balanced economic and agrarian development. Large-scale commercial farming in Southern Africa continues to be dominated by white elites, foreign landowners and small groups of emerging black elites, while small-scale farming is predominately black. Piecemeal efforts to involve black elites in large-scale farming through affirmative action programmes have hardly redressed this inequality and have made the demands for land and agrarian reform a topical issue.

Although official agricultural and economic policy discourse accepts that smaller sized farms also use their land productively in terms of yields and labour use and that they support the livelihoods of the majority, as demonstrated by their performances in most SADC countries, actual agricultural land use, economic and land reform policies continue to marginalize them. The tendency to believe in the superior “efficiency” of the large-scale farming system perpetuates an ideology which promotes excessively large farm

landholdings which are, however, underutilized, while the arable land available to small-scale farmers continues to decline in most countries.<sup>2</sup>

An underlying problem confronting the land use policy question is the continued increase in population in marginal and congested lands without a net increase in access to arable land. This is compounded by the slow rate of growth in land productivity and agricultural intensification, and environmental degradation of overcrowded areas. Discriminatory land use policies and practices and land tenure laws have tended to encourage underutilization of land among large-scale farmers, who nonetheless have high levels of productivity on the limited parts of the land they control.

## **2.5 Land Conflicts and Wider Political Stability**

The post-colonial era also experienced intensive political and armed civil conflict in some of the countries, particularly Angola, the DRC and Mozambique. These conflicts led to both internal displacement and people seeking refuge in neighbouring countries. These conflicts shaped some of the land questions facing the region including the challenges of resettlement and rehabilitating various communities and those of de-mining the zones of intense armed conflict. More recently, political polarization arising from extensive land reforms in Zimbabwe has led to economic decline and new domestic disturbances, in the context of international sanctions and conflict over external land and economic interests.

Land conflicts today continue to be informed and fuelled by past violence over access to land and natural resources and the wider social and political polarization bequeathed by this continued legacy of racial inequality. Persistent ill-treatment of black workers on farms, mines and in towns and the cheap labour policies of the past have generated confrontational responses from the disadvantaged. “Illegal” land occupations or “informal settlements” in SADC are thus manifestations of a much larger political phenomenon fed by commonly shared grievances arising from unresolved land questions.

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<sup>2</sup> Across Southern Africa, per capita arable landownership per household has been declining due to the increase in population in customary tenure areas. Thus, poverty tends to be concentrated in households with farm sizes under one hectare, and especially under half a hectare (IFAD, 1999, cited in Ntsebeza and Hall, 2007).

Political stability, peace and economic development in SADC can be significantly improved through land reform policies. This is only if the historical and contemporary social justice issues and problems of equity, poverty reduction and uneven economic growth are acknowledged and redressed directly, rather than being marginalized by neo-liberal development, trade and aid policies. Complex land conflicts require strategic political management rather than economic reforms, premised upon distorted and inadequately developed market processes. Proactive land reforms are critical for longer-term economic development and democracy in the region.

## **2.6 Land Reform Experiences**

Progress in the implementation of land redistribution and tenure reforms in the SADC region has been slow due to a variety of factors.

The national liberation process has had varied implications on the manner in which these land questions have been addressed in Southern Africa. Where decolonization was concluded comprehensively, as in Angola and Mozambique (notwithstanding the ensuing internal conflicts that were fuelled by external destabilization), the colonial legacy of the land question was broadly resolved. Where decolonization was negotiated, as it was in Namibia, South Africa and Zimbabwe, the land questions remained relatively unresolved; particularly the racial dimensions of unequal landholdings and land markets. Racially inequitable structures of wealth and economic participation related to land distribution remained intact under the protection of liberal democratic constitutions and market principles.

The trajectory of land reform processes in the SADC region spans the 40-year history of national liberation, such that gradual shifts in landholding patterns and tenure systems have been emerging. The nationalization of settler lands and foreign commercial structures of capital was pursued in Tanzania and Zambia in the 1960s and early 1970s and in Angola and Mozambique from the mid-1970s. In the former colonial “protectorates”, which faced indirect colonial rule alongside cheap labour migrant systems (such as in Botswana, Lesotho, Malawi and Swaziland), land expropriation for redistribution was used sparingly in the smaller areas of white settlement.

Land acquisitions through market-based compensation, with some finance from the former colonial master, were used for example in Botswana and

Swaziland, and during the 1980s in Zimbabwe. Thus foreign corporate, white and Asian minority settler land ownership, and excessively large-scale estate farming has remained a concern in a number of SADC countries.

The liberal market approach to land reform has been used in many countries in various ways. It consisted mainly of the state purchasing land on the market and redistributing it. The question of colonial responsibility for compensating large-scale white settler farmers whose land has been or is being acquired for redistribution (either through the market or compulsorily) has been a concern in some countries. Moreover, the principle of compensating for land targeted for redistribution has also been a major concern in a number of countries, given that such land was expropriated under colonial rule and developed into exclusive highly priced land markets, through discriminatory state subsidies. There is little consensus on how to determine the levels of fair and adequate compensation for acquired land taking into account the “losses” of past victims.

However, recent efforts to expropriate land have been dogged by extensive and costly litigation from landowners in the context of limited legal frameworks and bureaucratic capacities to manage the process. Furthermore, as the recent experience in Zimbabwe has shown, efforts to undertake extensive redistribution of land through expropriation in the current post-colonial era, has been accompanied by increased domestic and international conflicts, including political isolation and economic sanctions.

The land tenure reforms which accompanied the redistributive process tended to increase state ownership and control over land, while reducing freehold tenure. Leasehold tenure has been growing albeit slowly in most countries, while most of the inherited customary tenure has been retained despite a few efforts to title or register such land. Post-independence land tenure reforms have not adequately restructured the dualistic land administration systems and nor have they improved government support for the development of the disadvantaged customary land tenure systems. Moreover, low levels of resource allocations towards the improvement of land governance systems have led to weak land administrative capacities in most countries.

Attempts to “modernize” smallholder agriculture to improve land utilization have been limited by low levels of public resources allocations and the



continued preferential support to large-scale farmers. Policies have not addressed the persistent food deficits and dependence on imports.

Neo-liberal prescriptions for land reform in Southern African emphasize the role of market rights and the protection of the “rights” of existing land-owners over social justice, underplaying emotive grievances and demands for the redistribution of land and related resources. There is a perception that the national and global coalitions of industrial and agricultural capital aim to protect the property rights and benefits of minorities, while paying lip service to land reform and poverty reduction. Many non-governmental organizations (NGOs) also emphasize “community based natural resources management” reforms rather than innovative redistributive land reforms. Negotiated and market-assisted land reforms are currently being promoted by various global institutions, including the World Bank, purportedly to resolve land conflicts and to improve the functioning of land markets and smallholder production through the provision of loan funding, as in Malawi. Redistributive land reform has re-emerged on the Southern African agenda due to increasing popular demands for land, suggesting the need for concerted efforts to develop effective policies and land administration capacities.

## **2.7 Concluding Note**

Land policies in the Southern Africa region are developing within a dynamic and complex context. This context and the imperatives for future development require the players to understand that comprehensive land policies are critical for political stability and development in the economic, social and environmental spheres, and at the local, national, sub-regional, continental and international levels. Broad based control of land generally defines the nature of local and national sovereignty and territoriality, and mediates development of the agrarian economies. Historical and contemporary processes of class formation, gender and other social relations are shaped by land control among other factors, while social inclusion, belonging and citizenship are influenced by effective land rights. The control, distribution and utilization of land are increasingly mediated by the extent and nature of foreign interests or investments in land with or independently of domestic capital. Such investments range from agriculture, forest exploitation, minerals and oil and tourism (in coastal zone and wildlife conservan-

cies) to urban real estate development. The need to balance domestic and foreign interests in land is critical.

A clear understanding and definition of the role of the state in regulating and promoting effective land distribution, tenure and utilization at local and national levels (including its participation as landlord, trustee and land user, particularly in protecting land rights) is critical to effective land policy making. Such a role is best defined in relation to the roles of various other social actors. These actors include land rights claimants, non-state regulatory and administrative structures, organizations of civil society and structures which enhance popular participation in land and related governance. In this sense land is a primary political concern in so far as effective political institutions and processes of managing land are fundamental to ensuring that the economic, social and environmental benefits that land can bring to development are realized. It is critical to balance the roles and processes of land management of both state and non-state actors in order to enhance accountability to society and ensure political stability.

The social basis of land rights and land use is also complex and diverse. Historical and contemporary political processes of social organization and mobilization (including those derived from class, gender, religion, culture, ethnicity, nationality and generational cleavages) shape access to control and utilization of land. Therefore, effective land policy making should recognize that land is a fundamental resource for the livelihood of the majority (who are poor) in diverse rural and urban situations. Land is an instrument of beneficial economic investment and of exploitative social relations, particularly for historically established and new elites (from various races and ethnicities). Policy should therefore balance the rights and interests of the weak against the powerful, while ensuring the inclusion of all sections of society in realizing the variety of social, environmental and economic benefits from land.

### 3. Key Issues and Challenges for Land Policy

The previous section provides the broader context for current land issues in the SADC region. This section examines in more detail the key issues arising out of this context and the complex challenges they pose for land policy today. Although the issues are separated out for the purpose of discussion, they intersect in complex ways, and the policy implications have to be understood holistically, in relation to each other. Some issues, such as those of gender and HIV/AIDS, are cross-cutting, with important redistributive, tenure, land use and legal dimensions.

The issues can be clustered in several broad themes:

- Issues relating to the ways in which land is held and distributed. This includes the question of state sovereignty in relation to land; legal dualism in national property systems; inequities in the distribution of land; and widespread tenure insecurity (including among those holding land under customary tenure or, especially in urban areas, informally). Women, pastoral communities and people living with HIV/AIDS are often further marginalized; young people may also be disadvantaged in terms of access and rights to land.
- Issues relating to land use (which cannot be de-linked from the debate on tenure security). Increasingly, these have an urban and not only a rural agrarian dimension in the region, and include questions around the protection of the commons and sustainable environmental management more broadly.
- Issues relating to the integration of land policies with other national policies and regional initiatives. These include macro-economic policy, gender policy, urban and housing policy, youth development, and environmental management.
- Issues relating to post-conflict reconstruction.

A further challenge, that of state capacity to implement land policies and manage land administration in ways that are accountable, efficient and transparent, is dealt with in Chapter 5.

The discussion on the above issues is organized across 11 sub-sections:

1. Sovereignty over land
2. Dualism in property systems
3. Unequal distribution of land resources in terms of “race” and class
4. Gender biases in land relations and land policy
5. Rural security of tenure, including the issue of land markets
6. Protecting the commons, including pastoral rangelands
7. Sustainable management of the environment
8. Supporting economic development, including the enhancement of agriculture
9. Urban and peri-urban issues
10. Managing the impact of HIV/AIDS
11. Land issues in post-conflict reconstruction

### **3.1 Sovereignty over land**

State sovereignty over land refers to the ultimate authority of individual national states over land falling within its territorial boundaries; this authority is vested in the institution of the state by virtue of its ownership of radical or underlying title to such land. The politico-legal construct of “radical title” derives from the colonial period, when the colonizing powers “appropriated radical title to their respective sovereigns under the fiction that indigenous law knew of no property in land, hence conferred no ownership over the land resources occupied by African people”. After independence radical title shifted from the colonial to the post-colonial state which took over the extensive powers over land formerly residing with its colonial predecessor (AU-ECA-AfDB, April 2007:2).

For policy purposes an important distinction must be drawn between state land that is used for public purposes, for example national parks and military bases, and the generally much larger proportion of land which, although ultimately owned by the state, is held under customary law by the families and communities living on the land. This land is commonly referred to as communal land although within this land distinctions exist between family land and the commons. There are some significant differences in how state sovereignty with regard to land is conceptualized in the region. Thus in Lesotho the 1979 Land Act vests ultimate ownership of state

land in the “Basotho nation”. However, in Namibia, Tanzania, Zambia and Zimbabwe state land is vested with the President and in Swaziland with the King. In all cases the ownership is vested in their institutional capacity as trustees or custodians of the public good, rather than as personal owners. In Tanzania a 1991 Presidential Commission of Inquiry (the Shivji Commission) recommended that title to village lands be vested in the village assembly but this was rejected in favour of vesting radical title in the President. Botswana is an example of a country that has adopted a more decentralized model, whereby ownership of communal land has been transferred to local Land Boards, rather than remaining with the national.

The issue of state sovereignty raises critical challenges for land policy with regard to the rights of the people living on state land under customary law, and how to ensure that where the institutions of the state exercise their powers over this land, they do so in terms of the greater public good. There are several key issues here. The first is how to ensure protection of people’s customary rights and interests in their land against its possible alienation or exploitation against their will for public purposes (for instance, for conservation). A second issue is how to prevent the potential abuse of power over communal and public land by the state or by powerful interest groups acting with or without state support. Another major policy issue concerns the authority of the state over land that is privately owned, in terms of freehold title.

Most land in the region is owned by the state (see Appendix 1). However, in a minority of countries privately owned land is either the dominant form of tenure, as in Mauritius and South Africa (where it accounts for approximately 80 per cent and 72 per cent of land respectively) or is a significant form of tenure, as in Namibia (44 per cent private) and to a lesser extent Swaziland (25 per cent private). Privately owned land held under freehold title has been particularly prominent in the former Anglophone settler colonies of Namibia, South Africa and Zimbabwe and is rooted in the particular colonial history of these countries that has already been described. Here extensive dispossession of land by white colonialists brought large swathes of land under private ownership. In South Africa this dispossession was further exacerbated by various programmes of forced removals of black people out of areas designated as “white” in the approximately 40 years of the apartheid era after 1948. The other country where private ownership of land is extensive is Mauritius, where today approximately 80 per cent of all

land is privately owned. Mauritius has a very different history of settlement and colonization from the rest of the region and, as in South Africa, the institution of private property plays an important part in its broad economic policy.

