



African Union



African Development Bank



Economic Commission for Africa

Land Policy in Africa:

Eastern Africa Regional Assessment





African Union



African Development
Bank



Economic Commission
for Africa

Land Policy in Africa: Eastern Africa Regional Assessment



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Table of contents

Abbreviations and Acronyms	v
Acknowledgements	vii
Executive Summary	viii
1. Introduction	13
2. Contextualization of the Eastern Africa Region.....	15
3. Key Land Issues and Challenges in the Eastern Africa Region.....	23
4. Land in the National Development Framework.....	61
5. National Land Policy –Formulation and Implementation Processes	69
6. Lessons and Best Practices	86
7. Implementation Bottlenecks, Challenges and Gaps of Land Policy and Land Reform.....	101
8. Strengthening the Draft Land Policy Framework in Africa Document....	109
Bibliography	116
Appendix I: Eastern Africa Regional Assessment: Summary of Country Profiles, Country Variations and Similarities	127
Appendix 2: Countries Undertaking Land Policy, Legislative and Institutional Reforms	145
Appendix 3: Terms Of Reference	154

Abbreviations and Acronyms

ADLI	Agricultural Development-led Industrialisation Policy (Ethiopia)
AfDB	African Development Bank
AU	African Union
AUC	African Union Commission
CAADP	Comprehensive Africa Agriculture Development Programme
CCRO	Certificate of Customary Right of Occupancy (Tanzania)
COMESA	Common Market for Eastern and Southern Africa
CPA	Comprehensive Peace Agreement
CSO	Civil society organization
DFID	Department for International Development (United Kingdom)
EAC	East African Community
ECA	Economic Commission for Africa (United Nations)
EDPRS	Economic Development and Poverty Reduction (Rwanda)
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign direct investment
GDP	Gross domestic product
GEF	Global Environment Facility
GIS	Geographic information system
GPS	Global positioning system
HASHI	Hifadhi Ardh Shinyanga (Land Conservation Programme in Shinyanga, Tanzania)
HDI	Human Development Index
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome

ICRAF	World Agroforestry Centre
IDP	Internally displaced person
IGAD	Inter-governmental Authority on Development
KUFSALCC	Kampala Urban Food Security Agriculture and Livestock Co-ordinating Committee
LSSP	Land Sector Strategic Plan (Uganda)
MDG	Millennium Development Goal
MTEF	Medium Term Expenditure Framework
NDS	National Development Strategy
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental organization
NLPFP	National Land Policy Formulation Process (Kenya)
NLP	National Land Policy
PMA	Plan for Modernisation of Agriculture (Uganda)
PRSP	Poverty reduction strategy paper
RSPB	Royal Society for the Protection of Birds
SADC	Southern African Development Community
SPILL	Strategic Plan for the Implementation of Land Laws (Tanzania)
UN	United Nations
UNAIDS	United Nations joint programme on HIV/AIDS
UNCCD	United Nations Convention to Combat Desertification
UNDP	United Nations Development Programme
HABITAT	United Nations Human Settlements Programme
USAID	United States Agency for International Development
VEO	Village Executive Officer (Tanzania)

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Executive Summary

The African Union Commission (AUC) and African Heads of State and Government are committed to providing a conducive environment for economic growth, poverty reduction and equitable sustainable development. In this context, the quality of governance of land and natural resources is an important factor. Accordingly, better performance of land policies and institutions is required to deliver development goals. Land reforms must equitably address the needs of all land users, including smallholder farmers, the private sector, the urban poor and slum dwellers. This is especially because land is no longer readily available and there are rising pressures and tensions stemming from competition for this valuable resource.

Land policy needs to secure the rights of all land users and serve the multiple goals of equity, poverty reduction, income growth, economic efficiency and sustainable environmental management.

Given the importance of land to economic and social development and to ensuring peace and security, the majority of African governments have embarked on land policy and institutional reforms to address land issues in the context of national development. The key issues that need to be addressed in this context are: securing land rights to improve livelihoods and facilitate economic development; the centrality of urban land delivery and urban land development; natural resource access and sustaining common property resources; property rights and environmental sustainability; equitable land distribution and restoring alienated land; land and gender issues; and land and conflict.

To facilitate land policy formulation and implementation within the framework of the New Partnership for Africa's Development (NEPAD) and in line with the Millennium Development Goals (MDGs), the consortium of AUC, the Economic Commission for Africa (ECA) and the African Development Bank (AfDB) in collaboration with regional economic communities have initiated a process of developing a framework and guidelines for land policy in Africa. The framework and guidelines are vital tools aimed at complementary national and regional processes for land policy formulation

and implementation, with a view to strengthening land rights, enhancing productivity and securing livelihood.

The framework and guidelines will be useful in supporting regional and national land policy formulation and implementation processes through affording opportunities for peer learning. The framework and guidelines will also provide guidance on benchmarks and indicators for tracking progress achieved in land reform.

The process of developing the framework and guidelines includes regional assessments and consultations. The regional assessments aim to raise land policy issues that highlight specificities in existing initiatives and lessons that will enrich the framework and guidelines. The assessments will also help to identify challenges, knowledge, institutional and resource gaps as well as ongoing initiatives. This will assist in mapping out a strategy for capacity building and lesson-sharing activities vital to the implementation of the framework in the medium to long term.

Contextualization of the Eastern Africa region

The report recognizes that the Eastern Africa region is vast and therefore may be difficult to contextualize. It has the smallest country on the continent (Seychelles, 455 sq km) and the biggest (Sudan, 2.5 million sq km). There are 14 countries in the region (Burundi, the Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tanzania and Uganda), displaying a diversity of colonial legacy, ecosystems, cultures, tenure systems and a complex and dynamic history. This is reflected in the variety of land policy strategies and land administration and management systems. In spite of this complexity and diversity, this report attempts to extract the commonalities that are reflective of the experience of the region as a whole, without in any way trying to diminish the realities associated with individual countries.

Regional commonalities exist as a result of geography, history and efforts to deepen economic integration among some of the countries. However, there are significant differences in terms of colonial history and size, population, levels of urbanization, national economies and land tenure profiles.

Land is central to the livelihoods of people in the Eastern Africa region. The rural population is high; more than 80 per cent in Burundi, Eritrea, Ethiopia, Rwanda and Uganda. The region has a long history of regional cooperation with countries belonging to a number of sub-regional and regional and frameworks. The region is characterized by political instability. Conflict is a major concern, as Eastern Africa has the largest number of refugees and internally displaced persons (IDPs) on the continent.

Desertification, climate variability and climate change are a major concern in this region, a region that has substantial desert mass. Drought and floods pose serious challenges for land management.

The countries have different land policies and land laws as a consequence of their colonial history, diversity of culture and religions norms, and different endowments with natural resources.

Key land issues and challenges in the region

The key land issues and challenges are discussed below.

1. *Legal pluralism*

Most countries in the region have juristic or diffusive plural legal systems governing land. Consequently, multiple sources of property rights coexist. These are broadly categorized as customary and statutory/modern tenure, whereby statutory legal structure and customary practices interface.

The pluralism of authority over land can allow people to choose the legal framework that provides them with the best claim (“forum shopping”). This may increase uncertainty and confusion when people pursue different ways to legitimize claims to the same parcel of land. In addition, the presence of diverse tenure concepts or laws may create ambiguity. Different sets of rules are applied under different institutions in the same area. Parallel institutions could lead to competition for the same jurisdiction which could fuel conflict. After independence, most countries in the region formulated land policies and laws, and instituted tenure and institutional reforms to

deal with this colonial/historical legacy. However, pluralism needs to be recognized as a reality and as a resource and not as an obstacle in the changing lives of the poor.

2. *Land and natural resources degradation*

Land and natural resources degradation is a serious problem in the region. Rwanda is particularly affected with 71 per cent of the total area affected by very severe degradation problems (FAOSTAT, 2005); Madagascar is known for its high degree of environmental degradation. Eastern Africa has rather limited forest and woodland cover amounting to approximately 13 per cent of the total area (UNEP, 2002). It is estimated that the change in forest cover in the region is 0.51 per cent per year.

While the region contains some of the world's oldest and richest protected areas such as Tsavo, Queen Elizabeth and Serengeti national parks, a large number of protected areas are under threat from land use change, urbanization and population pressure. Land use change has resulted in deforestation and loss of natural resources.

3. *Land tenure security*

Ensuring tenure security for customary land rights in this region is an essential element for sustainable development, given the preponderance of customary tenure.

The factors which are responsible for tenure insecurity are many and varied. Where land is vested in the state, customary land rights of people living on this land are susceptible to tenure insecurity if these rights are not adequately recognized as fully legitimate and respected in law and practice. Pluralism can be a source of insecurity if not well regulated or where certain forms of tenure are allowed to override others. The plurality of legal norms and multiple tenure systems has resulted in insecure tenure, especially for land held under indigenous/customary systems. The role of the state as regulator and manager of land issues is a key factor in land tenure security. Inappropriate policies for abolition and replacement of customary land rights are also a major source of tenure inse-

curity. In addition, communities whose land has mineral and oil deposits, who border reserve land and those on land earmarked for infrastructure and urban development, also suffer tenure insecurity. Growing populations, declining soil fertility, increasing environmental degradation, climate change, the HIV/AIDS pandemic and new opportunities for agricultural commercialization have all heightened demands and pressure on land resources and caused land conflicts and tenure insecurity. Land and property rights have become the subject of fierce competition and conflict leading to increased tenure insecurity for those who are weak and disadvantaged.

4. *State sovereignty over land*

The role of the state in property relations is pivotal in all the countries in the region. In some countries the state holds all land and grants leases or rights of occupancy and use. States hold land in protected areas in all the countries. Where the land is vested in the state (sometimes in the President), the state has been known to abuse the trusteeship powers. Public land and resources have in some countries have been converted to private property. In many countries, the power of eminent domain and the police powers of the state (which allow states to regulate land use in the public interest through land use planning, taxation, and enforcement of environmental and agriculture regulations) have not been exercised judiciously and in the public interest. The debate on the relationship of the state with land has been a critical issue in the countries in the region.

5. *Land and conflict*

In Eastern Africa land, in combination with inequitable resource access, demographic pressure and resource degradation, has been a key driver in violent conflict. Conflicts in the region are centred on access to and control over land and valuable ecological resources (including timber, water, productive pastures, minerals and oil). The delineation of land rights under both modern/statutory law and customary tenure can lead to conflict and assist in containing conflict. The process of alienation of productive areas and explora-

tion of natural resources can trigger, sustain or generate conflict. The inhibiting effects of inequitable access to land and natural resources are exacerbated by general land scarcity.

Conflict can be an outcome of resource scarcity as a result of population pressure, inequitable distribution of land, takeover of land by non-local populations, and lack of transparency in addressing land problems. Land scarcity in the absence of off-farm livelihood options is often a structural cause of conflicts in some countries in the region. Some land conflicts are related to global forces such as trade liberalization, structural adjustment programmes, commercialization, globalization and privatization of community lands, forests and water services.

Another form of land conflict is over the competitive use of land and resources, e.g. pastoralists have land use conflicts with sedentary communities practising agriculture (Somalia, Sudan and Tanzania). Armed conflicts are often both a cause and an effect of land conflicts. In post-conflict situations, the land and shelter needs of returnees (IDPs and refugees) must be carefully managed to avoid further conflicts and violence.

6. *Inter- and intra-generational equity issues*

Equity issues are at the core of land issues in Eastern Africa. These include issues of inequitable distribution of land and natural resources; discrimination on the basis of gender and age; overemphasis on some forms of land use (e.g. agriculture); and the neglect of the land rights of pastoralists and marginal communities (such as the Batwa in Uganda and Burundi, the Creolas in Mauritius and the Ogiek in Kenya). Pastoralist, hunter and gatherer communities (such as the Maasai, Hadzabe, the Batwa and the Ogiek) are actually dependent on specific geographical habitats for their livelihood. The alienation of their land through gazettelement of their habitats as forests or other protected areas and the excision and allocation of their land to private interests makes their tenure insecure.

Rapid urbanization in the region is causing the displacement of people native to the area in which urban areas are expanding. The

displacement is state sanctioned (e.g. through declaration of planning schemes), but it is also market driven.

7. *Women's land rights*

In most of the countries in the region, there are gross disparities in land ownership between men and women. This is because of the customary practices which vest male members with the power to deal with important assets such as land.

Gender discrimination in access to and control of land remains a serious impediment to development. One of the most serious obstacles to increasing the agricultural productivity and incomes of rural women is their insecurity in terms of land tenure. Traditional/customary systems that might have protected a woman's access to land during her lifetime are breaking down under population, economic and environmental pressures.

Policies and laws in the region give mixed attention to gender land rights. Some countries have domesticated the relevant international treaties guaranteeing women's land and property rights. Although some progress has been made in policy, legal and institutional reforms concerning marriage, inheritance and land/property rights law, enforcement of such reforms remains a key challenge in many countries in the region.

8. *HIV and AIDS pandemic*

One of the biggest threats to Africa's capacity to implement the necessary response measures to derive the most benefits from opportunities available in terms of land is the HIV/AIDS pandemic. More than 25 million Africans have so far succumbed to the pandemic and more than 12 million children have been orphaned. Women and girls are the most negatively affected by HIV/AIDS.

Although considerable progress has been achieved in controlling HIV/AIDS, the pandemic has had significant impacts on total economic productivity and specifically on land utilization and produc-

tion from land based resources, as it has affected the most productive age bracket.

To bring the nexus of land and HIV/AIDS into context, one has to understand the centrality of land to social and economic safety nets of households and communities. Most land policies do not address HIV/AIDS specifically; neither do they address the implications of HIV/AIDS for land rights, land use and security of tenure. There should also be a link between land and HIV/AIDS policies.

9. *The phenomenon of global warming and climate change*

Today, climate change is one of the biggest environmental challenges the world faces. It has potential catastrophic effects on a global scale. Recent global, regional and local events, including destructive cyclones and hurricanes, flooding and unpredictable rainfall patterns are signs that urgent action is required to address the causes of global warming. The unprecedented warming of Africa is already evident in the rapid reduction of the glacier cover on mountains over the last century. Glaciers on the Rwenzori Mountains in Uganda and on Mt Kenya in Kenya are expected to disappear completely within two decades.

The majority of the population in the region rely on biomass energy. An estimated 20 per cent of greenhouse gas emissions contributing to climate change globally are a result of deforestation. Poverty contributes significantly to deforestation as it does not lend itself to an environmentally friendly lifestyle. To the poor life is a struggle for daily sustenance, leaving no room to think about the environment. The link between poverty and climate change ought to be appreciated by policy makers.

10. *Biofuels, food security and environmental concerns*

Biofuels are being rigorously promoted globally as a solution to reducing greenhouse gas emissions. Once heralded as the alternative fuel source of the future, biofuels have recently been questioned, as a number of reports suggest that they cause more harm to the environment than originally thought. Recent reports (OXFAM Inter-

national, 2008) have warned of rising food prices and destruction of rainforest as a result of increased biofuel production. Moreover, this production has prompted rich firms to drive poor people off their land to grow fuel crops (this is already happening in Kenya and Tanzania). Various issues on biofuel production and use are currently being discussed in the popular media and scientific journals. These include the effect of moderating oil prices, the “food vs. fuel” debate, carbon emissions levels, sustainable biofuel production, deforestation and soil erosion, impact on water resources, human rights issues, poverty reduction potential, energy balance and efficiency, and centralized versus decentralized production models.

There are already investors in the region scouting for large tracts of land in order to grow crops for biofuels. Countries seem to be in a dilemma. They want and indeed need investment, but there is the issue of the negative social, economic and environmental effects. No country in the region has developed a policy on biofuel production. Policy decisions about biofuels involve difficult trade-offs: carbon benefits versus other environmental benefits; food security versus export development; and efficient large-scale production versus smaller-scale or mixed production systems that deliver more equitable rural development.

The region has great biofuel potential due to its vast arable land, unused/underutilized land and large workforce. The merits of growing biofuels are a source of increasingly acrimonious debate where vast tracts of open land in Ethiopia, Kenya, Tanzania and Uganda are attracting the attention of local and international firms hoping to cash in on the demand for biofuel. The biofuels may offer some genuine development opportunities in the region, but the potential economic, social, and environmental costs are severe, and policy/decision makers need to proceed with caution.

11. *Land for investment and the impact of foreign direct investment*

The NEPAD initiative is committed to economic growth, development and increased employment, reduction in poverty and inequality and regional integration. It is apparent that growth in the

short term can only come from the agriculture, natural resources and mining sectors, given the limited industrial and service sectors in the region. Many countries in the region are now scrambling to attract private investment into these sectors, and capital from the developed world will seek opportunities to supply the foreign direct investment (FDI). It is necessary to handle the implications of FDI drives for land policy carefully in order to protect the livelihoods of the poor and avoid generating political and ideological conflicts around land, and enable real partnerships between the private sector and Africa's peasant farmers.

Despite its importance, growth in FDI can lead to alienation of land from indigenous rights holders and concentration in private hands. This is already causing serious concerns in Tanzania where large tracts of land are being leased to investors (see Legal and Human Rights Centre, 2006).

National Land Policy Formulation and Implementation Processes

Although the countries in Eastern Africa took different paths to land tenure reforms after independence, they all found themselves being required to undertake land reforms from the late 1980s. The policy development processes in this region have varied, with processes ranging from those deemed to have been highly participatory and consultative (Kenya, Rwanda and Tanzania) to the more top-down processes. In some countries the development of land policy has followed after passing of the land legislation (Uganda).

The countries in the region are at different stages of formulating national land policies, land laws, and land related laws and institutions; the countries are also at different stages of implementing the policies and laws. National land policy (NLP) frameworks are now in place in Rwanda and Tanzania. Uganda is in the process of developing a comprehensive NLP (having enacted some land policy principles and statements in the 1995 Constitution and in the 1998 Land Act). Kenya started on the formal process of developing a NLP in 2004, and the final draft has been awaiting cabinet approval since September 2007. In Mauritius land issues are subsumed within the

National Development Strategy that was passed in 2003. The Island States except Madagascar (land policy adopted in 2005) have not embarked on formulating comprehensive national land policies although there are a number of reforms, such as the cadastre reform of the Seychelles. These countries are focusing mainly on environmental protection and biodiversity preservation. Countries that are suffering from political strife such as Somalia find it difficult to embark on land policy formulation. In all countries there have been efforts to ensure public participation in developing land policy reforms.

Implementation, however, has been problematic since, generally, no budgetary provisions were made for the implementation process at the time of formulating the NLP. In addition, previous laws and institutions were swept away in the new law in Uganda but no arrangements had been put in place to manage the transition. Other preparations for the passage of the law were either absent or inadequate: training, public information and communication, and community facilitation. Piloting and scaling-up land certification systems have been undertaken in countries such as Ethiopia and Rwanda. Nevertheless, all countries need a low-cost system for land administration at a scale that is sufficiently large to provide an option for the majority of the poor.

The need for a decentralized, transparent, efficient and effective delivery of land administration services that satisfies customer requirements and which over a long time would be self-sustaining is imperative. This has been adhered to in many countries which have undertaken reform although there is hesitation from central governments for full decentralization. Nevertheless, in all the countries in the region the land rights administration institutions face institutional, technical, financial and human capacity problems, especially at sub-national levels.

Lessons from the processes

Numerous lessons can be gleaned from the way the different countries have approached the land policy reform process and the level of achievement that has been realized. Sequencing is critical. Countries that have undertaken the passage of land laws without a land policy have found that it was necessary to put the policy in place first. Thus, proper sequencing is on the

following lines: national and stakeholders consultations, identification of salient problems and formulation of a NLP; formulation of land laws and rationalization of land-related legislation; appraisal of institutional and financial/budgetary options; rationalization of the institutional responsibilities for implementation of NLPs and laws; and dissemination of information to the public, training and capacity building.

It has been established that the process is long and costly and cannot be expected to be implemented in a short time. Moreover, because of the cost implications, implementation needs to be budgeted for. It is not enough to address just land policy and land laws; there is also need to dock into other policies, reforms and programmes, such as those related to natural resources, water, forestry, agriculture, local government reform, mining, wildlife, and urban and human settlements.

A key lesson has been that the emphasis on individual titling and registration simplifies a more complicated situation since it disenfranchises many secondary land right holders such as women, tenants, migrants and young persons. Moreover, the belief that many of the poor land owners want to use their land as collateral to get loans from financial institutions is proving to be false.

The role of development partners needs to be well integrated into the needs and priorities of the country. Besides, where implementation is hinged on the support of development partners, the programme is likely to stall. Public consultations and the involvement of non-state actors is important not just during the formulation process but should be maintained through the implementation process.

Many land policy reforms have concentrated on rural areas, although urbanization is taking place rapidly. Land issues in urban, peri-urban and rural areas all need to be taken on board. All countries need to develop an urban development and management policy which will address the wider urban development issues as well as issues of urban–rural interface and linkages.

Land dispute mechanisms put in place are quasi judicial and take a long time, exclude the poor and tend not to address community to community problems. There is need to give support to traditional dispute resolution

mechanisms. Gender equality is important for poverty alleviation, food security and economic development.

Best Practices from the Eastern Africa Region

Several best practices can be gleaned from the region. These can be considered under several thematic categories: sequencing and participation in the reform processes; land titling and registration; decentralization of land management and integrating of traditional/customary institutions; good governance in land administration (transparency and accountability, equity, community participation, land policy formulation processes); dispute resolution mechanisms; coexistence of agriculturalists and pastoralists; sustainable management of land resources and common property resources; urban agriculture and poverty alleviation; piloting the processes; gender sensitive land policies and laws; common property resources; and the role of donors/development partners.

Both Kenya and Tanzania have proceeded by forming a commission, holding public debates and formulating the land policy. Tanzania has gone a step further with formulation of laws and implementation. Conversely, in Uganda the law preceded policy, meaning that once the policy is developed, the law may have to be amended. Kenya, Rwanda, Tanzania and Uganda have demonstrated the importance of public participation throughout the reform process.

All countries in the region have some initiatives to title and register land as a way of addressing poverty, increasing security of tenure, resolving conflicts, improving governance and equity and increasing land transparency. Despite the realization that there are benefits to land registration, countries have not been able to mount a programme that could lead to the realization of such benefits on a sufficiently large scale to provide options for the majority poor. Ethiopia, however, offers a good practice where over a period of 2–3 years the country registered the majority of rural lands in a rapid process at a rather low cost. The Ethiopia case can be complemented by that of Madagascar where from 2005 the government has used local systems of land management to mount a land registration process in rural areas.

Peaceful coexistence between farmers and pastoralists has been difficult to realize, but the experience of two communities in the North Korfodan State of Sudan has shown that this is possible. Rwanda, Tanzania and Uganda have shown examples of piloting land tenure regularization which is community-based, in both rural and urban areas, and which uses modern low cost technology. In terms of sustainable resources management, Tanzania offers a good example of the use of a traditional community-based management approach, supported by science, which has been able to reverse a process that had turned a huge area in central-western Tanzania into a desert.

Eritrea, Ethiopia, Tanzania and Uganda offer good lessons in gender sensitive laws and practices, ranging from constitutional reforms to land administration institutions where, throughout, the discrimination of women is guarded against. Problems of gender equality in land tenure were, however, experienced in Kenya. While there is heavy dependence on development partners for policy reforms, good practices come from the United States Agency for International Development (USAID) involvement in the Ethiopian and Southern Sudan land tenure reforms.

Implementation bottlenecks, challenges and gaps

Most of the bottlenecks and challenges lie in the implementation of NLPs, tenure reforms and land laws. Those identified from Eastern Africa include: lack of strategic planning for implementation; resources constraints; poor involvement of stakeholders; and poor integration of traditional and customary institutions. Decentralization is a major challenge given the unwillingness to devolve power and the limited capacity at sub-national levels.

Passing gender aware policies and laws is one thing but implementing the reforms is another. Bottlenecks to gender equality emanate from deep-rooted traditions and religious beliefs. There is also inadequate locally grounded research into land problems. Problems have been experienced in realizing the crucial role of the public in general and civil society in particular. Many countries have land administration regimes that are rooted in received processes and standards and it is still hard to convince practitioners to change in terms of, for example, lowering standards. Both the private sector and professional bodies have not been fully utilized in implementing reforms; they need capacity building as well.

Political instability in the region is making it difficult for land policy reforms to be implemented. Instability is being experienced in parts of Burundi, the Comoros, Eritrea, Ethiopia, Kenya, Somalia, Sudan and Uganda. Donors play an important role but there is need to ensure that they propel local agendas and their support is coordinated with other national and donor programmes. The biggest problem impinging on the implementation of land reform programmes, however, is lack of political will. Where political will has been shown, as in the case of Ethiopia, commendable achievements have been realized. A wealth of practical experience is now emerging in Africa and sharing lessons between countries provides ideas and experience on which to build. This is not the practice. The assessment has found no evidence of regional cooperation on land policy.

In carrying out this assessment of the region, a number of gaps have been identified. These include: limited knowledge and integration of traditional and Islamic systems of land management; lack of a NLP framework in some countries (such as the Comoros and Djibouti); lack of an urban land use and development framework addressing among other issues urban land tenure, peri-urban problems, slums and urban agriculture. The assessment also noted that the region as a whole lacks a comprehensive and equitable involuntary resettlement framework.

The environmental impacts (and what should be done about them) as a result of resource exploitation are in many cases unclear as are the advantages of commercial farming for biofuels. The current and future impact of global warming, especially on Island States and on food availability, needs to be studied. There is no clear picture on how to deal with pastoralists and hunter and gatherer communities. Finally, the extent to which foreigners should be allowed to own land remains a problem.

I. Introduction

1.1 This report is a Regional Assessment on Land Policy Formulation and Implementation in the Eastern Africa Region which comprises the following 14 countries: Burundi, the Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tanzania and Uganda. The assessment is based on a desk study and review of available literature on the 14 countries and on the discussions from the Regional Consultative Workshop held in Kigali, Rwanda, 16–18 January 2008. Comments and recommendations from the regional workshop have been used to revise the Background Paper on the Assessment of Key Land Issues in Eastern Africa, prepared earlier by the three consultants.

1.2 The continental Framework and Guidelines for Land Policy and Land Reforms in Africa is a vital tool aimed at assisting national and regional processes for land policy formulation and implementation, with a view to strengthening land rights, enhancing productivity and securing livelihoods. The process of developing the framework and guidelines is being done in close collaboration with regional economic communities, African Union (AU) Member States and other stakeholders, in order to ascertain that the process is African led and the end product African-owned. The framework and guidelines will be useful in supporting regional and national land policy (NLP) formulation and implementation processes through affording opportunities for peer learning and providing guidance on benchmarks for monitoring land policy reform and implementation processes and outcomes on the continent.

1.3 The regional assessment was commissioned by the African Union Commission (AUC), the United Nations (UN) Economic Commission for Africa (ECA) and the African Development Bank (AfDB), under the overall leadership of AUC. The terms of reference for this assignment (Appendix 3) state briefly the rationale and objectives as being:

- To raise land policy issues that highlight regional specificities, existing initiatives and lessons that will enrich the proposed Framework and Guidelines for Land Policy and Land Reforms in Africa.

- To identify challenges, knowledge, institutional and resource gaps as well as ongoing initiatives. This will assist in mapping out a strategy for capacity building and lesson-sharing activities vital to the implementation of the framework in the medium and long-term.

1.4 The report is organized as follows. The next chapter provides the contextualization of the Eastern Africa region in broad terms and highlights regional specificities, similarities and variations that characterize the region. Chapter 3 reviews key land issues, land related issues and challenges in the region. Chapter 4 examines land in the context of national development frameworks and agendas. Chapter 5 discusses the formulation and implementation processes of NLPs and land tenure reforms. Chapter 6 summarizes lessons from the formulation and implementation processes and distils out best practices. Chapter 7 examines implementation bottlenecks, challenges and gaps in the processes. Chapter 8 concludes the report by making suggestions for revision of the skeleton framework and guidelines with a view to ensuring that regional specificities are included and to enrich the proposed Framework and Guidelines for Land Policy and Land Reforms in Africa.

2. Contextualization of the Eastern Africa Region

2.1. Land is a primary asset for survival and development in Eastern Africa. It supports the livelihoods of most rural people. The rural population in the countries in the region is high; more than 80 per cent of the people live in rural areas in Burundi, Eritrea, Ethiopia, Rwanda and Uganda, and more than 60 per cent live in rural areas in Kenya, Somalia and Tanzania. However, in Djibouti only 16.3 per cent of the population lives in rural areas (FAO, 2005a). Land also provides diverse functions in support of ecosystem processes. In the region, Uganda has the highest proportion of potentially arable land at 70.8 per cent, while Somalia is at 3.8 per cent and Djibouti at 0 per cent (FAO/AGL/TERRASTAT, 2003). Potential arable land is negligible in Djibouti because of the extremely arid conditions in the country and more than one-third of the land area is covered by permanent pasture as the dominant land use. In most of the countries in the region, with the exception of Island States, pastoralism is a major land use¹ owing to the limited amount of arable land. The population densities in the countries in the region are high with the Comoros, Mauritius and Rwanda having densities of 315, 581 and 340 people per square kilometre respectively. Land scarcity is a major issue in Rwanda and Seychelles.

2.2. The countries have different laws governing land as a consequence of their colonial history, diversity of cultural and religious norms, and endowment with natural resources. Most of the colonial states introduced legislation to regulate the use of and access to land, forests, minerals, pastures, wildlife and water in Africa. These regulations ranged from expropriation and eviction of local people through various forms of nationalization and exclusion, systems of permits and concessions, to the delegation of control to local chiefs who represented the “natives” (Okoth-Ogendo, 1989). In some countries, such as Kenya, national registration of land rights as private property was introduced. These colonial regimes established that native land did not have status as private property. A concept of “unowned land” was introduced to transfer commons and fallow lands to the colonial state. Most colonial regimes established that in family and personal matters

1 In contrast, 43 per cent of the land in Seychelles is devoted to environmental protection.

the customary laws of the indigenous populations applied. Thus land transfers between Africans, marriage and inheritance were governed by customary law. In cases where natives were considered to have evolved out of their customs, statutory laws, sometimes imported from other colonies such as India, were applied. Customary laws were never clearly defined, were considered inferior to statutory laws and were never considered dynamic. In areas where Islamic traditions were strong, these were either wished away or were lumped together with customary laws. There are also new forms of tenure which are evolving, e.g. as a result of increasing land values and growing land markets, which cannot be considered customary. Most of the post-independence land policies have had to deal with this colonial legacy as elaborated in subsequent sections of this report.

