



African Union

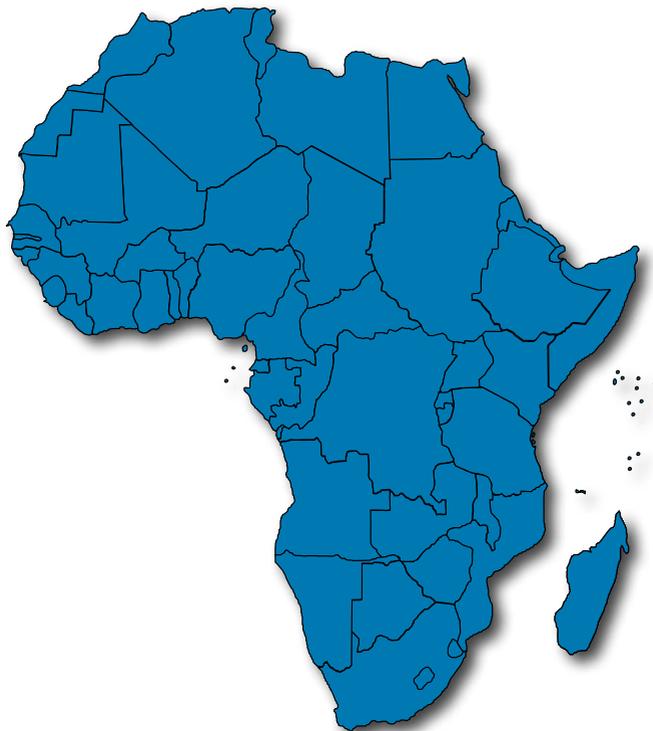


African Development Bank



Economic Commission
for Africa

Regional Assessment Studies on Land Policy in Central, Eastern, North, Southern and West Africa: Synthesis Report





African Union



African Development Bank



Economic Commission
for Africa

Regional Assessment Studies on Land Policy in Central, Eastern, North, Southern and West Africa: Synthesis Report



© AUC-ECA-AfDB Consortium, 2010
Addis Ababa, Ethiopia

Email: landpolicy@uneca.org

All rights reserved
First printing February 2011

Material in this publication may be freely quoted or reprinted. Acknowledgement is requested, together with a copy of the publication.

Edited and designed by the ECA Publications and Conference Management Section (PCMS).

Table of contents

Abbreviations and acronyms	v
Background: AUC-ECA-AfDB Policy Initiative (LPI)	1
Overview of the Synthesis Report.....	5
I. Central Africa	7
1. Regional Background.....	7
2. Key land issues/challenges in the region	10
3. Experiences of land policy formulation/implementation	12
4. Lessons, gaps, bottlenecks in policy implementation.....	14
II. Eastern Africa	17
1. Regional Background.....	17
2. Key land issues/Challenges in the region.....	19
3. Experiences of land policy formulation/implementation.....	20
4. Lessons, gaps, bottlenecks in policy implementation.....	23
5. Key recommendations to enrich the continental framework and guidelines.....	25
III. North Africa	29
1. Regional Background	29
2. Key land issues/Challenges in the region.....	30
3. Experiences of land policy formulation/implementation.....	34
4. Key recommendations to enrich the continental framework and guidelines.....	40
IV. Southern Africa.....	41
1. Regional Background	41
2. Key land issues/challenges in the region	43
3. Experiences of land policy formulation/implementation	44
4. Lessons, gaps, bottlenecks in policy implementation.....	46
5. Key recommendations to enrich the continental framework and guidelines.....	48
V. West Africa	49
1. Regional Background	49
2. Key land issues/challenges in the region	51
3. Experiences of land policy formulation/implementation	54
4. Lessons, gaps, bottlenecks in policy implementation	56
5. Key recommendations to enrich the continental framework and guidelines	59