The powers of the state over land held under freehold title are more limited than over land rights held under customary tenure. However, private ownership is not a guarantee of absolute autonomy from state authority, as all states retain the power of “*eminent domain*”. This extends to states the right to acquire land through due process for public purposes and to regulate land ownership and use, including through taxation. In countries where land redistribution to redress the racially based injustices of the past are pressing social and political imperatives, developing appropriate policy mechanisms to redistribute privately-owned land in the interests of equity and justice are major concerns. Given the history of colonialism and racially-based underdevelopment across the region, these policy debates have wider regional resonance. Key policy issues here concern the authority of the state to expropriate private white-owned land for public purposes, including land reform; to regulate foreign ownership of land; and to impose taxes on land in support of more equitable distribution and more efficient use.

Countries such as Namibia and South Africa are bound by their respective constitutions to protect property rights. This encompasses recognition of the rights of private landowners, including white beneficiaries of the apartheid era. However, states have the power to expropriate land whenever it is needed in the public interest; in both countries this extends to land reform. In former white dominated countries this is a potentially useful mechanism to acquire freehold land for redistribution, although the South African experience shows that legal expropriation is not necessarily a speedy mechanism. In Zimbabwe expropriation has been used extensively to acquire former white-owned land for redistribution, But Namibia has made very limited use of this mechanism. The issue of expropriation raises the related question of appropriate compensation for landowners whose land is acquired by the state. This is an emotive issue in view of the past history of racially-based dispossession and discrimination. The South African Constitution (1996) attempts to steer a judicious balance by providing for the payment of what is termed “*just and equitable*” compensation, in which the history of land acquisition has to be factored in with other considerations,

including the market. These issues are discussed further in the section on addressing the unequal distribution of land.

In general the region is shifting away from freehold title as a prerequisite for economic development. Major exceptions here, as already noted, are Mauritius and South Africa, although in both countries the role of the state in directing development is recognized as critically important. After independence Zambia converted all its freehold land to 100-year leases and unutilized tracts of land were taken over by the state. Botswana is gradually returning its small amount of freehold land to communal land, vested in local land boards with extensive powers to allocate, administer and adjudicate around land. Land redistribution programmes in Namibia and Zimbabwe are turning former freehold land into state-owned land, to be allocated by the state to the beneficiaries of land reform under long-term leases, although private ownership of land in the commercial agricultural sector has not been abolished. In South Africa, however, the general direction of land redistribution is away from state ownership, with ownership of redistributed land being vested in some cases in private individuals or, more commonly, in the case of group settlements in legal entities such as communal property associations or trusts. In Mauritius current housing policy provides for both leasehold and purchase opportunities of state land for low- and middle-income households (Government of Mauritius, 2003).

In countries not affected by settler colonialism, where the amount of privately owned land is very small, the key issues in terms of state sovereignty are rather different from those in the south. By virtue of being the ultimate owners of customary land, governments enjoy extensive powers over such land, which may be exercised in a more or less benevolent and consultative manner. These powers include the alienation of customary land for agricultural development, for example. Thus mechanisms for protecting local customary rights against arbitrary or even procedural alienation are very important, in the interests not only of protecting smallholder livelihoods, but also of equity and justice for all citizens. In Malawi small-scale farmers have been dispossessed of their land held under customary lease rights since the 1960s, leading to the loss of more than 700,000 ha of land. As a result Malawi is now proposing to convert customary tenure rights to full common law status so that customary land can be categorized as private land and thus be protected against its arbitrary conversion to public land (ECA, 2003:13–14). In Mozambique small-scale farmers were losing land to

well-placed individuals and foreign investors who were acquiring state farm land lawfully before the passage of the country's Land Law of 1997 (ECA, 2003:9). This law provides for pre-emptive demarcation and requires that communities be consulted and participate in the approval process for land concessions. In Namibia, policy and legislation on communal land provides for the designation of this land for individual commercial development. Unlike in Mozambique, however, Namibian legislation does not oblige local traditional leaders to consult with their communities before giving their consent to the designation of communal land for agricultural development, making local people more vulnerable to loss of valuable resources.

Where the state holds communal or customary land in trust for the people living on that land, in most cases the land is administered by traditional leaders according to customary laws and practice. The role of traditional institutions in land administration and local government is a matter of considerable debate. As institutions that have been historically responsible for the administration of customary tenure systems and in many cases continue to enjoy social and political legitimacy at the local level, they are enjoying increased recognition as potentially important agents within decentralized systems of local government and land administration. However, these institutions are also criticized as remnants of colonial systems of indirect rule that are insufficiently democratic, accountable and gender-sensitive in the contemporary era. Thus certain countries have taken steps to reduce the authority of traditional institutions over land, notably Botswana where the Land Boards have taken over the responsibilities of traditional leaders in land administration and land management. In Zimbabwe the authority of traditional leaders to allocate land was transferred to district councils after independence. More recently, Namibia introduced communal land boards in 2003. These have been modelled on the Botswana land boards, but in contrast, ownership of the land does not vest in them. Furthermore, while the Namibian land boards effectively control customary land administration and management, the authority to allocate land continues to rest with traditional leaders. In South Africa the Communal Land Rights Act provides for land administration by reformed traditional councils, with provision for both a minority of elected members and mandatory representation of women. However, this legislation has been criticized by NGOs dealing with land issues for imposing unrepresentative or illegitimate institutions on many communities, and for pandering to patriarchal norms and practices, to the disadvantage of non-elite women.



The extent to which the central state has devolved authority over communal land to lower levels varies across the sub-region. Devolution is high in Tanzania where the Commissioner for Lands has “sole authority” for overall administration but has delegated his powers to land officers at district level (Sijoana, 2002), but low in Swaziland, where the authority of the King over land matters is high. There is a general expectation within the region that local-level institutions contribute towards more transparent land administration and are better placed to protect the rights of local people. However, this has been compromised in some cases by the way lower level institutions have been established. In Namibia and Zimbabwe, for instance, the relevant minister appoints members of such committees and boards, while in Botswana members of land boards are elected. In situations where the central state appoints members it is able to exert more direct influence over the activities of such institutions than where members are locally elected.

### **3.2 Dualism in property systems**

Dualism in property systems refers to the coexistence within countries of two parallel, very differently constituted and unequally recognized legal systems in relation to land and property. The two systems are commonly described as the statutory system, which is embedded in national statute and generally recognizes private, freehold rights to land, and the customary system, which is based on indigenous law and underpins communal tenure. Advocates of customary tenure systems distinguish further between “statutory” customary law as codified and often distorted by colonial powers, and “living” customary law, as currently practised by local communities, which is seen to be generally responsive to changing conditions while still preserving important principles of accessibility, inalienability and administrative flexibility with regard to land. In Southern Africa the dualism in property systems is derived from the colonial period. Defining the relationship between statutory law, generally based on colonial law, and indigenous customary law is a major policy challenge in all countries except Mauritius, where the issue of customary law does not arise.

Before independence, colonial powers tended to consider customary forms of tenure as inferior, to justify the imposition of European systems of civil and common law and defend settler interests in land. Marginal land left to the indigenous people continued to fall under customary systems of law,

with responsibility for land management vested in local traditional leaders who were, however, ultimately answerable to the colonial power and not their local communities. Until recently post-colonial governments have tended to continue with the dual property systems that they inherited at independence, and have continued to favour the statutory system over the customary, notwithstanding the pervasiveness and popular legitimacy of the customary system. However, this is now beginning to shift, with greater recognition in national policy development and regional land tenure debates of the legitimacy and value of customary tenure systems. The challenge is to give this recognition content and to integrate different land management systems deriving from past dualist systems. As discussed further below, there is also concern that an uncritical adoption of customary law will be detrimental to the principle of gender equality, given the patriarchal foundations of this law. Recognizing the customary rights of culturally and economically marginalized minority groups to their ancestral lands, such as San communities in Botswana, adds a further layer of complexity.

Thus the Angolan Land Law of 2004 recognizes community rights to land, although it also admits the state's right to expropriate land in the public interest, subject to fair compensation. The approach found in the 1997 Mozambican Land Law and its accompanying regulations of 1998, which recognize the land rights of local communities, is widely advocated as an example of best practice in terms of protecting the rights of local communities. Wherever a potential conflict looms with other land users, the regulations provide that a preventive delimitation of community land must be carried out, applying participatory methods to determine boundaries and establish rights.

While there is broad acceptance that freehold tenure is not a prerequisite for either tenure security or economic development, it should be noted that not all analysts regard the entrenchment of customary tenure as a panacea for problems associated with either tenure insecurity or rural development. Molen and Lemmen (2004) argue that in some situations it may well be appropriate to replace customary rights with other forms of tenure. Drawing on the work of a number of analysts, they identify various conditions under which such steps may be warranted including:

- Population pressure on land, leading to land scarcity and the emergence of more individualistic forms of land tenure within communities.

- The need for credit for smallholders.
- The growth in land market initiatives and the need to develop new land management tools including taxation.
- Border conflicts between communities and the need for more effective land and water resource management.

The issue of land markets is discussed further below.

As already discussed, at issue in the debate on customary tenure is the role of traditional leaders as custodians and as the most appropriate administrators of customary law in the contemporary period. Whereas some countries, notably Botswana and also Lesotho and Tanzania, have reduced the role of traditional leaders in land administration, other countries, for instance Swaziland, continue to rely on them. In South Africa the state is attempting to steer a middle path. Here legislation has been passed making it possible for the state to transfer ownership of state-owned communal land to local communities, but, as already noted, there is controversy as to the nature and composition of the local land-owning legal entity, in particular provision for traditional councils authorities, derived from earlier tribal authorities, to become local land administration committees.

### **3.3 Unequal distribution of land resources**

The discussion on the regional context has indicated that redressing the grave inequalities in the distribution of land within the region is a key issue, one that raises complex challenges for policy development and implementation. This is of particular concern because of the centrality of land as an economic resource for poor, rural people dependent on agrarian-based livelihoods, and as a critical social resource in terms of family and community membership in family, identity and cultural practices. The gross, racial inequalities in land ownership that have defined property relationships in Namibia, South Africa and Zimbabwe in the south continue to be a major focus of attention in the region. More recently, growing class differences in terms of access to land across the region are becoming a matter of concern, as are gender-based inequities. This is also true in countries that did not experience settler colonialism.

The challenges here are many. Redressing past injustices, protecting the land rights of vulnerable people, addressing the growing problem of landlessness and boosting smallholder agriculture pose complex challenges for land policy in the region, although the specific intersection of issues differs from country to country. Part of the challenge is to integrate policies and programmes that address the imperative for equitable access to land with national economic policies aimed at promoting development and reducing poverty, through stimulating the non-agricultural economy and encouraging both rural and urban job creation.

### ***Racially-based inequalities***

The challenges around historically rooted, racially-based inequalities are not confined to the south of the SADC region, but here the history of settler colonialism has left a particularly bitter and extensive legacy of dispossession and unequal rights in land determined by “race”. Zimbabwe, in its first decade of land reform, and Namibia and South Africa have all embraced the “willing seller-willing buyer” principle to varying degrees to acquire land from white landowners for redistribution to black individuals, households and communities. This approach has been subjected to mounting criticism and there is now widespread scepticism about its capacity to deliver land speedily and efficiently, given the cost of land on the market and the reluctance of many white commercial farmers to release prime agricultural land for purchase by the state.

In Zimbabwe a constitutional amendment in 1992 removed the willing seller-willing buyer clause to pave the way for compulsory acquisition of white-owned land by the state. In 1980 approximately 15.5 million hectares out of a total area of 39 million hectares, or 40 per cent, of the land in Zimbabwe was owned by white settlers (Moyo et al., 2007), but today the amount of land under white ownership is negligible. This is as a result of the country’s fast-track land redistribution programme since 2000. But while the national question in relation to land has been largely addressed, the land redistribution programme has gone hand-in-hand with a severe economic crisis in the country, with major political and social consequences nationally and in the region.

The most extreme case of land alienation occurred in South Africa. Here the colonial dispossessions of the 18<sup>th</sup> and 19<sup>th</sup> centuries were consolidated and entrenched during the apartheid era in the latter half of the 20<sup>th</sup> century,

leading to a situation where the land rights of black people were recognized for only 14 per cent of the country. Today most agricultural land in South Africa (some 72 per cent of the total area) is still white-owned. However, a small number of black commercial farmers are beginning to emerge in this sector, in part through the government's land reform programme and in part through the purchase of land on the open market or via various share-holding schemes in companies. Following the fall of the apartheid system, in 1994 South Africa instituted a three-pronged land reform programme embracing: 1) land restitution for those who were dispossessed of land rights on racial grounds after 1913; 2) land redistribution for landless or land-hungry individuals and communities not qualifying for restitution; and 3) tenure reform for the communal areas and black residents on white-owned farms. The country's land restitution and redistribution programmes have a target of shifting 30 per cent of the agricultural land of the country into black ownership by 2014, but thus far the amount transferred has fallen far short of the target. As a consequence there have been repeated calls from land rights activists for the willing seller-willing buyer principle to be scrapped and the state to use its powers to acquire land through expropriation more aggressively.

### ***Class-based inequalities***

Outside the context of settler colonialism and racially based dispossession, inequality in access to land within rural communities is a growing problem, along with an increase in the concentration of land in the hands of well-placed members of national elites. Thus in 2005 in Lesotho 25 per cent of the households were described as landless (Selebalao, 2002). In Malawi 1.1 million hectares of land belong to approximately 30,000 medium and large "estates", while 6 million hectares are farmed by about 1.8 million households; more than 40 per cent of smallholder households cultivate less than 0.5 ha each. Across the region communal land is being privatized and accumulated by members of the national elite. For instance, government officials have been implicated in the enclosure of large tracts of land in southern Angola and in north-central and eastern Namibia, where the proliferation of private ranches and commercial farms is threatening the livelihoods of cattle-farming communities. In Angola's case members of the military and political elite have been the main beneficiaries of a process of reallocating state properties. Half the area that constituted the commercial agricultural

sector during the colonial period had been distributed to new large land-owners by the end of 1999.