2.3. Eastern African countries also have a long history of regional cooperation. The countries belong to various sub-regional and regional institutions and frameworks. While most of these institutions and frameworks are focused on political and economic issues, others are concerned with the sharing and management of natural resources. Among the cooperation arrangements that countries in the region subscribe to are the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA), the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC). Not all countries are members of all the arrangements. For instance, Tanzania is a member both SADC and EAC, but is not a COMESA member.

2.4. Given the centrality of agriculture and natural resources to both the livelihood and economic well-being of people in the region, land in turn has a central role in the operationalization of the cooperative arrangements. The way land is treated in individual countries forms the basis of cooperation in proposals for customs unions as is the case with EAC. Similarly, Article 13 of the IGAD constitutive instrument outlining areas of cooperation, proposes to strengthen land resource monitoring systems; harmonize existing national plans of action for marginal lands and dry lands management; and control of land degradation in line with the resolution of Urgent Action for Africa under the UN Convention to Combat Desertification (UNCCD). In this regard Member States shall prepare national action programmes to implement UNCCD; support the elaboration of sub-regional action programmes for the implementation of UNCCD in line with the Implementation Annex for Africa under the Convention. The New Partnership for

Africa's Development (NEPAD) Environment Action Plan seeks to combat land degradation, drought and desertification.

2.5 The countries in the region are implementing the Comprehensive Africa Agriculture Development Programme (CAADP) which is an initiative and pillar of NEPAD. The major aim of CAADP is to assist African countries accelerate economic growth through agriculture-led development, which eliminates hunger, reduces poverty and food insecurity, and enables expansion of exports. CAADP sets three important targets for each country: the objective of achieving and sustaining a 6 per cent annual sector growth target, the allocation of 10 per cent of national budgets to the agriculture sector; and the exploitation of regional complementarities and cooperation to boost growth.

2.6 The African Convention on the Conservation of Nature and Natural Resources does not directly address the issue of climate change, but its provisions on land and soil,² water³ and vegetation cover⁴ can be used to deal with some of the causes of climate change. With regard to land and soil, the parties are required to take effective measures to prevent land degradation and to develop long-term integrated strategies for the conservation and sustainable management of land resources such as soil, vegetation and related hydrological processes; and adopt measures for the conservation and improvement of the soil, to combat its degradation and misuse as well as the deterioration of its physical, chemical and biological or economic properties. The proposed measures for achieving these ends are:

- The establishment of land-use plans based on scientific investigations as well as local knowledge and experience.
- Implementing agricultural practices and agrarian reforms that
 - improve soil conservation and introduce sustainable farming and forestry practices, which ensure long-term productivity of the land.

2 Article IV of the African Union, African Convention on the Conservation of Nature and Natural Resources, EX/CL/50(III) (2003).

3 Article VII of the African Union, African Convention on the Conservation of Nature and Natural Resources, EX/CL/50(III) (2003).

4 Article VIII of the African Union, African Convention on the Conservation of Nature and Natural Resources, EX/CL/50(III) (2003).

- control erosion caused by land misuse and mismanagement which may lead to long-term loss of surface soils and vegetation cover.
- control pollution caused by agricultural activities, including aquaculture and animal husbandry.
- Ensuring that non-agricultural forms of land do not result in erosion, pollution or any other form of land degradation.
- Planning and implementing mitigation and rehabilitation measures in areas affected by land degradation.

2.7 Many countries in the region have put in place environmental protection policies and laws, agricultural policies and plans, and land-use policies and plans. A major challenge in these is the question of pastoralism and transhumance practices.

2.8 Pastoralism is a key land resource and use in the region. In Kenya, 60 per cent of the national livestock herd is owned and managed by pastoralists and livestock accounts for at least 42 per cent of agricultural and 10 per cent of the total gross domestic product (GDP). In Ethiopia, livestock makes up 40 per cent of the agricultural domestic product and 20 per cent of the total GDP. In Somalia, 98 per cent of the country comprises rangelands—here options for crop production are limited. Pastoral land rights and resources are significant issues in the region. A number of pastoralist groups remain highly mobile across the region, spreading from the north of East Africa into Sudan, Somalia and Ethiopia. This calls for formulation of regional and national dry land/rangelands policies.

2.9 The region has a substantial desert land mass making UNCCD relevant to land management and rights. The Convention recognizes that national governments play a critical role in combating desertification and mitigating the effects of drought and calls for improvement of the effectiveness and coordination of international cooperation to facilitate the implementation of national plans and priorities. Under Article 4(2) of the Convention, parties undertake to promote cooperation among affected parties in the fields of environmental protection and the conservation of land and water resources, as they relate to desertification and drought. Furthermore, they undertake to strengthen sub-regional, regional and international cooperation in this regard. The Convention requires that parties prepare national action programmes to achieve its objective, and requires that such

programmes be closely inter-linked with other efforts to formulate national policies for sustainable development (Article 9(1)). Such programmes would include the resettlement of communities where activities which threaten to cause desertification are carried out and regulation of access to and control of other natural resources, especially water and forests. This has a direct impact on land and other natural resource rights as it involves a redefinition of these rights through the national processes of legislation and implementation of other national policies aimed at the fulfilment of the obligations assumed under the Convention.

2.10 In compliance with the provision of the Convention several countries in the region (Table 1) have formulated national action programmes which specify the respective roles of government, local communities and land users and the resources available and needed.

Table 1: National action programmes

Country	Submission date
Djibouti	2000
Eritrea	2002
Ethiopia	2000
Kenya	2002
Madagascar	2001
Sudan	2002
Tanzania	2000
Uganda	2000

Source: UNCCD (2005).

2.11 Global warming is affecting the region, resulting in droughts, floods, unpredictable weather and rising sea levels. Droughts and floods are common problems affecting different parts of the region with devastating results on people and the environment. Millions of people face famine with relentless regularity, increasing their vulnerability to disease and other hardships. For example, at the beginning of 2003 about 25 million people in the region faced famine and by April 2003, this figure had jumped to 40 million (Harsch, 2003). In the Horn of Africa (Eritrea, Ethiopia and Sudan), famine is mainly a result of drought. Flooding has taken a large toll in Ethiopia, Somalia and Uganda. Global warming is also a threat to mountain

glaciers, many of which are melting at unprecedented rates, affecting rainfall and water bodies. For example, the ice cap on Mt Kenya has shrunk by 40 per cent since 1963, and it is predicted that the ice cap on Mt Kilimanjaro will have disappeared altogether by 2015. The rising sea level is affecting the Island States and coastal areas.

2.12 The region is characterized by political instability. The Greater Horn of Africa has been the site of conflict for many years. This conflict has attracted the attention of the United Nations Security Council in Resolutions 1291 of 24 February 2000 and 1304 of 16 June 2000. The longest war in Africa has been waged in Sudan. Somalia has not had a stable government since the early 1990s. The Comoros has suffered political instability for decades, culminating into the recent action by AU to forcibly remove the self-proclaimed ruler of Anjouan. Peaceful and regular political succession is becoming difficult, as recent events in Kenya demonstrated. The countries in the Great Lakes Region (Burundi, Rwanda and Uganda) have also experienced armed conflicts, political instability and genocide (in the case of Rwanda). The political instability and armed conflicts in the region have adversely affected land and natural resources.

2.13 The region hosts one of the largest refugee populations in the world owing to internecine strife and crises of citizenship and constitutionalism. The presence of refugees puts enormous pressure on already limited resources in the receiving countries. Refugees affect the environment as groups of people are concentrated in one area increasing demand for land, water and firewood. This has been experienced in north-western Tanzania and northern Kenya.

2.14 The region, due mainly to armed conflicts, has a large number of internally displaced persons (IDPs). The countries include Eritrea, Ethiopia, Somalia, Sudan (close to 4.4 million IDPs) and Uganda (was about 1.7 million IDPs now reduced to about 1.2 million). Restitution, compensation and resettlement are major land policy issues in many countries, particularly in Burundi, Eritrea, Ethiopia, Rwanda, Somalia, Sudan and Uganda.

2.15 All countries in the region are experiencing high levels of urbanization mainly from rural to urban migration but increasingly from natural growth as well. Most of these countries have a primate city size distribution meaning that there is one very large urban area compared to the rest. It is

in such an urban area that urban land problems are most acute. Peri-urban areas are areas of contest, where public authorities and market forces take over land from natives for urban development. This ruins the land based livelihood strategies of the population and leads to their displacement.

The level of urbanization and the rate of urbanization in the countries in the region are shown in Table 2.

Table 2: Levels of urbanization in Eastern Africa

Country	Population urban (%)	Rate of urbanization per year
Burundi	10	6.8
The Comoros*	33	4.1
Djibouti*	85	
Eritrea	20	5.2
Ethiopia	16	4
Kenya	22	6
Madagascar	27	3.5
Mauritius	42.0	1.1
Rwanda	21	6.5
Seychelles	53.4	
Somalia	36	4.3
Sudan	43	4.2
Tanzania	25	3.5
Uganda	13	4.8

All data are for 2007.

Source: Except for those marked (*) the source is UNFPA (2007).

Although the levels of urbanization vary from a low of 13 per cent in Uganda to a high of 85 per cent in Djibouti (the highest in Africa), all of these countries are facing high rates of urbanization creating serious land problems. The urban population is possibly underestimated since many townships and trade centres are usually excluded from urban data. Urban poverty is increasing faster than rural poverty. The State of the World Population 2007 Report (UNFPA 2007) states that more than half of the urban populations in a number of African countries lived below the poverty line. Like elsewhere

in Africa, urbanization in Eastern Africa has become virtually synonymous with slum growth. Rapid urbanization is depriving the rural areas of labour and countries seem to be unprepared to deal with rural depopulation and rapid urban population growth.

2.15 Throughout the region, there is renewed interest by foreigners in the exploitation of natural resources. There are demands for large areas of land for commercial agriculture, including growing crops for biofuels. There is pressure to exploit natural forests, to create hunting blocks, and to reserve land for oil, gas and mineral exploitation and extraction. This results in the displacement of many of the rural populations and to intra- and international conflicts.

2.16 Countries in the region have transboundary resources and porous borders. The River Nile basin for example includes Burundi, Democratic Republic of Congo, Egypt, Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda. Lake Victoria, the largest lake in Africa, is shared by three countries and those in the Nile Basin. Pastoralists can move their animals from one country to the other. Activities in one country can affect the resources in another country. This points to the need to harmonize policies and programmes to ensure sustainability. The Nile Basin Initiative and the Lake Victoria Management Programme stand out as role models in this endeavour.

2.17 Development partners are a key player in the region. A substantial proportion of national budgets (46 per cent in Tanzania) comes from donors. The initiative to undertake land policy and land tenure reforms came mainly from and is supported by donors. This brings to the fore issues of reform ownership, addressing local critical issues, and the long-term sustainability of reform undertakings.

3. Key Land Issues and Challenges in the Eastern Africa Region

The key issues and challenges identified in the region are: legal pluralism, land and natural resources degradation, land tenure security, state sovereignty over land, conflicts, inter- and intra-generation equity issues, women's land rights, the impact of the HIV and AIDS pandemic, global warming and climate change, biofuels, food security and environmental concerns, land for investment and the impact of foreign direct investment (FDI), and urbanization and the urban land question.

A. Legal pluralism

3.1. Most of the countries in the region have juristic or diffuse plural legal systems governing land.⁵ Juristic legal pluralism is common in colonial and post-colonial Africa where state law is the ultimate authority and dominates other plural legal orders. It arises in situations where the official legal system recognizes several other legal orders and sets out to determine which norms of these legal orders will apply. Thus, the official legal system provides an operating environment for the plural legal orders. For example, the constitutions of countries in the region provide for the operation of religious and customary laws thus availing juristic legal pluralism. The region is characterized by the coexistence of multiple sets of rules and laws (often referred to as “legal pluralism”). One finds in a country different legal systems, institutions and enforcement mechanisms that control how different people access, control and transfer land for agricultural and other livelihood functions.

3.2. Consequently, there are coexisting multiple sources of property rights broadly categorized as customary and modern tenure where statutory legal structure and customary practices interface. The modern system was largely inherited from the colonial era and used to weaken customary systems by incorporating formal systems that do not recognize the multiple values of land and the multiplicity of interests. It is usually based on written laws, acts of centralized or decentralized government agencies and judicial

⁵ A clear exception is Mauritius where 90 per cent of the land is privately held.

decisions. Customary tenure practices are flexible and based on local practices and norms and are managed by local/traditional rulers or councils of elders. The dynamic nature of customary tenure systems is a challenge to processes of codification of norms and is normally availed through oral narratives.

3.3. The pluralism of authority over land can allow people to choose the legal framework that provides them with the best claim to land, a process known as “forum shopping”. It may increase uncertainty and confusion when people pursue different ways to legitimize claims to the same parcel of land. In addition, the presence of diverse tenure concepts or laws may create ambiguity. The land policy should be cognizant of the potential conflicts that are likely to arise due to legal pluralism. Different sets of rules are applied under different institutions in the same area. Parallel institutions could lead to competition for the same jurisdiction which could fuel conflict.

3.4. Customary tenure practices are prevalent in most countries in Eastern Africa. The mechanisms these practices provide for dispute resolution at local levels are more accessible than the modern ones. Not surprisingly, they are perceived as pro-poor. There is a resurgence of interest in traditional/local land administration institutions in the region as decentralization of land management becomes institutionalized. The disadvantages of customary tenure practices, such as their discrimination against women, need to be realized and guarded against. The Comoros, however, has a long tradition of women owning/inheriting land. In Rwanda, 90 per cent of the land in the country is under customary tenure governed by customary law. This is unfavourable to women and promotes land fragmentation through inheritance practices. However, the land policy and new land law indicate that customary tenure will be abolished in Rwanda. Even if the intention is to replace customary tenure with low cost registration of land rights, people will continue to access land through customary processes of inheritance and exchange.

3.5. Similarly, in Kenya the process of land tenure reform perpetuated a dual system of economic relationships consisting of an export enclave controlled by a small number of European settlers and a subsistence periphery operated by a large number of African peasantry. The duality was manifest in systems of land tenure based on principles of English property law and

on a largely neglected regime of customary property law;⁶ a structure of land distribution characterized by large holdings of high potential land contrasting with highly degraded and fragmented small holdings; an autonomous and producer controlled legal and administrative structure for the management of the European sector, as opposed to a coercive control structure for the African areas; and a policy environment designed to facilitate the development of the European sector of the economy by under-developing its African counterpart (Njonjo Report 2003).

3.6 In some countries of the region (Somalia, Somaliland and Puntland), land and property relations are governed by three different sets of legal regimes: Western law, customary law and *Sharia*/Islamic law. These legal regimes have been a source of confusion when operating alongside other types of tenures. Forum shopping has taken place depending on the interests of the powerful personalities with interests in land.

3.7 Some countries in the region have a recent history of slavery and human trafficking. This has an impact on how to define the land rights between the parties, particularly the (former) slaves. Examples of such a problem can be found in Somalia and in Sudan in relation to Bantu Somalis, and in Mauritius in relation to Creoles.

3.8 After independence most countries in the region formulated land policies and laws, and instituted tenure reforms to deal with this colonial/historical legacy. Post-independence Kenya introduced a unified system of property rights based on the imported European model through programmes of land registration and titling which remains incomplete and problematic. In Tanzania, tenure insecurity was exacerbated by the *ujamaa* collective “villagization” process that reorganized rural landholdings and settlements in large parts of the country and sought to extinguish the authority of customary authorities and institutions. There is a general trend to give a place to customary rights or other informal classes of landholding in state law. This has arisen with recognition that 20th century efforts to subordinate or convert customary tenure have broadly failed and many of the tenets of European regimes are inappropriate to customary tenure in Africa

6 At independence, there were three substantive regimes in property law and five registration systems, namely Registration of Documents Act (Cap. 285), the Registration of Titles Act (Cap 281), the Government Lands Act (Cap. 280), the Land Titles Act (Cap.282) and the Registered Land Act (Cap. 300).

(due to multiple values of land and the multiplicity of rights and interests in one piece of land). There is also growing recognition of plural/group/com-munal rights—that families, clans and groups can legally hold land in com-mon. This has laid to rest the debate as to how far informal or customary rights can be entered into statutory law and property regimes which at once are highly individualized in their approach and have traditionally denoted the owner as a single person.⁷ These innovations are evident in Tanzania (with a village title and a family title enshrined in the land law). In sum-mary, different countries in the region have adopted pluralistic approaches providing, for example, for full legal customary land rights or incorporat-ing customary institutions into statutory legal procedures (such as dispute resolution).

3.10 The Ugandan land law makes provision for two or more persons, groups, associations, clans and communities, as “legal persons” or “entities” to hold and register land. Whilst certification remains deeply rooted within national strategies for improving land security throughout the region, it is no longer necessary for the purpose of individualization. Previously record-ing, registration, and the issue of titles were inseparable from the individu-alization of the ownership of that land.

3.11 There is also a general recognition in the region that indigenous tenure systems need support and a legislative framework for their evolu-tion. The most recent attempt is the 2007 Southern Sudan Draft Land Bill.

3.12 Policy issues which need serious consideration include:

- Tenure pluralism needs to be recognized not only as a reality but also as a resource—not as an obstacle to changing the livelihoods of the poor. Diversity in tenure options increases opportunities for all sections of demand to meet their needs.
- How to integrate the customary/indigenous systems, structures and institutions into the statutory ones, particularly bearing in mind that customary tenures themselves are variable even in the same country. Moreover, the choice need not be either customary or statutory tenures. Hybrid tenure forms are possible. An “inte-gration” approach would bridge the gap between the two legal or-

7 Alden Wily (2003) argues that the damage this has done to domestic property relations on the conti-nent has been immense, quite aside from the constraint this has placed upon group and community tenure.

ders by building on customary institutions to establish “highland” tenure in line with constitutional provisions on democracy, human rights and gender equality.

- Emphasis should be on the need for legislation to build on local practice. Ongoing debates on the formalization of customary land rights (which tend to be centred on individual land registration programmes) must avoid the trap of appealing but simplistic “one-size-fits all” solutions. Where land and resource access rights are multiple and overlapping, as is common in most of the countries in the region, registering individual land rights would raise important technical and political challenges and would entail that unregistered rights holders lose access to land and vital natural resources.
- Policy should recognize that legal pluralism is not necessarily a problem in so far as it allows land rights and resource rights to adapt to changes in economic and power relations.
- The plurality of legal systems entails the coexistence of different norms embodying contradictory principles. The plurality of norms is matched by a plurality of institutions. As a result numerous institutions may claim legitimacy to exercise land management responsibilities. These institutions have variable power and legitimacy. They are often in complex relationships of alliance and competition for arbitration and decisions over land and natural resources. They rely on different norms and are most often neither in defined relationships with each other nor in a hierarchical relationship. In some places, multiple institutions find ways to cooperate and coordinate, creating hybrid, new regulation frameworks. One stake for land policy is to favour the emergence and consolidation of land institutions that bring together legality and legitimacy and are accountable.

B. Land and Natural Resources Degradation

3.13 Land and natural resources degradation is a serious problem in the region. The total area affected by severe to very severe degradation is about 14 per cent (FAOSTAT, 2005). Rwanda is particularly affected with 71 per cent of the total area displaying very severe degradation problems (FAOSTAT, 2005). In Eritrea, Uganda, Kenya and Ethiopia, severe to very

severe degradation constitutes about 63, 53, 30 and 26 per cent respectively of total land area (FAOSTAT, 2005). In Djibouti, wind erosion is the principal form of erosion but is mainly viewed as “natural” due to the absence of agricultural land (FAO/AGL/TERRASTAT, 2003). In Tanzania, much of the central part of the country is affected by serious erosion although programmes to reverse this trend have positive impacts, e.g. in the Shinyanga area. Madagascar is also known for its high degree of environmental degradation. Almost 80 per cent of the country’s original vegetation cover has disappeared or has been severely degraded, mainly because of slash-and-burn agriculture.

3.14 The causes of land degradation include: over-cultivation, overgrazing and deforestation; soil degradation; poverty; population dynamics; insecure tenure; weak institutional support; political instability; and physical land attributes such as topography, soil and rainfall conditions. Topography is an important consideration, as many countries are mountainous. Ethiopia and Rwanda encounter the highest potential erosion risk due to steep topography. The areas with the most severe land degradation are also those with the highest population density such as the central and northern highlands of Eritrea and Rwanda.

3.15 Eastern Africa is endowed with diverse land based natural resources, which contribute directly or indirectly to the socio-economic well-being of the people. These resources include: wildlife, forests, water, minerals, marine, and the land itself. Other resources include biodiversity, cultural heritage, palaeontology, archaeology, and indigenous knowledge. Kenya has at least 8,000 plant species.⁸ Over 16 per cent of the total land area in Uganda is covered by fresh water bodies; 21 per cent is covered by natural forests and 10 per cent is gazetted as wildlife protected areas (see Anywar, 1998). Within Africa, Eastern Africa has the highest number of endemic species of mammals, birds, reptiles and amphibians (Toulmin and Quan, 2000; Alden Wily and Mbaya, 2001).⁹ Western Indian Ocean countries are some of the hotspots of biodiversity. Both Sudan and Uganda are endowed with extensive wetlands, with 13 per cent of the land in Uganda classified as swamps.

3.16 Eastern Africa has rather limited forest and woodland cover amounting to approximately 13 per cent of the total land area (UNEP, 2002).

⁸ Report of the World Conservation and Monitoring Centre, 1992 at 66.

⁹ *Infra* note 19.

Tanzania is the most forested country with about 43.9 per cent (33.5 million ha) of its land classified as forests and woodlands, followed by Kenya with about 30 per cent of its land area under forest. Uganda has 21 per cent forest cover and Djibouti has the least forest cover with about 6,000 ha or only 0.3 per cent of the land area under forests (FAO, 2005a). It is estimated that the change in forest cover in Eastern Africa is 0.51 per cent per year. At the current deforestation rates, and if sustainable forest management practices are not promptly adopted, most forests and woodlands may disappear by 2020¹⁰ (FAO, 2003). In the Western Indian Ocean countries, much of the natural forest cover was removed during colonization to give way to plantations or for export. The forest cover in Eastern African countries is indicated in Table 3.

Table 3: Forest cover TF

Country	Total forest area ('000 ha)	Per cent land area	Annual change '000 ha (1990–2000)	Annual rate of change, per cent (1990–2000)
The Comoros	8	4.3	Not available	-4.3
Djibouti	6	0.3	Not available	Not available
Eritrea	1 585	13.5	-5	-0.3
Ethiopia	4 593	4.2	-40	-0.8
Kenya	17 096	30	-93	-0.5
Madagascar	11 727	20.2	-117	-0.9
Mauritius	16	7.9	Not available	-0.6
Rwanda	307	12.4	-15	-3.9
Seychelles	30	66.7	Not available	Not available
Somalia	7 515	12.0	-77	-1.0
Sudan	61 627	25.9	-959	-1.4
Tanzania	38 811	43.9	Not available	Not available
Uganda	4 190	21.0	-91	-0.2

Source: FAO (2005b), adapted from UNEP (2006).

3.17 Nature based tourism is a major resource earner for countries in the region including in some of the Island States. According to the World Travel and Tourism Council, tourism in the Seychelles was expected to account for 60.2 per cent of GDP and 76.7 per cent of total employment in 2005. In

¹⁰ Most of the degradation is due to population pressure, poverty and poor agricultural practices.

Mauritius this sector was expected to account for 31.6 per cent of GDP and 33.9 per cent of total employment in 2005. Tourism in the Comoros and in Madagascar is less developed, but both countries have a great development potential. Indeed tourism is the primary foreign exchange earner in Madagascar. Similarly in Kenya, wildlife based tourism accounts for 25 per cent of GDP and more than 10 per cent of total formal sector employment. Land based pollution constitutes a major threat to nature based tourism. The introduction of solid wastes and other pollutants into water and land intentionally or accidentally causes drastic modifications to habitats thereby negatively affecting biological diversity. This is a major problem for Western Indian Ocean Island States.

3.18 While Eastern Africa contains some of the world's oldest and richest protected areas such as the Tsavo, Queen Elizabeth and Serengeti national parks, a large number of protected areas are under threat from land use change, urbanization and population increase. The intersection between land management, land tenure and environmental protection has become a higher priority as the implications of land tenure, land use control and the distribution of protected areas became more widely apparent. Increasing competition between different land uses due to population growth, commercialization and inadequate or ineffective regulatory policies is generating intensified conflict over land use in many areas. In the Eastern African region, land use change has resulted in deforestation and loss of natural resources as land previously available as habitat has been converted to other land uses.

3.19 The demographic changes, especially the changing age structure of the population, increasing urbanization and overall population growth have fuelled environmental change and natural resource degradation as land is opened up for agricultural, settlement and infrastructural development. Another cause of land degradation is the proliferation of extractive activities such as logging and mining (UNEP, 2006).

3.20 Shared ecosystems in the region such as lakes, river basins and forest ecosystems have implications for land rights. For instance, the management of the Mara–Serengeti ecosystem raises the need for land use plans that cover both Kenya and Tanzania. Similarly, the Virunga Volcanoes comprising Parc National des Virunga in the Democratic Republic of Congo; Parc National des Volcans in Rwanda and Mgahinga Gorilla National Park in

Uganda (which is the home of about half of the mountain gorillas in Africa) necessitates cooperative arrangements for land management. Activities in Kenya are said to contribute to the drying up of Lake Jipe in Tanzania. The United Nations Development Programme–Global Environment Facility–Food and Agriculture Organization of the United Nations (UNDP–GEF–FAO) conservation project initiative entitled: “Reducing biodiversity loss at cross border sites in East Africa” and covering four areas of cross-border closed forest ecosystems (Karamoja–Turkana; Rakai–Bukoba; Monduli–Kajiado; and Same–Taita Taveta), is an example of the cross-border cooperation that is required.

3.21 Increasing demand for food, fuel and wood as the population surges will put unprecedented and unsustainable demand on the region’s remaining forests. This massive potential leap in deforestation could contribute to global warming. More deforestation means more conflict, more carbon emissions, more climate change, more poverty and less prosperity for all. Unless agricultural productivity rises sharply, new land (read forests) will have to be cultivated to meet food and biofuel demand. The implications for policy are severe.

C. Land tenure security

3.22 Ensuring tenure security for customary land rights in this region is an essential element for sustainable development, given the preponderance of customary tenure. Secure access to land and natural resources can facilitate investment by the poor smallholders, thereby enhancing self-employment, improving food security and protecting the sources of livelihoods for the majority of the region’s population. As far as poverty reduction and economic development are concerned, land access and security of tenure are more important than ownership. Where land is vested in the state, customary land rights of people living on this land need to be adequately recognized as fully legitimate and respected in law and practice. Tenure security for women also remains a challenge for policy makers in Africa. Simpson (1984) argues that proper development depends on security of tenure rather than on ownership which can be empty of the right to use land (as is the case for tenanted *mailo* land in Uganda) and even of the power to control that use.

3.23 Pluralism, if not well regulated or where certain forms of tenure are allowed to override others, can be a source of insecurity. The plurality of legal norms and the dual system of tenure have resulted in insecure tenure, especially for land held under indigenous systems. The lack of a reliable land registration system in the Comoros and Rwanda has been cited as a cause of tenure insecurity. In Ethiopia, the policy of land redistribution promotes insecurity of tenure because it allows among other things periodic redistribution; is inefficient because it constrains land transactions; has inhibited the emergence of a dynamic land market; and promotes fragmentation of land and growing pressure on land resources because it discourages rural people from leaving their farms for other employment opportunities. It also gives the state immense power over the farming population because land is state property. The periodic redistribution and levelling down of landholdings that it gives rise to, means there is generalized insecurity and little incentive on the part of landholders to invest in the land and to manage it properly.

3.24 The role of the state as regulator and manager of land issues is a key factor in land security. Good governance of land, including accountability and transparency is a key issue affecting land tenure security. This is exemplified in the Kenyan experience, where tenure insecurity problems relate strongly to weak governance in land allocation and failures in land administration capacity.

3.25 Inappropriate policies for extinction and replacement of outstanding land rights may also be a source of tenure insecurity. In Kenya, the individualization of title to land has contributed to tenure insecurity for diverse groups such as local communities and women. This insecurity has also been fuelled by the government's non-transparent allocation of public land to politically-connected individuals. The local authorities who hold most of the land as trust land have also irregularly allocated it to individuals in total disregard of the rights of the community on whose behalf they hold the land. This has led to increasing pressure to convert trust land to individual ownership as people perceive private/individual tenure to be more secure.

3.26 Mention should also be made of tenure insecurity facing communities whose land has potential mineral and oil findings; communities bordering reserve lands; and land earmarked for infrastructure such as roads, dams and urban development. Many people have been evicted in Tanzania and Uganda without adequate compensation and with no resettlement arrangements. Virtually all the countries in the region have no involuntary

resettlement policies in place. Use of powers of eminent domain by governments and changes from one land use category to the other are a major sources of insecurity and this has led to confrontation between the people who reside on the land and public institutions.

3.27 There is also widespread insecurity of tenure arising from conflict of interest among and between users of the land and the state; the interaction of received and indigenous forms of tenure; weak land administration institutions; and ineffective conflict resolution mechanisms. Insecurity adversely affects productivity and ultimately compromises the well-being of the state and its citizens.

3.28 The arguments in favour of formalization of customary land rights in form of title as the means to secure tenure ignore the fact that formal title could also generate insecurity, as happened in Kenya. Claims about the inherent insecurity of customary tenure have been challenged by research that has demonstrated the resilience of these systems and their capacity to adapt to changing circumstances. Research has shown that customary/traditional land systems can provide adequate tenure security and related investment incentives.

3.29 Lack of security of tenure, especially for the vulnerable groups like the poor and women, is often a major obstacle to economic development and poverty reduction; it is often a major cause of social instability and often undermines good land use and land management.

3.30 Growing populations, declining soil fertility, increasing environmental degradation, global climate change, the HIV/AIDS pandemic and new opportunities for agricultural commercialization have all heightened demands and pressures on land resources and caused land conflicts. Land and property rights have become the subject of fierce competition and conflict leading to increased insecurity for those who are weak, e.g. those afflicted with HIV/AIDS, and their survivors.

3.31 Since independence, African governments have adopted policies and programmes aimed at increasing land security, so as to foster agricultural investment and productivity. These policies have often ignored existing customary and local institutions and disregarded the distributive issues underlying tenure security. The benefits of these policies have been gen-

erally limited and their implementation has resulted in loss of secondary rights.

3.32 Future policy direction in the matter of land tenure security should concentrate on the following issues:

- Policy development should seek to strengthen land tenure security so as to ensure a favourable climate for investors (both local and foreign). This will, in turn, result in high levels of economic growth and poverty reduction. Land policies and reforms can facilitate these changes by providing more secure land access both for small-scale farmers and for Africa's emerging corporate enterprise. As rural economies develop and diversify, employment opportunities in agriculture, agro-processing and service sectors will expand and fewer people will need to farm and own their own land.
- The challenge for NLPs is to guarantee security of access for the poor as a basis for improved food security and secure livelihoods.
- A judgment must be made about comparative cost and effectiveness, and the legitimacy of different ways of providing security of tenure for customary land rights holders. Introducing collective tenure is one approach to registering customary land rights holders. Introducing collective tenure is one approach to registering customary land rights and giving legal force to customary tenure systems. It serves to vest formal tenure rights in a community and avoid the need to register numerous sets of household, individual and subsidiary rights and defends community rights against outside or individualistic local interests.
- Converting customary land rights into freehold may result in the expropriation of land rights of vulnerable groups such as women and pastoralists. These policies may also increase the number of land disputes and conflicts, and ultimately foster tenure insecurity.
- Legislation should give land users a menu of tenure options, including recognition of customary land rights. The legislation also may be flexible in defining and regulating the institutions empowered to hold and manage land, so as to allow communities to devise their own arrangements on the basis of their specific needs and to retain the elements of customary systems they find useful.

D. State Sovereignty over land

3.33 Ownership of land is quintessential to being a sovereign state. Not surprisingly therefore, the existence of a state is determined by control over land. The role of the state in property relations is pivotal in all the countries in the region. Despite some change, many governments strive to be the ultimate sovereign over land. In all the countries in the region, except Uganda, the radical title to land is vested either in the state or the president.

3.34 The state–land relationship was introduced with the assertion of the protectorate as a political entity owning land and granting to property users subsidiary rights (see Okoth-Ogendo, 1991; Leys, 1941/1970).¹¹ The state has different roles with regard to land. It grants rights to land; guarantees those rights; and holds rights to land. States hold land in protected areas in all the countries in the region. In some countries, the state holds all the land and grants leases for periods of time. In other countries, freehold tenure has been granted to individuals alongside other tenurial arrangements that have the state, local authorities and groups as holders of rights to land. The land in Kenya is, for instance, owned by individuals, the state, local authorities and communities. The systems of land ownership overlap in some cases, especially where the tenure reform process is incomplete, as is the case in the trust land awaiting registration where individuals have rights over land legally vested in local county councils as trustees. In the Comoros, there are untitled lands, titled lands, state lands and village reserves.

3.35 In Uganda, the radical title is vested in the citizens of Uganda, while vital natural resources are vested in the government in trust for citizens. Rwanda has also indirectly vested the radical title in the Rwandans by declaring under Article 3 of the Land Law that national land resources shall be part of the common heritage for all Rwandans. However, legally almost all land in Rwanda is owned by the state, and private land is largely restricted to registered concessions that have written contracts attached to them. Furthermore, most rural land is in effect held extra-legally by small-scale farmers under customary systems of land tenure, through which rights are guaranteed by common social understanding of legitimate rights of occupation.

11 Note that the introduction of a new tenure system constituted “legal-structural authoritarianism”. This is the origin of government ownership and eminent domain theory in property relations in Kenya.

3.36 In Ethiopia, the land is owned by the state and the people have only user rights over plots they have in their possession. In Article 40 of the Constitution it is provided that the right to ownership of rural and urban land, and of all rural resources is exclusively vested in the state and in the peoples of Ethiopia.¹² Similarly in Eritrea, under the Land Reform Proclamation No. 58/1994, the state/government owns all the land which it proposes to allocate fairly and equitably without discrimination on the basis of race, religion, gender or national origin.

3.37 The debate on the relationship between the State and land has been a critical issue in the countries in the region. In Ethiopia, for instance, the government and the ruling party advocate state ownership of land while experts and scholars in the field, Western economic advisors, and international organizations favour private ownership. In Tanzania, land is vested in the president as trustee for all Tanzanians. This is generally translated to mean that land is owned by the president. Efforts during the land reform formulation process to wrangle the vesting of the radical title away from the president were not successful. In Kenya there is a proposal to vest the radical title in the National Land Commission and not the state in the context of the Constitution review and the NLP formulation process.

3.38 Removing radical title from the state has been motivated by the feeling of the existence of abuse by the state, of its powers over land and the consequent conversion of public resources to private ones. In most cases, this is occasioned by the absence of strong systems for holding governments accountable for their actions with respect to land vested in them. In Kenya for instance, a Presidential Commission of Inquiry into Illegal/Irregular Allocation of Public Land was appointed in 2003 to look specifically at this issue. The Commission made recommendations in 2004 on how to deal with this concern. These recommendations have largely not been implemented and remain at the core of the land question in Kenya.

3.39 Compulsory acquisition of land in the public interest subject to compensation is provided for by laws in the countries in the region. In Rwanda, the state reserves the right to acquire land compulsorily (expropri-

¹² Public ownership of land is securely deposited in the Constitution as one of its articles requiring not only the full agreement of regional parliaments but also two thirds majority in a nationwide referendum.

ation) in the public interest,¹³ for human settlement and for national land development according to the law and on payment of fair compensation. The situation is similar in Tanzania. Another residual power of the state is development control/police power which allows it to regulate land use in the public interest through taxation, physical planning and enforcement of environmental and agriculture regulations. In all the countries, however, there is universal dissatisfaction with compulsory land acquisition powers and procedures, and the lack of or limited assistance involuntary settlers to regain their feet.

3.40 The multiple functions of the state as large-scale landowner, regulator and manager in land matters are often a source of inefficiency, corruption and arbitrariness in the use and disposal of land that is at the disposal of the state. Contemporary research indicates that the vesting of radical title in the state has been widely abused through land grabbing and neglect of critical land resources. Policy development must re-examine this juridical position to determine whether the state should hold title to land directly in addition to the police power it exercises over its use. The state should therefore progressively divest itself of lands under its ownership and control and limit its role to being a regulator and an auditor, and ensuring standardization.

E. Land and Conflict

3.41 Land and conflict are closely linked. In Eastern Africa land, in combination with inequitable access to resources, resource degradation and demographic pressures, has been a key driver in violent conflict. A further problem is the mismatch between customary land tenure systems, which are undergoing changes related to modernization and globalization, and state systems based on Western models.

3.42 Armed conflict has affected most parts of the region at one time or another. Millions of lives have been lost and many millions of people have been displaced, either internally or as refugees and combatants, throwing this critical human resource into a virtually unproductive existence for long

¹³ The terms “public interest” and “national land development” are not defined. There is a danger of abuse and misuse, as has happened in other countries. Public interest has been given wide latitude, in practise: increasingly actions in reality more attuned to political or private interests.

periods.¹⁴ Conflicts in the region are centred on access to and control of land, and valuable natural resources (including minerals, oil, timber and productive pastures and water).¹⁵ The delineation of access and use rights under both modern introduced and customary law can lead to conflict and can assist in containing conflict. In instances where certain actors feel marginalized by the prevailing access and control regimes, tensions are likely to build up to full fledged conflict.¹⁶ Processes of alienation of productive land areas and exploitation of natural resource wealth can trigger, sustain or generate conflict. This is typified by the conflict in Abyei Region between the Sudanese Government (in Khartoum) and the Government of Southern Sudan. The widespread and grave alienation of productive land and exploitation of natural resource wealth during the colonial period sowed the seed for the link between environmental resources and conflict.

3.43 The inhibiting effects of inequitable access to land and natural resources are exacerbated by general land scarcity. In Rwanda, land scarcity was a factor in the civil war (Bigagaza et al., 2002). War and genocide have had land as an issue and also had an impact on land. For instance, the massive return of refugees caused a systematic destruction of existing woody areas, and a quasi-anarchical takeover of protected nature areas (the Akagera National Park and the Gishwati Nature Reserve). There is also the issue of contested rights over land because of different waves of population movement. The cycles of civil conflict produced successive waves and associated groups of long-term refugees and returnees in need of resettlement. This situation has led to the new national policy of land sharing.¹⁷ In Kenya land has been at the heart of clashes in different parts of the country which have generated IDPs in the Rift Valley, Coast and Western provinces. Recently land was at the centre of the post-election violence in the country. In Sudan, waves of population displacement and return have raised land tenure issues which need to be addressed by a comprehensive NLP. Generally there is need to adequately and comprehensively address land issues in conflict resolution and reconciliation processes and to secure land for refugees, IDPs and returnees.¹⁸

14 Rwanda has experienced waves of population displacement and return. Sudan is currently undergoing a similar bad experience.

15 Such conflicts are manifest in Ethiopia and Somalia.

16 This has happened in the Darfur Region or Sudan.

17 Rwanda appears to have abandoned this policy of land sharing and opted for resettlement of returnees in grouped settlements; this is still a big challenge.

18 Unfortunately, the peace accords in Sudan have not handled this issue adequately.

3.44 Land and resource rights systems are inherently complex in Africa. Incomplete understanding, ignorance or disregard for complexities on the ground are the root cause of failed policy prescriptions and conflict around land.

3.45 Conflict can be an outcome of resource scarcity as a result of population increases, inequitable distribution of land, take over of land by non-local populations, and lack of transparency in addressing land problems. Land scarcity in the absence of off-farm livelihood options is often a structural cause of conflicts in parts of Africa.

3.46 Some land conflicts are related to global forces such as trade liberalization, structural adjustment programmes, alienation, privatization, commercialization and the privatization of community forests, lands and water sources.

3.47 Another form of conflict occurs over the use of land. For instance, pastoralists have land use conflicts with sedentary communities practising agriculture (Somalia, Sudan and Tanzania) and also with natural resource conservation authorities in many countries in the region. Existing policy frameworks have not addressed this issue adequately. Similarly, human-wildlife conflicts are an issue in Kenya and Tanzania. Another form of land use conflict is between communities and mining companies that have mining concessions from governments. This is already an issue in Kenya and Tanzania and may be replicated in Sudan and Uganda with regard to oil reserves. Contested rights to natural resources can become a significant element in the dynamics of conflict in Eastern Africa.

3.48 Armed conflicts are often both the cause and effect of land conflicts. In post-conflict situations, the land and shelter needs of returnees, IDPs and refugees must be carefully managed to avoid further disputes and violence. The imperative of taking early action on land policy reform in post-war settings cannot be overemphasized. Countries should also ensure that peace agreements include meaningful provisions to reform institutions and practices that fuel land-related conflicts and that implementation of such measures is full and timely. Policy consideration should focus on restitution of land to rightful claimants and the resettlement of people who are landless or who cannot return to their lands. Reconstruction and rec-

conciliation processes require the disentangling and negotiated settlement of overlapping post-conflict land claims. In addition, following armed conflict, the rebuilding of land institutions and the revision of outdated legal frameworks are important steps in the restoration of governance and creation of an equitable basis for long-term and sustainable development.

F. Inter- and intra-generational equity issues

3.49 Equity issues are at the core of land issues in the Eastern Africa. These include issues of inequitable distribution of land, discrimination on the basis of gender and age, overemphasis on some forms of land uses (agriculture), neglect of the land rights of pastoralists and marginalized communities. In Rwanda, available statistics show that in 1984, a total of 15 per cent of the landowners owned half of the land. Distribution of arable land now stands at one hectare for every nine Rwandans and it is diminishing due to high birth rates. A substantial number of rural families who subsist on agriculture own less than one hectare of land. Family holdings which are the main source of access to land through customary inheritance have reached extremes in fragmentation (national average 0.50 ha).

3.50 Pastoralists, hunters or gatherers, such as the *Maasai*, *Hadzabe*, the *Batwa* and the *Ogiek* are culturally dependent on specific geographical habitats and depend on land for their livelihoods. The alienation of their land through *gazettement* of their habitats as forests or national reserves and the excision and allocation of their land to individuals makes their tenure insecure.

3.51 Pastoralism is the principal form of land use in Somalia, southern Ethiopia and large parts of Sudan. It is also a major form of land use in Kenya, Tanzania and, to some extent, the northern part of Uganda. A number of pastoralist groups remain highly mobile across the region, spreading from the north of East Africa into Sudan, Somalia and Ethiopia. There are sporadic resource access conflicts over pastoral territory between herders and settled agriculturalists, and ongoing disputes surrounding exclusion of pastoralists from rangeland areas reserved for purposes of wildlife conservation and tourism, particularly in Kenya and also in Tanzania.

3.52 Policies that discourage mobility and undermine the resource rights of pastoralists, including devaluing communal land tenure, fail to acknowledge that pastoralism is not only the most economically viable production system for the dry lands, but also the most sustainable management approach for that environment.

3.53 Since mobility and flexibility are key to the sustainability of pastoralist livelihoods and production systems, pastoral peoples need assured rights of access to grazing and water over extensive areas. Resource scarcity due to pressure from agriculture, periodic drought and public policy neglect have led to restrictions on pastoral mobility and conflict between pastoral groups and their more sedentary neighbours. This has tended to spill across national and regional boundaries. The design of policy options to maintain and strengthen pastoral economies through clear regimes of pastoral tenure will be necessary if these conflict areas are to be managed and pastoral livelihoods enhanced. This calls for new paradigms for the management of pastoral lands to be adopted. There is also need for formulation of national and regional dry land/pastoral policies.

3.54 Vesting land in older males denies youth and children access to the productive resource. In Tanzania, children below 18 years cannot legally own property. They are also not included in decision making on land matters because they are minors and culture and tradition exclude children and youth from accessing and making decisions over land. The issue of the rights of children in the region have become more tenuous with the HIV and AIDS pandemic. The disinheritance of children by relatives after the death of their parents raises the need for policy and legal interventions to protect the land rights of children. In Kenya, the draft National Land Policy proposes special protection in matters related to land rights for children and youth in view of their precarious position.

3.55 Rapid urbanization in the region is causing the displacement of people native to the area in which an urban area is expanding. The displacement is state sanctioned (e.g. through declaration of planning schemes), but it is also market driven. The danger that the future generation of local populations will question their continued displacement in the wake of urban development is real indeed and needs to be guarded against by incorporating native populations in the growing urban areas.

G. Women's Land Rights

3.56 In most of the countries in the region, there are gross disparities in land ownership between men and women. This is because of the customary practices which vest male members with the power to deal with important assets such as land. Most societies in the region are patriarchal and even in the Comoros and Tanzania, where there are matrilineal societies, these are increasingly giving way to patrilineal systems. Women are thus under-represented in formal and informal institutions that deal with land, their rights under communal ownership are not defined and are mainly enjoyed vicariously as a factor of relationships that women have with men as mothers, wives, sisters and daughters. In Kenya, despite providing 70 per cent of agricultural labour, women own only 1 per cent of the land they farm (DFID, 2007). This is replicated across the developing world with only 5 per cent women farmers owning their land (IUCN, 2007, cited in Cotula, 2008).

3.57 Gender discrimination in access to and control of land remains a serious impediment to development. In a region where land users are predominantly women, radical steps are necessary to remove these constraints. Women face discrimination under both customary and statutory systems of land tenure, as a result of culturally embedded discrimination beliefs and practices and male control of inheritance systems. Under many systems of customary law in the region, women—regardless of their marital status—cannot own or inherit land, property and housing in their own names. Succession and inheritance rights remain problematic, since a woman cannot inherit the matrimonial home on the death of her spouse. Some have been conditioned to shy away from doing so. Under Islamic Law, women are not precluded from owning and inheriting land, housing and property although their share of inheritance is smaller than that of men. A review of the shares widows and daughters receive under Islamic Law of inheritance reveals that a widow is entitled to a fixed share of one eighth of her late husband's estate if she had children and one quarter if there were no children. In practice, however, women are usually denied even that which is provided for them under *Sharia* law.

3.58 In the face of increased competition and conflict over land and resource rights for development and other economic activity and as a result

of trends towards market based land reforms and environmental disasters, African women are fast losing their already precarious access to land and natural resources. In addition, the gender dimensions of land tenure are particularly acute in contexts where men have been killed at war, and where women have survived but cannot secure their inherent land rights due to male-centred tenure systems. Attention given to gender land rights in the policies and laws is mixed in the region.¹⁹ Women's rights are affirmed in the constitutions of a number of the countries in the region and more progressive gender-neutral land legislation has been enacted in many countries.

Some countries now have constitutional and legal restrictions upon practices which discriminate against women's land rights (Ethiopia, Tanzania and Uganda serve as examples). The constitutions in these countries mention women as a sector deserving attention, with routine reference to their equality with men in the eyes of the law and the illegality of actions that discriminate on the basis of gender.²⁰ The Ugandan constitution in particular provides for affirmative action (positive discrimination in favour of women). In matrimonial contexts, women have argued for a presumption of spousal co-ownership of matrimonial property and specific provisions protecting spouses from sale of jointly occupied land without their consent and protecting women's interests in the allocation of land. While Tanzania has provided for spousal co-ownership and consent in dealing with matrimonial property in the land and marriage laws, this issue remains contentious in Kenya and Uganda. The spousal co-ownership clause which was lost during the discussion of the Uganda Land Bill in Parliament in 1998 has been re-introduced in the Domestic Relations Bill which has stalled in Parliament. However, the consent clause was passed in the law. The new land laws in Eritrea and Ethiopia are supportive of women's land rights. Both states do not provide for legal presumption of spousal co-ownership (like Tanzania does) but make it a matter of law that both men and women will receive equal land allocations in their own right, which they may then farm together or individually as they prefer. The Ethiopian federal law orders new regional land laws drafted under its direction "to confirm the equal rights of women in respect of the use, administration and control of land as well as in respect of transferring and bequeathing holding rights". The Tanzanian law not only includes the right of every woman to acquire, hold, use and

19 Important changes in land relations among all sectors of society are in progress (see Toulmin and Quan, 2000; Alden Wily and Mbaya, 2001).

20 See Ugandan Constitution, Articles 21, 31 and 33.

deal with land to the same extent as men, but also presents this with special emphasis as a separate sub-clause of the listed fundamental principles of national land policy. The laws in Eritrea and Tanzania provide for divorcees to retain a share of land. These laws, however, need to be emphasized such that, even in the case of Tanzania, what is covered under spousal consent is just matrimonial property (i.e. where man and woman ordinarily reside) but not all property owned by the family.

3.59 The implications for policy are:

- A paradigm shift in policy is needed to look at land relations, gender equity and gender equality, not as merely a human rights/equity issue, but as a development issue as well as a food security issue. Land relations that deprive the main productive force in agriculture (the woman) from ownership of land, constitute fundamental constraints not only upon human rights, but also upon agrarian production.
- The goals of eradicating extreme hunger and poverty and achieving food security will not be attained unless governments take specific action to end the persistent discrimination against women in matters of access to, ownership and control over land and natural resources.
- The women's limited access to land and natural resources and associated insecurity of tenure are products of a series of inter-related social, economic and cultural factors that force them into a subordinate role, to the detriment of their own development and that of society as a whole.

H. HIV and AIDS Pandemic

3.60 One of the biggest threats to Africa's capacity to implement the necessary response measures to derive the most benefits from the opportunities available in terms of land is the HIV/AIDS pandemic. About 70 per cent of the world's 42 million people affected by HIV/AIDS are in Africa, the region worst affected by the pandemic. More than 25 million Africans have so far succumbed to the pandemic and more than 12 million children have been orphaned. The high prevalence and spread of HIV/AIDS has accelerated mortality levels in both urban and rural areas in Eastern Africa. Most of the countries in the region have generalized epidemics. Howev-

er, the HIV prevalence is either stable or has started to decline. Uganda was the first country in Africa to register a decline in national adult HIV prevalence; however, the epidemic remains serious and is estimated at 5.4 per cent. (UNAIDS, 2007) With between 7.1 per cent and 8.5 per cent of the adult population estimated to be HIV positive, Kenya has a serious although declining epidemic; adult prevalence is 6.2 per cent in Tanzania according to UNAIDS (UNAIDS, 2007). This situation has led to a reduction in gains achieved earlier in health standards, life expectancy, mortality and child survival the region. It has also increased the dependency ratio and put the traditional care structures under strain in most parts of the region. Although considerable progress has been achieved in controlling this pandemic, HIV/AIDS has had significant impacts on total economic productivity and specifically on land utilization and production from land based resources, as it has affected the most productive age bracket.

3.61 HIV/AIDS has had major impacts on land rights and use. Recent studies from Kenya, Lesotho and South Africa (Drimie, 2002) document the effects of HIV/AIDS on land use and land rights, and on land administration systems. For land use, the main effects relate to loss of labour force caused by the disease. This may be because households are no longer able to farm at the level required to meet subsistence needs. In some cases, households are able to cope with increased vulnerability by hiring labour, by renting out land, by entering into sharecropping arrangements or by selling land. Where families are unable to respond to the situation, land may be left fallow or under-cultivated. Besides negatively affecting agricultural productivity, this may create problems in countries where effective occupancy and use regulations require land forfeiture in case of non- or underuse.

3.62 For land rights, available evidence shows the occurrence of land grabbing by male relatives following the death of a husband/father. Indeed, widows rarely inherit land under customary norms, and they are often deprived of access to their husband's land if they have no children. Furthermore, orphans may be too young to inherit. Land is therefore vested in trusteeship with uncles and other male relatives and inherited by children when they become of age. However, there are reports of uncles grabbing the land from orphans. Moreover, HIV/AIDS may lead to land loss as a result of distress sales, as poorer households may be forced to sell their land for medical care and funerals.

3.63 To bring the nexus of land and HIV/AIDS into context one has to understand the centrality of land to social and economic safety nets of households and communities. The strength of social and economic safety nets of a household are tied to the level and character of its asset and endowment. This asset endowment determines a household's resilience in the event of adversity. Land constitutes more than 50 per cent of the asset endowment of poor households. This implies that land reform issues like enhancement in tenure access and land ownership, transparency of land administration and transferability of land have implications on the ability of households to have sustainable and dynamic social and economic safety nets.

3.64 Women and girls are the most negatively affected by the HIV/AIDS pandemic. HIV/AIDS is linked with women's land and housing rights. Women are frequently evicted, even by their own families, after they are diagnosed with HIV/AIDS. Often, after their husbands die from AIDS related complications, women are denied any inheritance. Property grabbing from widows and orphans is not a new phenomenon as such; it existed before the HIV/AIDS pandemic. However, the pandemic has exacerbated the situation. Increasing rates of infection and the stigma accompanying the disease only add to the economic vulnerability of widows and orphans.

3.65 Most land policies do not address HIV/AIDS specifically; nor do they address the implications of HIV/AIDS for land rights, land use and security of tenure. HIV/AIDS policy should transcend prevention and treatment to dealing with the effects of the pandemic. An effective land policy is one which will help secure livelihoods that are strongly "land based". The land reform process should, through the policy, encourage actions either by government or civil society that specifically lessen the impacts of HIV/AIDS or increase the self-insuring and resilience capacity of households. Land policies should take into account the specific needs of HIV/AIDS-affected households and should deal with the land tenure implications of the pandemic. Measures could include the institutionalization and liberalization of land rental markets, so as to allow AIDS-affected households to obtain cash by renting out their land, and ensuring the representation of marginalized groups (including those affected by HIV/AIDS) in land administration institutions. Moreover, greater attention should be paid to protecting the land rights of widows and orphans in particular.

I. The phenomenon of global warming and climate change

3.66 Today, climate change is one of the biggest environmental issues facing the world with potential catastrophic effects on a global scale. Recent global, regional and local events, including destructive cyclones and hurricanes, flooding and unpredictable rainfall patterns are indications that urgent action is required to address the causes of global warming. The unprecedented warming of Africa is already evident in the rapid reduction of the glacier cover on mountains over the last century. Glaciers on the Rwenzori Mountains and Mt Kenya which have persisted for more than half a million years are expected to disappear entirely within two decades. Climate change is partly responsible for the degradation of Lake Victoria.

3.67 The World Environment Day²¹ global theme for 2008 focused on the effects of human induced carbon emissions on the global community. Carbon emissions cause global warming that ultimately leads to various climate related changes already being experienced globally, and is in future expected to manifest itself in different ways for different communities of the world. Global warming can mean reduced farm productivity and hunger for African farmers who may not be able to cope with drought²² and it could mean migration for island communities who would be faced with rising sea levels and stormy weather. Traditional means of survival may also be affected by climate change.

3.68 Climate change threatens to create unprecedented reversals in human progress in our lifetime. Increased exposure to droughts, floods, storms and climatic uncertainties will reinforce the poverty trap affecting millions of people in Africa. Poverty and climate change are closely linked in Africa, as poverty is not environmentally friendly. For the poor, life is a struggle for daily sustenance. They have little time to consider the environment. The majority of the population in the region relies on biomass energy whose pressure on trees and green vegetation has direct impacts on global warming. An estimated 20 per cent of greenhouse gas emissions contributing to climate change globally are a result of deforestation.

21 World Environmental Day is marked on 5 June; in 2008 the celebrations focused on fostering low carbon economies.

22 Ethiopia already experienced this in 2008.

3.69 COMESA and its partners have developed a new approach to climate change within the context of CAADP. Under its Climate Change Initiative, COMESA will address the negative direction of the interaction between climate change, global carbon balances and forests, and between prevailing agriculture and land management practices and forest conservation and protection.

3.70 What can the countries in the region do and what are the land policy implications?

- Land policies need to be “climate proofed” and properly integrated with the development of country mitigating and adaptive measures and strategies.
- Interventions based on agricultural, forestry and land use provide an important opportunity for mitigation of greenhouse gas emissions. Afforestation should be promoted as a priority.
- Grassroots action is needed to reduce pressure on wood biomass resources through adoption of technologies for efficient utilization of available wood energy resources and other renewable cleaner energy sources.
- In the region, there is large potential for generation of carbon emission reduction credits through afforestation, reforestation, sustainable land use, agroforestry and related livelihood activities. There is massive potential in the \$30 billion global carbon market of which Africa has only a 2 per cent share.
- Poverty, because it limits options, is a major reason for the vulnerability of developing country farmers to the global climate change. And due to poverty, there has been a steady degradation during recent decades of the soil, water, forests and other plant resources on which the livelihoods of the poor so much depend. So, poverty reduction strategies are key to fighting global warming.

J. Biofuels, food security and environmental concerns

3.71 Biofuels are being vigorously promoted globally as a magic solution to reducing greenhouse gas emissions. The idea is to replace fossil fuels (petroleum-based fuels) with biofuels. Biofuel as a term has come to mean ethanol and biodiesel made from crops, including corn, sugar cane,

soya, cassava, jatropha.²³ They are considered more renewable and sustainable sources of energy than fossil fuels, and are one of the few technologies with the potential to displace the use of oil in transport. Production of ethanol doubled globally between 2000 and 2005, with biodiesel output quadrupling. Growing concerns over climate change, rising oil prices and insecurity of supply mean that governments and industry are desperately searching for alternative fuels. Biofuels do not contribute to climate change—although burning the fuel releases carbon dioxide, growing the plants absorbs a comparable amount of gas from the atmosphere. Biofuels are cleaner and safer for the environment and they are biodegradable and non-toxic which makes them cleaner and greener. They are considered one of the cheapest and cleanest sources of energy. Biofuels are presented in rich countries as a solution to two crises: the climate crisis and the oil crisis. But they may not be a solution to either, and instead are contributing to a third: the current food crisis (Oxfam International, 2008).

3.72 However, biofuels have their negative impacts. Once heralded as the alternative fuel source of the future, biofuels have come under scrutiny recently with a number of reports suggesting they cause more harm to the environment than originally thought. Despite releasing less carbon emissions when burnt, growing the crops that produce biofuels, harvesting, refining and transporting the fuel can lead to an overall increase in carbon in the atmosphere. The rising appetite for fuels worldwide means there are economic incentives to destroy rainforests to provide more plantation land. Vast amounts of greenhouse gases are released in this clearance and some scientists say this is enough to negate any of the intended future benefits. This also has a major impact on the conservation of plants and animals living in these areas, as well as on water patterns and soil protection. It is now recognized that there are also harmful social and economic impacts. Food shortages are on the rise in poorer countries, as farmland traditionally used for food and animal feed has been turned over to grow crops suitable for biofuels. In addition, the increase in demand for crops, such as rice, corn or soya, which can be used as both food and biofuels, has forced the cost up, pricing people in poorer counties out. In Mexico in 2006 there were riots after the price of maize quadrupled, pushed up by the demand for biofuels.

23 Different countries specialize in certain types of biofuel according to their climate. In Europe it is rapeseed, wheat and sugar beet, while the US primarily harvests corn and soy beans. Sugar cane tends to be grown in Brazil and a huge amount of palm oil comes from South-East Asia. Africa is trying sugar cane, cassava, jatropha, millet, among other crops.

3.73 Recent reports have warned of rising food prices and rainforest destruction from increased biofuel production; they also warn that this production prompts rich firms to drive poor people off their land to grow fuel crops. Biofuels have caused world food prices to increase by 5 per cent according to a World Bank (2008) report published by the Guardian newspaper on 4 July 2008. The European Union and United States of America push for greater use of biofuels has had the biggest effect. Without the increase in biofuel, global wheat and maize stocks would not have declined appreciably and price increases due to other factors, would have been moderate, according to the said World Bank report.²⁴ The debate on crops for food versus crops for biofuels remains one of the major problems yet to be resolved in the sector.²⁵

3.74 As the debate rages on, African countries are keen to transform their expansive farmlands into the next “oil fields”. Africa in general and the Eastern Africa region in particular, has great biofuel potential due to its vast arable land and large workforce. In Africa, several governments have made moves to promote biofuels production. Zimbabwe began the manufacture of bioethanol to supply a 5 per cent mix in a road fuel in the early 1980s. Malawi uses gasoline blended with 10 per cent locally-made sugar cane ethanol. Mozambique has developed an effective biofuel sector based on sorghum and sugar cane, and the government has set aside over \$US700 million for biofuel research, production and promotion. Nigeria, the world’s largest producer of cassava, is keen to use its major crops as an alternative to fossil fuel (it aims to produce cassava ethanol worth over \$150 million every year, once it establishes suitable infrastructure). The South African Government has plans to invest \$437 million in 5 biofuel projects (GRAIN, 2007:40). *Jatropha* in Kenya and Tanzania have been attracting significant investment from both the public and private sectors.