### **3.4 Gender biases in land relations and land policy**

Women are major producers in smallholder economies in Southern Africa, yet they are discriminated against in terms of land ownership and in access to and control over communal land. Both human rights requirements and arguments based on economic efficiency demand that their land rights be recognized and strengthened. Most countries in the region have adopted various international instruments to promote gender inequality, including the African Protocol on the Rights of Women in Africa (2003) and the Convention for the Elimination of all forms of Discrimination against Women (CEDAW) and committed themselves to gender equality as an important principle within the development of national land policy. Problems exist, however, in turning high-level principles into practice, and in aligning discriminatory components of civil and customary law (as currently codified or practised) with the national commitment to gender equality (Walker, 2002; 2003). Gender equality with regard to land has two components: securing women's independent rights to land, and securing their rights to family and marital land which is often regarded as ultimately vested in or controlled by men. In countries where customary tenure and inheritance systems are based on matrilineal principles (for instance, in parts of Malawi and Zambia), women's rights still need securing against patriarchal value systems which privilege male members of matrilineal clans and may undermine women's land rights.

Zambia has taken important steps towards promoting gender equity since, in addition to approving a National Gender Policy in 2002, the country has established a quota system in land allocation, setting a 30 per cent minimum target for land to be allocated to women. Furthermore, the Ministry of Lands has conducted a sensitization campaign appealing to all councils to implement this policy when considering allocation of land. The ministry launched consultations with the traditional chiefs on the need to abandon discriminatory practices and traditions that disadvantage women's access to land, and created an Information Centre which would contribute towards informing the women and the youth on procedures for acquisition of land and the availability of land.

A key issue here is that improving women's land rights cannot be addressed through land policy alone, but requires identifying and addressing discriminatory provisions in other sectors of national legislation and policy. Thus in a number of countries gender equality in land relations is undermined or actively blocked by the persistence of discriminatory provisions in marriage and inheritance legislation. In Tanzania, for instance, while both the Constitution and the National Land Policy accord women equal status with men, under the Customary Law (Declaration) Order, women are prevented from inheriting clan land (TAWLA, 2006). In Lesotho, similarly, there are tensions between the country's Gender and Development Policy, which commits the government to addressing gender inequality, and aspects of customary law in which women are regarded as perpetual minors. While the 2006 Constitution in Swaziland formally recognizes gender equality, married women are deemed to be married under Community of Property (unless specifically exempted), and as a result face various legal restrictions to their ability to own and inherit property. Generally, new tenure policies and legislation do not provide for joint ownership of land by married couples under statutory tenure, reinforcing concerns that under such circumstances women's tenure rights are likely to become more insecure.

There is a major debate on the extent to which the land rights and tenure security of poor women living under systems of communal tenure are protected by "living" (as opposed to "statutory" or official) customary law. Gender experts have warned that "the turn to the customary" (Whitehead and Tsikata, 2003), i.e., the revival of interest in traditional institutions and customary law already described, can be detrimental for women, especially in terms of reinforcing patriarchal systems of authority and control over land. However, customary law is adaptive and there is evidence that norms prohibiting women's independent rights to land are adapting to accommodate the growing numbers of single women in need of land as well as new discourses around equality. South Africa is a case in point (Walker, 2003). Local level institutions for managing land access and settling disputes are also more accessible for women. What is required, however, is ongoing state support for entrenching the principle of gender equality in land adjudication and administration at the local level, and for advocacy and education around the rights of women.

### 3.5 Rural security of tenure and the issue of land markets

Issues surrounding tenure security are closely allied to those relating to dual tenure systems and unequal land distribution that have already been discussed. This sub-section looks at the issues relating to rural tenure security; tenure security in the urban context is addressed in sub-section 3.9.

As already noted, in many countries the customary land rights of communities living on state-owned communal land have not been adequately recognized as fully legitimate and respected in both law and practice, while the tenure rights of women and marginalized groups remain a major challenge for policy makers. Farm workers and their families living on large-scale commercial farms constitute another important category of vulnerable people. Many farm workers have lived on these farms for generations, but their security of tenure is generally tenuous, dependent on the goodwill of landowners and employers. The workers and their families are extremely vulnerable to eviction, especially in the case of loss of employment. Where there is legislation protecting farm workers' rights, as in South Africa, enforcement is often very difficult. In Namibia, South Africa and Zimbabwe, farm workers have also lost access to land and employment as a result of land redistribution projects that have targeted the farms on which they live and work without adequate provision being made in policy or law to protect their interests vis-à-vis the beneficiaries of the redistribution projects. This is an example of the unintended consequences that can flow out of inadequately conceptualized and monitored land reform programmes.

Ensuring tenure security for the holders of customary rights is an essential element for sustainable development. In terms of economic development, today secure tenure is widely recognized as more important than formal, titled ownership. Simpson (1984) asserts that "proper development depends on security of tenure rather than on ownership which can be empty of the right to use land, and even of the power to control that use". In fact, most investors are more interested in security of tenure than in ownership of land, although very often without a clear understanding of the difference between the two concepts.

Secure access to land and natural resources can facilitate investment by poor smallholders, thereby enhancing self-employment, food security and protecting the sources of livelihoods for the majority of the region's population. This can be achieved in a number of ways: through legislation, and



through innovative measures for demarcating and registering customary rights when needed. In Mozambique, the recognition of community rights to their land through the 1997 Land Law is widely regarded as an innovative approach. Communities that have had their boundaries surveyed and their land registered can enter into contracts with commercial firms. The new law enabled communities and individuals to acquire land rights through occupancy and use of a piece of land for a period of at least 10 years before the delimitation; occupancy rights are regarded as equal to rights conferred under title. Furthermore, communities are not obliged by law to register their land, thus avoiding complex and costly delimitation and registration processes. However, if a threat looms the land is preventively delimited and community title issued.

### ***Land markets in Southern Africa***

Of relevance for the discussion on rural tenure security is the debate on policy around land markets. In most Southern African countries there is intensive debate over the appropriateness of developing land markets as an instrument to enhance investment and productivity in land, including improving its collateral value for securing credit. As already discussed, the enclaves of freehold and leasehold farming areas have tended to receive the largest proportion of public investments in infrastructure and private financing, leading some sections of the society to conclude that freehold land markets are best suited to agricultural and economic development. To cater for the increasing demand for individualized land property rights by relatively small emerging elites, many governments have supported the development of freehold urban land markets and to a lesser degree transferable rural leasehold land rights.

The dominant view held by most governments and the majority of citizens who are not vested in current land markets suggests that where public support and other incentives are directed to producers, including small-scale farmers who hold land under customary land tenure systems, there have been credible increases in land productivity and broad-based investments in land. Moreover, most southern African governments have not promoted formal private land markets extensively. This is partly because of the nature of their historical evolution in the context of land dispossession, and partly because of fears that the extension of private land markets into customary

tenure areas could lead to extensive dispossession of the majority of the poor and large-scale landlessness.

The legitimacy of current land markets tends to be questioned because of their exclusivity and apparent inefficiencies and because of customary values which eschew the idea of selling land since it is considered a god-given, natural heritage. This commonly held normative perspective is a source of added grievance in a situation where land markets have been dominated by minority communities, including those perceived to have gained unfairly from colonial dispossession and recent access to public land by emerging corrupt elites. In addition, formal land markets tend to be inaccessible to the poor in rural and urban areas because of highly unequal current income distribution patterns and narrow and expensive capital markets beyond the reach of the majority. Formal land markets are also considered to be poorly regulated in so far as they restrict excessively the sub-division of large farm holdings into smaller units and present obstacles to land use conversions for the diverse needs of new entries into the land market. In this way the transaction costs of entry into formal land markets is considered high and a constraint to investment in land.

Nonetheless, informal land markets have been emerging in the customary land tenure areas of most countries in various forms, including land rentals, sharecropping and other forms of exchange. These land markets are being experimentally developed in a number of countries through pilot programmes of land registration, certification and titling. This policy direction is partly aimed at recognizing such informal transactions, and partly at improving the efficacy and cost of such transactions through improved information and records on land rights. However, even here there are fears that land concentration may emerge leading to increased landlessness and rural conflicts.

As discussed further in Chapter 5, the evolution and management of equitable, fair and efficient land markets is also constrained by weakly developed land administration systems, particularly in the customary tenure areas. Capacity weaknesses are notable in land information and adjudication systems, such that the protection of acquired land rights, through law enforcement and effective administrative support, has been inadequate.

### 3.6 Protecting the commons, including pastoral grazing lands

Linked to the debate on rural tenure security is that of how best to manage the region's valuable common property resources (CPRs). CPRs consist, *inter alia*, of forests, rangelands, wildlife, lakes, wetlands and ritual places. Across the region the commons are under threat, due to poverty and increased population pressure and to weak management and the commoditization and privatization of land, for instance, through the enclosure of communal grazing lands. The development of more effective management systems is an urgent priority, given the importance of the commons for rural livelihood strategies and their overall ecological significance within the region.

At issue is where the most effective management of these resources lie—at the local or at the national level. The answer probably has to be determined on a case-by-case basis, depending on the effectiveness of local authority structures, the nature of the resource and its national significance in terms of broader public interest considerations. Where areas are set aside as protected areas, this may deprive local people access to important natural resources and lead to conflict between local communities and conservation authorities, as already discussed. However, devolving management of CPRs to local communities on their own may not necessarily solve the problem. Communities may destroy forests for firewood, hunt protected animals for subsistence, and exhaust fish resources for survival. Therefore incentives are needed to encourage communities to preserve these assets and to be able to monitor and enforce national environmental policy.

The maintenance and management of communal rangelands is identified as a problem across the region (including Angola, Botswana, Lesotho, Namibia, Swaziland and Tanzania). Although there are few fully nomadic pastoralist communities within the SADC region, many rural households keep livestock and communal rangeland is an important community and national asset that is under threat both from overuse and enclosure. In Angola, for example, pastoral leaders fear that the proliferation of ranches and commercial farms in the country's south-west is threatening the livelihoods of local communities. Thousands of hectares of land, once solely the territory of pastoral people and their cattle, have become the fenced-in, private property of wealthy new landowners, including government officials (IRIN, 2000).

The management of grazing land for sedentary communities can be protected through preventive delimitation of these areas. A different strategy should be adopted for nomadic pastoralists to guarantee their access to grazing and water over large and possibly not always contiguous spaces. Group tenure rights must be guaranteed by law to pastoral communities, and administration institutions developed to enforce these legal instruments. In Namibia, for instance, the Communal Land Reform Act gives traditional authorities powers to exercise control over the commons, including setting limits to livestock numbers, but in practise customary control systems are breaking down, resulting in illegal enclosures of common grazing lands for private use.

Community based natural resource management (CBNRM) is an approach to conservation and rural development that various SADC countries have been applying for over 15 years (Child and Jones, 2006), and many valuable lessons may be obtained from this work. It stems from the premise that if local communities have a large degree of control over their natural resources and are able to benefit from management, then there is a strong probability they will use those resources sustainably. Important examples include Tchuma-Chatu in Mozambique; Communal Conservancies in Namibia; Communal Areas Management Programme for Indigenous Resources (CAMPFIRE) in Zimbabwe; Natural Resource Management Programme in Botswana; and in Zambia the Administrative and Design Programme and the Luangwa Integrated Rural Development Project.

### **3.7 Sustainable management of the environment**

The region currently faces serious environmental challenges which are likely to be exacerbated by the impact of climate change. In 2001 the African Report to the World Summit on Sustainable Development highlighted environmental threats to the region stemming from land degradation, soil erosion and the loss of forests. This degradation threatens not only biodiversity, but also agrarian livelihoods (UNEP et al., 2001). All countries in the region report problems in this regard. Particularly serious levels are indicated in Madagascar, where almost 80 per cent of the country's original forest cover has disappeared, leading to severe problems with soil erosion; in Lesotho, where soil erosion is also a severe problem; and in Malawi, where total forest cover has declined by more than 41 per cent, mainly due to the demand

for wood fuel and the clearing of land for cultivation. In Mauritius, areas under forest declined from 30.6 per cent in 1996 to 25.2 per cent in 2005. In Namibia, total forest cover has declined since 1972 by more than 41 per cent. Land degradation affects the rural poor most because they have limited options for earning their livelihoods.

The continuing dependence of poor households on firewood as a primary source of energy is a serious issue. The production of biofuels as an alternative source of energy is highlighted in the draft document on *Land Policy in Africa* (AU-ECA-AfDB, 2007), but there is controversy over the environmental impacts of this strategy in some countries, including South Africa. Critics are concerned that turning land over to the production of bio-fuels may undermine both national and household food security (by replacing food crops with biofuel crops) and encourage the cultivation of marginal lands. In some countries such as Namibia, bush encroachment has reduced the productivity of rangeland dramatically. Strategies to process invader bush into charcoal could not only provide a source of energy, but, potentially, if well managed, could also improve the productivity of rangelands.

Since the 1990s most countries have embarked on the major process of overhauling or developing environmental legislation and policies to strengthen and provide greater coherence to national environmental strategies. Examples include the National Environment Management Act in Tanzania; the 1994 Environmental Action Plan in Zambia; the 1995 National Environmental Management Programme in Mozambique; Angola's Environmental Law of 1998; South Africa's 1998 National Environmental Management Act; and the 2001 Forest Act, 2004 Water Resources Management Act, and 2005 Community Forest Guidelines in Namibia. All these documents acknowledge the importance of the sustainable management of environmental resources. Enforcement remains a serious challenge, however. A further challenge is the alignment of environmental policy with related policies for land and tenure reform, rural development and agriculture, and with national economic development strategies more broadly. In South Africa, for instance, state departments responsible for job creation and housing delivery have expressed frustration that the need for environmental impact assessments required by the country's environmental laws is impeding "development". Incorporating long-term sustainable environmental management into economic planning that is often focused on short-term benefits, in a holistic way, is thus a major challenge.