24 Sonja Vermaulen from the International Institute for Environment and Development’s Forestry and Land Use Programme had this to say recently on BBC London: “In reality, policy decisions about biofuels involve difficult trade-offs; carbon benefits versus other environmental benefits; food security versus export development; efficient large-scale production versus smaller-scale or mixed production systems that deliver more equitable rural development.”

25 According to the World Bank (2008) report, the drive for biofuels has distorted food for fuel, encouraging farmers to set aside land for its production, and sparked financial speculation on grains. Factors ranging from climate change and high fuel prices, to population explosion have been blamed for the current high food prices. However, the World Bank report names biofuels as the main culprit.

3.75 Recent government allocations of large areas of land for biofuel production in countries as diverse as Colombia, Ethiopia, India, Kenya, Mozambique and Tanzania have raised significant concerns and criticisms concerning the impacts on land access for more vulnerable groups. In Tanzania, the Prime Minister is fast-tracking agro-fuels to accommodate a Swedish investor looking for 400,000 hectares in the Wami Basin, one of the country's major wetlands to plant sugar cane for ethanol (ABN, 2007; GRAIN, 2007). This area is reported to be already in use for rice production by thousands of smallholders; other reports indicate 1,000 rice farmers may be evicted as a result of the project. Various other proposed or ongoing land allocations for jatropha and oil palm cultivation, including various combinations of plantations and out-growers have been reported from different parts of the country, involving investors from Germany, Malaysia, Sweden, UK and other countries (ABN, 2007). Other ongoing or planned large-scale land allocation in Tanzania has been reported to involve replacement of local farmers (ABN, 2007). Large-scale jatropha cultivation may be associated with significant negative impacts on land access for local groups. For example, a multi-million dollar jatropha project sponsored by a British firm in Kisarawe District of Tanzania has been reported to involve acquiring 9,000 hectares of land and the clearing of 11 villages which, according to the 2002 population census, are home to 11,277 people. Some \$632,400 have been set aside to compensate a total of 2,840 households (African Press Agency, 2007).

3.76 In Kenya, Mumias Sugar Company is planning to plant 20,000 hectares of sugar cane in the Tana River delta to produce biofuel and sugar. The \$315.5 million project including an ethanol refinery and food-processing plant promises to create thousands of jobs in an area dominated by traditional cattle herding, small-scale rice and subsistence farming. Environmental campaigners claim that the scheme would destroy the wetlands—home to 345 species of birds. In the Tana River delta, the two main worries are that monoculture planting would replace a large area of rich and diverse habitat, including the unusual and unprotected *Borassus* palm savannah, and that irrigation for the new plants would use up to one third of the available water, claims made by the Royal Society for the Protection of Birds (RSPB),²⁶ as reported by The East African newspaper of July 7–13, 2008.

²⁶ According to RSPB, the merits of growing biofuels are the source of increasingly acrimonious debate in East Africa where vast tracts of open land in Ethiopia, Kenya, Tanzania and Uganda are attracting

3.77 Which way forward for the Eastern Africa Region and what are the policy challenges?

- Biofuels hold great promise for the region but the research is not yet in place to reap the rewards or analyse the pitfalls. Biofuels provide an opportunity to harness the region's vast arable land, labour force and vast biomass resources. The biofuels may offer some genuine development opportunities in the region but with potential economic, social and environmental costs.
- Policy should consider the merits and demerits of biofuel production and use and carry out a vigorous cost-benefit analysis.
- From the theoretical and conceptual framework, governments in the region seem to be driven by energy security, climate change and development concerns. Indeed, local energy security strategies and rural development efforts have underpinned recent interest in the cultivation of crops for biofuel as part of the rural development framework. At the same time, governments should appreciate that the triple challenge facing Africa is achieving food security, energy security and sustainable development.
- What are the obvious merits? Price signals to small-scale farmers could significantly increase both yields and incomes, securing real long-term poverty reduction in countries that have a high dependence on agricultural commodities. Small-scale farmers could seize the opportunities offered by biofuel cultivation whether for income generation or for local energy self-sufficiency. Large-scale biofuel cultivation could also provide benefits in the form of employment, skills development and secondary industrialization.
- Biofuel production should not compromise food security (i.e. land that is fit for food production should be excluded from biofuel activities); displacement of poorer people from land should be avoided; and biofuel production should not lead to destruction of forests and important ecosystems.
- Serious trade-offs are involved in the production and use of these biomass-derived alternatives to fossil fuels. Tough choices have to be made. Consider the wider implications of biofuels in terms of land use, land tenure and land rights. In reality, policy decisions about biofuels involve difficult trade-offs: carbon benefits versus other environmental benefits; food security versus export devel-

the attention of local and international agricultural firms hoping to cash in on the demand for clean energy sources such as ethanol.

opment; and efficient large-scale production versus smaller-scale or mixed production systems that deliver more equitable rural development.

K. Land for investment and the impact of Foreign Direct Investment

3.78 The NEPAD initiative is committed to economic growth, development and increased employment, reduction in poverty and inequality, and regional integration. It stresses the need to create an enabling environment for investment. The partnership aims to boost food production, enhance agricultural credit and to redirect resources to rural areas. Many countries in the region are now looking increasingly at the possibilities for new technology led agricultural productivity growth, to raise output, employment and food security. In this regard, the region will want to attract private investment in agricultural growth not only to boost domestic production, but also to compete better in world markets. Capital from the developed world will seek opportunities to supply FDI at a return.

3.79 The major aim of CAADP is to assist African countries accelerate economic growth through agriculture-led development, which eliminates hunger, reduces poverty and food insecurity, and enables expansion of exports. It is considered a key driver to achieving the Millennium Development Goals (MDGs), with strong emphasis on MDG1 which focuses on eradicating extreme poverty and hunger and MDG7 relating to protecting the environment and using its resources wisely. CAADP is best understood as a common framework, reflected in a set of key principles and targets intended to guide country strategies, programmes and investments in the agricultural and rural sector. CAADP aims to achieve and sustain a 6 per cent annual growth rate in agriculture, through investments in high productivity commercial farming for small- and large-scale farmers. Since this is likely to have an impact on existing land use rights, the programme will need to find ways to address tenure and equity issues at the local level.

3.80 Governments in the region have often focused on the need to attract FDI, through advantageous tax regimes, rather than the promotion of local enterprise. Despite its importance, growth in FDI can lead to alienation of land from indigenous rights holders and concentration in private

hands. The drive to attract foreign and domestic investment and develop agri-business in Africa increases the risks of displacing smallholder farmers who could be major contributors to agricultural growth.

3.81 The land sector needs to improve the investment climate in rural land. The major challenges involve overcoming a series of constraints to the investment climate, including bureaucratic inefficiency and corruption in the land institutions. Investors need assured rights to the land and property in which they invest, yet the time periods required to register property in Africa are amongst the highest in the world, with costs ranging from 5 to 35 per cent of property values (World Bank, 2005). Governments should also make progressive improvement in the quality and completeness of cadastral and land information databases and systems to facilitate planning, land use change and to ensure that land claims and economic needs of the poor and the vulnerable are not ignored in the process of structural economic transformation through investment in agriculture and agri-business.

3.82 The implications of FDI drives for land policy should be handled very carefully to protect the livelihoods of the poor and avoid generating political and ideological conflicts around land, and to enable real partnerships between the private sector and Africa's peasant farmers. There are uncertainties about what type of policies are needed to deliver the right balance between improving livelihoods, protecting the poor, and raising opportunities for investments and economic growth. The main policy issues which relate to investing in the agricultural sector, land use sectors and the rural sector as far as land and natural resources are concerned, and in particular when national governments pursue policies to attract FDI and promote large-scale export-oriented agricultural development, are:

- The policy should make a strong contribution towards dispelling predominant negative stereotypes about smallholder agriculture, which revolve around inefficiency, subsistence and low productivity as a consequence of insecurity of tenure. In practice, smallholders make an immense contribution to agricultural output, generally holding land customary tenure systems.
- Facilitating investors' access while protecting local land rights, should be major objectives of NLP. Smallholders, although central to the agricultural economies of most countries in the region and very responsive to new markets and opportunities, are unable to guarantee production at sufficient scale, quality and regularity

to meet the needs of global markets, dominated by supermarket chains.

- Avoiding one-off compensation for loss of land rights and instead promoting long-term benefit-sharing arrangements.
- The need for robust safeguards to protect local land rights and implement these safeguards effectively. The safeguards include clear procedures and standards for local consultation and attainment of “free prior informed consent” in land acquisitions for large-scale investments and mechanisms for appeal and arbitration.
- Measures to mitigate loss of land access by poor people, other marginalized groups, smaller-scale land owners and land users to large-scale farming interests. Large-scale farming is often associated with significant negative impacts on land access for local groups.
- The need to explore alternative operational business models which ensure long-term benefit-sharing arrangements between local groups and investors (such models include contract farming schemes for smallholder farmers, out-growers schemes, equity-sharing schemes, joint ventures and purchase agreements).

L. Urbanization and the Urban Land Question

3.83 The whole East Africa region is urbanizing fast, a phenomenon that is creating challenges for land policy and administration reform affecting both the rapidly-growing urban and peri-urban areas and the rural areas. Most urbanization is a result of rural-to-urban migration but natural increase is becoming significant. The need for urban policy to provide for issues emanating out of urbanization has generally been overshadowed by the need to address rural land tenure. Land policy must therefore take into consideration problems of rapid urbanization within the urban and peri-urban areas and the long-term impacts of urbanization on rural land tenure and productivity.

3.84 A multitude of land tenure regimes are found in the cities of Eastern Africa. Vestiges of colonialism, during which period urban land was administered on a racial basis, can still be detected: those who are rich and economically powerful get the best serviced urban land available. A minority of landowners has statutory tenures and may have certificates of title

to land. Other tenures are customary. However, since customary tenure is breaking down, in urban areas quasi-customary tenures have developed. Informal or vague tenure, with or without informal evidence of ownership, exists and is held by the majority of urban landowners, particularly the poor. The outward growth of urban areas encompassing traditional villages creates a situation of informality since customary tenures in these villages cannot automatically be converted into statutory tenure. Aspects of Islamic tenures (such as *waqf*) are practised in a number of countries including the Comoros, Somalia and Sudan, and in parts of other countries with long-standing Muslim traditions such as along the coast of Eastern Africa and Zanzibar. Islamic tenures are not well-documented and often are not referred to in national land laws and policies.

3.85 The majority of the people in the urban areas of Eastern Africa (with the possible exception of Mauritius and Seychelles) live in slums. These may be scattered in pockets throughout the city. Some develop on marginal land, others on neglected public or private land. Yet others develop out of former peri-urban villages which are engulfed, without land planning, by the expanding urban areas. The urban poor—the core slum dwellers—are in many places forced to settle on hazardous or otherwise unsuitable land for building: over-steep hill slopes; river banks and floodplains; in the shadow of refineries, chemical factories, and toxic dumps; or on the margins of railroads and highways. Here, they are exposed to disasters, such as chronic flooding. The poor are also vulnerable to occasional state violence including forced evictions. The extent of slum living and rates of slum growth in Eastern Africa are shown in Table 4.

Table 4: Urban slums in Eastern Africa

Country	Slum annual growth rate	Per cent slum 1990	Per cent slum 2001	Population slum 1990 ('000s)	Population slum 2001 ('000s)
Burundi	2.6	83.3	65.3	294	394
The Comoros	4.6	61.7	61.2	91	151
Djibouti	*	*	*	*	*
Eritrea	3.6	69.9	69.9	342	590
Ethiopia	4.8	99.0	99.5	5 984	12 315
Kenya	5.9	70.4	70.9	3 985	9 620
Madagascar	5.3	90.9	93.7	2 562	5 696
Mauritius	*	*	*	*	*
Rwanda	3.6	82.2	90.1	296	504
Seychelles	*	*	2.0	*	
Somalia	3.6	96.3	97.4	1 670	2 867
Sudan	5.2	86.4	85.5	5 708	12 441
Tanzania	6.2	99.1	89.6	5 601	14 113
Uganda	5.3	93.8	92.7	1 806	4 010

* Data not given.

Source: Habitat (2006).

Slums have mushroomed in Eastern Africa, growing faster than the rest of city and creating negative impacts on the social and biophysical environment. Slums are the physical manifestation of poverty, inequality and social exclusion.

3.86 While slums are not a desirable policy objective, their existence in many cities in the region is unavoidable, and may have a number of unforeseen benefits. They are often the first stopping point for rural-to-urban migrants; they provide low-cost affordable and well-located housing that enables new entrants in the urban labour market to save enough money for their eventual absorption into the formal urban society. In addition, the slums provide a vibrant array of economic activities which give livelihood opportunities to those who dwell there. Besides, the slum inhabitants provide the major labour force involved in the more ordinary yet vital tasks required in the maintenance of safe and vibrant towns and cities in developing world. There is thus an urgent need to develop land administrative regimes to adequately address current slums and to prevent others from

developing. *In situ* upgrading is a far more effective solution to improving the lives of slum dwellers than is resettlement (Habitat, 2003).

3.87 A major phenomenon taking place in urban and peri-urban areas in the region is urban and peri-urban agriculture which has significance for the livelihoods of poor people. The urban poor often have a home garden or raise small animals as part of their coping strategies. This urban production, often undertaken by women, the sick, the unemployed and the aged can complement household incomes and improve the quality of urban diets. However, urban farmers often have few tenure rights over the land and water they use in farming. The legal situation in most cities in the Eastern African region in terms of urban farming and livestock keeping ranges from illegal to tolerated. As a result, the urban poor are often pushed out from their gardens by land development. Urban agriculture should be incorporated as an important urban land use. Farmers should be allocated areas from which they can operate; they should also be given security of tenure.

3.88 A major problem in urban areas in the region is the provision for and protection of the commons and public lands including wetlands. Land for public uses, such as open spaces, sports, schools, burial grounds, markets, and so on is inadequately provided for, is poorly looked after and is subject to grabbing by powerful personalities in these countries. In most cities, the open spaces left behind by the colonial authorities or that were planned in the early days of independence have been privatized thus denying the city citizens areas for recreation. The under-provision of burial grounds is made worse by the prevalence of deaths from the HIV/AIDS scourge. There is a need for public authorities to protect public places and the urban commons. Transparency over these areas, their documentation and registration, and their allocation to communities for upkeep and management can help to protect them.

3.89 Urban areas in Eastern Africa are subject to major land related conflicts. These are manifested by expropriations and displacement, especially of the poor, and demolitions and evictions. Where governments exercise powers of expropriation, this is not done in a transparent manner, and the compensation packages range from non-existent to inadequate; tenants are excluded. Displacement can also be a result of declaration of areas for official planning schemes. In some urban areas mass evictions have taken place because landowners occupy valuable land and have vague tenurial status.

Mass forced evictions have been recorded in cities in the region such as Khartoum and Nairobi. Policy is needed to ensure displacement and evictions are minimized and expropriation is fair.

3.90 The urban environment is characterized by high levels of pollution and limited access to services such as water and sanitation, and poor waste management regimes. Discharge of untreated waste into rivers and lakes is on the increase. Lake Victoria and the Indian Ocean are particularly affected, as are all the urban rivers, water courses and water bodies. Governments in the region are yet to formulate effective policy measures and regulations to arrest the situation.

3.91 Island States suffer from particular problems associated with their small size, marginalization, remoteness and vulnerability to natural disasters (such as tsunamis and climate change). This exacerbates poverty and adversely affects coastal settlements and livelihoods. East African Island States are, in general, more urbanized than the non-island states with nearly 50 per cent of their populations overall living in urban areas. Mauritius and Seychelles top the list. Many of the major urban centres in these islands are located on the coast where the environment is already fragile, but where rapid urban growth increases the risks of environmental disturbance, erosion and pollution. The large and growing numbers of tourists coming to the islands is also pushing up the demand for housing and infrastructure, and land is being reclaimed and coastal wetlands drained. In Seychelles, coastal sand dunes are now being used for construction and land is being reclaimed from the sea with irreparable damage to the reefs, wetlands and marine and land ecosystems.

3.92 Urban poverty is increasing as poverty is transferred from the rural areas. The poor moving or living within urban areas have either marginal or no land; some are being displaced from the land which they previously held. Effective land policies and supportive legislation coupled with efficient land administration systems are critical to securing land rights for the poor in urban and peri-urban areas. Improving the conditions and tenure of existing urban populations is not enough. Measures are needed to prevent the growth of new slums and informal settlements, where tenure security is at most risk. This requires a parallel approach to increase the supply of planned, legal and affordable land on a scale equal to present and future demand. Many governments realize that the current centralized approach

to land management is unsustainable, but have been slow and inconsistent in decentralizing land administration and management regimes to sub-national levels. There is the need to develop policies that are especially focused on the poor in terms of access to affordable land and housing.

4. Land in the National Development Framework

4.1 Experience from across Africa shows the need to set the land question within a broader policy framework aimed at promoting agricultural growth, economic growth and development, and addressing poverty.

A. Land issues and poverty reduction strategies

4.2 Land remains the most important factor in development in Africa policy principles. For this reason mechanisms must be put in place to ensure its effective, efficient, productive and sustainable use. Because Africa remains predominantly rural, development of the land sector is central to poverty reduction. In addition, the land sector will continue to generate the land resources necessary for growth in other sectors of the national economy. It is important therefore that those who need land for production have access to it in sufficient quantities and quality for productive use. Proper stewardship of land is thus the key to sustainable development.

4.3 With the exception of Djibouti and Seychelles, the majority of the population in the region remains rural, relying on agriculture and thus land, for livelihood. This gives agrarian economies and rural development special importance on the continent. In the rural areas of most of sub-Saharan Africa land is not only the primary means of generating a livelihood, but it is also often the main vehicle for investing and accumulating wealth; land is also transferred between generations. The importance of land resources makes its management critical for agricultural production and for development in general. This includes the way in which access to land is regulated, how rights to it are defined and conflicts around land ownership and use are resolved.

4.4 In sub-Saharan Africa, poverty is largely found in rural areas where the poorest people live. Efforts to alleviate poverty therefore have largely targeted rural areas. The lack of access to land is one of the key contributors to poverty since many of the poor people are landless. This relationship

elevates land to a position of being one of the most important economic resources in the region.

4.5 Land in Africa is a critical constraint to poverty reduction because most rural households rely on land for the survival of future generations, since the industrial and service sectors do not currently provide alternative opportunities for survival. Apart from its value for agricultural purposes, to realize subsistence production and cash income, land also provides for basic household needs, such as energy through fuel wood, medicines, housing materials and nutrition. Unequal control over land is therefore a critical factor in formulating policy reduction strategies.

4.6 Most of the countries in Eastern Africa have focused on developing strategic plans for poverty reduction. Uganda has the Poverty Eradication Action Plan; Kenya has two documents, namely the Poverty Reduction Strategy Programme and the Economic Recovery Strategy for Wealth and Employment Creation Programme, 2003–2007. Rwanda boasts the Economic Development and Poverty Reduction Strategy (EDPRS; 2008–2012) while Mauritius has the National Development Strategy. Tanzania has the National Strategy for Growth and Reduction of Poverty 2004 whereas the Comoros has a Growth and Poverty Reduction Strategy and an Action Plan (2006–2009) to implement the strategy. The Seychelles has developed a 10-year Seychelles Development Strategy. These strategic plans have tried to mainstream and address land issues.

4.7 The Rwandan Poverty Reduction Strategy Paper (PRSP) of 2001, which was a precursor of the EPDRS, recognized the importance of land in the Rwandan economy. The PRSP acknowledged that land is a critical component of the stated priority of “Rural Development and Agricultural Transformation”. The PRSP document makes considerable reference to land and land policy. It focuses on the importance of land as a foundation for food security and agricultural growth, and on the need for improvement in land use. EDPRS has four key messages: increase economic growth; reduce population growth; tackle extreme poverty; and ensure greater efficiency in reducing poverty. The second flagship of EDPRS provides for an integrated rural development programme to eradicate poverty by 2020 and release the productive capacities of the poor. PRSP prioritizes the environment and land. The priorities include ecosystems, the rehabilitation of degraded areas and strengthening newly established central and decentralized institutions.

Special attention will be paid to sustainable land tenure security through the planning and management of land registration and rational land use, soil and water conservation, reforestation preservation of biological diversity and adaptation and mitigation against the impact of climate change.

4.8 In Kenya, among the main causes of poverty that were identified in the PRSP, nearly half of them had a direct link to land issues. Low productivity in crop farming and livestock farming, lack of access to land, rural unemployment, general insecurity couched in ethnic animosity, inadequate access to infrastructure and social services, gender imbalance and the high incidence of HIV/AIDS were identified as direct causes of poverty (PRSP, Kenya, 2001:21). Land tenure systems have been associated with poor access to land by a large proportion of the population who would wish to make use of land to support their livelihoods. It has been observed that 40 per cent of the large-scale farms in the high potential areas are not optimally utilized. This is because the elite who own these farms keep them mainly for social rather than economic reasons. Subsequent to the Kenyan PRSP and the National Poverty Eradication Plan (1999–2015), the country developed the Economic Recovery Strategy for Wealth Creation Programme (2003–2007).

4.9 The 10-year Development Strategy of Seychelles (Strategy 2017) recognized that one of the principal constraints faced by the country is land availability. Careful land management plans are to be developed focused on deriving the maximum utility from land allocation. The land is to be allocated on a fair and transparent basis. This will be complemented by a detailed assessment of future land needs and an assessment of possible areas available for reclamation. The strategy emphasizes that, at no point will economic development be allowed to compromise Seychelles' deserved reputation for environmental excellence and the highest national and international iconological standards will be adhered to throughout.

4.10 Mauritius has developed Vision 2020, the 2000 National Strategy for Sustainable Development and an Empowerment Programme with two critical activities under it: land for social housing and land for small-scale entrepreneurs. In Tanzania a National Strategy for Growth and Reduction of Poverty 2004 was developed to support the Tanzanian Development Vision 2025 of becoming a middle-income country.

4.11 In 2003, the Comoros adopted a growth and poverty reduction strategy and established an Action Plan 2006–2009 to implement the strategy. The strategy envisages seven main thrusts:

- Creation of conditions for sustainable economic development.
- Stimulation of the private sector by stressing such key sectors as agriculture, fisheries, livestock, tourism and other private sectors including micro-finance.
- Strengthening of governance and justice by consolidating national institutions and ensuring access to equitable justice.
- Improvement in the population's health.
- Promotion of education and professional training in order to build human capital.
- Promotion of a healthy environment, while ensuring sustainability of development.
- Promotion of security and the fight against terrorism.

B. Land Issues in Agriculture

4.12 Land use patterns in Africa have developed in close relationship with land tenure patterns. Land use patterns and regulations also determine what is to be produced and at times, the method of production. Agriculture supports more than 70 per cent of Africa's population. The sector employs the largest number of workers and generates a significant share of GDP in most countries (50 per cent in Tanzania, Mauritius has the lowest percentage contribution at 6.1 per cent, 46 per cent in Rwanda and 28 per cent in Madagascar). The main purpose of agricultural production in Madagascar is to meet food security needs, supply inputs to the agricultural industry and earn foreign exchange. Generally, the vulnerability of agriculture translates into various forms of insecurity, predominantly economic, social and environmental.

4.13 Linking land policy to improving agricultural productivity and efficiency has been a principal concern of policy makers in the Eastern Africa region. Smallholder subsistence farming remains the main activity of land rights holders in this region. Smallholder agriculture, which is largely under customary tenure systems, dominates agricultural production, the main exception being Mauritius. Some countries in the region have devel-

oped policies and programmes to support farmers, particularly those holding customary land rights. Uganda developed the Plan for Modernisation of Agriculture (PMA). PMA has seven priority areas of action and one of them is sustainable natural resource utilization and management. Section 7.7 of the plan states that land reform, improved management and administration would contribute to PMA by:

- i. Enhancing food security through redistributing land to the landless and poor thereby giving them opportunities to be directly productive.
- ii. Facilitating investment and enhancing efficiency in the use of factors of production.
- iii. Contributing to resource conservation by providing up-to-date inventories of the natural resources and improving the allocation of land to its optional use.

4.14 Most underlying attempts in Africa to improve agricultural productivity assumed that secure individual freehold to leasehold tenure is a precondition for investments in more efficient land use. Research has revealed, however, that most customary tenure systems can provide sufficient tenure security for efficient productivity (Quan, 1998). In this regard, it is suggested that more attention be directed towards innovative methods of land rights adjudication and registration rather than privatization in support of agricultural development (Augustinus, 2003).

4.15. 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 as 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. It is now realized that the linking of land formalization with collateralization is inappropriate and studies, including those referring to rural and urban land, show that the poor are least interested in using their land as collateral to secure credit. In any case, it is not easy to alienate customary lands through foreclosure.

4.16. The agriculture policy in Seychelles is aimed at ensuring food security through the most economically effective methods available, given the numerous constraints to intensive agricultural production (such as climate, soil type, and limited available land) in the country. The agriculture strategy focuses on subsistence farming and on small- to medium-scale agriculture and livestock production (destined primarily for domestic consumption) in which Seychelles has established comparative advantage.

4.17. In Ethiopia, the Agricultural Development Led Industrialization Policy (ADLI) focuses on increasing the productivity of “smallholder farmers”. The policy and strategy view agriculture as the engine of growth on account of its potentially superior growth linkages, surplus generation, market creation and provision of raw materials and foreign exchange. However, critics of the strategy argue that ADLI as an agriculture and overall development strategy is facing complex challenges as it did not give due attention to solving the known problems that existed and hindered the agricultural development of the country. One such issue is the unresolved issue of land tenure.

C. Land and other land-related policies and laws

4.18. There are several complementing land-related policies and laws that facilitate and sometimes impede the implementation of NLPs and laws. The status of land resources is an important determinant of the health and vitality of sectors and sub-sectors which depend on them for productivity. Among these are agriculture, livestock, energy, minerals, water, wildlife, forestry and human settlements. In addition, the overall condition of the environment depends to a large extent on how land resources are used and managed. Strategies to ensure that the land sector provides effective support to associated sectors and sub-sectors includes the development and operationalization of sectoral and sub-sectoral policies, laws, plans and management systems consistent with the NLP.

4.19. Most countries in the region have a plethora of sectoral policies and laws and plans relating in one way or the other to natural resource management. Some of these complement natural resource management while others conflict with it. Policies and laws of various forms and origins have been created in the different countries in the region so as to create the

environment for national development, for achieving food security and for conservation. Some key characteristics of these policies and laws include:

- Natural resource use legislation is based on the sectoral approach with separate legal regimes for the management of the various natural resources. Consequently, resource management is uncoordinated and disregards the holistic and interconnected nature of sustainable use of resources.
- The relative lack of horizontal integration of government ministries and departments—this has led to confusion and competition between and within institutional mandates.
- The more recent trend and emphasis on decentralization should result in greater integration of the land, agricultural, conservation and human settlement sectors.
- State control has been largely unsuccessful, costly and financially unsustainable. Thus over the last 15 years community involvement in natural resource management has received considerable policy and development attention, and the “move to local control” has seen the emergence of a range of so called “community based” models and initiatives for natural resource management. A good example is Tanzania’s Forestry Policy 2002 (and the resultant legislation) which emphasizes community-based forest management approaches.
- The new trends towards decentralization and strengthening communities and their institutions have placed pressure on authorities to embrace community approaches, biodiversity and natural resources.
- Ownership, control of and access to land and natural resources is becoming the single most important issue for sustainable natural resource management.
- Policies and legislation in many countries have often separated the rights to resources from the responsibilities for those resources or areas of land.
- The lack of clarity in tenure arrangements has resulted in much natural resource degradation, encroachment and conversion.
- There is urgent need to closely link tenure rights with natural resource management.
- The absence of nationwide land use planning is the root cause of natural resources conflicts in many countries.

4.20 The enactment of policies and legislation relevant to sustainable utilization of land and natural resources and environmental management is a priority action area in most of the countries in this region. Most of these countries have also established environmental agencies or departments.

4.21 Several countries have also formulated national land use policies, legislations and plans to sort out land use conflicts, and the confusion and competition between and within institutional mandates. Below is a selection of such national land use policies and plans:

- Uganda—National Land Use Policy (2007); a National Land Use Plan is being prepared
- Tanzania—National Land Use Act (2007)
- Ethiopia—Rural Land Use and Administration Policy
- Seychelles—National Land Use Plan (1992)
- Mauritius—National Development Strategy (2003) replacing the 1994 National Physical Development Plan; and the Planning and Development Act (2004)

5. National Land Policy –Formulation and Implementation Processes

A. Land Policy Development Processes

5.1. The approaches and strategies pursued in the making of land policies in Eastern Africa have tended to vary by country and historical experience. The drivers and the rationale have also differed. Some, like Uganda, have been in response to the persistence of complex problems, struggles for access to land for agriculture and livelihoods, and to meet varied political, economic, social and environmental objectives. For others, the drivers have been equity considerations. For example, the main driving objective of Ethiopia's land policy was equity in landholding size. The Ethiopian 1995 Constitution gives farmers and pastoralists free use of the land (i.e. access to land for farming/livestock is a right).

5.2. Land policies after independence in this region were largely influenced by (among other things):

- The legacy of colonial land policies—Kenya, for example, remained committed to individual ownership of land.
- The development path chosen in the post-colonial period (capitalist or socialist)—Tanzania and Ethiopia opted for the socialist model.
- The role of donor agencies and the influence of Western countries.

These three factors were critical to shaping land policies in the region.

5.3. Post-independence land policies implemented in this region have ranged from extreme tenure individualization and privatization, as represented by Kenya, to the collectivist socialist approach to land reform represented by Ethiopia and Tanzania. Collectivization of tenure in Tanzania took place through programmes of ujamaa and villagization. In Ethiopia collectivization was the follow-on to a huge “land to the tiller” reform. To date, Ethiopia and Tanzania (and now Eritrea) remain committed to broad state ownership of land and pursue non-market policies. Some of the countries have provided some recognition to customary land tenure (Tanzania

and Uganda), while Eritrea and Ethiopia have abolished private ownership and sought to replace indigenous customary tenure systems with community-based tenure reforms (Bruce et al., 1996). Kenya has largely remained committed to individual ownership of land while the Comoros and Uganda are at different stages along the same path of private property. Ethiopia and Somalia went for public ownership of all land as a strategy for attaining social justice, equality and development. Thus, the region shows marked variation in terms of land policy strategies by individual countries.

5.4. In Uganda, the 1995 Constitution and the 1998 Land Act vested the land in the citizens of Uganda and emphasized security of tenure by Uganda's smallholders, protection of women and other vulnerable groups from irresponsible land sales and promotion of investment and smooth operation of the land market. Uganda's tenure reform has therefore followed the Kenya route of promoting the sanctity of private property. Ethiopia has remained committed to state ownership of land, although it has decentralized the responsibility for the development of new tenure arrangements (leasehold and rental) to the governments of the new ethnically defined regions.

5.5. Eastern Africa is confronted by land tenure conflicts of various types. For example, civil wars in Burundi, Rwanda, Sudan and Uganda have resulted in increased threats to and conflicts over natural resources. The tenure issues surrounding IDPs, refugees and ex-combatants are of paramount concern in these countries. In Burundi and Rwanda, high population densities, ethnic tensions and excessive competition for land and other resources remain the key issues being faced by the land policy.

5.6. The policy formulation processes in this region have also varied. Processes have ranged from those deemed to have been highly participatory and consultative (Kenya, Rwanda and Tanzania) to the more top-down processes. In most cases, these processes have involved a greater or lesser degree of stakeholder consultation and public debate and considerable study, often organized through the appointment of commissions of enquiry into the necessary reforms (Kenya and Tanzania). In some countries the development of land policy has followed after passing of the land legislation (Uganda). A key feature of land policies in Africa is that the state has always had an overriding interest in access, control and management of land irrespective of tenure categories under which it is held or owned. More often

than not, NLPs are a collection of ad hoc statements on what the state wants to achieve at any particular time with respect to land. Governments have always relied on expert panels, task forces/working groups, investigating teams or comprehensive commissions of inquiry. Reports of the various commissions have often provided the background material for the development of land policies (vide the Presidential Commission of Inquiry into Land Matters—the Shivji Commission—in Tanzania and the Presidential Commission of Inquiry into the Land Law System of Kenya, popularly known as the Njonjo Commission). Input by locals into those policy documents was received through various means that included limited public hearing, workshops and conferences (public consultations).²⁷

5.7. Attention to tenure matters in Tanzania began in 1989–1990 with the establishment of a Technical Committee in the Ministry of Lands. The Shivji Commission was appointed in the light of numerous conflicts over land in a situation of perceived land maladministration. It began its work in January 1991. After two years of intense research and discussion and public consultations that covered all the regions of Tanzania (277 meetings attended by 80,000 people), the Commission submitted its exhaustive report in January 1993. This crucial document called for the formulation of NLP as a backbone for the formulation of the new land legislation. Thereafter, The Ministry of Lands drew up a position paper and a draft National Land Policy which drew heavily upon the Commission's recommendations. This was the subject of a public workshop in January 1995 and later was approved by Parliament in August 1995 without any real public consultation. The prime recommendations of the commission to vest root title of most of the country in respective village communities, and to remove control over tenure administration from the executive into an autonomous Land Commission were not supported by the government.

5.8. In Kenya the process started in 1999 with the appointment of a Commission of Inquiry into the land law system in Kenya. The Commission recommended the need to urgently formulate NLP to guide and address issues of land. The Njonjo Commission gave guiding values and principles by recommending that the process be consultative, participatory, interactive, inclusive, consensus-based, timely, professional, gender

²⁷ The policy processes that have driven land policy reforms in Africa have been described by Okoth-Ogendo (1998) and by Alden Wily (2000).

sensitive, innovative and cost effective. Equally, the principles of equitable access to land, intra- and inter-generational equity, gender equity, secure land rights, effective regulation of land development sustainable land use, vibrant land markets, democratic administration of land and access to land information were to be guiding tenets of the entire formulation process. The Land Policy Formulation Process was then initiated in February 2004 with the objective of developing an administrative and legal framework that would ensure equitable, efficient and sustainable access to and use of land resources in Kenya through a widely consultative process. The ministry in charge of land adopted a fully consultative and participatory process which involved structures that would enhance interaction between public and private sectors; civil society, grass root communities, and development partners; and with clearly defined principles, values, time frame, and outputs at each stage. Out of the wide consultations with key stakeholders, the NLP formulation process identified core issues that relate to the administration and management of land.

A steering committee comprising key stakeholders in land and line ministries was formed to oversee the National Land Policy Formulation Process (NLPFP). The role of the steering committee was to provide leadership, guidance and direction; six thematic groups were selected and these identified current land problems and developed recommendations on the resolution to the issues identified. The actual formulation activities started with the preparation of a concept paper that gave the road map for the formulation exercise. In this document, key requirements of the formulation were outlined. They included amongst others, the objectives, formulation principles, guiding values, methodology, scope, terms of reference for each thematic group and general set of rules for the day-to-day operations. Draft issues and recommendations reports from the thematic groups were integrated into one final issues and recommendations report which collated the findings of all six thematic groups. This report formed the basis for writing the NLP. The first draft of the policy was produced in December 2005. In September 2006 Cabinet approved its release to the public for debate and analysis. Comments from the public were incorporated into the policy document to produce an improved version which was presented to the stakeholders during the National Stakeholders Symposium held on 26–27 April 2007. The NLP was thoroughly discussed and endorsed as a document that is a reflection to the fullest extent of the consensus among all sectors: public,

private, civil society and owners and users of the land.²⁸ A Cabinet memorandum on the draft NLP was prepared and presented to Cabinet in September 2007 and is still awaiting approval. The contents of the draft NLP will be translated into a sessional paper for presentation to Parliament once the policy is approved by Cabinet.

5.9. In Rwanda, the NLP formulation started in 1999 with a consultative workshop held in November 2000 to discuss the draft policy. Various consultations were carried out to gather views from different stakeholders, including the general public and civil society. The NLP was finally adopted in 2004.

5.10. Uganda is in the process of formulating NLP to rationalize principles enshrined in the 1995 Constitution and the 1998 Land Act and to harmonize land-based sectoral policies. The country has followed a long route to formulating a codified NLP. Land tenure reforms in Uganda began in 1983 with the establishment of the Agricultural Policy Committee under the Ministry of Agriculture to look into ways to increase security of tenure and to make land more freely available for investment. Research into tenure systems and agricultural development was conducted by Makerere Institute of Social Research in collaboration with the Land Tenure Centre, University of Wisconsin, USA. This resulted in a report on land tenure and agricultural development in 1989. The study made several recommendations that informed the initial process of land tenure and land policy reforms in Uganda. In parallel, a Constitutional Commission (the Odoki Commission) was appointed in 1988 to review the Constitution and make proposals. The Odoki Commission used a participatory and consultative approach and its report of 1992 made several recommendations on land tenure, land use, land administration and land management.

5.11 The region as a whole is at different stages of formulating NLPs, land tenure reforms, and land laws/land related laws, and creating institutions and implementing the policies and laws. NLP frameworks are now in place in Rwanda and Tanzania. Uganda is in the process of developing a codified NLP. Kenya started on the formal process of developing NLP in 2004, following the Njonjo Commission Report and the final draft has been awaiting Cabinet approval since September 2007. In Mauritius land

28 As reported by the NLPPF Secretariat.

issues are subsumed within the National Development Strategy that was passed in 2003. The Island States (except Madagascar which adopted a land policy document in 2005) have not embarked on formulating comprehensive national land policies although there are a number of reforms, such as the cadastre reform of the Seychelles and the simplified titling programme (Guichet Foncier) of Madagascar. These countries are focusing mainly on environmental protection and biodiversity preservation. Countries that are undergoing political strife such as Somalia find it difficult to embark on land policy formulation. For information on each of the countries, refer to Annex I.

5.12. One of the key issues in the development of such wide-reaching reforms is the degree of participation or consultations which different governments either encourage or permit. According to Alden Wily (2000), “for most part, the process of reform has been centrally-driven, defined and delivered, and such popular participation as has occurred, has been in the vein of ‘consultation’ of which note is, or is not, taken, according to the will of state”. In countries where public consultation appears to have been deliberately limited, “the common position appears to be that matters of property are too political, too powerful in their implications to be left even in part to those who have most stake in the matter, the ordinary, and mainly peasant landholder” (Alden Wily, 2000). In most cases the formulation processes have involved a greater or lesser degree of stakeholder consultation and public debate. Kenya, Rwanda, Tanzania and Uganda stand out as countries that have carried out wide stakeholder consultations and public debate in the land tenure reform and land policy formulation processes.

5.13 Because land issues involve political choices, broad public debate of the options available is essential. Governments need to engage with different sections of society to understand diverse interests and priorities. Taking time to consult and effectively following a flexible calendar are essential to confidence-building between a government and its people. Kenya serves a good example where the design of the NLP was done by the state through a myriad of stakeholder groups which set the agenda, through six thematic groups, of what was to be accomplished by the NLP. Policy formulation and tenure reforms need to involve civil society at large, as happened in Kenya and Uganda, with a strong element of capacity building. A wide spectrum of organizations, ranging from government to private, NGOs and community based organizations, is central to the evolution of NLPs. These organi-

zations provide a variety of services and functions, including policy analysis and lobbying, research and information services; by doing so the organizations give credibility and legitimacy to NLP. Public participation, as Okoth-Ogendo (1998) argues, is essential to satisfactory land policy reform and debate between government and a diverse range of stakeholders should ideally be engaged throughout. Public participation has become “so crucial that donors are now insisting on and actively demanding its incorporation into all land reform exercises however limited these may be” (Okoth-Ogendo, 1998).

A constituent assembly was elected in Uganda to debate the Odoki Commission Report and finally promulgated the 1995 Constitution which enacted fundamental land policy principles, directives and statements as seen in Chapter 15, together with a few articles elsewhere. The 1995 Constitution set the policy framework, with a strong orientation towards the democratization of property relations. This was manifest in the removal of radical title from the state and its vesting directly in the citizens of Uganda. Democratization was to be furthered through the removal of authority over land administration and land management from the central government to autonomous land boards at district level. Dispute resolution was to be similarly removed from the government-supported judiciary to a regime of independent land tribunals. The 1998 Land Act operationalized the fundamental constitutional provisions that related to land.

C. Land Tenure Reforms and Land Policy Implementation Processes

5.14 As this chapter illustrates, many countries in Eastern Africa are currently undertaking a variety of land tenure reform initiatives. Indeed some countries (Rwanda and Tanzania) adopted their NLPs several years ago and are now struggling to implement them. However, implementation of new land laws and policies has proved problematic. Commonly, land laws and policies are drafted without adequate attention to the available financial and human resources. The challenges encountered by countries such as Tanzania and Uganda can provide useful lessons for others. Uganda perhaps provides the prime example of recent legislation and implementation. Here a comprehensive and ambitious Land Act was passed in 1998 (before NLP

could be adopted due to a constitutional deadline) following a relatively open, albeit short process of consultation.

5.15 Vigorous debate ensued within the Ugandan Parliament before the Act was passed. Yet, for all the good intentions, the Act has proved very difficult to implement in its current form. First and foremost, while a large amount of energy went into lobbying in order to get the best possible deal for the various stakeholders within the legislation as it progressed through Parliament, little thought was given to the cost of implementation which in the event proved very high.²⁹

5.16 The enactment of the tenure reform legislation was not preceded by a financial and economic appraisal and no provision was made in the budget for its implementation. The Land Act was enacted without considering the funding and human resource requirements for executing the wide-ranging tenure and institutional reforms that it proposed (for further details see Nsamba-Gayiiya, 1999b). The huge bureaucratic structures proposed by the Act placed it at odds with available resources and capacity, and therefore with the macroeconomic goals of government. In addition, previous laws and institutions were abolished in the new law but no arrangements were made to manage the transition. Other preparations for the passage of the law were either absent or inadequate: training, public information and communication, and community facilitation. The case of Uganda illustrates clearly the need for strategic planning, to assess how much institutional change is really necessary to achieve the goals of the tenure reforms to enable the costs of such reforms to be compared with the likely risks and benefits. Unlike other countries, Uganda did not commence its land reform process with the formulation of a systematic policy on land. This made it difficult for the country to carry out land tenure reforms.

5.17 Nevertheless, some positive lessons can be drawn from the Uganda experience. Although the land tenure reform process has not always been as participatory as some demand, the development of a Land Sector Strategic Plan (2001–2011) (LSSP) represents a significant contribution in the land sector. The formulation of the LSSP involved country-wide consultations and this has provided a more robust basis and greater legitimacy for its implementation. The case of Uganda illustrates clearly the need for strategic

²⁹ The funding needed to finance land titling and ownership transfer also was estimated in excess of US\$700 billion or £UK280 million (Government of Uganda, 1999).

planning to assess how much institutional change is necessary to achieve the goals set out by the Land Act and to enable the costs of such reforms to be compared with the likely risks and benefits.

5.18. Unlike Uganda, Tanzania chose to use the existing and well-established village governance machinery for tenure administration and local dispute resolution, rather than depositing these functions in district level agencies. The “democratization” of control over property relations should simplify implementation of the reforms, increase accountability in local land matters and cost a great deal less than the concurrent reform process in neighbouring Uganda. In 1999, Tanzania enacted two acts to implement the NLP, the Land Act and the Village Land Act. The enactment of these laws marked the start of a long land tenure reform process. The Ministry of Lands formed an Implementation Committee to address the immediate and long-term measures necessary for “operationalizing” the new legislation. In 2005, six years after passing the two land laws, Tanzania developed a Strategic Plan for the Implementation of the Land Laws (SPILL). The strategy calls for investment independent of the Medium Term Expenditure Framework (MTEF). Implementation is in some aspects being preceded by piloting. A pilot scheme to give certificates of titles to villages (village titles) and to individual land owners in the villages has been undertaken in several districts spearheaded by the Ministry of Lands. Implementation of SPILL is donor-funded and it is doubtful whether much could have been achieved without this kind of support. In urban areas, a pilot scheme to give residential licences to landowners in unplanned areas has so far given out over 60,000 licences. The Tanzania laws were subjected to limited public consultation in their formulation. Whilst disappointment was expressed at the failure of government to release its ultimate ownership and control over land, there is widespread approval of its handling of customary rights to land, the devolution of land administration and dispute resolution and the express support in principle and procedure given to the security of women, urban “squatters” and pastoralists.

5.19. Rwanda is also struggling with the implementation of its NLP and organic land law. The roadmap for systematic implementation is ready with support from a donor, the United Kingdom Department for International Development (DFID). However, implementation is very difficult and slow due to limited human and financial capacity. Furthermore, about 20 pieces of subsidiary legislation (decrees) are needed to implement the organic land

law. Pilots on land tenure regularization are also underway at four sites. The land tenure reform aims at replacing the customary tenure arrangement through land tenure regularization and systematic land registration.

5.20. Ethiopia is a good example for piloting and scaling implementation of tenure reforms. In 2005 the government rolled out an accelerated programme of land user certification throughout the country whereby 10 million peasants would be given user right certificates within 3 years. Despite a policy environment that is lacking in many aspects, Ethiopia has, over a short time period, distributed certificates to more than 20 million plots in a very decentralized process (Deininger, 2008). The Federal Government of Ethiopia in collaboration with the four regional states of Amhara, Oromia, Southern Nations Nationalities and Peoples and Tigray, with financial support of the United States Agency for International Development (USAID) is implementing a three-year programme called the Ethiopian Land Tenure and Administration Program. The major objective of this programme is to establish and implement a sound land certification system that provides holders of land-use rights in Ethiopia with robust and enforceable tenure security in land and related natural resources. Ethiopia does not have NLP, but some land policy principles are enshrined in the 1994 Constitution and in the new land law: the 2005 Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation No. 456/2005. For the first time, provision was made for the registration and certification of landholdings. The enforced land redistributions of the last 30 years remain a major cause of tenure insecurity in the highlands of Eritrea. Land policies have also marginalized pastoralists in the semi-arid lowlands. The herders have lost access to vital drought fallback areas which have been requisitioned by authorities for irrigated and rainfall crop production.

5.21 Eritrea does not have NLP. However, the 1996 Constitution contains fundamental land policy principles and statements. The policy is also integral to the new land law, the Land Reform Proclamation No. 58/1994. The land issue in Eritrea is particularly sensitive following the abrogation of customary rights and the strict control over land allocation by government land administration bodies. In Somalia, there is no NLP, mainly due to political instability and the absence of a unified government. The Agricultural Land Law of 1975 nationalized all land. Formal laws regarding land tenure and land reform have been replaced by informal patterns of property claims based on an admixture of customary tenure and armed oc-

cupation. In southern Somalia, local farming communities continue to rely on customary land tenure. In the secessionist state of Somaliland, land tenure legislation has been made into law and farmers have been granted full ownership of their agricultural plots.

5.22 There is no NLP in Sudan. However, studies relating to property rights and development of NLP started in 2003/2004 led by international NGOs and UN agencies. The three peace agreements (Comprehensive Peace Agreement (CPA), Darfur Peace Agreement and Eastern Sudan Peace Agreement) and the Interim Constitution covered, in a sketchy way, some land policy and tenure elements. There is ambiguity in the CPA and the Interim National Constitution as to who owns the land and natural resources and who governs these resources. As far as Southern Sudan is concerned, land and natural resource questions are provided for in the Wealth Sharing Protocol under the CPA and the subsequent Interim National Constitution. However, some ambiguities and seemingly contradictory articles in the CPA and the Interim National Constitution have hampered and delayed implementation of the CPA and the enactment of the land laws in particular. Rural land relations in Sudan have long been contested. Competing pastoral and farming interests have been a self-evident root of conflict in many parts of the country. Failure to accord customary land rights explicit status as private property rights is also an ongoing cause. Land was an issue which the parties to the CPA were unable to resolve during the peace negotiations. Land rights were fiercely contested in the decades before the most recent phase of the civil war (i.e. 1983–2005)

5.23 The United States of America has funded a Customary Land Security Programme operating in Nuba/Southern Kordofan and Blue Nile states, whereby tribal communities delineate the precise boundaries of their respective communal domains using global positioning system (GPS) technology. Each community is establishing a Land Council to hold the root customary title of the domain and administer interests on its behalf. The Southern Sudan Government has drafted a Southern Sudan Land Bill (2007). USAID has funded the Customary Land Tenure Programme (2006–2009) which aims to ensure that customary rights to land and resources are protected and formalized.

5.24 In Kenya, preparations for land reforms and policy implementation are underway with the formation of a Land Reform and Transformation

Unit. This unit will put together the logistics for land reforms and prepare the ground for the holistic implementation of the NLP once passed by Parliament. In the meantime, implementation of administrative principles that do not require legal reforms, especially in areas of land information management will be carried out.

5.25. All in all, implementation of tenure reforms and new land policies and laws has proved problematic. This is not unexpected, given the contentious and highly political nature of land, and the current financial and human constraints on governments. As Okoth-Ogendo (1998) remarks few countries have yet taken a holistic view of land policy reform, and those which have, found actual implementation slow, wrought with numerous political risks, cumbersome and costly. While many countries in the region have recently adopted highly innovative and pro-poor land laws, lack of implementation thwarts their potentially far-reaching impact on productivity. A key observation is that the implementation strategy is rarely made part of the reform formulation process.

5.26 Although practically all land policies and laws propose a decentralized implementation process, this has largely failed to start due to a lack of both financial resources and technical capacities and sometimes a lack of political will (Tanzania, Uganda and now Rwanda). Ethiopia and Rwanda decided to introduce pilot programmes as a strategy for testing new approaches and tools (Ethiopia for community based land demarcation and certification; Rwanda is piloting land tenure regularization, albeit without a supporting law). Uganda is piloting systematic land rights adjudication and demarcation.

5.27 Another major implementation challenge has been institutional and technical change associated with greater access to land, including land rights certification and titling. Not a single certificate of customary ownership has been issued in Uganda, almost 10 years after the 1998 Land Act was passed. In fact, hardly any of the countries that introduced legal reforms with much fanfare have succeeded in developing, let alone rolling out, a low-cost system for land administration at a scale that is sufficiently large to provide an option for the majority of the poor (Ethiopia and Madagascar could be the exceptions). This impedes realization of many of the expected benefits from such legislation and more generally it has raised doubts regarding the technical, institutional and political feasibility of such reforms.

5.28 In an “ideal” world, the land policy development and implementation process consists of a number of steps:

- Consultation and formulation of a NLP.
- Rationalization of land-related legislation.
- Appraisal of institutional and finance/budgetary options.
- Rationalization of the institutional responsibilities for implementation of the laws and regulations.
- Dissemination of information to the public, training and capacity building.

5.29 However, it is apparent that in very few countries has the ideal sequence of process been feasible (Tanzania and Rwanda). Many countries in the region have been forced to put the cart before the horse, as they have started with the formulation of a land law and then set about writing the policy. This happened in Uganda, simply because the 1995 Constitution required that a land law be promulgated within two years of the promulgation of the Constitution which in practice meant before the land policy could be adequately developed.

C. Land Rights Administration

5.30 However good land policies, land laws and land sector strategic action plans are, they will be rendered ineffective if land rights administration systems, structures and institutions to support their implementation are not functioning efficiently, transparently and in a cost-effective way.

5.31. Most NLP reforms undertaken in the last decade recognize the legitimacy of customary land rights and provide for some form of certification and registration of the rights, and a role for local and community based institutions in land administration and land management (Village Assembly/local committees in Tanzania), alongside that of the state. The new land policies and laws differ, however, in the instruments and arrangements adopted to interface customary and formal tenure, in particular concerning the extent to which they seek the documentation of rights to land, and the empowerment of decentralized institutions in the administration of land rights and the management of land as a resource at the local level.

5.32. Current land institutions and practices are still strongly influenced by colonial legacies. Land administration and management regimes in the region are characterized by strong centralized state control regimes. Although Uganda has decentralized land administration, the prevailing mode is that of a centralized land administration regime. However, only a limited amount of land is within official records, as registering land is a tedious process. Land registries are mainly manual and out of date. When they finally get a title, many title holders do not abide by the terms of the title such as developing the land in the stipulated time and according to an approved scheme, because of poor records and follow up. In all the countries in Eastern Africa land records are poor, incomplete and are rarely updated. Information sources are unreliable and information kept at ministerial level may differ from that kept at local government level which may differ from that kept at lower levels with local communities. The official land registration system is slow, expensive and tends to exclude the poor. Most of the land rights administration institutions are tasked with judicial, regulatory, fiscal, cadastral and conflict resolution functions. The roles of these institutions are generally restricted to land under formal tenure arrangements, often little more than 5 per cent of the land. These institutions generally fail to deliver on their mandates and do not function well, as a result of weak technical and human capacities, outdated equipment and their limited spatial coverage.³⁰ They also suffer from vested interests, rent seeking behaviour and corruption compounded by the use of land as a tool for political patronage.³¹

5.33. An important objective of land policy reform should be to comprehensively restructure institutions for land rights administration so as to achieve decentralized, transparent, efficient and effective delivery of land administration services that satisfy customer requirements and which over time would be self-sustaining. Public land institutions also need to be decentralized and work in closer collaboration with local government to deliver land services closer to the users,³² building on local innovations by informal and customary institutions such as local parcel demarcations, documen-

30 According to the Uganda Draft National Land Policy, the land rights administration system is beset by a number of malfunctions: high degrees of obsolescence, bureaucratic complexity, managerial capacity, operational inefficiency, corrupt tendencies and high transaction costs.

31 Kenya serves as a good example in this area.

32 Uganda serves as a good example of an attempt to decentralize administration and management functions down to lower local government level (Parish level) but the institutional innovations failed to take off due to lack of financial and human capacity.

tation, witnessing systems, and land dispute management systems (which have arisen in the absence of effective coverage by the state and which are legitimate and credible in the grassroots).

5.34. The new land policies and land laws that many countries in the region have adopted in recent years provide for greater decentralization in land administration and management with a great variety of models and approaches to the nature and roles of local-level institutions; the role granted to customary/indigenous institutions; and the powers of decentralized institutions and of indigenous/customary institutions in land conflict/dispute management.³³ The global pressures to decentralize and for participation have led to institutional reforms in the land rights administration in the region. Most governments now have some form of decentralization policy. To what extent this represents a real decentralization of power, or a de-concentration of centralized function is open to question. Tanzania and Uganda would be examples of decentralization, while Kenya is an example of de-concentration. To what extent decentralization has really empowered the lowest levels of administration (village, parish, location and community) is also open to question.

5.35 The centrepiece (and main innovation) of the new tenure laws in Tanzania is the devolution of a great deal of authority and administration over land to the grassroots, in what is arguably a unique form of tenure democratization. Land administration and management responsibilities for village land have been vested in the Village Council. This Council is a body elected democratically by the community, at meetings of the Village Assembly which bring together all adult village residents. So called “village lands” encompass the vast majority of land in the country. The Land Act and Village Land Act designate village councils as land managers, responsible for guiding community decisions on how to distribute land within the village into household, clan, community or other lands, and on their adjudication, registration and titling. The Tanzanian land reform may work better than elsewhere because the institutions upon which it will depend are already subject to popular direction through meetings of the Village Assembly. A caveat pointed out by analysts is the powers vested in the Commissioner for Lands to re-categorize village land into non-village land categories (i.e.

33 The biggest challenge in the region is how best to integrate customary/indigenous systems, structures and institutions with statutory ones in land rights administration (including land dispute management) and land management (including natural resource management).

general or reserved land) thus removing it from the jurisdiction of village authorities. General land is administered by the Commissioner for Lands, through appointed authorized officers who can be working within local governments. This is limited decentralization since the authorized officers are answerable to two masters, the local authority executive officer, and the Commissioner for Lands.

5.36. Other land rights administration models exist in the region. Uganda's 1995 Constitution provided for the devolution of authority over land administration and management and the subsequent 1998 Land Act prescribes the institutional structures through which this is to be done. The Act requires the establishment of land boards and land offices at district level throughout the country (currently 80 districts). The overall institutional framework proposed by the Act is complex and includes area land committees, the institution of a Recorder at each sub-county to record land allocations and transfers and a Land Tribunal in every district. Tanzania and Uganda, while recognizing customary land rights, have vested authority over them in non-customary institutions.

5.37. Ethiopia and Sudan operate federal systems of government with complex land administration systems. The introduction of a federal system has changed the balance of power in favour of the newly created regional states, which have legislative executive and judicial powers within their jurisdictions. Ethiopia devolved land administration and management to regional councils and governments. Each region has decentralized the land administration function to the *woreda*, a governance structure comprising democratically elected representatives of local communities and the *kebele* administration, the lowest formal level of local government. Each *kebele* covers around 1,000 households. In Sudan, under CPA, the parties agreed that land should be a concurrent matter between the national government, the Southern Sudan Government and state governments. The parties are in the process of developing and amending the relevant laws. Implementation is at a very early stage.

5.38. In all the countries in the region the land rights administration institutions face institutional, technical, financial and human incapacities. In most countries, even where land responsibilities are vested with local bodies, the central government retains considerable control. The control is exercised through a variety of tools. In addition, decentralized land institutions are

largely dependent upon support from the central government in terms of finance and technical expertise, further limiting the autonomy of local bodies.

5.39 The different institutional options present strengths and weaknesses. Establishing a new set of land institutions has proved expensive and slow. Appointed land bodies tend to be largely accountable upwards to government institutions appointing them. Elected governments are more likely to be accountable to their constituency. Then again, vesting land management powers with political bodies may create opportunities for patronage and corruption, as elected officials may allocate land to reward political allies. Vesting responsibilities over land with customary authorities enables them to build on institutions that are already performing land related functions (thereby reducing implementation costs) and that are often regarded as legitimate by the local community.

6. Lessons and Best Practices

6.1 The region as a whole is at different stages of formulating land policies with the resultant land laws, institutions, public awareness, capacity building and implementation. From the countries which have gone through the process, or are currently doing so, a number of lessons can be drawn.

A. Lessons

1. *Sequencing the process is critical*

6.2 All countries in the region have land problems and are characterized by a number of salient features such as duality, neglected customary tenure, vague tenures for the majority, unequal access to land between communities and on a gender basis, conflicts, over-centralized and inefficient land administration, lack of transparency and so on. In many countries land laws exist but these may not be commensurate with the current requirements. Thus, nationwide deliberations should be held first on what should go into the NLP and subsequently into the laws. This seems to have worked well in Tanzania. In Uganda, however, a land law was passed without the policy. The current deliberations which will lead to NLP can only mean that there will be need for a new land law or laws. Logical sequencing of the land reform process is therefore necessary, starting with national consultations, formulating a land policy and then the laws and institutions. The ideal sequence consists of:

- Consultations and identification of salient problems and formulation of NLP.
- Formulation of land laws and rationalization of land-related legislation.
- Appraisal of institutional and financial/budgetary options.
- Rationalization of the institutional responsibilities for implementation of the NLP and laws.
- Dissemination of information to the public, training and capacity building.

2. The process is long and costly

6.3 Among the countries of the region which have made significant achievements in the area of NLP formulation is Tanzania. The NLP was approved in 1995 after a report of a Presidential Commission on Land Matters which had been set up in 1991 (the Shivji Report). The report was produced after research and consultation covering the whole country. Likewise, the NLP was approved after it was discussed nationwide. The NLP outlined the fundamental principles it aimed to cover. These were largely reproduced in the legislation. The resulting land laws aimed at fulfilling these principles and incorporating all observations that had been put in the land policy.

6.4 It took four years for the laws to be drafted, discussed and finally passed through Parliament. It took another two years before the laws could become effective since the country had to prepare relevant regulations and forms.

6.5 Often, NLPs and land laws are drafted without adequate attention to available budgetary and human resources. Experience has shown that administrative capacity is invariably the principle constraint to the implementation of land policy and law in most countries of the region, yet the resources required for the implementation rarely receive adequate attention. Governments rarely allocate more than 0.5 per cent of their budgets to the land sector.