In most countries there are also tensions between local communities and conservation authorities over the designation of protected areas for wildlife and nature conservation. Eco-tourism has been identified in many countries as an important source of national revenue, with the potential to stimulate local economic development if local people are empowered to participate actively in its development and management. In Tanzania almost a quarter of the total area of the country (23 per cent) falls under some form of environmental protection as national parks and game and forest reserves, including communal lands. The country has taken the lead in pioneering a multiple land use approach to many of these areas, most famously in the Ngorongoro Conservation Authority, which is aimed at facilitating the coexistence of humans and wildlife. Co-management of protected areas is also being developed in South Africa, including in cases of land claims on protected areas, where the government has adopted a policy position that provides for the restoration of ownership of the claimed land to its former owners, but with restrictions on land use including provision for the continued designation of the land for environmental conservation. The long-term success of this approach, given the potential for conflict between communities and conservation authorities over the management of community-owned land, has yet to be established.

Perhaps more clearly than with other land-related issues, environmental issues are cross-border concerns and cannot be addressed by national policy alone. Southern Africa has gone some way in acting upon this recognition, with the development of a number of important regional protocols in recent years. These include: the SADC Protocol on Shared Water Resources (28 August 1995); the SADC Protocol on Fisheries 8 August 2003; the SADC Protocol on Forestry; and the SADC Protocol on Wildlife Management and Law Enforcement (18 August 1999). Another important initiative is the SADC Protocol on the Environment which is in the process of being developed. Other initiatives of note include those directed at establishing and managing Transfrontier Conservation Areas and the Regional Biodiversity Conservation Strategy.

In addition to dealing with conventional natural resource management issues described above, Southern Africa needs to deal with climate change. Globally, climate change and the associated rise in sea levels have been identified as serious threats to small Island States, among them Mauritius. Yet, the impact of climate change on rainfall patterns, land cover and land-

based livelihoods has yet to be factored into the development of land policy in most SADC countries. Much of the region is already water-stressed and prone to drought; currently a number of countries, including Lesotho and Swaziland, are in the grip of a drought that is having devastating consequences on household food production. Too little attention is being paid to the integrated management of land and water, particularly in water-stressed and arid countries. Access to water is often a precondition for establishing land rights.

### **3.8 Promoting economic development, including enhancing the productivity of agriculture**

The economic importance of land and thus the importance of effective land policies for driving the economic development of the region have already been noted. While there is broad acceptance of this observation, which can almost be regarded as a truism, a major challenge is to align land policy with both national macro-economic policy and with policy dealing with other sectors, such as agriculture, forestry, mining and tourism.

Although land policy should not be conflated with agricultural policy, the linkages between these two sectors are critical and policy alignment here is extremely important. The major importance of agriculture for most national economies and households within the region is shown in Appendix 1. In Madagascar, for instance, agriculture accounts for 28.1 per cent of GDP, while in Tanzania it accounts for fully 50 per cent of GDP. However, results in Appendix 1 also highlight differences among countries and the relatively minor role that agriculture plays in the national economies of some countries, notably Botswana and South Africa (although in both these countries agriculture is not insignificant, especially when employment and upstream and downstream linkages are taken into account). These differences have important implications for the political priority afforded land issues.

Linking land policy to improving agricultural productivity and efficiency has been a principal concern of policy makers in the region, not least because of periodic food crises. Smallholder subsistence farming remains the main activity of land rights holders in the sub-continent despite the fact that most households depend on a variety of livelihood strategies and not just food production for survival. For example, over half of the population

depends on agriculture for their livelihood in Lesotho. In Angola and Swaziland agriculture employs approximately 70 per cent of the population, while in Mozambique, Tanzania and Zambia more than 80 per cent of the population are employed in this sector.

As already mentioned, average smallholder landholdings are declining across the region, partly due to increasing population and partly due to limited employment options for people outside of agriculture. However, in some countries, for instance Zambia, land access is not the major problem facing small-scale farmers; rather, smallholders struggle to cultivate optimally because they lack the necessary inputs, such as ploughs or draught power and fertilizer and seeds. Many countries in the region focus their agricultural services on the support of commercial farming on land held under individual title or leasehold, including the promotion of export crops. To improve productivity in the smallholder farming sector, however, the focus of agricultural policies needs to include small-scale farmers. Issues that need to be addressed include the introduction of new production technologies to replace existing rudimentary technologies in farming, as well as the development of an agricultural product value chain to add value to locally grown and export food crops. The role and rights of women in agriculture also needs to be recognized and supported.

Empirical evidence from resettlement experiences in Zimbabwe supports the view that integrated support packages to small-scale farmers are essential to improve their livelihoods through agricultural productivity increases. Some countries in the region have developed and implemented policies and programmes to support farmers, particularly those holding customary land rights. During the 1980s Botswana introduced a number of agricultural subsidy programmes to help small-scale farmers raise their crop outputs and overcome severe droughts. These programmes have been reviewed in order to prepare revised programmes. The Farm Input Subsidy Scheme benefiting approximately 90 per cent of the population during the 2006/2007 growing season in Malawi has been hailed as a success.

Most underlying attempts to improve agricultural productivity have assumed that secure individual freehold or leasehold tenure is a precondition for investments in more efficient land use. The Namibian Government is working with this model in its bid to develop commercial agriculture in communal areas. Research has revealed, however, that most customary tenure systems can provide sufficient tenure security for efficient produc-



tivity (Quan, 1998). In this respect, it is suggested that more attention be directed towards innovative methods of land adjudication and registration rather than privatization in support of agricultural development (Augustinus, 2004).

Another issue concerns using land as collateral to raise credit for further investment in agriculture. In general, customary land cannot be used as collateral. The conventional wisdom is that before lending agencies will recognize communal land for collateral, some form of alienable title is required. While some analysts believe that raising money from lending institutions will enable improvements to be made on the land and promote sustainable development, others argue that using customary land as collateral will render many people landless and governments will not be able to cope with the consequences.

### **3.9 Urban and peri-urban land issues**

The degree to which significant levels of urbanization are affecting the region is illustrated in Table 1 (Appendix 1). Rapid urbanization is bringing about new challenges for land policy as the demand is mounting for land for settlement and housing provision and for urban-based livelihoods (including urban agriculture). This is leading to pressure on peri-urban land and on the capacity of local government structures to provide adequate urban services, including water, sanitation and waste removal.

In most cities across the region the demand for land surpasses the ability of the different governments to respond in a coherent manner. In Dar es Salaam, for instance, the population grew from 2,116,000 people in 2002 to 2,676,000 in 2005, an increase of over half a million people in just 3 years. In Swaziland the population of Mbabane grew by almost a third in the 5 years between 2000 and 2005.

While urban population is growing rapidly, needed social infrastructure is not keeping pace. In Manzini (Swaziland), less than half the population lives in formal housing. In Mozambique what are described as the “cement cities” (i.e. the developed part of the city) are approximately the same size as they were during the colonial period. Businesses and government services are still concentrated in the pre-independence urban centres, so people from the peri-urban areas have to commute daily into the former colonial

urban centre. Even Mauritius, which is economically in a stronger position to respond to urbanization and the demand for housing than many of the other countries are, is concerned about the impact of uncontrolled urban sprawl on prime agricultural land, and about the provision of services.

In the absence of an effective response by the state and local government, informal settlements in and around the region's cities and towns are mushrooming. This makes it virtually impossible for governments to attain some of the Millennium Development Goals (such as target 11 which aims at significantly improving the lives of at least 100 million slum dwellers by 2020), and impedes sustainable urban planning and development. For the most part, slum residents do not enjoy security of tenure, and are vulnerable to forced eviction, as seen in Zimbabwe. Tenure security plays a critical role in facilitating urban residents' own investment and development in the housing sector. In order to attain the Millennium Development Goals, Southern African countries must develop innovative approaches to secure land tenure that are inclusive and participatory in nature, as well as cost-effective and accessible to the urban poor.

Available information does not suggest substantial initiatives from the sub-region apart from in South Africa where there is a major state-subsidized housing development programme for the urban poor. This, however, is also criticized for providing sub-standard housing, often on the periphery of the city. In general, governments have not adequately dealt with urban sprawl in spite of the official discourse of building modern cities. Namibia has introduced a compensation policy for land rights holders who are losing land as a result of new towns being proclaimed in communal areas. In addition, government is beginning to implement a pilot project introducing a flexible and upgradeable tenure system for informal urban settlements. The system is designed to improve tenure security at minimal cost to land rights holders.

### **3.10 Managing the impact of HIV/AIDS<sup>3</sup>**

The SADC region is recognized as the epicentre of the AIDS pandemic globally. Any meaningful land policy framework for the region therefore has to grapple with the implications of HIV/AIDS not only for land-based

<sup>3</sup> Statistics used here are obtained from UNAIDS (2006) and, for Mauritius, from ADB/OECD (2007).

livelihoods but also for state capacity to fund, roll out and implement ambitious land programmes and policies.

Madagascar, Mauritius and Angola have relatively low HIV prevalence rates, with adult prevalence rates estimated at 0.5 per cent, 0.6 per cent and 3.7 per cent respectively. However, there are concerns that these countries are vulnerable to escalations in infection rates. Here, national investment in policies and programmes that will prevent this from happening is of critical importance. In the rest of the region, adult prevalence rates range from 12 per cent in Tanzania to 33.4 per cent in Swaziland. Swaziland currently has the highest HIV prevalence rate in the world and its health services are stretched to breaking point.

The impacts of HIV/AIDS on land use and on food and tenure security are well documented and present land policy makers with complex challenges. In affected households money is often diverted from agriculture to pay for hospital visits, treatment and funerals, while household labour is reduced through sickness, death and the increased burden of care; responsibility for this care work falls disproportionately on women. Without alternative sources of support, this can lead to inadequate farming practices or the abandonment of land altogether. Major assets, including household equipment and, ultimately, even land itself, may be sold off to generate income. Governments thus urgently need to develop policy and legal frameworks that address the needs of people who are too weak to work their land, for instance by renting out their land in order to obtain an income. Investment in research into alternative, less labour-demanding crops and production methods is also needed.

In the region women are particularly vulnerable, in terms of both infection rates and the social impact of the pandemic. Land-grabbing has been identified as a serious problem, with AIDS widows and orphans most at risk. This directs attention not only to the need to strengthen the inheritance rights of vulnerable social groups but also to the importance of establishing local dispute resolution mechanisms that are gender-sensitive and can enforce the rights of vulnerable women and children to their land.

Reliable access to treatment, which is itself linked to the reduction of denial and stigma associated with AIDS, can turn HIV from a death sentence into a manageable condition. Thus land policy cannot be developed and imple-

mented in isolation from attention to effective, accessible and affordable health policies that reach those most in need of treatment.

### **3.1.1 Managing land issues in post-conflict reconstruction**

Post-conflict reconstruction remains a major challenge for land policy in the region. Issues to consider here include: the need for land restitution for people who have been dispossessed of their land rights; mechanisms for adjudicating competing claims to land; designing suitable resettlement programmes for displaced people; promoting economic development in areas devastated by war and strife; and the rehabilitation of environments damaged by warfare and dangerous weapons, such as landmines. Landmines are a serious problem in Angola and Mozambique.

A number of SADC countries are moving out of the immediate post-conflict phase of reconstruction (Mozambique, Namibia and South Africa) although tensions, including land-related ones, remain. Angola is still in this phase and facing major challenges, with well over a million internally displaced people requiring resettlement, along with tens of thousands of people who fled to neighbouring countries and are now returning home. The current economic crisis in Zimbabwe is also leading to cross-border migrations into neighbouring countries, and the resettlement and land rights of returnees may become an important issue in the future.

Various examples of land policies developed as part of post-conflict reconstruction can be identified in the region. In South Africa a land restitution process was established after 1994 to settle land claims by people who were dispossessed of land rights as a result of racially discriminatory laws and practices after 1913. The programme encompasses both rural and urban land, the latter relating mainly to dispossessions in terms of the Group Areas Act of the apartheid era. The 1994 Restitution of Land Rights Act established a Land Claims Court and a Restitution Commission but subsequently the Act was amended to shift the process from a court-overseen process to one that allowed for greater administrative discretion. Recourse is sought from the Land Claims Court only where claims cannot be settled through negotiation among all stakeholders. A significant body of indepen-

dent research is emerging on this programme, which could provide important lessons for restitution processes in other countries.<sup>4</sup>

Another example of post-conflict reconstruction is found in Mozambique. Following the end of conflict in 1992, the country experienced a massive return of refugees and internally displaced persons. With the return of peace, the demand for land by both local and foreign investors was also intense, leading to increasing competition for land as well as tenure insecurity among land occupants in communal areas. To deal with this and the vacuum in land legislation, the government started a consultation process around a land policy aimed at providing an overall vision for the land sector, culminating in the approval of a land policy framework in 1995. The Land Campaign played a fundamental role in shaping Mozambique's post-conflict land policy formulation and implementation. What started as an unstructured campaign supported by different interest groups, associations and NGOs grew into an organization comprising 200 NGOs. One observer noted that at one stage government administrators were concerned that the people knew the law better than they did (Negrão, 2002). Gradually consensus was reached among public opinion makers, decision makers, political party leaders, sections of the private sector and donors, including the World Bank, on a number of key issues.

Of interest is that in Mozambique former settlers were unable to lodge claims for land they had previously owned since in the terms of the country's first post-independence Land Law of 1979, all land rights that were not renewed within three years of the promulgation of regulations in 1987 became void as from 31 December 1990.

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<sup>4</sup> The PLAAS website contains papers delivered at a conference on land restitution in South Africa in September 2006. <http://www.plaas.org.za/>.

## 4. Land Policy

The trajectory of land reform processes in the SADC region spans the 40-year history of national liberation, such that gradual shifts in landholding patterns and tenure systems have been emerging. The nationalization of settler lands and foreign commercial structures of capital was pursued in Tanzania and Zambia in the 1960s and early 1970s and in Mozambique and Angola from the mid-1970s. However, articulated post-colonial land policy development began to get underway in the 1980s, with Botswana and Zimbabwe taking the lead, although progress in the implementation of land redistribution and tenure reforms in the SADC region, especially in redressing colonially based unequal land ownership, discriminatory land use policies and insecure land tenure systems, has been slow, due to a variety of factors.

Since the 1990s there has been an intensive process of land policy formulation and reform across most of the region. The end of apartheid in South Africa, the demise of socialist ideals in other countries in the region and the advent of more market-friendly economic policies can be said to have stimulated this process.

National land policy frameworks are now in place in Botswana, Malawi, Mozambique, Namibia, South Africa, Tanzania and Zimbabwe. Madagascar has developed its National Land Policy in 2005 while Angola has adopted a new Land Law, although it has not yet passed the enabling regulations. In Mauritius land issues are subsumed within the National Development Strategy that was passed in 2003. Draft policies also exist in Lesotho (2002), Zambia (2002) and Swaziland, although in Swaziland the policy process that started in 1999 appears to have stalled. These developments are summarized in Appendix 2.

### 4.1 The process of land policy development

Processes followed for land policy development and implementation in the SADC region have not been uniform. They have covered the spectrum from the highly consultative process in Mozambique to more top-down processes adopted in Lesotho, Mauritius and Zambia. The role of donor countries

and international agencies in promoting particular models of policy development and land reform has been controversial—for example, the “market-assisted” model of redistributive land reform espoused by the World Bank for South Africa in the early 1990s.

Not all countries started their process of policy development by identifying land-related problems and opportunities, and in some countries the development of land policy followed the promulgation of land legislation. In Namibia, for example, a consultative conference on land reform elicited a great deal of information on land matters. However, legislation on land redistribution was promulgated before a national land policy was in place and the Communal Land Reform Act was passed without a prior process of determining land problems experienced in communal areas. Although the government was criticized for not consulting civil society on the legislation, its land reform legislation still enjoys general legitimacy as it addresses the racial inequalities in land distribution. Similarly, Angola has not yet developed a national land policy but has a Land Law (passed in 2004) and has prepared draft regulations for that Law, although these have not yet been approved. NGOs operating in the country such as ADRA (Acção para o Desenvolvimento Rural e Ambiente<sup>5</sup>), Rede Terra and Forum Terra were instrumental in encouraging the government to conduct wider stakeholder participation in land issues, including the pressure for approval, without success, of the regulations of the 2004 Land Law.

In other countries the starting point for policy development was a process of identifying key land issues and problems nationally. Thus in Botswana, Malawi, Tanzania and Zimbabwe, the government first appointed commissions of inquiry to review land-related issues. These bodies commissioned specialized research into aspects of land administration and management and were supported by local and foreign experts; thereafter their reports generally served as background material for the development of land policy in each country. In South Africa a major research process on land issues in the early 1990s fed into the development of a White Paper in 1996/1997. Mauritius, in turn, followed a state-led process of identifying key land issues; this was complemented by a series of research papers on these issues.

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5 Action for Rural Development and the Environment.

## 4.2 Stakeholder participation

The level of stakeholder participation and consultation has differed between countries. Several countries have been criticized for not having involved all constituencies sufficiently in land policy development. These include Lesotho, Namibia, Swaziland and Zimbabwe. Botswana, Malawi, Madagascar, Mauritius, Mozambique, Tanzania and Zambia, however, have all been described as having engaged in extensive consultations. In Madagascar, civil society organizations have been active in the process of consultations around the development of its land policy programme, with the support of the International Land Coalition. As a consequence of a series of land conflicts across the spectrum of rights holders, the government took the initiative, through the Ministry of Agriculture, Livestock and Fisheries of creating a Technical Preparation Unit representing elected stakeholders, civil society and representatives from the ministries dealing with land issues

Levels of popular involvement in the process tend to reflect the strength of civil society organizations within countries. Generally the capacity of land-sector civil society organizations in many countries is weak, limiting their role in policy development, implementation and monitoring (e.g. in Lesotho, Mauritius, Namibia and Swaziland). A report prepared for the SADC Land Reform Facility (Moyo and Makhado, 2007) states that NGOs generally have limited technical capacities and as a result broader institutional capacities are scattered and thin on the ground. However, in Malawi a large number of NGOs mobilized against a land policy sponsored by the World Bank and produced an alternative Draft Land Bill with support from the international NGO, Oxfam. The Land Campaign in Mozambique was organized by NGOs and was instrumental in arranging awareness workshops around new land rights and supporting community capacity building. In Zambia, 17 civil society organizations, coordinated by Zambia Land Alliance constituted a Land Policy Committee in 2003 which became actively involved in advocacy work on a number of developmental issues, with land at the top. The committee influenced the land review process; facilitated the effective participation of the poor and marginalized in the land policy review process; lobbied for pro-poor policy provision to ensure equity and transparency in land delivery; and facilitated information dissemination to communities on the land policy and related laws.

Despite popular participation in some countries, the state has generally played the dominant role in driving land policy formulation. Frequently in-



puts and proposals from civil society to land policy development have been ignored or not fully taken into consideration. Donor involvement in policy development has also been prominent in many countries. In Tanzania the World Bank assisted in the establishment of government committees that the government then used to steer the policy development process away from the direction recommended by its Lands Commission (Quan, 1998). The Presidential Lands Commission in Malawi was appointed at the behest of the World Bank. The World Bank had been supporting the land policy process together with the Danish International Aid Agency (DANIDA), with technical inputs from UNDP and the Food and Agriculture Organization of the United Nations (FAO) (Quan, 1998). FAO has also been supporting policy development in Angola and Mozambique. In South Africa the World Bank initially tried to steer the policy development process through its sponsorship of research, but met resistance from local intellectuals and policy makers (Quan, 1998).

Land policy and legislation need to be monitored and reviewed regularly to ensure that they remain relevant and effective in addressing problems as they arise as a result of changing socio-economic and political environments. Botswana has carried out some reviews of policy and implementation and should serve as a best practice example in this regard. Most countries, however, have only recently begun to undertake such reviews after a long period of inactivity. Namibia, for instance, recently reviewed its land redistribution programme. This took the form of a technical team that recommended strategic options and developed an action plan on the basis of research inputs. However, the team did not hold consultations with people in rural areas before making the recommendations.

### **4.3 Harmonization with other sectoral initiatives**

Land policy development has also often been a sectorally driven process, with little coordination or harmonization with other sectoral and cross-sectoral policies, in particular in the natural resources management sector and poverty reduction programmes. CBNRM policies exist in Botswana, Namibia and Zimbabwe which not only support land reform in promoting more sustainable utilization of land based natural resources, but also devolve limited property rights to legally constituted communities. Many countries have also developed poverty reduction programmes. However,

as already noted, generally policies to promote environmental protection, poverty alleviation and an improvement of land and labour productivity have not been adequately incorporated into land reform policies. Conversely, land policies are not well articulated in wider rural development and natural resources policies and programmes. In Namibia, for example, the transfer of ownership of water points to communities has led to the establishment of exclusive group rights over grazing in localities linked to these water points without appropriate provisions in land policy and legislation.

#### **4.4 Regional Initiative: the SADC Land Reform Support Facility**

Independently of the individual countries initiatives, SADC as a regional organization has established a Land Reform Support Facility with a view to providing support to member states in the formulation and implementation of land policies and programmes concomitant with their development priorities. This is regarded as an important regional initiative, with lessons for the continent more broadly.

SADC member states have been developing a regional approach to addressing land reform issues in the region since 2001 when the SADC Heads of State and Government gave a directive for the region to develop a regional strategy. This followed the realization of the potential of land problems to affect regional peace and security as well as the socio-economic development of the sub-region. The establishment of the SADC Land Reform Support Facility was a response to this directive and also to the SADC Regional Indicative Development Strategic Plan (RISDP). RISDP identifies a number of key intervention areas for deeper regional integration, development and poverty reduction, including sustainable regional food security, environment and sustainable development, trade and other areas.

The SADC Land Reform Support Facility aims to provide support to member states in the formulation and implementation of land policies and programmes in line with their national development priorities. The approach recognizes the sensitivity and national specificity of land issues in the region. To this effect the establishment of the Facility and its programmes has involved extensive consultations at various levels with both state and non-state actors in land including civil society. The governance framework of the

Facility is in line with the existing SADC processes and procedures where decisions are taken through established policy-making structures involving all member states. To ensure that the programmes are fully owned and determined by the member states, the key governing structure is a steering committee of permanent secretaries responsible for lands from all 14 countries that feed into the Integrated Committee of Ministers, the SADC Council of Ministers and the SADC Summit.

To ensure all-inclusive participation of stakeholders and to enhance the sharing of information and experiences, the Facility is designed as a virtual network of institutions within the member states, under the coordination of a lean management unit at the SADC Secretariat. This also facilitates the pooling of expertise and other resources in response to the needs of member states. The critical feature of the Facility is that it does not aim to prescribe uniform policies, recognizing the diverse histories, political challenges and development aspirations. Rather it aims to provide a robust platform for learning and exchange of information and best practices that will hopefully influence member states adopt pro-poor land policies and programmes.

The operationalization of the Facility took a long time due to the need for in-depth consultations and identification of critical land problems amenable to the Facility's interventions. Besides the original project proposal approved by SADC Council of Ministers in 2003, the Facility has conducted an assessment of land issues in member states and has developed a five-year phased programme that started in 2007. This programme addresses identified problems under four major areas: policy formulation and implementation, capacity building, information and communication, and research.

The Facility has proceeded to establish databases on land institutions and land experts to facilitate collaborative implementation of the programme, and a website to enhance information sharing. It is in the process of elaborating component documents that will include projects addressing different issues as identified during country consultations.

## 5. Land Policy Implementation

However good land policies may be, they will be rendered useless if the implementation systems and institutions are not functioning. National land policies only provide high-level political guidance, spelling out the overall objectives. The implementation process falls under the domain of land administration, whose capacity remains low in most SADC countries. Indeed, modern land administration is increasingly computer based, which requires a different approach to geo-information acquisition, processing and management. The knowledge economies are driven by technology with the Internet and World Wide Web at the forefront, through which databases and other geo-information resources can be accessed and disseminated. SADC countries lack the basic infrastructure such as communication networks and power supply which underpin information and communication technology (ICT) development, the backbone of e-economies. This *status quo* limits the ability of member states to adopt electronic communications and inherent modern management methodologies, including land administration and management.

The term “land administration” generally refers to the processes of recording and disseminating information about the ownership, value and use of land and its associated resources in the process of land management implementation policies (ECE, 1996). Such processes encompass adjudication which in turn entails determining rights and other attributes of the land; the survey and description of land parcels; the maintenance of appropriate documentation; and the provision of relevant land-related information for society. The provision of information falls technically under the scope of cadastre, defined as a parcel based and up to date land information system comprising a record of interests in land. It is usually divided into three types, namely juridical cadastre when the main concern is rights to land; fiscal cadastre if the main purpose is to levy taxes; and geometric cadastre when the dominant aim is the spatial relationship. Over time, cadastral systems have improved from dealing with only one theme to dealing with a number of issues at once. This means that apart from the spatial information in only one layer, cadastral systems can include various layers and attribute information in what is termed multi-purpose cadastre. The advent of ICTs has resulted in further improvements to multi-purpose cadastre. The develop-

ment of databases and database management systems gave a huge boost to multi-purpose cadastre to become what are now called land information management systems. Geo-referenced information contained in databases serves several purposes. It can assist in decision making in such fields as agricultural development, physical planning, land development, resettlement schemes, tourism development, mining, real estate, among others.

## **5.1 Historical overview**

The colonial powers and white settlers destroyed or marginalized traditional land administration systems. The colonialists imposed European systems of land administration, with variations depending on whether these derived from English, French, Portuguese or (briefly, in the cases of Namibia and Tanzania before World War 1) German systems. Thus in the former British colonies land affairs were separated organizationally from land surveying and mapping, while in the former Portuguese colonies all three functions were grouped under the same agency, the Survey, Mapping and Cadastral Organization (Direcção dos Serviços Geográficos e Cadastrais—SGC). Issuing of land rights was, in the latter part of the colonial period, the responsibility of the colonial Governor with advice from the Director of the SGC.

## **5.2 Post-independence land administration**

After independence, countries in Southern Africa tended to maintain their colonial legacies with regard to land administration, although some names were changed along the decision-making hierarchy. The mandate of the existing institutions was to deal with formal land rights. Therefore the land rights of the vast majority of land users who held land under customary or communal systems were not protected, let alone registered. Established land administration systems were unable to accommodate these rights because national cadastral systems had not been designed with customary rights in mind. Primacy was given to non-indigenous forms of tenure, particularly freehold and leasehold. Thus the major challenge facing SADC governments with regard to land administration is to build systems that

cater for the spectrum of land delivered through customary, neo-customary (Durand-Lasserve, 2004)<sup>6</sup> and formal mechanisms.

One of the first decisions that newly appointed post-independence governments took was to promulgate land acts laying the basis for the delivery of land rights and land administration in general. In the former British colonies the challenge was to bring all land under the same administration system. However, the early land acts passed in these countries, while recognizing the rights of local communities to their land, did not incorporate actual mechanisms by which they would be protected, because this land was not registered.

The former Portuguese colonies inherited a three-tier system of landholding for the European settlers, “assimilated” people (*assimilados*) and ordinary African people. However, after independence Angola and Mozambique took different turns. While Angola nationalized land that had been abandoned by white settlers, Mozambique nationalized all land outright and converted prevailing freehold to leasehold. Mozambique approved its first land law in 1979 and the relevant regulations eight years later (i.e., in 1987). The regulations provided that all landholders should renew their tenure by 31 December 1990. Failure to do so resulted in their land being confiscated by the state.

The dual system of “registrable” (formal freehold and leasehold) land and “non-registrable” (customary) land continued during the post-independence period and into the 1990s when, as already described, the need for a serious rethink by policy makers was recognized across the region. Whatever form of land administration, accurate information about the location, shape and size of parcels will always be needed. However, the accuracy requirements are a function of the fitness for the purpose, in which case a number of techniques for information acquisition, ranging from the classical surveying through total stations, high resolution satellite imagery, aerial and terrestrial photography to inertial and global positioning systems (GPS), are available.