6.6 Institutional reform may also be necessary. In Tanzania some of the institutions that were supposed to be established as part of the new Land Acts are yet to be created. These include: the National Land Advisory Board and the Land Compensation Fund. In Uganda, the area land committees and recorders envisaged under the Land Act 1998 have yet to be put in place.

6.7 While many countries in the region have recently adopted highly innovative and pro-poor land laws, lack of implementation has thwarted their potentially far-reaching impact on productivity, poverty reduction and governance.

3. *There is need to have other laws, institutions and sectors addressed*

6.8. In developing NLP and laws there is usually the feeling that the new land laws will cure all the ills related to access to and administration of land. A law that should deal with land tenure is overloaded with issues related to land use planning, land acquisition and mortgaging, environmental protection etc., as was the case with Tanzania. Conversely, other aspects related to land administration that need to be addressed may not be dealt with in tandem with the formulation of land laws. The Tanzania Government realized that reform was also required in areas of land use planning, land surveying, land acquisition and compensation, land registration and the registration of land professionals. These issues are only just being addressed, and this has an impact on the effective implementation of the NLP.

6.9. Likewise many NLPs and laws are developed without reference to other related sectors such as water, forests, minerals, wildlife, agriculture, and urban and human settlements. These sectors also develop their own policies and laws with limited reference to the NLP.

6.10 The lesson here is that the formulation of NLP should be comprehensive and go beyond the realm of land tenure issues. Account should be taken of other national macroeconomic policies that impinge on land and land use sectoral policies on agriculture, environment, forests, wetlands, wildlife, water, minerals and so on.

4. *Emphasis on individualization of land rights and titling*

6.11. Many NLP and land law documents in the region emphasize individualization of land rights, stressing titling and giving limited attention to holders of secondary rights (women, children, migrants, IDPs, pastoralists, hunters and gatherers and other minority groups such as the *Hadzabe* in Tanzania). The rights of pastoralists have not been clarified and secured in law. Likewise the commons, including forest, wetlands, grazing land and others have not been adequately addressed. Land adjudication and registration have been conceived in terms of individuals or villages, leaving out land uses that do not use land individually or as static communities.

6.12. Moreover, emphasis on individualization has been hinged on the belief that this will lead to higher productivity, enhance land markets and address issues of poverty alleviation, especially by allowing poor land owners to access credit markets. This assumes that poor people are eager to borrow and can handle credit. Many studies have pointed to this not being the case and to poor people not wanting to risk their property by using it as collateral for loans. This is a lesson to be remembered during the formulation of land policies, land laws and formalization of land rights. Studies from Eastern Africa suggest that people are more concerned with tenure security than with using land as collateral.

6.13. There is growing consensus that, even in rural African contexts where individual titling of land may not be desirable or feasible and use of land as collateral for credit is at best a distant possibility, providing poor land owners or users with options to have their rights documented can yield significant benefits. These benefits, which arise largely from the ability to invoke formal mechanisms to protect land rights, include incentives for land-related investments, enhanced gender equality and bargaining power by women, improved governance, reduced conflict, potential, and lower transaction costs for productivity-enhancing land transfers through either rental or sale.

5. *The role of development partners and ownership of the processes*

6.14. The funding for the development of NLPs to a large extent comes from development partners. As a result, the input of expatriate staff has also been significant. This has been the case with the Tanzanian and Ugandan land laws. Development partners have played an important role in the NLP formulation processes in Kenya and Rwanda and they are assisting in the implementation of the NLP, tenure reforms and land laws in Rwanda. Implementation is also hinged on the availability of funds from development partners. This brings into question the ownership of these processes and their sustainability. Given that all the countries in the region have their own land problems, there is need to have home-grown solutions developed by local experts.

6.15. Development partners have their own priorities depending on their mandates, normative approaches and inter-relations with the partner coun-

try. Some directly support advocacy civil society organizations (CSOs) that have been actively involved in NLP formulation and land tenure reform processes or that provide technical expertise and advocacy for the development of pro-poor land tools. The spectrum of development partners is not homogeneous and their areas of interests differ. However, generally their role is that of policy dialogue partners, facilitators of change and providers of expertise and capacity development (including technical and financial resources). The challenges revolve around harmonization, cooperation and coordination—harmonizing differing perspectives and interests and creating consensus on support priorities and policy dialogue directions.

6. Public consultations and the role of non-state actors

6.16 There have been efforts to engage non-state actors³⁴ in formulating land policies and laws. This has involved public meetings and consultation with interested groups such as NGOs, academics, chambers of commerce, community leaders, religious leaders, youth and women groups, professional bodies and others. This has been the case in Kenya, Rwanda, Tanzania and Uganda. The need for a participatory and consultative process cannot be overemphasized, as this ensures that provisions that benefit the common people are put into the policies. Public consultation and participation allows the different stakeholders to set the agenda of what is to be accomplished by the respective land policies instead of the governments setting the agenda.

6.17 However, the extent to which the views of the civil society are accepted differs. Even after the draft policies and laws have been widely discussed, it remains incumbent on a few officials to determine what will be taken for approval/enactment. In the case of Tanzania, for example, despite the wide discussions on the new land laws, the final bills that went to Parliament were not open for public review on the grounds that these were government documents. As a result officials were able to play down or reverse some of the proposals that had been articulated in the public consultations. For example, the need for decentralization of land management and ad-

³⁴ Civil society and private sector organizations, professional associations and faith-based organizations are non-state actors in this context. These actors have been actively involved in NLP formulation processes in all the countries in the region. They have contributed through technical input and expertise and through advocacy and awareness creation among their own constituency and among the general public.

ministration was emphasized during public consultations, but was ignored during the preparation of the final draft bills and instead powers were concentrated in the Commissioner for Lands and ministerial headquarters. Another example is that although it was argued that land had value, the draft that went to Parliament stated that undeveloped land had no value. Pressure was brought to bear on the Ministry of Lands to agree to an amendment of the Land Act to acknowledge the value of undeveloped land and put this in law. Often, the final land laws differed in a number of respects from the fundamentals of the land policy which was supposed to provide the guiding principles for the laws.

6.18 After civil society has been consulted, implementation tends to exclude them on the grounds that this is government business. This is the experience in Rwanda. Given that the input of civil society is considered important, it should be involved in implementation to increase a sense of ownership, transparency and capacity building.

6.19 The lesson here is that the dialogue process seems to be restricted to the land policy formulation phase. Dialogue stops during land administration and policy implementation and the issues becomes government business. The role of civil society organizations as watchdogs of government commitment to reforms ought to be appreciated.

7. Urban and Peri-urban Land Issues

6.20 With the exception of Djibouti and the Island States, urbanization levels in the region are still low but growing rapidly. A good number of NLPs have concentrated on the rural areas, paying limited attention to urban and peri-urban areas where informal settlements are growing fast. There is also displacement of peri-urban land owners either by the market or through government planning schemes. These land owners need protection lest they become landless or sink into poverty. A lesson here is that NLP needs to be comprehensive and cover rural, peri-urban and urban areas comprehensively. All countries in Eastern Africa need to develop an urban development and management policy which will address the wider urban development issues and the urban–rural development issues.

8. *Dispute Resolution Mechanisms*

6.21 All NLPs need to include dispute resolution mechanisms. The objective is that these should be fast efficient and just. Observations show that the mechanisms put in place are land tribunals (Tanzania and Uganda). They have complex litigation and adjudication procedures usually associated with ordinary courts. With the exception of Somalia, no specific recognition is given to indigenous mechanisms of dispute processing or customary law as a normative framework for processing disputes under customary land tenure. Many disputes cannot therefore be brought to the tribunal. Those submitted to the judge are piling up at the tribunals, remaining unresolved. Moreover, disputes beyond individuals or groups of individuals, such as a whole community against another community or a community against the government or a government backed stakeholder (such as a mining company), cannot be easily solved by tribunals. There is therefore the need to give support to traditional dispute resolution mechanisms.

9. *The Role of Foreign aid and Sustainability of Reforms*

6.22 All countries in the region have their own land problems. Dealing with these problems must be a national priority, given the importance of land in the socio-economic set up of the country and poverty alleviation strategies. Yet, to a large extent, resources to address land matters come from foreign aid. SPILL in Tanzania is hinged on financial inputs from development partners. If foreign funding stops, implementation may stop as well. This introduces the issue of sustainability. Land policy reforms must therefore be made part and parcel of the national development agenda with national resources devoted to this process.

10. *Importance of Local Conditions*

6.23 Eastern Africa as a region has strong local differentiations and this affects: first, whether countries are able to focus their attention on the development of NLPs (this would be the case for countries in conflicts); and second, what to focus on. In the Island States, for example, the focus is more on environmental protection, tourism promotion and housing compared with countries on the mainland which focus on land tenure issues. The lesson here is that since the ultimate goal is to attain national development and fight poverty, countries can choose different paths and emphases.

B. Best Practices

Several best practices can be gleaned from the region. These can be considered under several thematic categories.

6.24 **Sequencing of Policy Processes:** The need to have a logical sequencing of the land reform process, starting with national consultations, formulating a land policy and then reforming the laws and institutions cannot be overemphasized. Tanzania offers the best example in sequencing the process. It has gone all the way from land policy development, through legislative reforms and institutional reforms to actual implementation of NLP in form of the two land laws and SPILL. Kenya is on course with the ideal sequence, albeit slowly. Uganda did it in reverse, with the land law being enacted before the formulation of NLP. Nevertheless, the country is now in the process of formulating the land policy; the land law will have to be amended after the land policy has been approved.

6.25. **Participation in the Reform Process:** A wide spectrum of organizations ranging from government to private, civil society, NGOs and community based organizations is central to the evolution of NLPs, land laws and implementation of these policies and laws. These organizations provide a variety of services and functions, including setting the agenda, lobbying, policy analysis, technical land services, finance, marketing, community development activities and attending to the specific needs of members.

Public consultations and participation are critical to the processes and it is important to secure and engage the support of all stakeholders in the formulation, operationalization, monitoring and evaluation of the NLP implementation processes. The civil society, NGOs and land rights holders need to be involved in the process.

There was active public consultations and participation in Kenya and Tanzania throughout the formulation process. In Rwanda, the enthusiasm for public consultations and participation seem to have waned after the NLP was passed; civil society is currently seeking ways to participate and be involved in the implementation process. There is need to confer continuous legitimacy to the process of implementation.

6.26 Land certification: All countries in the region have instituted some initiatives to title and register land as a way of addressing poverty, increasing security of tenure, resolving conflicts, improving governance and equity and increasing land transparency. Despite the realization that there are benefits to land registration, countries have not been able to mount programmes that could lead to the achievement of such benefits on a sufficiently large scale to provide options for the majority poor.

Ethiopia, however, offers a good practice where, over a period of two to three years, the country registered the majority of rural lands in a rapid process at relatively low cost. In 1997 a federal proclamation (law) devolved responsibility for land policy to the regions. Under the programme, each village elects a Land Use and Administration Committee that takes responsibility for public registration of plots in a field-based process with the presence of neighbours to increase transparency and reduce the scope for manipulation or error. Once results have been discussed in public, households receive a preliminary registration certificate identifying their holdings, to be followed by an official certificate with the holders' pictures and space for maps. The programme has registered 20 million plots for some 5.5 million households in a very short time. The cost for first time registration (including the certificate) is around \$1 per plot. Use of GPS to add spatial reference would cost around \$1.5 per plot. This provides an important benchmark for other African countries, and suggests that technical factors are not sufficient to explain the limited progress with implementing innovative new laws and reforms.

The evidence from Ethiopia suggests that large-scale and rapid delivery of land certificates in a participatory way is possible, without bias to favour the wealthy and to marginalize women. Positive assessment of the process by users, readiness to pay and replace lost certificates, high demand and willingness to pay modest sums for a spatial reference and their positive assessment of likely impacts suggest that the modalities of implementation responded to local needs. Most of the disputes were solved in the field and outcomes were not in favour of the wealthy or against women. This reinforced the initial evidence of positive investment and transfer effects.

The Ethiopia case also illustrates that given the massive scale and positive impact of first-time land registration, technical obstacles and resource constraints cannot explain the near-universal failure by African countries to

put the innovative aspects of recent legal reforms into practice. Instead, the main obstacle to documenting land rights of current occupiers on a massive scale seems to be political. With political commitment, documenting land rights on a massive scale and at a cost that is affordable under African circumstances is feasible and can have significant benefits even in the short term.

The example of Ethiopia can be complemented by the case of Madagascar where from 2005 the government has resorted to the use of local systems of land management to mount a land registration process in rural areas. Before this, one had to travel 300 km to get a title; the process took 7 years. Local communities have a *Guichet Foncier* or communal land management office responsible for acknowledging private property rights by issuing a *Certificat Foncier*. The whole system is based on local management. As a result, the time taken to get a title has been reduced to 3 months, and the cost has come down from \$500 to \$24. The *Certificat Foncier* can be issued 12 times faster. The *Certificat* is to be introduced in urban areas with the support of the United Nations Centre for Human Settlements (Habitat).

Sudan is piloting community-based approaches to land rights adjudication, mapping and certification; good practices will emerge eventually.

6.27 Building institutional development on existing structures: A major constraint to the implementation of land policies, tenure reforms, land laws and institutional reforms is the lack of relevant, effective and efficient land institutions. Legislation may be constrained by lack of human and financial resources to set up these bodies and by problems concerning the perceived legitimacy of such bodies compared to existing customary/local institutions. Building on existing structures, whether they are customary/traditional authorities, community-based institutions, local governments or other bodies, may be less costly and more effective where such institutions are solid and considered as legitimate by the local population.

6.28 Coexistence between Agriculturalists and Pastoralists: One of the major problems in the region is reconciling the land needs of agriculturalists with those of pastoralists and other land users. Two issues need to be addressed. First, encroachment on traditional pastoralists' land and, second, pastoralists have been accused of driving their animals on to farmers' land causing extensive destruction. This has often led to clashes between

the two groups resulting in the loss of property and life. Conflicts are more frequent and severe during the dry season and during periods of prolonged drought.

However, the experience of two communities—the Kawahla (farmers) and the Gawamba (herders)—in the village of Gereigikh in North Korfodan State (Sudan) who have learnt to coexist offers useful lessons. Farmers learn that when cattle graze on their fields, the animal droppings make good manure for crops, improving productivity. Farmers therefore allow the herders access to the fields at appropriate times. Now the two communities have developed a symbiotic relationship: they have relationships in the market place over the supply of manure and labour; and they buy products from each other. In times of drought the farmers sell water to herders. The herders supply farmers with dairy products, while the farmers supply them with agricultural produce.

The risk of a flare-up is always there, usually over animals grazing on cropland and sharing water points. However, the communities manage because the tribal system, where traditional leaders arbitrate conflicts is very strong in the area. Furthermore, transhumance routes, whereby herders can move their animals through farmers' areas to other parts of the country in search of pasture and water, are well recognized and protected.

6.29 Decentralization of Land Management: Land management regimes in the region have traditionally been centralized. Reforms to realize decentralization have been undertaken with limited results. Tanzania, however, took the bold steps of formulating two land tenure laws, one for urban land and the other for rural land. Under the rural land law, customary practices are recognized provided they are not discriminatory against women. Village assemblies and village councils are given powers to manage rural land and to issue certificates of customary right of occupancy (CCRO). Although the Commissioner for Lands retains some powers, powers are decentralized to the villages. Uganda, under the 1998 Land Act, decentralized the land management function to the parish level. However, the implementation has been difficult due to inadequate financial resources and administrative capacity.

Madagascar offers some examples of good practice in decentralized land administration, capacity building and linkage of customary and statutory tenure.

6.30 **Piloting:** Land reform undertakings are expensive and may have unforeseen implementation and tenure results. As a result, many countries undertake piloting before rolling out the full-scale reform undertaking. Having passed the land laws, Tanzania is poised to register all land in rural and urban areas. A pilot scheme to give certificates of title to villages and to individual land owners in the villages has been undertaken in Mbozi District in southern Tanzania and is being replicated in various parts of the country. The pilot, implemented by the Ministry of Lands and the District Land Office, provided insights into effective ways of facilitating rural property formalization using aerial photographs and GPS. It also provided feedback on the role that village executive officers (VEOs) can play in facilitating the preparation and issuing of CCROs using geographic information system (GIS) techniques. The piloting also included a human capacity building component. A team of 10 VEOs were initially trained, followed by the training of another 60. Some 35 VEOs qualified and were able to create CCROs using GIS tools. Digital pictures of each property owner are kept in a cadastre database. These pictures are used to fill in the appropriate fields in a standard crested form used to issue CCROs.

Uganda is piloting systematic adjudication and demarcation with the major focus being not titling as such, but resolving disputes/conflicts, increasing tenure security, and creating land information for multiple purposes. Rwanda also offers good examples in piloting land tenure regularization which is community based in both rural and urban areas. Moreover, Rwanda is piloting new surveying technologies. Piloting provides an opportunity for flexibility, innovation, learning by doing and then scaling up what works.

6.31 **Urban agriculture and poverty alleviation:** Throughout the region, rapid urbanization is taking place and as a result, urban poverty is on the increase. One way of tackling this is to support urban agriculture. Unfortunately, agriculture in many urban areas of sub-Saharan Africa is at best only tacitly accepted and is often banned. In any case, urban agriculture is not encouraged and is not taken as part of the development process in urban areas in Eastern Africa. However, urban agriculture has continued to exist under these hostile conditions and has therefore been unregulated.

Given the global food crisis there is added impetus to support urban agriculture. The City of Kampala in Uganda is doing this.

After many years of conflicting approaches towards urban agriculture, the situation began to change in 2004. The Kampala Urban Food Security, Agriculture and Livestock Co-ordinating Committee (KUFSAALCC) was set up in 2004. Its members, drawn from institutions of higher learning and public and civil society organizations including the Kampala City Council, are concerned about the availability of healthy and safe food for Kampala, and are actively engaged in research, policy dialogue and public awareness. The members participated actively in a policy change process which resulted in a review and update of the by-laws regulating urban food production and safety in the city. In May 2005 a set of five ordinances (by-laws) was passed which recognized the right of city residents to grow food and raise livestock. This is a significant achievement for Kampala.

6.32 Sustainable Natural Resource Management: Two decades ago Shinyanga and Tabora regions, a dry land area in western Tanzania, was labelled the “Desert of Tanzania”. Gradually and steadily, residents are reclaiming large parcels of land through the efforts of their communities, public sector agencies and development partners. They are rehabilitating once-thriving dry land ecosystems using science-based agroforestry techniques.

In Shinyanga Region alone, scientists estimate that some 350,000 ha of land have been rehabilitated. Current estimates show that about 40 million hectares, or more than half of Tanzania’s land, is highly degraded. Historians note that up until the early part of the 20th Century, western Tanzania was home to a thriving woodland ecosystem that had a large diversity of flora and fauna and easily supported the livelihoods of its people. By the 1920s, however, things had begun to change.

Policies put in place by the Colonial Government—often with little knowledge of local conditions or an appreciation for the inherent fragility of the region’s natural resources—proved highly disruptive. With little foresight, the new policies encouraged the conversion of woodland areas to agriculture, a policy that severely taxed dry land soils and disrupted traditional land use systems. No one is quite sure why this was allowed to take place, as the result was virtually preordained, but one explanation is that the Co-

lonial Government sought to eradicate the tsetse fly scourge that limited cattle rearing. In so doing, the government created conditions perfect for overgrazing, quickly overwhelming the carrying capacity of the land. Subsequent efforts by the World Bank and other agencies in the 1960s and 1970s to reforest the region failed to stem the loss of indigenous woodlands. This was mainly because the projects lacked scientific rigour and the understanding of local environments and cultures required for scaling up. Many observers believed that the region's decline could not be reversed.

Happily, things have changed for the better. In 1988, researchers identified the main land use constraints in the agropastoralist region of western Tanzania as inadequate fodder, shortages of wood products, soil degradation, declining crop yields and insecure land tenure. Three years later, scientists from the World Agroforestry Centre (ICRAF) joined agencies in the region that were working on projects to check environmental degradation. The Centre focused mainly on research to support the activities of *Hifadhi Ar-dhi Shinyanga* (HASHI; Land Conservation Programme in Shinyanga), an award-winning region-wide development programme (UN Equator Prize 2002) that effectively brought together science, extension, and financial services.

Working with various partners, scientists from ICRAF began by carrying out a survey that identified five agroforestry technologies as key to reclaiming the degraded ecosystem. These techniques included rotation woodlots, improved fallow, fodder bank, domestication of traditional medicinal trees and fruit trees—all land management techniques that built on traditional knowledge. The research team identified a total of 56 tree species which were introduced on farms. This was followed by training various stakeholders, including extension workers, to disseminate the chosen agroforestry technologies and encourage local communities to adopt them. To varying degrees, the efforts by HASHI and other projects implemented by more than a dozen agencies proved effective in stabilizing large areas of land and gradually reversing the damage caused by years of misuse.

The biggest success of the HASHI project, observers say, was its use of *ngitili*, a traditional land use system in which large areas of land are set aside by communities and individuals to ensure that forage is available for draught animals at the end of the dry season. Community *ngitili* set aside usually cover about 50 ha, while those of individual farmers are far smaller. In the

ngitili system, vegetation and trees are nurtured on fallow land during the five-month long rainy season. By mutual agreement in the community, animals are kept away from the *ngitili* so that fodder is available during drier months. In 2003, economists estimated that more than 800 villages were using different variations of *ngitili* systems. Subsequent studies showed that *ngitili* had had a substantial impact on local incomes, contributing up to \$500 to each household every year, a large sum in rural Tanzania. In addition, the practice greatly reduced women's labour, cutting the time spent on searching for fuel wood by over 80 per cent, and had a highly positive impact on biodiversity.

6.33 Gender-sensitive land policies and laws: Uganda offers some of the best practices as far as gender policies and laws are concerned. The Constitution and the Land Act provide for gender equality in land access and land ownership; affirmative action in favour of women; and two instruments declare illegal, all customary laws and practices that discriminate against women. In the matrimonial context, Ugandan land law has specific provisions protecting spouses from sale of jointly occupied land without the consent of the concerned spouses. Tanzania has provided for spousal co-ownership and consent in dealing with matrimonial property in land and marriage laws. The new land laws in Eritrea and Ethiopia support women's land rights as they provide that both men and women will receive equal land allocations in their own right, which they may farm together or individually as they prefer. The law in Eritrea and Tanzania provides for divorcees to retain a share of the land.

6.34 The role of donors/development partners: Lessons learnt from the role of donors in land policy development, implementation and evaluation are not well documented. Despite the Paris Declaration, donors' interventions are poorly coordinated in the field of land policy. However, some of the good practices come from USAID with the land tenure reforms in Ethiopia and Southern Sudan; DFID with the land tenure reforms in Uganda; and the World Bank in Tanzania. The policy framework should examine what modalities of donor assistance are appropriate to support land policy formulation and implementation and land tenure/institutional reforms as well as mechanisms to achieve better donor coordination and integration with country assistance strategies in practice.

7. Implementation Bottlenecks, Challenges and Gaps of Land Policy and Land Reform

A. Implementation Bottlenecks and Challenges

Most of the bottlenecks and challenges lie in the implementation of NLPs, tenure reforms and land laws. The key ones identified from the Eastern Africa experience are discussed below.

7.1 Policies do not seem to consider the implementation strategy as part of the policy development process. This leads to policies that are an end in themselves or to the start of deliberations on the strategy for implementation after the policies have been adopted. Implementation must therefore be considered as part and parcel of policy formulation. In many countries, piloting is undertaken, but this becomes an end in itself as scaling up becomes difficult.

7.2 **Resource constraints:** Resource constraints to implement the policies are immense. These are both human and financial at various levels of the implementation process and in various institutions which are supposed to implement land policies and laws. Resource constraints may be exacerbated by the unwillingness to explore alternative approaches to land services delivery.

7.3 **Involvement of Stakeholders:** Stakeholders who are consulted during the policy development process should also participate in implementation. This has not been the case in any of the countries in the region. Stakeholders are usually omitted both from the final policy and legal documents and from implementation. The need for continuous stakeholder support and confidence cannot be overemphasized; there is need to confer continuous legitimacy to the implementation process. The involvement of stakeholders in implementation requires that capacity be built in them as well so that they can handle this important role.

7.4 Integration of traditional/customary institutions: In many countries in Eastern Africa, traditional/customary systems and structures have not been properly integrated into the statutory ones and yet they play an important role in matters related to land. Failure to integrate these systems has led to unwarranted institutional clashes. An example is possibly taking place in Uganda between traditional authorities and the central government. These traditional/customary institutions need to be democratized. Governments must ensure that operations handled by these customary institutions are transparent and that accountable land administration and land management mechanisms are in place.

7.5 Decentralization Challenges: Decentralization creates major challenges at institutional and technical levels. There are also serious capacity gaps in terms of human and financial resources and equipment as far as decentralization of land administration and land management functions are concerned. The tendency to want to centralize functions in ministries or other central government agencies is very strong. Among the reasons given for this situation is the lack of capacity at local levels or the need to control corruption. These reasons need to be re-examined and corrective measures taken, but should not be cited to justify the continued reluctance to decentralize. In many cases, lack of political will to decentralize is a big factor whereby the central government is reluctant “to let go”.

7.6 Inadequate Research: Research and studies in land tenure issues are still major challenges and constitute a gap in knowledge. Land policies and laws should be informed by detailed analysis of issues. Many studies on land issues are not locally initiated or funded and this brings to question their ownership, and relevance to the local circumstances.

7.7 The need for strategic planning: There is need to have strategic planning for the land sector, perhaps taking a cue from the Uganda LSSP and Tanzania’s SPILL. This strategic plan should be prepared in a transparent manner, based on a consultative bottom-up approach and local needs as opposed to being donor-driven.

7.8 Gender perspectives: In the Eastern African countries gender awareness in formulating land policies varies. In some countries it is lacking, while in others, there is full awareness. In some countries, such as Ethiopia, approaches to gender differ within the country. However, making gen-

der aware policies is one thing, but carrying this through implementation is another. This has been clearly demonstrated in Kenya and Uganda. The biggest problem is tackling traditions/customary practices. There is need for programmes that address traditions and customs to enable the realization of a gender aware land policy. Powerful obstacles may come from religious institutions, especially where it is felt that ordained norms to deal with the roles of men, women and children are being tampered with.

7.9 Public awareness: Although consultations are carried out during the formulation of land policies, the public at large remains unaware of these. Some countries have mounted campaigns to inform the public and this is commendable. In some countries this brings in the question of the language in which these public campaigns should be conducted or the language in which the policies are written. In Tanzania there have been efforts to translate some aspects of the policy and the laws into Kiswahili but this has proved expensive with limited effectiveness.

7.10 The Crucial role of the civil society: Monitoring and evaluation of the implementation process is very important. Indeed civil society should be strengthened to play a watchdog role. Transparency is important, especially for government agencies, which have a tendency to hide information or to label it confidential.

7.11 Land Administration Challenges: Most of the land in the region is not surveyed thus cadastral surveying, titling and land information systems are a major challenge. Some countries are still reluctant to use alternative approaches to surveying and registering land rights, except Ethiopia and Rwanda which are experimenting with modern surveying technologies. Building capacity in land administration is a major issue affecting all countries.

7.12 The Role of the Private Sector: Implementation of land policy reform is usually seen to be a public sector activity. However, the private sector can play a useful role. It should be included in this activity to take some of the burden of land management and administration functions from the public authorities. The capacity of the private sector needs to be built (it should not be assumed to be there) to handle the functions that are currently played by the public sector. For this to work, a conducive regulatory framework must be put in place. In the public sector, there is need to build

capacity in the land administration and management institutions to enable them deliver the retained core services (formulating policies and laws, titling, setting national standards, quality control and assurance and regulating the land sector).

7.13 The Role of Professional Bodies: Professional bodies and organizations, at national regional and international levels, can play an important role in implementing national land policies and laws. Again, these should be included and strengthened to handle a regulatory function. However, professional bodies in the region are generally weak or do not exist.

7.14 Sharing Experiences and Lessons: A wealth of practical experience is now emerging in Africa and sharing lessons between countries provides ideas and experience on which to build. This practice is not yet harnessed and this is a serious gap. This assessment has found no evidence of regional cooperation on land policy. In addition, one gets a sense of governments acting mainly in ignorance of what neighbouring countries have done or have attempted to do on land issues.

7.15 Political stability: Political instability in the region makes it difficult to implement land policy reforms. Instability is being experienced in parts of the Comoros, Eritrea, Ethiopia, Kenya, Somalia, Sudan and Uganda.

7.16 The role of donors and development partners: Donors play an important role in influencing land policy reform in Eastern Africa. **Governments, CSOs and NGOs in the region depend heavily on donor funds and expertise. Some of the reforms, processes and programmes have been donor-led while others have been donor-supported.** This creates a problem of ownership and sustainability of reform programmes. Governments should take the lead in their land policy process and play an active role in funding and directing the reform undertakings. There is poor coordination between donors and this leads to unnecessary competition and sometimes wastage of resources.

7.17 Political will: The biggest problem impinging on the implementation of land reform programmes in the region is lack of political will. Where there has been political will, as in the case of Ethiopia, commendable achievements have been realized.

B. Gaps

In making a survey of the situation in the region a number of gaps have been identified.

7.18 Although traditional and religious systems of tenure and land management are acknowledged and in some cases mentioned in national legislation, they are referred to in a blanket manner. They are not well analysed and do not fit into the national set up governing access to and the use of land resources. Islamic land tenure practices are not included in national legal and institutional frameworks. There is lack of a coherent approach by which traditional land management systems can be incorporated in land policy and land law regimes. In some aspects there is a situation of conflict where governments want to retain control and believe they have what it takes to manage national land property. There is therefore a tendency to marginalize traditional systems of land management.

7.19 Countries in the region are at different levels of developing land policies. Some countries (such as the Comoros) lack NLP frameworks. Others such as Kenya and Uganda are in the process of formulating them, while Tanzania has had a land policy for over 10 years. The Island States have opted to lay emphasis on the environment as opposed to the standard land issues. This means that there is need for a diversified approach. The countries which are in the process of formulating their land policies can definitely learn from those which have already done so. But we may need to ask whether those who have had more than a decade of land policy need to review their situations. This may be important considering that achievements have not been spectacular.