Tanzania, like other former British colonies, has a Commissioner of Lands whose role needs to be reviewed. The country approved a Village Land Act and devolved land administration to village councils, including dispute

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<sup>6</sup> Durand-Lasserve (2004) defines neo-customary land delivery systems as a “combination of re-interpreted customary practices with other informal and formal practices.”

resolution and protection of the interests of women, disabled people and absentees. In Madagascar, land administration is the responsibility of the National Directorate of Cadastre and Land Tenure Services (Direction Nationale des Domaines et des Services Fonciers) under the Ministry of Agriculture, Livestock and Fisheries (Ministère de l'Agriculture, l'Élevage et de la Pêche). The country's National Land Policy Programme (Programme National Foncier) mentions four axes for land reform covering the restructuring and modernization and decentralization of the land administration system.

Angola inherited the Portuguese set up of land administration systems. The Institute of Geodesy that was established after the country's independence followed the Portuguese model mentioned above. In Botswana, community land is administered by land boards, who issue use rights and not ownership rights. In 1966 the State Act turned Crown Land into State Land while the Tribal Land Act of 1968 provided for the establishment of tribal land boards and the transfer of authority over land from chiefs to land boards. The Tribal Land Act was then reviewed in 1992.

In Mozambique one challenge faced by land administration institutions in order to fulfil their mandate is increasing capacity, a multi-dimensional undertaking that requires concerted efforts by many stakeholders dealing with land. The government body in charge of land administration is the National Directorate for Lands and Forestry (Direcção Nacional de Terras e Florestas—DNTEF), an organization recently created as a result of institutional reforms. Daily land administration activities are run out of the Provincial Offices of Geography and Cadastre (SPGCs), located at provincial agriculture directorates. NGOs are very active in community land delimitation, doing most of the delimitation work, with technical assistance from the SPGCs. In urban areas, however, the awarding of rights is the responsibility of municipal councils. Although the land law is 10 years old, it was only in December 2006 that urban land regulations were approved by the Council of Ministers. According to the urban land law regulations, there are five access forms to an urban plot, including the good faith principle and lottery. Furthermore, the regulations provide that whenever there are plots to be offered on the lottery basis, 20 per cent must be set aside for low-income people and other vulnerable groups.

Most countries in the SADC region have been developing policy and legal instruments to address land issues, although they sometimes fail to con-

sider vulnerable groups such as widows, orphans and the like. Therefore, if land policies and legislations do not clearly articulate this need, the unequal land distribution already discussed in Chapter 3 will perpetuate and may result in instability even in countries where there is an apparent peace.

In addition to policy and legal arrangements, appropriate information systems must be in place in order to assist both the private and public sectors in development programmes. With the pervasive ICTs we are bombarded with masses of information. If this information is not adequately systematized, there is a risk of becoming overwhelmed and to running into information overload and consequently, x-inefficiencies.

Therefore, land information should be organized in such a way that anyone from any socio-economic sector can access and use it to meet their needs. Given that land information would, in general, be used in combination with information from other sectors, standardization is of utmost importance. The recent “commodification” of information makes the standardization even more important than ever before. The development of spatial data infrastructure is seen as a catalyst for land information design and management since it aims at producing datasets once and making them available from a single source to a wider group of potential users. In order to access the database, SADC countries must invest seriously in ICT related training, including, *inter alia*, database management systems and data discovery techniques like data mining.

### **5.3 The use of information and communication technologies in land administration**

ICTs are today considered the driving force of the global information society and knowledge-based economies and can contribute significantly to the rapid and sustainable development of nation-states. These technologies can benefit land administration systems and institutions in two ways. First, they can improve the efficiency and effectiveness of service delivery through computerized systems. Secondly, ICTs can help in information delivery and dissemination of policies and legal documents, reducing the digital divide and helping to make rural communities more aware of their rights and land administration processes. Being aware of their rights, they may participate



more actively in actual land administration and are better positioned to demand accountability of land administration officials and institutions.

ICTs are therefore powerful tools capable of helping reduce corrupt practices, and increasing transparency in public services. When fully implemented under the electronic government (e-government) banner, they may improve public service delivery not only to communities but also to businesses, civil society organizations and the like. Incorporating geographic information systems (GIS) into an e-government model (g-government) is considered here as one approach to delivery of modern land rights.

## 6. Lessons

In view of the relatively short period in which regional land policies have been developed, in most cases since the 1990s, it is easier to draw lessons from the experience of policy development than from the impact of new policies on the ground. While all new land policies address major issues such as gender rights and environmental conservation in various ways, implementation appears to be lagging behind. Against this general background, it is therefore premature to speculate whether new land policies are simply academic documents or will have the desired impact on the ground. Monitoring and evaluation of policy implementation has not been done on a regular basis in most countries, making it difficult for policy makers and researchers to obtain information on policy successes or failures.

### 6.1 Dialogue process in policy formulation: Commissions of Inquiry

Policy development processes in the region have to a greater or lesser extent relied on public consultations and participation. In some countries the level of consultation was very high (Botswana, Malawi, Mozambique and South Africa), while in others it was limited or changed over time (Zimbabwe and Namibia respectively). Generally commissions of inquiry have served as the mechanism to facilitate such consultations. The extent to which these commissions have enabled people to make meaningful contributions to land policy depends on the time given to complete their work. Proper consultation is time consuming and requires considerable resources; gender-sensitive consultation is even more time-consuming (Walker, 2003). The Land Commission in Zimbabwe took 12 months to complete consultations. It consisted of 12 commissioners and physically visited 44 rural districts. In addition, several consultants were hired to make specific contributions. In Malawi, 15 commissioners worked for 12 months with a budget of US\$ 1.2 million, and arranged 237 meetings with the public.

Despite the resources that went into commissions of inquiry, their recommendations have not always been taken seriously by their governments and the process of policy development was largely driven centrally by government. Commissions of inquiry generally have also had no influence over

the implementation of findings and recommendations. The experience of Lesotho, Malawi and Zimbabwe suggests that it often takes a long time before policy is approved, and once approved, put into law. Delays may cause impatience with formal processes of land reform and land delivery, which in turn may lead to communities “exerting their collective powers to resolve the land question on their own through organised strategies of land occupations [and] popular protests” (Moyo, cited in Palmer, 2000: 276).

## **6.2 Bridging the gap between policy makers and land rights holders**

The Chairman of the land commission in Zimbabwe, Prof Mandivamba Rukuni, stated that one-off commissions were not likely to have much impact. What was required was a more permanent arrangement to learn continually from people and involve them in reforming land tenure systems. Commissions of inquiry by their very nature should not be confused with participation. They were a collective learning process, the beginning of a process of showing governments how to empower people not only to shape and reshape policies, but also to implement them. To be more effective, commissions should go back to the people with an implementation package immediately after governments have decided on which recommendations to adopt, to obtain public reaction. After this, commissions should be tasked to draft a policy statement or prepare a white paper to inform people of the next steps (Moyo, cited in Palmer, 2000:276).

Nevertheless, even where the recommendations of commissions of inquiry were not taken seriously, as in Zimbabwe, the consultation process has been found to be invaluable in beginning to breach the huge gap that exists between the way rural people live and the way urban bureaucrats and scholars think. Prof Rukuni was of the opinion that because of the lack of connection between government and rural people, the government often do not understand the implications of its land policy reforms (Haramata, 1999).

### **6.3 Engaging civil society and other stakeholders in the policy process**

Public participation of stakeholders is essential for satisfactory land policy reform. In this regard NGOs and other civil society actors have an important role to play. But holders of land rights need to become actors in the process too. The Land Campaign in Mozambique effectively mobilized land rights holders to be involved in the policy process and its implementation.

At the same time many governments need to learn how to engage constructively in debates with stakeholders on land policy reform. Their commitment to this process and the devolution of authority over land management need to be strengthened. At the same time, the capacities of NGOs to engage with governments on land policy issues need to be strengthened. In many countries NGOs have only developed in the last 10 years and consequently are weak. This is the situation, for instance, in Lesotho, Namibia and Swaziland. Where the involvement of civil society and land rights holders is lacking, “new legal paradigms in property relations have proven to be unworkable, over-expensive, and unwanted by the supposed clients” (Moyo, cited in Palmer, 2000: 274).

Although several countries have resorted to commissions of inquiry as a way to consult people on land policy, and bearing in mind Prof Rukuni’s advice that commissions should not be one-off events, Botswana stands out as far as regular policy reviews are concerned. According to Adams (2004) the Government of Botswana reviews its land policy every 10 years. The process followed by Botswana is summarized in Box 1.

### **Box 1: Best practice—Botswana**

Botswana followed an iterative process of policy development. This has taken up to 2 years in some instances. The process generally looked as follows:

- a) Establishment of a commission of inquiry or expert review. The commission called for written submission and held public meetings with stakeholders.
- b) Preparation of a draft report, oral presentations and discussions at national workshop covered by the media.
- c) Draft paper debated in Parliament.
- d) Publication of government White Paper setting out policy and policy changes adopted and the recommendations which government adopted, amended and deferred or rejected with justification for having done so.
- e) Amending existing or drafting new laws where necessary.

In no other country in the region does one find a linear relationship between the analysis of the problem or opportunity and the assessment of evidence, the formulation of recommendations and the announcement of the policy change. More common is a policy process that is regarded as the task of Cabinet. Collective decision making is largely absent. Policies thus often reflect short term expediency.

(Adams & al., 2003).

## **6.4 Awareness creation and sensitisation about land policies: the role of civil society**

Dialogue on land policy development and administration has to go beyond consulting stakeholders. To be effective and successful, government and NGOs need to provide feedback to stakeholders, i.e. to the people whose land and livelihoods are at stake. Without this, implementation of new land policy and legislation is met frequently by scepticism and even resistance at the local level. This often stems from ignorance of the aims of land tenure reforms and the content of new policies and laws among target groups. Awareness and sensitization campaigns to create awareness of new policies and laws and their intended impacts are necessary. To this end, simplified versions of policies and laws need to be made available in as many local languages as possible.

NGOs can play important roles in policy development and implementation. However, in many cases these organizations have been denied the space to participate fully in development debates. Only South Africa has acknowledged the need to empower the NGO sector in its land policy. NGOs and other advocacy groups can stimulate the involvement of a wide range of actors in policy debate and implementation at different levels. They can facilitate links between local, provincial and national levels and vice versa and transmit the lessons of good practices between neighbouring countries and across regions.

The Land Campaign in Mozambique stands out as best practice in the region. It was driven by the belief that the knowledge rural families had about the new land law was fundamental for its effective implementation. Stakeholders needed to be informed about their rights and duties.

The organisers produced and disseminated 15,000 copies of a *Manual to Better Understanding of the new Land Law*. As well as disseminating information about the new law, the Campaign sought to promote justice by enforcing application of the law and to simulate discussion between the family and commercial sectors occupying the same area (Palmer, 2000: 284).

The Campaign also advocated for communities to be consulted where outsiders applied for land and informed people about the ways in which consultations with the state should be carried out. Approximately 15,000 volunteers who were trained as activists in the Land Campaign succeeded in covering 114 out of 228 districts and 280 out of 385 administrative posts in 2 years of campaigning (Palmer, 2000: 284).

## **6.5 Creating a decentralized institutional framework and integrating traditional authorities**

Recent land policy reforms in the sub-continent have been guided by the principle of subsidiarity and decentralization. This signalled the intent of most governments in the region to devolve land management decisions to the lowest possible level in order to facilitate participation of land rights holders in policy development and implementation. To give effect to this, new institutional frameworks have been planned or implemented in countries such as Lesotho, Botswana, Malawi, Namibia and Tanzania.

In most cases, institutional reforms have been the result of new policy developments and therefore have had no role in developing policy. The extent to which such institutional reforms have facilitated the implementation of land policies cannot be generalized as countries are at different stages of implementation. More specifically, countries such as Botswana, Malawi and Tanzania have been able to use existing institutional frameworks to improve tenure security and transparency in land administration, whereas Namibia and Lesotho are in the process of developing the capacity of new institutions.

Most countries have devolved land administration powers to the regional level (Namibia) or district level (Lesotho and Malawi). This implies that the role of traditional leaders has been diminished to a greater or lesser extent. In some instances such as in Lesotho, new community councils and district councils are expected to take over land administration powers previously held by traditional leaders. Namibia's Communal Land Reform Act has confirmed the responsibilities of traditional leaders in land administration, but has established communal land boards as a check on the process of land allocations and cancellations. In South Africa it is proposed that traditional leaders may be transformed into land administration committees for communal land held by communities. However, the Act has yet to be implemented.

In Lesotho and Malawi these developments have led to tensions between traditional authorities and government. While recognizing the need in many countries to make traditional authorities more democratic and accountable, a more gradual process of implementing land tenure reforms involving traditional leaders is called for. The Communal Land Rights Act 2005 of South Africa proposes that traditional authorities may become land administration committees for communally held land, while the Communal Land Reform Act 2002 of Namibia confirms the role of traditional authorities in administering customary land, albeit under the supervision of communal land boards. A continuing challenge in land tenure reform is to democratize traditional authorities while building on and improving customary tenure systems. This is particularly important if women's land rights are to be secured.

## **6.6 Cost implications of creating new institutions versus building on existing ones**

Creating new institutional frameworks for increased devolution of land administration functions requires vast financial and human resources which are frequently beyond the capacities of individual governments. Utilizing existing structures may prove more cost-efficient while enhancing the “ownership” and legitimacy of new land policies. Here the examples of Malawi and Tanzania are worth looking at.

In Malawi, district assemblies have been given additional powers of land administration including valuation, taxation, surveying and enforcement of leasehold contracts. The Malawi National Land Policy also recommends the establishment of customary land committees. Traditional land clerks will be appointed by district assemblies. They will be trained in land administration and will provide a land policy monitoring capacity in each traditional authority area and will provide technical advice to members of the Customary Land Committee.

Tanzania has devolved land administration powers to existing village councils rather than depositing these functions in district level institutions. Village councils are elected and are designated as land managers by the Land Act and the Village Land Act. As such they are responsible for guiding community decisions on the distribution of land within the village into household, clan, community or other land and their adjudication, registration and titling. This approach is likely to simplify implementation of land reform, increase accountability in local matters and be more cost effective than where new institutions are created (Alden Wily and Mbaya, cited in Palmer, 2000: 281).

Locating decision-making powers at the village level is arguably the most efficient way to secure the land rights of individual households and communities, but this must be subject to national monitoring and review. Legislation should require that communities give consent for land alienation and the conversion of customary land into land held under leasehold. Such provisions are absent in Namibia, where the consent of a traditional leader suffices to designate land for commercial agricultural development.



## 6.7 Resource implications of policy reforms: developing implementation strategies

Significant resources have gone into the formulation of new land reform policies and laws in order to ensure the best possible outcome of various stakeholders. However, little thought has gone into the budgetary implications and the staffing requirements of implementation. These often exceed the capacities of governments. Moreover, the costs of implementation must be weighed against the likely economic and other benefits resulting from new land administration systems.

The inability to implement new land reform policies and laws creates the risk that insecurity over land rights and a vacuum in land administration may set in. Where new land policies have excluded traditional leaders from land administration and created new local level institutions, land disputes that previously were settled reasonably quickly at the local level may be drawn out. Strategic planning will help to assess how much institutional change will be required to implement policy and legislation and what the costs involved are likely to be (Palmer, 2004). The *Malawi Land Reform Programme Implementation Strategy (MLRPIS) 2003–2007* of June 2004 provided a guide for the implementation of the country's land policy and identified key issues arising from its recommendations as well as its relationship with other national policies. A logical framework annexed to the Strategy summarizes outputs, results, activities, indicators, time frame and costs. The document was meant to be flexible rather than a definitive programme, leaving space to modify as required as implementation proceeded (Adams, 2004).

MLRPIS appears to address the lack of policy harmonization prevalent in most countries. The role of land reform in national development strategies is not clear and does not appear to be a particular concern in most countries. Of specific concern is the lack, in some countries, of harmonization of land tenure reforms and poverty reduction strategy papers. Moreover, the relationship between land policy and national development strategies points to tension between market-oriented and pro-poor priorities. This is an important issue in view of the fact that the long-term visions of most countries as contained in Vision 2030 (Namibia) and Vision 2025 (Botswana), for example, see these countries becoming middle income and industrialized countries, encouraging foreign investment and development. However, poverty reduction strategy papers emphasize the need to improve

the livelihoods of the poor. A challenge for countries in the region will be to develop an integrated focus on agrarian development and reform in order to promote small-scale farmers' access to productive resources and to domestic and global markets. Improved regional and urban planning processes must secure access to basic services.

## **6.8 Urban land: developing appropriate policies**

The expansion of urban areas on to customary land will require its own set of policy and tenure interventions across the sub-region. The constant influx of rural people into urban areas exceeds the ability of most local authorities to supply serviced land. Furthermore, this leads to growing informal settlements in urban areas.

However, and related to the high demand for land, informal markets in customary land develop with a number of potentially negative impacts particularly on the poor. The operation of these markets is complex and often not well understood by public agencies involved in land administration. Formalizing land markets through titling programmes is frequently regarded as the solution. Amongst other things, such an approach may lead to loss of land rights by the poor. A preferred route would be to make incremental changes based on existing practices and offering a variety of tenure options (DFID, 2002). Namibia is in the process of implementing a pilot programme to introduce a flexible and upgradeable land tenure system in a few informal urban settlements. The experiences of this programme should be closely monitored and evaluated for possible repetition elsewhere.

## **6.9 The importance of ongoing monitoring and evaluation and regular reviews of national policy**

Other major lessons to emerge are the importance of setting up effective monitoring and evaluation systems that feed back into implementation and policy review processes, and scheduling regular reviews of land policy.

## 7. Needs Assessment: Challenges and Gaps

### 7.1 Implementation bottlenecks, challenges and gaps

A number of factors are hampering the implementation of land tenure and distribution reforms. Some of these constraints are discussed below.

#### ***Financial and human resources constraints***

Governments and their advisors have primarily focused on the development of policy and legislation with little attention to capacity building, translating laws into programmes that can be implemented and prioritizing resources to support tenure reform. These activities are essential to effect changes on the ground. New policies need to be translated into programmes with sufficient resources to undertake public education, create new systems for recording rights, hire staff, run offices and vehicles and train those participating in the system (including traditional leaders) to manage land in a sustainable way and have the power to monitor and enforce sustainable land use (ECA, 2003: 24–25).

As a result, many governments do not have sufficient funds to implement policies. Decentralization of land administration functions requires substantial investments in offices, information systems, staff training and transport. In general governments do not have enough funding to fully implement new policies and laws. At the same time, in some countries departments responsible for land policy implementation underspend their allocated budgets. This has been observed in South Africa. Factors contributing to this problem include shortages of technical staff at central and regional levels, and the complexity of the challenges relating to implementation on the ground.

#### ***Lack of awareness and understanding of new land policy measures***

A common problem in tenure reform is that many land rights holders are not aware of the benefits of new policies and legislation and are thus unable to use legislation to defend their land rights. This is especially so for women. Dissemination of land policy and legislation in a simplified and understandable form remains a challenge. Civil society organizations can be instrumental in providing and disseminating simplified versions of legislation

and building awareness about new policies and laws. The Land Campaign in Mozambique was instrumental in supporting this process. Evidence suggests that where NGOs associated with the Land Campaign were active, farmers were aware of their rights and could use them. Communities that were not reached by NGO campaigns were not aware of their rights (ECA, 2003:15).

A related challenge is that many of those responsible for implementation are not always conversant with policies and legislation as they have not been exposed to the relevant documents. They frequently lack training and instruction on the new approach. Gender-sensitive training is often absent or poor (Walker, 2003). This results in slow and haphazard or partial implementation.

### ***Integrating traditional authorities into a new institutional framework***

Processes of democratizing traditional leadership structures and introducing greater transparency in customary land administration by establishing new local level institutions are incomplete in some countries. Indications are that the role of traditional leaders in reformed land tenure systems will pose a challenge to smooth implementation in many countries. In some countries new institutions have been designed to take over the responsibilities of chiefs, such as community and district councils proposed in Lesotho and land boards in Botswana. In other countries traditional leaders have been integrated into new structures, mostly in subordinate roles. Newly established communal land boards in Namibia are one example. In most cases, however, the roles and mandates of traditional authorities vis-à-vis decentralized land administration and management structures and elected leaders in a new institutional framework are not always clear, and frequently cause tensions.

A common perception is that new institutions are undermining traditional authorities, resulting in negative sentiments to proposed reforms and possible conflict. In Malawi, there was growing resistance from traditional leaders to the proposed privatization of customary land and registration in the name of individuals (Adams and Palmer, 2007). In Namibia there is a widespread perception among traditional leaders that they will gradually disappear. The challenge is to secure effective articulation of customary and

state institutions (Quan, 1998:7), but giving content to this requires engagement with the realities and views of ordinary people on the ground.

These processes need to be closely monitored to adapt policies to what is a sensitive issue in all countries. Botswana appears to have managed the process of reducing the powers of traditional leaders by dealing with it in a measured way, over a long period. Regular policy reviews have enabled government to identify specific problems and respond to them with specific tenure innovations. However, there are concerns that Botswana may not be representative of other countries in the region. Its population is small and ethnically relatively homogenous. It is a relatively wealthy country and does not have a history of colonial settlement which might have impaired land reform (Adams et al., 2003).

### ***Developing representative rural institutions***

Inappropriate and exploitative administrative practices continue to be a source of tenure insecurity, particularly in situations where traditional leaders acquire interests in the development or disposal of community property. In some countries (Mozambique and South Africa) this problem has been addressed by the recognition of group tenure rights. Where group rights are recognized, collective boundaries can be demarcated and registered with the possibility of upgrading to full title. This approach may empower local regimes. Developing strong representative rural institutions is central to rural economic development. These have to be representative and accountable to the constituencies they represent. Not all new decentralized institutions are fulfilling this requirement. Moreover, they operate at a regional level, making direct access difficult for land rights holders. The success of this approach depends on an appropriate legal framework and sufficient skills and resources to exercise control.

### ***Harmonizing gender policies with customary laws on property and inheritance***

Most countries in the sub-region have gender policies and legislation in place. But in some countries legal frameworks around marriage and women's status are at odds with gender equity principles. Customary laws on property rights and inheritance continue to be in conflict with principles of gender equality in many areas. Furthermore, many officials struggle to operationalize gender policies that they do not fully understand or necessarily

support, as has been observed in South Africa, for example (Walker, 2003). Registration of land rights in most countries is intended to make the rights of households more secure. However, women may not benefit, as rights are normally registered in the name of the head of household. In patriarchal societies, this is normally a man. Women's interests in land extend beyond household land, however, and supporting their rights to independent ownership of land may require addressing discriminatory provisions in statutory law relating to marriage, legal authority and inheritance.

### ***Harmonizing land policies with community based natural resource management policies and strategies***

A number of countries have policies and legislation in place that support sustainable land administration and management. However, these are not always well coordinated and consistent across sectors. Policies and legislation covering CBNRM confer limited powers over the management and utilization of wildlife and forests to legally constituted group entities. In Namibia, the state has transferred outright ownership over water points to communities of users. This will have a direct impact on property rights over communal grazing areas. Yet property rights over grazing land by groups of people have not been integrated into land policy and legislation. Frequently such sectoral policies create decentralized institutions to facilitate increased local level participation. As these grow in numbers, mandates overlap and become blurred, defeating their original intention.

### ***Balancing the needs of the poor with those of national economic development***

Despite the rhetoric of pro-poor development, national development plans and strategies tend to be focused on market oriented economic growth and economic diversification. Balancing these concerns with the land rights and interests of the poor remains a challenge. In some countries in the region tenure reform policies provide for the alienation of customary land for intensive economic development or the conversion of customary land rights into leasehold without adequate mechanisms to protect the land rights of the poor individually or as groups. The most effective way to do this is to involve local communities in identifying land for alienation to make sure that no other rights are held over such land. Legislation should require that both traditional leaders and communities approve the alienation of land into leasehold. However, most governments in the region are unlikely to

cede full ownership rights to communities since this would effectively divest themselves of political control over customary lands (Quan, 1998).

### ***Resource and planning constraints in redistributive land reform programmes***

A lack of funds is put forward as one of the factors slowing down the acquisition of freehold land for redistribution in countries such as South Africa and Namibia. One consequence is that the willing seller-willing buyer principle has been criticized for being too slow and too expensive to deliver land for redistribution fast enough. Expropriation has been suggested as a more appropriate mechanism to obtain land. In Zimbabwe, the lack of funds to compensate farmers has contributed to widespread expropriation. However, the Ministry of Lands and Resettlement has regularly underspent on its budget for land acquisition. A shortage of professional staff, particularly for valuation and land use planning, has contributed to this.

Cumbersome land acquisition procedures also have a negative impact on land delivery to land reform beneficiaries. The land reform legislation requires detailed farm assessments and valuations before acquisition followed by land use planning and sub-division, advertising availability of land and selecting beneficiaries. It can take up to 18 months from the date of acquisition to settlement of beneficiaries. Budgets and technical capacity to plan and service land acquired for redistribution do not always match the pace at which land is acquired. This leads to delays in providing and upgrading infrastructure such as roads and water installations. In some instances this has had a negative impact on the rate at which beneficiaries have been able to take possession of their land and use it productively.

### ***Redistributive land reform: challenges in beneficiary selection***

The challenges faced in the land redistribution programmes of Namibia and Zimbabwe are similar in many respects. A hotly contested issue is who the beneficiaries of land redistribution should be. There is considerable evidence to suggest that the benefits of redistribution are captured mostly by urban elites rather than the poor and landless. The absence of unambiguous and well targeted selection criteria contributes to this. Part of the explanation for the absence of clear criteria has to be sought in the unresolved question on how to balance economic growth with pro-poor policies.

### ***Redistributive land reform: developing appropriate settlement models***

A related point is that resettlement models do not always match land use capabilities and the skills and asset levels of beneficiaries. This leads to underutilization of agricultural land and reduced welfare levels of beneficiaries. Where beneficiaries do have assets to engage in agricultural production, their willingness to make longer-term investments is reduced due to insecure tenure on allocated land. In Zimbabwe beneficiaries obtain temporary occupation licenses while beneficiaries in Namibia sign an agreement with the government. This, however, has no legal standing in terms of relevant legislation, which provides for long-term leaseholds to be registered in the Deeds Office. Delays in providing leasehold tenure are largely due to the time it takes to sub-divide and survey large-scale freehold farms for registration and capacity constraints in this regard.

### ***Providing serviced land and secure tenure to growing urban populations***

A major challenge in the sub-region will be to provide adequate land to rapidly growing urban populations and tenure security for informal settlers. In many countries urban areas expand onto land held under customary tenure. Regulations need to be in place to prevent land grabbing by urban elites and alienation of such land by traditional leaders for handsome profits. Provision has to be made to compensate people who lose their land rights on account of urban expansion. Botswana appointed a Commission of Inquiry to investigate these problems in some of its urban areas.

But increasing numbers of informal settlers in urban areas need to be provided with secure tenure at an affordable cost. Namibia is in the process of piloting the introduction of a low-cost flexible tenure system for informal settlers. The system will enable settlers to obtain a basic form of security to be registered in local property offices. As the need arises and as resources increase, basic or starter titles can be upgraded to a higher form of security.



## **7.2 Capacity building needs and resources**

In many countries the complexities of land tenure change have been underestimated. Greater access to land and improved tenure security has created major challenges at an institutional and technical level, including land title registration and consolidation of fragmented holdings (Moyo et al., 2007). This is demanding in administration, skills and financial resources.

The most recent inventory on capacity building and technical support needs is documented in the report for SADC by Moyo and Makhado (2007). Under the broad category of land policy formulation and implementation three specific areas have been identified for technical support. These are land tenure, land redistribution and land use planning and regulation.