7.20 Although countries in the region are urbanizing fast, there is lack, in almost all countries, of an urban land use and development policy framework. Such a framework would not just cover land issues, but would address rural–urban relationships, livelihood, environmental, economic and social activities and infrastructure and service provision in urban areas.

7.21 All countries in the region lack an involuntary resettlement framework outside the basic provisions for compensation in the case of expropriation. Consequently, there is considerable resistance to government land

acquisition. Where governments expropriate land, the concerned land occupiers end up all the poorer, a tenet that is contrary to the move to alleviate poverty. Concepts that land belongs to the state, and the determination of compensation based on unilateral government assessment of investments disadvantages those who lose land to urban and infrastructure development, and those who are displaced to give way for mining, conservation, and investments. There is an urgent need for countries to develop a comprehensive involuntary resettlement framework.

7.22 Exploitation of natural resources is on the increase in the region, propelled by foreign investors. Most countries require environmental impact assessments before investment is approved. It is not clear what should happen when the resources are exhausted and the investor leaves, although the need to carry out land restoration is obvious.

7.23 Sometimes it is not clear what should be done when there is conflict between the community or sections of experts and the government. An example is the contemplated soda ash factory near Lake Natron in Tanzania. Environmentalists see the development as a hazard to the environment for the flora and fauna related to the lake using the example of when such a factory was built in Kenya and local fauna suffered. However, the government wants the factory constructed. In Uganda, the government's intention to excise part of the Mabira Forest led to street riots. The problem is how to ensure governments only operate in the public interest.

7.24 The countries in the region are not prepared for the invasion of bio-fuel production. No country has a coherent policy on biofuel production yet foreign capital is moving in fast. For example, an investor has already been awarded 9,000 ha out of the 18,000 ha requested in Kiserawe District, near Dar es Salaam, Tanzania, where some 11 villages have been relocated to give way to the growing of jatropha. Large-scale jatropha planting requires much land, water for irrigation and forest clearance. There are obviously economic benefits, but a close regulatory framework is required nationally so that the agenda is not driven by foreign investors. The countries also have to evaluate the harmful and negative environmental, social and economic impacts. Whenever agro-fuels are on the agenda, the pressure on peasants and subsistence farmers to leave their land intensifies.

7.25 Addressing the effects of global warming, especially for Island States and coastlines, is a major problem. Floods, weather change and unpredictability, and rivers changing courses are some of the effects of global warming. The rising sea level is a threat to coastal settlements and islands. Global warming may affect what farmers plant and will also affect the behaviour of pastoralists. African countries need to prepare themselves for the effects of global warming.

7.26 There is the need to manage the rural–urban transition. For example, when peri-urban land is expropriated for urban development, owners are given monetary compensation or a piece of their former land, but they can no longer practice natural resources-based livelihoods. Yet there are no policies to ease them into urban life (employment, trade and commerce).

7.27 Urban agriculture (including urban forestry) is a useful land use for many low income urban dwellers yet there is the lack of a conducive policy to deal with it. Urban authorities should consider how to incorporate environmentally sound urban and peri-urban agriculture in their plans and by-laws, clearly spelling out what should and should not be practised.

7.28 Throughout the region slums are growing fast and many countries are behind schedule in meeting the MDG targets. Upgrading is possible, especially if it is community based. Likewise there is need for a system to minimize the growth of other slums. The problem experienced with slum upgrading is the lack of standards to be applied for land demarcation and infrastructure. Most official standards cannot be applied to slums without extensive demolition. There is possibly a need to develop standards that are applicable to the various types of slums.

7.29 Pastoralism is a major land use in Eastern Africa. Nevertheless, it is felt that policies in the various countries have not succeeded in addressing the needs of pastoralists, and of hunters and gatherers. As a result, conflicts have continued to flare up between farmers and herders. Despite government promises to demarcate land for pastoralists, little has been done. National policies and laws are unclear on how to address the problems of the societies that migrate in their use of land.

7.30 Countries in the region are cautious about allowing foreigners to own land, yet they need to encourage foreign investment. In developing

land laws and policies some countries have decided that foreigners should not own land (Madagascar and Tanzania). Many, however, have softened their stand and allow foreign ownership under specific circumstances.

8. Strengthening the Draft Land Policy Framework in Africa Document

After examining the Draft Framework and Guidelines for Land Policy and Land Reforms in Africa, it is felt that there are areas where strengthening is necessary to enrich it and ensure that the regional specificities are included. Such areas are indicated in the matrix below.

Area/Issue	Required Strengthening in the Framework
Overview of the importance of land rights for Africa's development	The importance of land rights in Africa's development cannot be overemphasized. Based on the Eastern African experience, it needs to be stressed that these land rights are being threatened by a number of factors including: state sovereignty over land, conflicts, marginalization of customary/traditional systems, foreign investors, resource degradation, climate change, among others.
State sovereignty over land	This needs to be revisited to minimize abuse of power by the state. There must be a clear definition of the powers and limits of the state to compulsorily acquire private/communal land. The concept of "public interest" needs to be made clear and defined and administered in a transparent manner. Where the state must exercise its powers of eminent domain, this must be done in a transparent manner. Compensation packages need to be redefined and should aim at putting the affected communities in an equivalent (or better) situation, and should, as much as possible, include the provision of alternative land. The state should not determine compensation or if it does, then this must be subject to independent review. Compensation packages should be administered expediently and before the land is taken over. Beneficiaries should include all those affected (e.g. tenants) and not just the land owners.

Area/Issue	Required Strengthening in the Framework
The duality of property systems	<p>While it is recognized that there are statutory and customary tenure systems, it is important to realize that the situation is not that of either or. Customary tenure is not homogeneous and is not static. It is also important to appreciate that there is a plurality (not just a duality) of land tenure systems and institutions.</p> <p>We need to talk of plurality of property systems, which are under a dynamic situation. The advantages of these systems need to be maximized and the disadvantages minimized. The pluralism should not be treated as a problem but rather as a resource.</p> <p>Legal pluralism needs also to address the needs of communities who may have suffered or still suffer from slavery institutions in the past. This will ensure that they have land of their own when they are freed. Currently, they may have no land or have to live on the land of their former masters as serfs. Formulation of customary land rights should not mean replacement of customary tenure with modern tenure.</p>
Land tenure security	<p>Increasing tenure insecurity results from state action, mining, oil exploration, commercial farming, urbanization land titling, restrictions on access to the commons, expropriation and so on.</p> <p>There is need to enhance the tenure security and to adopt alternative, speedy and cheap ways of land adjudication and registration. The focus on full certificates of title and collateralization is possibly misguided. With less than 15 per cent of the land parcels registered, there is need for alternative land registration systems at various levels. The Eastern Africa region offers interesting innovations in this area.</p> <p>Tenure security for pastoralists needs special attention—there is need for rangeland/pastoral policies at national and regional levels.</p>

Area/Issue	Required Strengthening in the Framework
Sustainable management of land and natural resources	<p>Traditional ways of land management (such as the <i>ngitili</i> of Tanzania) need to be explored and utilized. Likewise, ways and means of coexistence between pastoralists and agriculturalists need to be explored. The continued degradation of land and natural resources (in particular the serious deforestation) in Eastern Africa needs special attention. Desertification is another serious challenge in the region.</p> <p>The region has some world famous conservation areas such as mountains, Kenya and Kilimanjaro, and national parks, Serengeti, Ngorongoro, Gombe, Queen Elizabeth, and Mgahila Gorilla national parks. Special measures are required to protect these from human encroachment and prevent the animals within from getting extinct.</p> <p>The Sustainable Land Management initiative promoted by NEPAD and TerrAfrica should be embraced by all African countries.</p>
Protecting the commons	<p>The commons in Eastern Africa are under serious threat, partly because of the misuse and abuse of state power, partly because of population pressure and partly because their role is not well understood. The commons should be well defined, and include fragile coastal lands, forests, wetlands, mountains, and nature reserve parks and natural resources. Some countries are experiencing inter- and intra-state conflicts over the control of the commons.</p>
Managing pastoral land use (as well as tenure security for hunters and gatherers)	<p>Governments have in general found it difficult to put in place a system to protect pastoral land uses and ways of life. Some have contemplated sedentarizing pastoralists with little success. The recurring conflicts between farmers and herders must be highlighted. Symbiotic existence between agriculturalists and pastoralists is possible.</p>

Area/Issue	Required Strengthening in the Framework
Improving land rights security in urban and peri-urban areas	<p>Land policy formulation must take into account the rapidly growing urban areas, and address their internal land tenure and use issues. These areas include slums/informal settlements, land for low income households and urban agriculture. Peri-urban areas are areas of contention, where the weak lose their land rights. There is also the need to look into the urban–rural linkages in the long-term, in terms of urban remittances to rural areas and the migration of labour from rural areas to urban areas.</p> <p>Just as there is concern about productivity of rural land in terms of agriculture, there is need to consider how urban land could be made productive. This should be in terms of enabling production activities by households and the intensive rather than the extensive use of land.</p>
Addressing gender bias in land relations	<p>The concern with women holding land in their own right is now widespread, more so since the number of women-headed households is on the increase (33 per cent of all households in Tanzania in 2002). Changes in legislation and institutional frameworks to encourage gender equality need to be followed by women empowerment in terms of economics, education and advocacy as well as enforcement of the laws. Laws and customary practices related to matrimonial property rights and rights of inheritance rights need to be reformed. Protection of matrimonial property provided for in various legislation in Eastern Africa needs to be extended to cover all family (not just matrimonial) property.</p>
Managing the impact of HIV/AIDS on land rights	<p>The impact of HIV/AIDS is not well researched. Impacts on land tenure may differ with the stages of the pandemic, from asymptomatic, to early illness, to chronic illness, to death, and the effects on the survivors. At all the various stages, there is need to protect the property rights of the concerned parties. Although in most instances it is widows and children who suffer and who have been discussed in development circles, cases where widowers (men) get mistreated by the relatives of their wives/partners are increasing.</p> <p>The impact of HIV/AIDS on the land administration institutions (including its impact on human capacity) should also be addressed.</p>

Area/Issue	Required Strengthening in the Framework
Restructuring land administration systems and institutions	<p data-bbox="632 248 1203 472">There is evidence from Eastern Africa that central governments are unwilling to decentralize powers over land or that they take only half measures to do so. Some countries have experienced u-turns in the decentralizing process. Yet decentralization is important for ensuring tenure security and proper land administration and management. There is need to push for decentralization along with other sector decentralization and local government reform.</p> <p data-bbox="632 508 1203 675">Decentralization must increase the role of non-state actors, including traditional leaders, and the private sector. In all cases capacity building and the establishment of a conducive regulatory framework are imperative. Lack of capacity at sub-national levels should not be used as an excuse to discourage decentralization.</p>
Managing land issues in post-conflict (and post-disaster) reconstruction	<p data-bbox="632 702 1203 869">Situations of latent and small conflicts should be recognized early and nipped in the bud. Where, for example, people are being pushed away from land for whatever reason, this creates a situation of potential conflict. Situations of resource scarcity under demographic pressure and lack of off-farm livelihood opportunities lead to conflicts.</p> <p data-bbox="632 904 1203 1090">Strengthening the role of traditional systems of land management may diffuse conflicts. Several countries in Eastern Africa are bedevilled with armed conflicts which need to be addressed immediately. NLP should address issues of land restitution, compensation and resettlement in countries, where armed conflicts have led to displacement of people destruction and destruction of property.</p>

Area/Issue	Required Strengthening in the Framework
Designing land policy formulation and implementation strategies and programmes	<p>While meaningful and full public participation is necessary, the Eastern African experience has shown the need to sequence the process and to include implementation strategies and programmes as part of policy formulation. The agenda must be locally formulated and locally-based solutions (benefiting from available experiences) adopted.</p> <p>Dependence on donor resources for policy formulation and implementation may divert the focus from local issues, and may adversely affect the integration of policy formulation and implementation into the national development framework. There is need to harmonize and coordinate the activities of development partners in the policy formulation and implementation processes. Governments need to internalize land policy implementation processes and programmes while benefiting from donor assistance.</p>
Regional variations and challenges	<p>The Eastern African region has both the largest and the smallest countries in Africa. Island States have their own special problems emanating from environmental fragility, proneness to natural disasters and the effects of global warming. Some countries in the region have known only instability for the past few decades generating both refugees and IDPs. Some countries are part of the Sahel dry region, and desertification is a big policy issue. These variations need to be taken into consideration when formulating the continental land policy framework.</p>
Global warming and climate change	<p>Climate change is causing havoc within Eastern Africa. Countries in the region suffer from phenomena such as weather unpredictability, rising sea levels, tsunamis, cyclones, floods, droughts or changing inland water bodies. Many times, sectors crucial to the livelihoods of the poor are affected. The policy framework needs to address this issue in terms of designing both mitigation and adaptive strategies, such as growing drought resistant crops and steps to minimize natural resources degradation. The draft framework is silent on this matter.</p>

Area/Issue	Required Strengthening in the Framework
Biofuels, food security and environmental concerns	The onslaught of investors seeking to acquire large chunks of land in Eastern Africa for growing crops to produce biofuel, need to be addressed. Growing biofuel will make the food situation worse in terms of both availability and price, and may also lead to environmental degradation and to new conflicts over land. However, biofuels may offer some genuine development opportunities.
Land for investment and the impact of foreign direct investment	Much land in Eastern Africa is being acquired by local and foreign interests in the name of investment. People are being dispossessed of their customary rights where land is suspected to hold valuable minerals or oil. A number of countries had laws restricting land ownership by foreigners, but these laws have been watered down somewhat. The framework needs to be strengthened to define the role of large landholdings vis-à-vis the general population and, in particular, to minimize displacement of local populations and creating land shortages.
Intra- and inter-generational equity issues	<p>The framework needs to be strengthened to address intra- and inter-generational issues such as the rights of women, children, migrants, refugees, IDPs, and communities with their unique socio-economic cultures based on living directly off land produce, and owning land in the commons. These include the Batwa in Rwanda, the Hadzabe in Tanzania, the Eyle in Somalia and other such communities.</p> <p>Likewise, there is considerable displacement of communities native to areas where urban areas are growing. There is need to accommodate these communities instead of sending them farther away from urban areas.</p>

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Appendix I: Eastern Africa Regional Assessment: Summary of Country Profiles, Country Variations and Similarities

	The Comoros	Madagascar	Seychelles	Mauritius	Tanzania	Comment
Salient country features	Group of islands Area: 2,230 km ²	Large island Area: 587,041 km ²	Country of 115 islands Area: 444 km ²	Group of islands Area: 2,045 km ²	Large country Area ¹ : 945,087 km ²	
Population	619,700 (2006 est.)	18,606,000	86,000	1,248,600 (2005)	38,000,000 (2004)	Population densities very high in island countries ²
Population density	315 per km ²	27 per km ²	220 per km ²	578 per km ²	38 per km ²	
Urban/rural	36.4 per cent : 63.6 per cent		52.5 per cent: 47.5 per cent	41 per cent: 59 per cent	24.2 per cent: 75.8 per cent(2005)	Island countries highly urbanized in relative terms. High urbanization rate in all countries.
Human Development Index (HDI)/ ranking	132	143	47	63	162	Seychelles has highest HDI ranking in Africa.
Land use	35.9 per cent of land arable. Forest areas cover 3.60 per cent	Importance of intensive rise cultivation, but land used primarily for pastoralism	Agriculture: 22 per cent Environment protection & tourism : 60.3 per cent Human settlements : 11.7 per cent	Agriculture: 44 per cent ³ Forestry: 30 per cent Built-up: 26 per cent	68 per cent is range-land 23 per cent classified as reserve land including game & forest reserves	Most dominant use is agriculture.

	The Comoros	Madagascar	Seychelles	Mauritius	Tanzania	Comment
GDP-composition by sector	Agriculture, hunting, forestry and fishing : 36 per cent Services : 55 per cent Industry : 9 per cent (2005)	Agriculture : 28.1 per cent Services : 55.7 per cent Industry : 14.3 per cent	Country's economy depends heavily on fishing industry and up-market tourism	Agriculture : 6.1 per cent Industry : 26.9 per cent Services : 67.0 per cent	Agriculture: 45 per cent Manufacturing : 9 per cent Mining & quarry: 3.5 per cent Trade: 17.2 per cent (includes tourism) Construction: 5.7 per cent Transport, communication: 5.4 per cent Electricity & water: 1.6 per cent Finance, business: 9.6 per cent Public administration: 7 per cent (2005)	
Colonial legacy	French colony for 130 years until 1975. Three tenure & property rights system—French colonial law, traditional Comorian law and Islamic law	British colony until 1975	Mauritius was a French colony from 1715 to 1810 and a British colony from 1810 until its independence in 1968	Freeholds & leaseholds granted under German rule Rest of land declared Crown Land under British rule Dual tenure system: statutory as well as customary tenure in place	Legal pluralism, is a source of confusion and conflicts	

- 1 Out of which 61,500 km² is water.
- 2 Mauritius has the highest population density in Africa. Scarcity of land for development is one of the major constraints to development in Seychelles.
- 3 Sugar cane takes up 39 per cent of total area.

	The Comoros	Madagascar	Seychelles	Mauritius	Tanzania	Comment
Land tenure	Four basic categories: untitled land, titled land state domain and village reserves	Three major property regimes: private holdings, commons and state property. Customary/local-level tenure arrangements are composed of both private holdings and commons		90 per cent private, rest state owned some of which is leased to tenants. Lack of comprehensive records of land ownership, land use and valuation hampers physical and economic planning and adversely affects collection of tax revenue	<ul style="list-style-type: none"> ✓ Radical title is vested in the President as trustee for the people. ✓ After independence, all freeholds converted into 99-year leaseholds and leaseholds converted into rights of occupancy. ✓ The Land Acts, 1999 give three categories: general land, village land and reserved land. 	<p>Customary right of occupancy titles are given out of village land.</p> <ul style="list-style-type: none"> ✓ 70 per cent is village land; 2 per cent “general” land and 28 per cent forests and national parks.

	The Comoros	Madagascar	Seychelles	Mauritius	Tanzania	Comment
Land policy formulation and implementation processes	<p>No NLP. Political instability has made it difficult to put in place a national land policy or to bring about land reforms</p> <p>The main focus has been on conservation and protection of biodiversity and the environment.</p> <p>Developing the national land policy and land tenure legislation and institutions are a major challenge for the Comoros</p>	<p>✓ Madagascar adopted a NLP in May 2005.</p> <p>✓ Four axes for land reform are developed:-</p> <p>i. restructuring and modernization of the land administration system</p> <p>ii. decentralization of the land administration system;</p> <p>iii. Review and amendment of the legal framework;</p> <p>iv. Development of a national training and capacity building programme</p> <p>✓ Civil society organizations (CSOs), including the International Land Coalition were active in the formulation and consultation process of the national land programme</p>	<p>Seychelles does not have a NLP</p>	<p>✓ No NLP in place</p> <p>✓ The National Development Strategy (2003) (NDS) provides a strategic framework for land use planning</p> <p>✓ There are proposed reforms to land policy to make more land available for non-sugar farmers</p> <p>✓ NDS involved a state-led process of identification of key issues; followed by stakeholder consultation on Working Papers, development of draft strategy and further engagement with stakeholders including private sector & NGOs.</p> <p>✓ Mauritius is implementing the Land Administration, valuation and Information Management System (LAVIMS). The objectives of this system, <i>inter alia</i> are streamlining and modernizing the processing of land transactions for both state and freehold land and compiling a comprehensive cadastral map.</p>	<p>✓ 1995 NLP passed after the 1991 Presidential Commission of Enquiry. Policy formulation process was inclusive and participatory involving all stakeholders, identified as local governments, land users and donors.</p> <p>✓ Implementation followed with the Land Act, 1999 and the Village Land Act, 1999. Strategic Plan for the Implementation of the Land Laws developed in 2005.</p> <p>✓ The two land laws aim to secure existing rights based on long-standing occupation/use; promote equitable distribution promote efficient administration and sustainable development; fair compensation and facilitate market in land.</p>	<p>Level of civil society participation in the process has varied from country to country.</p> <p>Civil society reported relatively weak in Mauritius.</p> <p>Weak capacity of civil society to engage in policy debates in some States is a matter of concern.</p>

	The Comoros	Madagascar	Seychelles	Mauritius	Tanzania	Comment
Complementary policies, plans & laws and links with land policy	<ul style="list-style-type: none"> ✓ The National Environmental Action Plan has been adopted. Coastal erosion is a big problem in the Comoros. All mature forests habitats are highly threatened by agricultural expansion. ✓ A National Biodiversity Strategy Action Plan is under preparation. ✓ In 2003 Comoros adopted a Growth and Poverty Reduction Strategy followed by an Action Plan 2006-2009 to implement the strategy. 		<ul style="list-style-type: none"> ✓ Seychelles Development Strategy 2017 which covers land management, environment, agriculture strategy and housing strategy 2017 which covers land management, environment, agriculture strategy and housing strategy 2017 ✓ NDS (2003) defines the framework for land use planning. It is a cohesive package of plans and policies, guidelines and mechanisms for implementation. It aims to create conditions focus and prioritise government investment and private sector initiatives ✓ The Town and Country Planning Act and the Planning Development Act 	<ul style="list-style-type: none"> ✓ Vision 2020 ✓ 2000 National Strategy for Sustainable Development, 1990 White Paper on National Environment Policy, followed by the Environment Protection Act. ✓ NDS (2003) defines the framework for land use planning. It is a cohesive package of plans and policies, guidelines and mechanisms for implementation. It aims to create conditions focus and prioritise government investment and private sector initiatives ✓ The Town and Country Planning Act and the Planning Development Act 	<ul style="list-style-type: none"> ✓ A number of national policies, legislation and plans are in place:- ✓ The National Forestry Policy 1998 and the Forestry Act 2002; ✓ The Minerals Sector Policy 1997 and the Mining Act 1998; the National Water Policy 2002; the National Environmental Policy 1997 and the National Environmental Management Act 2004. ✓ 2004 National Strategy for Growth and Reduction of Poverty supports Tanzania Development. ✓ Vision 2025 of becoming a middle-income country environmental protection productivity 	<p>Since Seychelles has a fragile ecology, protection of the environment is vital.</p> <p>Reform in land and other sectors in the countries was necessitated by adjustment programmes, economic and social liberalization, the need for good governance and the need to deal with poverty</p>

	Kenya	Somalia	Djibouti	Ethiopia	Eritrea	Comments
Salient country features	Large country Area ⁴ : 582,646 km ²	Large country Area: 637,677 km ²	Small country Area: 23,300 km ²	Large country Area: 1,101,000 km ²	Relatively small country Area: 124,320 km ² Coastal line of 1200 km	Djibouti represents a country with relative political stability, economic freedom and modern financial, transport and communications infrastructure in an otherwise undeveloped region which is subject to recurrent civil unrest and economic uncertainty.
Population	36,139,000	7,964,000	600,000 (est.) ⁵	75,600,000 (est.)	3,500,000 (est.)	A large population of refugees in Djibouti.
Population density	62 per km ²	13 per km ²			High density in the central highlands where 65 per cent of the population live on 16 per cent of the total land.	Big numbers of IDPs in Somalia, Ethiopia & Eritrea, Djibouti highly urbanized.
Urban/rural	22 per cent : 78 per cent		85 per cent : 15 per cent	15.70 per cent : 84.3 per cent	20 per cent : 80 per cent	
HDI ranking	152		148	170	157	

	Kenya	Somalia	Djibouti	Ethiopia	Eritrea	Comments
Land use	20 per cent potential arable land, 10 per cent forests, woodlands and game parks; rest is arid or semi-arid	Limited arable land, 3.8 per cent of land is arable Pastoralism is a major land use in Somalia	The majority of Djibouti's rural population depends almost exclusively on livestock production for their livelihood. Virtually all livestock are managed under a system of transhumance pastoralism, where human and livestock movements are based on the seasonal availability of water and pasture.	Potential arable land is 6.3 per cent. The country has expansive rangelands, which comprise 56 per cent of the country's surface area. Forest covers only 2.8 per cent of the land. 42.3 per cent of the land is devoted to pastoralism in the arid zones.	Grazing land: 56.3 per cent; crop land 3.6 per cent; woody vegetation 5.9 per cent and barren land 34.1 per cent	How crop land in this sub-region and almost non-existent in Djibouti due to severe climatic, water and agro-ecological constraints. Arid land in Somalia & desertification increasing. Pastoralism is a major land use in Ethiopia, Eritrea, Somalia and Djibouti.
GDP-composition by sector	Tourism, followed by agriculture and manufacturing		Djibouti is dependent on the service sector which contributes over 80 per cent to GDP; agriculture contributes a mere 3 per cent due to the country's arid country.	Agriculture is the main economic activity, accounting for 45 per cent of the GDP of small holder farms account for more than 90 per cent of agricultural production.	Only 7-10 per cent of the land in Eritrea is used for cultivation. The forest cover today in Eritrea is only about 2-3 per cent of the total area.	

4 Comprising 97.8 per cent land and 2.2 per cent water surface. Only 20 per cent of the land area can be classified as medium to high potential agricultural land, and the rest of the land is mainly arid or semi-arid.

5 Exact population of Djibouti is uncertain. Although a national census was carried out in 1991 the results were disputed by both government and by international agencies.

	Kenya	Somalia	Djibouti	Ethiopia	Eritrea	Comments
Colonial legacy	<p>Colonial land policies and laws saw the alienation of customary African lands. It also led to multiplicity of legal regimes that relate to land. The objective of the colonial regime was to entrench a dominant settler economy while subjugating the African economy through administrative and legal mechanisms</p>	<p>✓ Somalia was ruled by the Italians on one part and the British on the other part during the colonial era. Land was confiscated by the colonial authorities and ruled under a western tenure regime, in which individual titling was a norm.</p> <p>✓ The customary tenure laws were wiped away and the Somalis lost their ancestral rights</p>	<p>Formerly a French colony which gained independence in 1977.</p>	<p>✓ The country's geographical, ethnic and cultural diversity and its historical background produced highly differential forms of land utilization and ownership.</p> <p>✓ The most recognized tenure types were "rist"/kinship, private, church, and state holding systems.</p>	<p>✓ Eritrea developed 3 types of land tenure systems – the village ownership system ("dies'a") – communal land holding system mainly dominant in central high land Tigrinya speaking zone of Eritrea which comprises 65 per cent of the population and 16 per cent of the land</p> <p>✓ -extended family ownership system ("rusti/ishmi") which is a private land holding system</p> <p>✓ -state ownership system ("dominale") created by the Italian colonizers.</p> <p>The Italian colonial statutes abrogated indigenous customary tenure in some parts of Eritrea.</p>	<p>The process of colonization introduced an alien concept of property relations in Kenya, where the protectorate or the state as a political entity came to own land and grant to land users subsidiary rights</p>

6 The per capita income of \$780 ranks highest in the region, however, poverty and unemployment levels are high (42 per cent and 59 per cent respectively).

	Kenya	Somalia	Djibouti	Ethiopia	Eritrea	Comments
Land tenure	<p>✓ Dual system based in the one case on principles of English property law and, in the other, on a largely neglected regime of customary property law.</p> <p>✓ Land in Kenya is vested in the President in trust for the people of Kenya</p>	<p>✓ The Constitution states that land belongs to the state.</p> <p>✓ In 1969, the government adopted the socialist system where land was nationalized and redistributed;</p> <p>customary laws were totally ignored. Currently a plural system operates: the pre-1991 statutory law (secular), the Islamic/sharia laws and the Somali customary law (popularly known as <i>Xeer</i>)</p>		<p>The land is state-owned, the people have only user rights over plots they have in their possession. Land cannot be sold, exchanged or sold but can be leased in short term.</p>	<p>The Land Reform Proclamation No. 58/1994 introduced a new and uniform land tenure system throughout the country. The state/government owns all land in Eritrea and the people have only user rights.</p>	<p>Somalia is in transition where statutory laws are generally not applied and are either inefficient or disconnected from the reality on the ground.</p>

	Kenya	Somalia	Djibouti	Ethiopia	Eritrea	Comments
Land policy formulation and implementation processes	Kenya is in a process of formulating NLP. The draft was ready in 2006, and the Final Draft in May 2007. It is awaiting cabinet approval	There is no NLP, mainly due to political instability and absence of a unified government	There is no National Land Policy	There is no NLP; however some land policy principles are enshrined in the 1992 Constitution. ✓ The land policy appears to be integral to the new land law (The Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation No.456/2005	There is no NLP; however the 1997 Constitution contains fundamental land policy principles and statements. ✓ Under the Land Tenure Proclamation of 1994, all land became the property of the state would grant land rights to all Eritrean adult children (both male & female) depending on their place of residence and main occupation. However formal regulations and institutional arrangements for the new system have not been established.	

	Kenya	Somalia	Djibouti	Ethiopia	Eritrea	Comments
Complementary policies, plans and laws and links with land policy	<p>The policy documents in Kenya include:-</p> <ul style="list-style-type: none"> ✓ Kenya Vision 2030 ✓ The National Development Plan (2002-2008) which has proposed the formulation of a National Land Use Policy that would facilitate the preparation and implementation of land use plans for all urban and rural areas. ✓ The National Poverty Eradication Plan. (1999-2015) ✓ The Economic Recovery Strategy for Wealth and Employment Creation Programme- (2003-2007) 			<ul style="list-style-type: none"> ✓ The national economic policy at the macro-level is known as the Agricultural Development-Led Industrialization (ADLI). Central to this policy is improving the productivity of peasant agriculture. In implementation of ADLI and the National Conservation Strategy, the Government will give priority to (a) rectifying policy failures which have caused or exacerbated market failures resulting in unsustainable management of natural resources as well as environmental damage; and (b) allowing local communities to participate in decision making on natural resources management/ utilization. ✓ Sector specific policies which impact on land natural resources include:- 	<ul style="list-style-type: none"> ✓ The 1997 Constitution in Article 8 sub-article 3, gives on explicit mandate to the Government to put efforts on the sustainable development, utilization, management of land, water air and other natural resources in a balance and sustainable manner and ensuring participation of the people in the safeguarding the environment. ✓ The Constitution, therefore lays a viable foundation for a National Development Policy based on the principles of sustainability and the maintenance of biodiversity. ✓ The Agriculture Sector Policy aims to promote equal opportunities, market liberalization and support services to the private sector, especially o small holders and small to medium scale commercial farmers. 	<p>The need to harmonize the different policies and laws on land and natural resources has emerged as an important pre-requisite for their effective implementation, especially if sustainable land and natural resource management is to be realized.</p>

Kenya	Somalia	Djibouti	Ethiopia	Eritrea	Comments
<ul style="list-style-type: none"> ✓ In addition to these broad policies, the Government has developed policies addressing specific resources and the objectives for which they will be managed. These policies include the water, wildlife, forest, minerals and agricultural policies. ✓ The Forest Policy (1994) ✓ The Wildlife Policy (the Statement on Future Wildlife Management Policy in Kenya (Sessional Paper No. 3 of 1975) and the Policy Framework and Development Programme (1991–1996) 			<ul style="list-style-type: none"> ✓ The Disaster Prevention and Management Policy ✓ The Population Policy ✓ Rural Land Use and Administration Policy ✓ Forestry Policy ✓ Soil and Water Conservation Policy ✓ Water Resources Policy ✓ National Agricultural Research Policy and Strategy ✓ Wildlife Policy ✓ The Industry Sector Strategy ✓ The Mineral Sector Policy 	<ul style="list-style-type: none"> ✓ The Macro-Policy Document, 1994 outlined the background for Eritrea's national economic growth strategy and pursue the guiding principles of human centred, efficient, sustainable and equitable development. ✓ The Macro-Policy Document also contains clear consideration of environmental protection including references to biodiversity conservation. ✓ The new Macro Policy document assured that proper decentralization should assist in spurring economic and social development and further facilitate proper protection and preservation of the natural resources. As a result of this, the structure of local government was revised under Proclamation No. 86/1996-this proclamation intends to gradually decentralize powers and encourages regional economic development. 	<p>The failure of countries to put in place national land use policies that take into account diverse ecological zones within each country has resulted in community members engaging in activities with limited guidance on appropriate land use practices.</p> <p>Policy statements in most countries acknowledged the linkage between poverty alleviation and sustainable management of land and natural resources and environmental conservation.</p>

Kenya	Somalia	Djibouti	Ethiopia	Eritrea	Comments
				<ul style="list-style-type: none"> ✓ The National Environmental Management Plan for Eritrea, 1995 provides the basic policy for action in the environmental sector and lays out a strategy for action on conservation activities. ✓ The preparation of the National Biodiversity Strategy and Action Plan is a continuation of the government's efforts in biodiversity conservation and sustainable use. 	
<p>There are numerous statutes that specifically deal with the rights of ownership and control of land. Also several laws have been enacted to implement the land use sectoral policies (natural resources) mentioned above.</p>					

	Sudan	Uganda	Rwanda	Burundi	Comments
Salient country features	Largest country in Africa Area: 2,505,810 km ²	Medium sized country Area: 241,500 km ²	Small country Area: 26,338 km ²	Small country Area: 27,816 km ²	Sudan lies in the dry region with almost 50 per cent of its area as desert and semi-desert.
Population	30,080,373 (2001 est.)	27,800,000	8,128,553 (2002)	7,700,000 (2005)	Sudan is highly urbanized in relative terms. Burundi least urbanized.
Urban/rural	39.8 per cent : 60.2 per cent	12.2 per cent: 87.8 per cent	16.9 per cent : 83.1 per cent	10 per cent : 90 per cent	
HDI ranking	141	145	158	70 per cent of population live below poverty level	
Land use	Arable land: 5 per cent Permanent crops : 0 per cent Permanent pastures: 46 per cent Forests & woodland: 19 per cent Other 30 per cent (1993 est.)	Potential arable land 70.8 per cent	<ul style="list-style-type: none"> ✓ 52 per cent of land arable ✓ Cultivated land is only 43 per cent ✓ Land covered by forests 20 per cent ✓ Marshlands/wetlands cover 6 per cent ✓ 86.7 per cent of the population live on subsistence agriculture 	<ul style="list-style-type: none"> Predominant land use is agriculture. 90 per cent of the population are employed in agriculture 	Smallholder subsistence agriculture is predominant in these countries. Burundi is a country with little or no resources in its soil. However, it has numerous lakes and swamps; water occupies one tenth of the surface of the country.
GDP-composition by sector	Agriculture :39 per cent Industry:17 per cent Services:44 per cent (1998 est)	Agriculture : 43.1 per cent	<ul style="list-style-type: none"> Services: 18 per cent Industry : 36 per cent Agriculture accounts for 46 per cent of GDP 	Agriculture contributes 50 per cent to GDP	

	Sudan	Uganda	Rwanda	Burundi	Comments
Colonial legacy	<p>Since the colonial period, successive laws and decrees have undermined the land rights of rural communities, small farmers and pastoralists. Sudan had a long system of land registration through which an individual, an enterprise, or the government could establish title to a piece of land. Such registration was extensive in northern Sudan.</p> <p>The colonial government in the North traditionally made broad claims for state ownership of unregistered land, but customary use was accommodated.</p> <p>During the British colonial era, the south was essentially devoid of a legal regime regulating land rights. This was a product of the colonial power's general disinterest in developing southern Sudan.</p> <p>Traditional tribal leaders administered various customary laws with regard to land and resource rights, which were also recognized by the State.</p>	<p>The British Colonial Government reached land settlements with three kingdoms of Buganda, Ankole and Toro in 1900-1901 whereby part of the land was allocated to the respective kings, chiefs and notables in quasi-freeholds (mailo) in Buganda and native freeholds in the other 2 kingdoms.</p> <p>The rest of the land in the three kingdoms and the rest of the country was declared crown land. Those occupying Crown Land practised customary tenure until independence.</p> <p>The colonial legacy gave rise to the phenomenon of multiple and conflicting rights on one and the same piece of land (registered land) which has bedevilled Uganda to date</p>	<ul style="list-style-type: none"> ✓ Under German from 1894 to 1916; under Belgium (1916-1962) ✓ The German authority recognized the King's authority over land ✓ The first Catholic & Protestant Missions got a lot of land and were granted freeholds. ✓ The Belgians introduced the written law in sixth position with the existing customary practices. ✓ All vacant land was declared state owned land ✓ Land registration was introduced for only land owned by colonialist while land occupied by native continued to follow customary laws ✓ The colonialists introduced the system of grouped settlements called "<i>paysannat</i>" in some rural areas. ✓ The change in administration from kingdom to the republic changed the whole customary system of land administration; traditional land administrators were abolished. ✓ There has been a clash between statutory and customary tenants. 	<ul style="list-style-type: none"> ✓ Burundi was under German administration from the end of 19th century to the First World War. Then it was occupied by the Belgians until independence in 1962. ✓ Given its historical and socio-economic context, Burundi is facing delicate land issues. ✓ There have been a lot of land disputes since independence. 	

7 Out of which 129,810 km² is water.

	Sudan	Uganda	Rwanda	Burundi	Comments
Land tenure	<ul style="list-style-type: none"> ✓ Beginning in 1970,⁸ successive socialist and radical Islamist governments in Khartoum stripped away the protection of customary users by abolishing the authority of traditional leaders of land and natural resources access. The State asserted direct control over land and resource use, abrogating customary laws and expelling existing users without compensation. Even ownership rights for registered lands along the Nile in Northern Sudan were converted to user rights. ✓ The big area of land used for pasture and subsistence cultivation is communally owned under customary land laws that vary somewhat by location but which follow a broadly similar pattern. ✓ Unclear land ownership in Sudan constitutes major constraints to long-term land and land resource use patterns. 	<ul style="list-style-type: none"> ✓ The radical title of land in Uganda is vested in the citizens of Uganda by the 1995 Constitution ✓ However critical natural resources are vested in the Government in trust and for the common good of all citizens of Uganda. ✓ The Constitution and the Land Act 1998 recognizes four tenure systems: <i>matilo</i>, freehold, leasehold and customary. ✓ The majority of the land is under customary tenure, about 85 per cent. 	<ul style="list-style-type: none"> ✓ Land in Rwanda is vested in the state by law ✓ Mineral resources and other natural resources found in the soil are vested in this state. ✓ Legally almost all land is owned by the state, and private land is largely restricted to registered concessions. However most rural land is in effect held by small farmers under customary systems of land tenure. ✓ Customary land ownership is legally recognized under the land law. ✓ The new laws define the following tenure systems: - freehold (for residential, commercial and industrial land); long term leasehold of 99 years for former individual and customary lands; leasehold of 20 years for marshlands (private state lands); leasehold of 49 years for private state lands dedicated to agriculture, tourism, forestry. Before these new systems, 90 per cent of the land was held under customary arrangements. ✓ The new land tenure reform is replacing the customary tenure arrangements through land tenure regularization and systematic land registration 	<ul style="list-style-type: none"> ✓ Almost all land in Burundi is owned by the state ✓ Two tenure systems: statutory and customary land tenure systems ✓ The Minister in charge of Agriculture can grant rural land rights (4-50 acres) ✓ The Minister in charge of City Planning can grant urban land (max.10 acres) ✓ Citizens have easy access to urban land; they are excluded from owning rural land ✓ Women are not allowed to inherit land from their parents. 	<p>Conflict in Sudan has been fuelled in many contexts by competition over land and other natural resources.</p> <p>Sudan is in a transition period. The Southern Sudan draft land bill has restored customary tenure and recognizes it as legal tenure.</p>

	Sudan	Uganda	Rwanda	Burundi	Comments
Land policy formulation and implementation processes	<p>Sudan does not have a NLP. The 3 peace agreements covered in a sketchy way some land policy and tenure elements.</p> <ul style="list-style-type: none"> ✓ Comprehensive Peace Agreement (CPA) 2005⁸ between the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) ✓ The Darfur Peace Agreement, 2006 (DPA) ✓ The Eastern Sudan Peace Agreement (ESPA) 	<p>Uganda is in the process of developing a comprehensive NLP.</p> <ul style="list-style-type: none"> ✓ However, the 1995 Constitution contains many fundamental land policy principles and statements. 	<p>Rwanda has a NLP adopted in 2004.</p> <ul style="list-style-type: none"> ✓ The NLP has two main objectives: to register all land ownership in the country and to rationalize land use ✓ The NLP provides for the unification of land tenure under customary practice and formal written law and for the formalization of customary land rights as long-term leaseholds. ✓ Implementation of the NLP started with the enactment Land Law in 2005. The Roadmap for systematic implementation of the land law is now ready. 	<p>There is no NLP in Burundi, however there is an ongoing reflection about developing a NLP</p> <ul style="list-style-type: none"> ✓ The NLP will face challenge of integrating refugees and IDPs ✓ There are a lot of land disputes and conflicts. The return of refugees and IDPs has caused a lot of tension and strife, given that their land was occupied during their absence. ✓ The government recognizes that peace can only be achieved through clarification of individual land rights. 	

8 The unregistered Land Act 1970 declared that all waste, forest, and unregistered lands were government land. This encouraged the patronage of land by the government as a means to secure political power.

	Sudan	Uganda	Rwanda	Burundi	Comments
Complementary policies, plans, and laws and links with land policy	<p>The Four-year Salvation and Recovery Development Programme (1988-1992) included policy proposals on natural resources conservation, ecological balance, desertification control and environmental planning. The Comprehensive National Strategy (CNS, 1992-2002) includes the most recent policy objectives that guide resource development in Sudan. The CNS calls for the reservation of 25 per cent of the country's area for forestry, rangeland and wildlife. The Strategy recommends the integration of forestry into agriculture, with 10 per cent of the area of rainfed schemes at 5 per cent of the total irrigated area being allocated for the establishment of shelter belts and woodlots.</p> <p>The Forest Policy (1986) recognized and encouraged the establishment of community, private and institutional forests. However the entire land, environmental and natural resources management structure of Sudan suffers from lack of definitive policy framework within which programmes and actions can be designed and implemented.</p>	<p>The policy documents in Uganda include: Vision 2025 Poverty Eradication Action Plan Plan for Modernisation of Agriculture Medium Term Competitive Strategy The National Environment Management Policy, 1994 The Water Policy, 1994 National Policy for the Conservation and Management of Wetland Resources, 1995 The Wildlife Policy, 1996 The National Forestry Policy, 2001 The Mineral Policy of Uganda 2001 The Mineral Policy of Uganda, 2001 The National Land Use Policy, 2007</p> <p>The land and land use sectors have developed the following strategic action plans. The Land Sector Strategic Plan (2001-2011) The National Environment Action Plan, 2005 The Wetland Sector Strategic Plan (2001-2010) The National Forestry Plan The Water Sector Strategic Plan The Tourism Master Plan The National Biodiversity Strategy and Action Plan</p>	<p>Key policy documents in Rwanda include: Vision 2020 Decentralisation Strategy and Decentralization Implementation Programme (2004-2008) Community Development Policy (2001) Agriculture Policy Environment Policy Mining Policy Forestry Policy The Economic Development and Poverty Reduction Strategy (EDPRS)</p>	<p>Land is crucial for peace consolidation and long term prosperity The Poverty Eradication Strategy and the Arusha Peace Agreement have provisions on land The Land code is obsolete and inadequate The Environment Code (2000) The Forestry Code (1985) The Decentralization Code The Urban Development code Law on Land Preservation Reforestation law Legislation on Water</p>	<p>On the other hand, the instability and uncertainties of land use discourage investment in land and encourage unplanned agricultural expansion. There is a need to develop clearly defined and agreed upon land-use policies and legislation in Sudan and Rwanda to be developed through the participation and involvement of all relevant stakeholders.</p>

9 CPA includes specific attention to land issues and reflects tremendous effort to reach delicate and complex compromises on land. Where immediate agreement was not possible, provisions for continued consultations (e.g. through independent land commissions) were important to ensure that peace could be achieved.

Appendix 2: Countries Undertaking Land Policy, Legislative and Institutional Reforms

Country	Key developments	Current issues and processes
Tanzania	<ul style="list-style-type: none"> • Presidential Commission of Inquiry, 1991 • 1995 National Land Policy • 1999 Land Act and Village Land Act • 2002 Land Disputes Courts Act • 2005 Development of a Strategic Plan for the Implementation of the Land Laws (SPILL) 	<ul style="list-style-type: none"> ✓ There was intense research and discussion matters of land tenure and public consultations that covered all the regions of Tanzania. ✓ Policy development process and land laws development process were participatory and inclusive of all stakeholders (local government, land users and donors) ✓ The Village Land Act devolves power and reconstitution for land allocation and management to Village Assemblies ✓ Widespread implementation was frustrated by lack of financial resources and institutional capacity. SPILL makes a number of policy and practical proposals, including establishment of decentralized land administration support services, land administration infrastructure, and District Land Boards and a greater emphasis on gender equity. Strategy calls for investment independent of the Medium Term Expenditure Framework.
Rwanda	<ul style="list-style-type: none"> • The NLP formulation started in 1999. A consultative workshop was held in November 2000 to discuss the draft NLP • 2004 NLP published • 2005 Organic Land Law passed 	<ul style="list-style-type: none"> ✓ Seeks to develop a comprehensive system of registration of land rights, land administration by local governments at district level, plus resettlement for returnees and compensation for those losing land. Villagization, urbanization and land consolidation are all sensitive policy issues. ✓ Roadmap for systematic implementation ready, with donor support. Land Tenure Reform Programme in the process of being implemented. ✓ Implementation very difficult due to limited human and financial capacity, also about 20 pieces of subsidiary legislation (decrees) are needed to implement the organic land law ✓ All key laws and decrees now gazetted. All land management institutions now in place. ✓ Decentralisation at advanced stage—5 regional offices for land registration and titling; 30 land bureaux in the districts complemented by district land commissions sectors and cells committees are now in place. ✓ Pilots on land tenure regularization are underway in 4 sites. (modern survey technologies used).

Country	Key developments	Current issues and processes
Uganda	<ul style="list-style-type: none"> • The 1995 Constitution (Chapter 15, Articles 237–244) gives founding policy on tenure:- • Democratisation of radical title (roof ownership) from state to people. • Devolution of tenure administration to district land boards • Recognition of four tenure systems (customary, freehold, leasehold, <i>mailo</i>) • Creation of Land Tribunals independent of state to dissolve land disputes. • In the process of national land policy formulation to rationalize principles enshrined in the 1995 Constitution and the 1998 Land Act and to harmonise land-based sectoral policies. 	<ul style="list-style-type: none"> ✓ Piecemeal implementation of the Land Act and other tenure reforms due to high costs and insufficient budgetary resources for hierarchy of decentralized institutions created by the law ✓ Land Sector Strategic Plan (LSSP) passed in 2001 after widespread participatory consultative process ✓ National Land Use Policy passed in 2007 ✓ Legislative reforms of other land related laws are underway; and institutional reforms planned ✓ Pilots of systematic demarcation underway ✓ Retrospective development of a detailed NLP to guide implementation of Land Act
Kenya	<ul style="list-style-type: none"> • Land issues addressed by 2004 Constitutional Review • The NLP formulation process was launched in Feb 2004 • April 2007 Draft NLP presented at the National Symposium • Sept 2007 Draft NLP presented to cabinet for approval • Oct 2007 Land Reform & Transformation unit formed to facilitate preparations for the envisaged land reforms. 	<ul style="list-style-type: none"> ✓ Land in the recent past has been the subject of many commissions of inquiry and public debate (i.e., The Presidential Commission of Inquiry into Illegal/Irregular Allocation of Public Land, popularly known as Nding'u Report; The Constitution of Kenya Review Commission; and the Presidential Commission of Inquiry into Land Law system of Kenya popularly known as the Njonjo Commission) ✓ The National Land Policy Formulation Process (NLPPF) was launched at the Stakeholders Workshop in February 2004. ✓ A concept paper to guide the NLPPF was discussed at a workshop in August 2004 and an integrated Inception Report (with key issues in respect of six selected broad themes) was prepared ✓ Land policy issues were grouped into six broad themes, each of which was reviewed and analysed by a Thematic Group (each made up of state and non-state actors from the public sector, private sector, civil society and communities) ✓ Workshops were organized in all the eight provinces of the country to collect views from selected stakeholders who represented various interest groups.

Country	Key developments	Current issues and processes
Ethiopia	<ul style="list-style-type: none"> • The land policy principles are enshrined in the 1994 Constitution • There is no NLP, the policy is integral to the new land law. • 2005 Federal Democratic Republic of Ethiopia Rural and Administration and Land Use Proclamation No. 456/2005 was passed (repealing the Federal Rural Land Administration Proclamation No. 89/1997). • Four regional states have initiated a simplified form of land registration. 	<ul style="list-style-type: none"> ✓ The land is state-owned, the people have only user rights over parcels they have in their possession. The Constitution provides adult Ethiopian peasants have a right to be allocated land for farming by the state without payment. ✓ The law seeks to provide security of tenure to rural people, implement land use planning, enforce the rights and obligations of rural land holders, resolve disputes between users and gather, analyse and supply land information to users. Land must not be sold or exchanged privately or used as collateral but improvements on the land can be sold. ✓ The new land law made provision for the first time for the registration and certification of land holdings. ✓ At the local level land administration is undertaken on an ad hoc basis by committees and unpaid committee members. At higher levels, there is lack of clear jurisdiction and co-ordination among the government organizations that have responsibility for different aspects of land administration and management. ✓ Peasant farmers/pastoralists engaged in agriculture for living shall be given rural land free of charge ✓ Land administration and management is devolved to regional councils, with each region empowered to develop its decentralized land policies and laws
Eritrea	<ul style="list-style-type: none"> • The 1996 Constitution contains fundamental land policy principles and statements • There is no NLP, but the policy is integral to the new land law. • 1994 The Land Reform Proclamation No.58/1994 	<ul style="list-style-type: none"> ✓ Article 23 permits any citizens to acquire, own and dispose of property, individually and in association with other ✓ It also states that “all land, water and natural resources below and above the surface belong to the State. Usufruct rights of citizens will be determined by law” ✓ The State/Government owns all land in Eritrea and will allocate land fairly and equitably without discrimination on the basis of race, religion, gender, or national origin. ✓ The law guarantees all Eritreans above 18 years of age the right to land based on the usufruct principle; the usufructuary can use the allotted land for his/her usufruct right over the land in whole or part, or may transfer it to his or her children.

Country	Key developments	Current issues and processes
Sudan	<ul style="list-style-type: none"> • There is no LP in Sudan • The three peace agreements together with the Interim National Constitution (INC) covered in a sketch way some land policy and tenure elements. • The three peace agreements are: The Comprehensive Peace Agreement (CPA) 2005 between the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A), the Darfur Peace Agreement, 2006 (DPA) and the Eastern Sudan Peace Agreement (ESPA) • 2007 Southern Sudan Land Bill (Draft) 	<ul style="list-style-type: none"> ✓ The CPA calls for the incorporation of customary laws and the establishment of four Land Commissions (National Commission, one for Southern Sudan and for each of Southern Kordofan and Blue Nile states) to arbitrate claims, offer compensation and recommend land reform policies. ✓ The CPA provides that land administration and management should be a concurrent competence of Government of National Unity and the Government of Southern Sudan and Regional States. ✓ The ambiguity of the CPA and the INC, state constitutions of South Kordofan, Southern Blue Nile and Abyei is a source of concern. It is not clear who owns the land and natural resources and who governs these resources. ✓ Each state has the right to develop, conserve and manage its natural resources but does not have the institutional arrangements for inclusive, just and equitable use and management of land and natural resources. ✓ The Land Bill states that all land in Southern Sudan is the customary ownership of the people of Southern Sudan and shall vest in them collectively or as individuals. ✓ All Southern Sudanese owning land under customary tenure will be assured security of occupancy. ✓ Customary land rights including those held in common shall have equal force and effect in law with freehold or leasehold rights acquired through statutory allocation, registration or transaction.

Country	Key developments	Current issues and processes
Somalia	<ul style="list-style-type: none"> • There is no NLP, mainly due to political instability and absence of a unified government. • Somalia is currently split into 3 parts: Somalia, Somaliland and Puntland • According to Article 12 of the 2001 Constitution of Somaliland, all land belongs to the state of Somaliland. • Just like in Somaliland, the land in Puntland belongs to the state. 	<ul style="list-style-type: none"> ✓ The Constitution previously vested all land in the State, all citizens with equal rights to access land for residence and cultivation. ✓ In 1969 the Government adopted the socialist system whereby land was nationalized and redistributed. ✓ In 1975 the land law was passed (mainly for agricultural purposes). All land was transferred from the traditional authorities to the government. The law stipulated that previous landholders were authorized to register, within a six months timeframe, a limited amount of land as state leasehold or concessions for 50 years. No transactions were allowed on the sale of the land and farms and co-operatives received preferential treatment in the registration process. Customary laws were totally ignored.
The Comoros	<ul style="list-style-type: none"> • No NLP 	<ul style="list-style-type: none"> ✓ The Somali region has inherited three systems of law. These are secular law, customary law (popularly known as the <i>Xeer</i>) and the <i>Sharia</i>/Islamic law. There is confusion and overlapping of different laws. ✓ There is confusion and overlapping of different laws. ✓ In Somaliland as well as in Puntland people grabbed the land during the last decades and illegal occupations are widespread. ✓ Another common problem is the issue of refugees and IDP returnees who claim a piece of land they previously occupied. Claimants have a legal document. The actual occupier also has a legally acquired right. ✓ In rural areas due to the war, the geographic clan-map of Somalia has been redrawn as stronger clans took possession of the best agricultural and pastoralist areas and mostly displaced minority groups to urban areas. ✓ Political instability has made it difficult to put in place a national land policy or to bring about land reforms. The main focus has been on conservation and protection of biodiversity. ✓ Lack of land registration creates confusion over ownership and land rights. Most land ownership is not registered (approximately 80 per cent of the people own small parcels without titles) ✓ Land ownership is not clearly defined (derived from French, traditional and Islamic laws)-3 types of land tenure regimes. ✓ The legal system in Comoros is based on the French civil law system – the French colonial law continues to provide the texts for land ownership and registry. There are 4 basic categories:- untitled land; titled land; state domain; and village reserves. ✓ Land use remains uncontrolled

Country	Key developments	Current issues and processes
Seychelles	<ul style="list-style-type: none"> • Seychelles does not have a NLP • The country has many pieces of legislation, regulations, programmes and plans including: <ul style="list-style-type: none"> • Town and Country Planning Act, 1972 • The Land Registration Ordinance, • Environment Protection Act, 1964 whose aim is to provide for the protection, improvement and preservation of the environment and for the prevention, control and abatement of environmental pollution. • State Land and Rivers Reserves Act, 1991 • National Park and Nature Conservancy Act, 1992 • The Environment Management Plan of Seychelles (EMPS 2000–2010). • The National Land Use Plan, 1992 provided zoning schemes and indicating land use patterns up to the year 2000. 	<ul style="list-style-type: none"> ✓ The focus of Seychelles is to accommodate its population and their activities while at the same time making every effort to protect the fragile environment. It has prioritized the conservation of coast strip in a sustainable manner. ✓ Seychelles needs to develop a national land policy to be harmonized with the country's emphasis on environmental protection. ✓ Scarcity of land for development is one of the major constraints of development and is subject to severe competition due to the wide range of uses such as environmental protection (43 per cent), agriculture (22 per cent), tourism (6.3 per cent) and human settlements (11.7 per cent)

Country	Key developments	Current issues and processes
Mauritius	<ul style="list-style-type: none"> • There is no NLP in Mauritius • 2003, National Development Strategy (2003) (NDS) was adopted. It defines the framework for land use planning. • 2004 new Planning Development Act passed • Housing Policy provides for leasehold and purchase opportunities of state land for low and middle-income households; also incentives for landowners to develop land otherwise frozen for development for housing, with provision that 25 per cent must go to low income households. • 1990 National Environmental Policy, followed by National Environmental Action Plan & 2002 Environment Protection Act • The Land Administration, Valuation and Information Management System (LAVIMS) Project launched. 	<ul style="list-style-type: none"> ✓ NDS is a cohesive package of plans, policies, guidelines and mechanisms for implementation. It aims to create and stimulate the conditions to focus and prioritize government investment and private sector initiatives as efficiently as possible, so that economic growth can be sustained, whilst maintaining and enhancing the nation's natural and built environment. ✓ Reforms aim to make more land available for non-sugar farmers ✓ Focus is on urban/peri-urban sprawl and unregulated development ✓ 90 per cent of the land is private ✓ Demand for housing is described as 'single' largest pressure on future use of land. Land scarcity is leading to increased development on mountain slopes as well as wetlands. ✓ Rapid urban development is outstripping provision of environmental resources. ✓ Tourism (a major economic sector) is also putting pressure on fragile ecosystems. ✓ Global warming poses threat to coastline and marine resources. ✓ Preservation of forests is considered vital for protection of ecosystem areas under forestry have declined from 30.6 per cent in 1996 to 25.2 per cent in 2005. ✓ Major pressure to take out agricultural land for development. There is need to preserve best land for agriculture ✓ Plans to modernize land administration under way ✓ Serious concern that environmental protection and development are not always compatible. ✓ LAVIMS has 3 major components: property valuation, a cadastre and a parcel-based deeds registration system, integrated and supported by an appropriate information management system

Country	Key developments	Current issues and processes
Madagascar	<ul style="list-style-type: none"> • Still in the process of developing NLP • The country has a National Land Programme 	<ul style="list-style-type: none"> ✓ There are 3 major property regimes in the country: private holdings, commons and state property. The customary or local level tenure arrangements include both private holdings and commons. ✓ The NLP is being developed under the auspices of the National Land Programme (<i>Programme National Foncier</i>) lead by the Ministry of Agriculture, Livestock and Fishery through the National Directorate of Cadastre and Land Tenure Services. ✓ Four axes of land reform are being developed: <ul style="list-style-type: none"> ✓ (i) Restructuring and modernization of the land administration system ✓ (ii) Decentralisation of the land administration system. ✓ (iii) Review and amendment of the legal framework (v) <p>Development of a national training and capacity building programme.</p> <ul style="list-style-type: none"> ✓ The Action Plan's main objective was to reverse the downward spiral of environmental degradation and maintain the biodiversity. ✓ Madagascar is known for its high degree of environmental degradation. Almost 80 per cent of the country's original forest cover has disappeared, or has been severely degraded, mainly because of slash-and-burn agriculture. This also results in the loss of an estimated 200 tons of top soils per hectare each year. ✓ 1989 National Environmental Action Plan.

Country	Key developments	Current issues and processes
Burundi	<ul style="list-style-type: none"> • There is no NLP in Burundi, however, there is ongoing reflection about establishing a NLP. • The Arusha Peace Accords for Burundi have some provisions land. • The accords provided for the creation of the Commission National de Réhabilitation des Sinistrés (CNRS) which was mandated to facilitate the return of refugees and IDPs and address land-related issues including allegations of abuses during the (re) distribution of land and rule on individual cases to specific principles. • Different documents and studies have been produced and carried out in view of enacting a NLP and these include <ul style="list-style-type: none"> • Agricultural Policy Documents • Special Planning Policy • The Decentralization Code • Refugee Resettlement Plants • Property Recovery Plan and Land Dispute Resolution • The Land Code of Burundi of 1986 is outdated • The draft Land Law has been in development for several years. 	<ul style="list-style-type: none"> ✓ The new NLP will face the challenge of integrating refugees and IDPs. ✓ The main issues are disputes over boundaries, contestations over statutory land transactions, land grabbing by authorities without any form of legality or compensation, allocation of land belonging to people who have been exiled or displaced by war, illegal occupation of public, land by the state, and exclusion of women in matters of land inheritance. Because of high population densities land disputes were common in Burundi even prior to the refugee returns. <ul style="list-style-type: none"> ✓ The country has a big challenge of rebuilding the nation through eradicating poverty and restoring peace, solidarity and trust between the different political and ethnic communities. ✓ In particular, the return of refugees and the exiled has caused a lot of tension and strife, given that their land was occupied during their absence. In some cases land vacated by refugees had been systematically given by the state to third parties ✓ The land law is obsolete and inapplicable in many aspects; many provisions are out of line with the current socio-economic realities of the country. ✓ The National Commission for Land and Property (CNTB) was set up in 2006 to take over the functions of CNRS to settle disputes between the exiles and others. The commission set up lower commissions (town and communal commissions)

Appendix 3: Terms Of Reference

The Terms of Reference for the Regional Case Studies on Land Policy Formulation and Implementation in Eastern 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 assessment including all the elements above.



This Eastern 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 Inter Governmental Authority on Development (IGAD). The report 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 Eastern 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.