### ***Land tenure, land redistribution and land use planning***

With regard to land tenure, strengthening land boards/committees and land formalization systems and improving leasehold/estate and land allocation management systems have been listed as areas for support. In addition, the strengthening and expansion of land surveying capacities and land valuation systems should be supported.

Particularly in countries involved in resettlement programmes (Malawi, Namibia, South Africa and Zimbabwe) technical support is required to improve land identification and acquisition processes, design post-settlement support systems, improve systems for beneficiary selection and enhance financing of land reform.

Land use planning both at national, regional and village level and planning in urban and peri-urban areas needs to be strengthened. On a more general policy and institutional level, some countries have identified a need for support in reviewing and updating national land policy and legislation and in drawing up guidelines for land tribunals.

### ***Exchange of land information and implementation experiences***

Land information management, policy implementation and exchange tours and the documentation and sharing of best practices constituted a second major area for support. Particular interest was expressed to learn about best practices in district and local level land administration practices and systems. Tanzania and Botswana were mentioned as best practice countries in

this regard. Zimbabwe was regarded as the best practice country in providing post-settlement support. Study tours were also proposed to learn more about land taxation and valuation and land reform in general.

Six countries in SADC expressed an interest in learning more about national and district level land information systems and mapping for land management. Promoting public awareness about land policies, laws and land rights also featured as a desired activity.

### ***Training courses in technical fields***

Member states identified 23 specific training courses to build capacities in land policy implementation and land administration. Courses identified by all countries were: land use planning and management; land information management systems; land surveying, valuation and registry; land mapping; record keeping (land records); land acquisition, tenure and land market management; GIS/spatial analysis; strategic policy management and analysis; land management and natural resource use; and land data collection and urban planning. Training in land policy formulation, analysis and advocacy and land administration were needed by most member countries.

### ***Knowledge and information: the importance of monitoring and evaluation and research***

The absence of systematic monitoring and evaluation programmes related to land policy means that data are limited in most countries, making integrated spatial and economic planning difficult. Reliable maps and a lack of surveying and land use planning staff further slow down implementation and may have resulted in a mismatch of resettlement models and land use capabilities in countries that are involved in land redistribution.

Policy development needs to be informed by sound knowledge and information. Not all countries have been systematic in identifying specific problems that needed to be addressed in policy. More needs to be known about specific needs of customary tenure systems to formulate specific policy changes. Regular reviews and monitoring are essential in this regard, but are not carried out regularly and consistently. Botswana has been hailed as a best practice case in this regard. Regular reviews of land policy issues have enabled the government to introduce tenure changes in a gradual and iterative manner.

Interactions between newly created local level land administration institutions and traditional authorities need to be monitored and understood, as do dispute resolution and adjudication systems in different localities. Here the complexity of customary gender rights and inheritance practices in both patrilineal and matrilineal societies is an important area not only for monitoring in terms of policy and administration, but also for further in-depth research, in order to understand shifting dynamics better.

## 8. Conclusion

The history of colonial and racial discrimination in Southern Africa has left a deep mark on land issues in the region. This history of land dispossession, colonial settlement, racial discrimination and struggle for independence needs to be properly addressed by land policy processes. The specific history of the region has also had an impact on economic development and land policy: today, large-scale commercial farming is dominated by white elites and foreign landowners while small-scale farming is predominately black.

Land policies need to address discrimination against women in terms of land ownership and access to land. Women are major rural producers in Southern Africa, yet they are marginalized from access to factors of production.

Southern Africa is recognized as the epicentre of the HIV and AIDS pandemic globally. Therefore any meaningful land policy framework for the region has to grapple with the implications of HIV/AIDS not only for land-based livelihoods, but also for state capacity to implement ambitious land programmes.

Land policies in the region need to be harmonized with other development and sectoral policies. It is crucial that civil society organizations be involved throughout the whole cycle of land policy development, including the implementation and progress tracking phase. The role and contribution of the private sector should not be underestimated.

While recognizing the impact of the colonial legacy, and identifying the constraints of the current situation, land policies in Southern Africa need to consider emerging issues and challenges of the future. These issues include rapid urbanization, globalization and markets and environmental challenges.

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## Appendix I: Selected socio-economic indicators per country

	Area (ha)	Population	% pop that is urban	HDI rank (177 states)	Economic significance of agriculture	Land tenure profile <sup>7</sup> (approximate proportions)
Angola	124 670 000	15 400 000	38	160	8,5% of GDP; 70% e.a.p.	N.A.
Botswana	58 200 000	1 765 000	52	131	2% of GDP	71% tribal (communal); 4% private; 25% other state
Lesotho	3 035 500	2 000 000	19	149	18% of GDP; over half e.a.p.	90% communal; 5% private; 5% other state;
Madagascar	58 704 100	18 606 000	32	146	28,1% of GDP	Land is divided between holdings, commons & state
Malawi	9 400 000	12 880 000	20	165	45% of GDP	66% communal; 12% estate (private); 22% other state & urban
Mauritius	204 000	1 248 600	42	65	5,8% of GDP	C 80% private
Mozambique	80 159 000	19 792 000	39	168	21,1% of GDP e.a.p.	All land is state land; 93% is communal
Namibia	82 400 000	2 031 000	37	125	5% of GDP;	36% communal; 44% private; 20% other state
South Africa	122 103 700	47 400 000	59	120	2% of GDP;	14% communal; 72% private; 14% other state
Swaziland	1 736 400	1 000 000	24	147	10% of GDP e.a.p.	56% communal; 25% private; 19% other state & urban
Tanzania	94 508 700	38 000 000	24	164	50% of GDP; 80% e.a.p.	84% communal, 1,5% private; 14,5% other state
Zambia	75 261 400	11 668 000	36	166	19,9% of GDP 85% e.a.p.	64% communal; 30% state parks, game management areas 6% leasehold
Zimbabwe	39 100 000	13 010 000	37	145	18,1% of GDP	42% communal 41% private 16% conservation, state land

## Appendix 2: Land policy development in the SADC region since 1980

Policy formulation process and implementation	
<b>Angola</b>	<p>1992 first Land Law approved, followed by regulations in 1995</p> <p>Late 1990s: Government supported by FAO Land Tenure Service with collaboration of NGOs started to address land policy issues, including some land delimitation exercises</p> <p>2004 new Land Law approved after cessation of hostilities within the country, but regulations not yet in place.</p>
<b>Botswana</b>	<p>1983 Presidential Commission on Land Tenure conducted first review of land policy</p> <p>1992 Commission to review Tribal Land Act, land policies and related issues</p> <p>1992 Presidential Commission and White Paper on Land Problems in Mogoditshane and other peri-urban villages</p> <p>2002 National Land Policy Review</p> <p>Consultations conducted during inquiries and on draft papers; gradualist approach to policy change</p>
<b>Lesotho</b>	<p>1999 Land Policy Review Commission</p> <p>2002 Draft White Paper</p> <p>2003 Land Bill prepared, revised in 2004, 2005 and 2006 but not yet adopted</p> <p>Civil society participation inconsistent and capacity to engage in land policy seen as weak</p>
<b>Madagascar</b>	<p>A National Land Policy is being developed under a National Land Programme (Programme National Foncier—PNF)</p> <p>2005 the government approved an intention paper for a National Land Policy aimed at modernizing and decentralizing land administration, reviewing the legal framework and building capacity</p> <p>Civil society participation has been active</p>

## Policy formulation process and implementation

<b>Malawi</b>	<p>1995 Presidential Commission of Inquiry</p> <p>1999 Report of the Commission of Inquiry submitted</p> <p>2002 Malawi National Land Policy</p> <p>2003 Special Law Commission established to develop codified legislative framework of land rights (not completed yet)</p> <p>2004 Malawi Land Reform Implementation Strategy 2003–2007 adopted—sector-wide approach</p> <p>Community based Rural Land Development Project implemented with assistance of the World Bank</p> <p>Wide consultations held</p>
<b>Mauritius</b>	<p>2003 National Development Strategy passed</p> <p>2004 Planning and Development Act passed</p> <p>State-led process of identifying key issues; stakeholder consultation on working papers</p> <p>Development of draft strategy and further consultations with stakeholders including private sector and NGOs; civil society relatively weak</p>
<b>Mozambique</b>	<p>Early 1990s: Land Campaign to review 1979 Land Law</p> <p>1995 Land policy framework</p> <p>1997 New Land Law passed</p> <p>1998 Rural land regulations approved</p> <p>NGO campaigns very effective in creating awareness of new rights vis-à-vis the state and outsiders</p> <p>2006 Urban land regulations approved by government</p>

### Policy formulation process and implementation

<b>Namibia</b>	<p>1991 National Conference on Land Reform and the Land Question</p> <p>1991 Technical Committee on Commercial Farm Land</p> <p>1994 NGO conference on land reform (Peoples' Land Conference)</p> <p>1995 Agricultural (Commercial) Land Reform Act passed and revised several times since</p> <p>1996 Consultative Conference on Communal Land Reform</p> <p>1997 National Resettlement Policy passed, revised 2001</p> <p>1998 National Land Policy passed</p> <p>2002 Communal Land from Act passed</p> <p>2003–2004 review of land reform and development of strategic options by a team of consultants</p> <p>NGO sector considered weak</p> <p>Namibia Agriculture Union (commercial farmers) and Namibia National Farmers Union (communal farmers) devising proposals for land reform</p>
<b>South Africa</b>	<p>Early 1990s: Constitutional negotiations leading to democratic transition in 1994</p> <p>1996 Constitution adopted—property rights protected and land reform defined as in the public interest</p> <p>Land policy consultation and research process: pilot land reform districts, various research initiatives including with World Bank support</p> <p>1997 White Paper defined restitution, redistribution and tenure security as three main legs of land reform</p> <p>2000 Land Redistribution and Agricultural Development policy emphasized importance of support for “emerging” commercial farmers</p> <p>1995, 2000 and 2005 Land Summits involving government and civil society</p> <p>2005 Communal Land Rights Act: not yet implemented</p>
<b>Swaziland</b>	<p>1999 Draft National Land Policy</p> <p>2001 civil society began to engage in land issues but capacity is weak</p> <p>2002 draft policy reviewed by government but then process stalled</p> <p>2005 adoption of new Constitution cleared the way for the review to resume, but this has not yet happened</p>

Policy formulation process and implementation	
<b>Tanzania</b>	<p>Presidential Commission of Inquiry 1991 (Shivji Commission)</p> <p>1995 National Land Policy</p> <p>1999 Land Act and Village Land Act</p> <p>2004 Consultants appointed to develop Strategic Plan for the Implementation of the Land Law (2005)</p> <p>Policy process inclusive of all stakeholders (local government, land users and donors)</p>
<b>Zambia</b>	<p>1995 Lands Act repealed the Land (Conversion of Titles) Act of 1975</p> <p>Little consultation on the Act</p> <p>2002 new Draft Land Policy published for public comment</p> <p>A coalition of human rights organizations coalescing into the Zambia Land Alliance raised awareness about the Act and mobilized people</p>
<b>Zimbabwe</b>	<p>1980 Lancaster House agreement and Constitution</p> <p>1985 Land Acquisition Act</p> <p>1992 Land Policy published</p> <p>1992 Land Acquisition Act to provide for compulsory acquisition</p> <p>1994 Commission of Inquiry into Appropriate Agricultural Land Tenure Systems (Rukuni)—conducted extensive public hearings</p> <p>1996 ODA Land Appraisal Mission</p> <p>1996 Policy Paper on Land Redistribution and Resettlement in Zimbabwe</p> <p>1998 Publication of Land Reform and Resettlement Programme Phase II—made use of participatory process involving the government, farmers organizations, financial institutions and civic organizations</p> <p>2000 Fast Track resettlement introduced</p> <p>2001 Rural Land (Occupiers Protection from Eviction) Act passed</p> <p>Several amendments of the Constitution and the Land Acquisition Act occurred</p>

7. “Other state” in the table includes, but is not confined to conservation land.

## Appendix 3: Terms of Reference

The Terms of Reference for the Regional Case Studies on Land Policy Formulation and Implementation in Southern Africa included the following tasks:

1. Identify priority land issues and challenges in the sub-region that constrain social and economic development, sustainable natural resource management, and the achievement of peace and security.
2. Document and give a historical perspective to key policies and legislation relating to land in the sub-region, referring to countries as is necessary.
3. Document any complementing policies, legislation and laws that might facilitate/impede the implementation of land policies.
4. Document relevant processes used in policy formulation and implementation (e.g. commission of enquiry, identify key stakeholders involved, etc).
5. Identify key authorities involved in administering land rights, dispute resolution etc.
6. Document any institutional reforms related to land administration.
7. Document other existing initiatives relating to land policy reform, including land policy facilities, highlighting key stakeholders and partners.
8. Analyse the extent to which land issues and challenges (in 1 above) are addressed by the policies, legislation, laws, and processes identified above. Make special reference to lessons and areas for improvement.
9. Analyse the extent to which institutional reforms have facilitated the formulation and implementation of land policies, highlighting innovative reforms, e.g. use of traditional institutions and processes. Make reference to potential lessons and best practices
10. Based on assessment above, document challenges, gaps and implementation bottlenecks of land policy and land reform, including capacity building needs and resources.

Prepare a report of the sub-regional assessments including all the elements above.







This Southern Africa regional assessment study on land policy has been prepared by experienced land experts from the region and has benefited inputs from a wide range of stakeholders including representatives of Governments, Civil Society, Private Sector, Centres of Excellences and Development Partners, during a regional multi-stakeholder consultation led by the Southern African Development Community (SADC). The study discusses key land issues and challenges, provides information on the status of land policy development and implementation and draws lessons from land policy processes in the region.

This regional assessment helped to enrich the *Framework and Guidelines on Land Policy in Africa* with regional specificities and perspectives from Southern Africa.

The AUC-ECA-AfDB Land Policy Initiative Consortium hopes that this publication will be useful to all stakeholders, especially Governments, Civil Society Organisations and Development Partners, in their efforts to promote experience sharing, document best practices in the land sector and build capacity for effective land policy development, implementation, monitoring and evaluation.



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