Abbreviations and acronyms

AfDB	African Development Bank
AUC	African Union Commission
CEMAC	Economic and Monetary Community of Central Africa
CDT	Core Drafting Team
COMIFAC	Commissariat des forêts d'Afrique Centrale
DFID	Department for International Development (United Kingdom)
DRC	Democratic Republic of Congo
EAC	East African Community
ECA	Economic Commission for Africa (United Nations)
ECT	Expert Consultative Team
ERSAP	Economic reform and structural adjustment programmes
ERW	Explosive remnants of war
EU	European Union
FDI	Foreign direct investment
F&G	Framework and Guidelines on Land Policy in Africa
GDP	Gross domestic product
GPS	Global positioning system
LPI	Land Policy Initiative
MDG	Millennium Development Goal
NLP	National land policy
PFR	Plan foncier rural
SADC	Southern African Development Community
UNCCDUN	Convention to Combat Desertification
UNSO	United Nations Sudano-Sahelian Office
UNDP	United Nations Development Programme
USAID	United States Agency for International Development

Background: AUC-ECA-AfDB Land Policy Initiative (LPI)

In recognition of the central role played by land in Africa's social, political and economic development and sustainable resource management, and in the achievement of peace and security in Africa, the African Union Commission (AUC), the United Nations (UN) Economic Commission for Africa (ECA) and the African Development Bank (AfDB) embarked on a Land Policy Initiative (LPI) in 2006, with a view to developing a Framework and Guidelines on Land Policy in Africa (F&G). The aim of the F&G, which will be submitted for endorsement by the African Heads of States and Government, is to support national and regional processes for land policy formulation and implementation to strengthen land rights, enhance productivity and secure livelihoods. In addition to providing guidelines for policy formulation and implementation, the LPI will undertake programmes to facilitate lesson sharing and peer learning. The LPI will also promote progress tracking in land policy reform and implementation on the continent.

In order to achieve its objectives, the LPI embarked on the following activities:

a. A consultative workshop

This workshop took place from 27 to 29 March 2006. The discussions were informed by an issues/discussion paper. The meeting brought together representatives from African governments, regional economic communities, and civil society including farmers' organizations, African private sector, centres of excellence and development partners. The consultative workshop aimed to build consensus around the following issues:

- Elements and thematic issues that would characterize the framework and guidelines of land policy and land reform in Africa.

- Features of a vision and guiding principles for a framework of land policy in Africa.
- Actions and sequential activities needed to develop a land policy framework and guidelines.
- Roles of stakeholders and partners, and resource mobilization.

Additional outputs of the workshop were: i) a background document summarizing the main land issues in Africa that should be used as the basis for developing the guidelines and framework; and ii) a skeleton F&G.

b. Expert group meeting on land indicators in Africa

In a meeting held in May 2007, experts on land issues and indicator development established a road map of activities necessary for the development, review and advocacy of benchmarks, indicators and mechanisms for tracking progress in land reforms in Africa. Those discussions were based on an Issues Paper on land indicators. The work on indicator development is in progress.

c. Regional assessments and consultations on land policy in Africa

Regional assessment studies were conducted between June 2007 and July 2008 in all five regions of Africa (Central, Eastern, North, Southern and West) with a view to documenting and enriching the continental skeleton Framework with regional specific issues, needs and initiatives. This synthesis report provides a summary of the outcomes of these studies as documented in five separate reports of regional assessments.

Following the assessment studies, multi-stakeholder regional consultative workshops were held to enhance the regional assessment reports and gain consensus on the key issues, challenges, initiatives and to chart a way forward for land reform in each specific region. These workshops were held as follows:

- Southern Africa—August 2007, Windhoek, Namibia
- Eastern Africa—January 2008, Kigali, Rwanda
- West Africa—April 2008, Ouagadougou, Burkina Faso
- Central Africa—August 2008, Yaoundé, Cameroon
- North Africa—December 2008, Addis Ababa, Ethiopia

d. Drafting and review workshop of the Framework and Guidelines on Land Policy

A Core Drafting Team (CDT), comprising an African Task Force on Land Policy and representing all regions of Africa and various disciplines within land policy, gathered in Addis Ababa in September 2008 to draft a Framework and Guidelines on Land Policy in Africa. The team used as inputs, various outputs of the LPI, starting with the skeleton framework and guidelines, key messages and recommendations of the continental and regional consultative workshops, and the continental and regional background reports on land policy in Africa. An Expert Consultative Team (ECT) then reviewed the draft report of the F&G and provided comprehensive inputs for the revision of the document. The document was also circulated to participants of previous LPI events for comments. It is envisaged that the document will receive extensive review by various stakeholders before it is finalized.

e. African Experts Meeting and Meeting of African Ministers Responsible for Land

Having improved the draft F&G through stakeholder review, the document will be subjected to an extensive discussion by key experts (at the level of Permanent Secretary) from land related line ministries of all AU member States. A key outcome of the experts meeting will be a refined draft of the F&G to be sent to a subsequent ministerial meeting. In addition to the draft framework, an Experts Report on the land policy framework and guidelines including key recommendations on its implementation will be produced and endorsed by the Meeting of African Ministers. This meeting will produce a Ministers Report and Recommendations on the Framework and Guidelines on Land Policy in Africa.

f. The Summit of Heads of State and Government

The Ministers Report and Recommendations on the Framework and Guidelines on Land Policy in Africa will be subjected to the policy organs of the AU Summit for consideration and adoption. These include the Permanent Representative Council and the Executive Council of the Assembly. The Executive Council will prepare a draft Declaration for consideration, review and adoption by the Assembly of African Heads of State and Government. The Declaration will contain resolutions and decisions on its implementation and follow-up.

Overview of the Synthesis Report

This Synthesis Report is a synopsis of the outcomes of the regional assessment reports, which were based on studies and subsequent consultations in five regions of Africa. These reports show that some land related issues are common to all regions in the continent while others are region specific. Issues common to the whole continent are those related to: state sovereignty over land; legal pluralism; gender biases in access to land; land tenure security; and land and conflicts. A snapshot of region-specific issues shows that: migration and regional integration challenges are currently more prominent in West Africa; Island States seem to focus more on environmental issues and impacts of climate change on land; Southern Africa gives specific interest to unequal distribution of land; Central Africa focuses on the issue of land and natural resources including forests and on land rights for indigenous people; in Eastern Africa, countries have been scrambling for a long time to attract foreign private investment into sectors like tourism and mining, with effects on the customary based land rights of local communities, including pastoral communities; and in Northern Africa there are specific concerns regarding land fragmentation and water rights.

The regional assessments and consultations also identified some important emerging issues that need to be addressed by land policies in the continent. These are issues such as land markets and foreign direct investments (including the way they relate to biofuels); land and climate change; land, demography and urban development; and the new scramble for African land.

Experiences of land policy formulation and implementation are diverse. Regions and even specific countries within each region are at different stages of this process. While land reforms have been on going for many years in North Africa most other regions (Southern, Western and Eastern Africa) are just going through reforms and are at different stages. In Central Africa, no significant land reform has been undertaken for a very long time.

I. Central Africa

I. Regional Background

According to the AU classification, the Central Africa region comprises the following nine countries: Burundi,¹ Cameroon, Central African Republic, Chad, Congo, Democratic Republic of Congo; Equatorial Guinea; Gabon; and Sao Tome and Principe.

1.1 Ecological context

Central Africa is characterized by the extreme diversity of its ecoregions. This region stretches from the north of Chad (23°05'50") that is characterized by permanent drought, crosses the equatorial region to the south of Angola (18°11'15"). Given its favourable latitudinal position, its oro-hydrographical setting, Central Africa experiences the main ecosystems types of the continent. Being a typical equatorial region on both sides of the equator, the region hosts one of the world's richest forest biodiversity. From Lake Chad to the extreme south of Angola to the south, the landscapes are very different. Human settlements and related activities show a great variety, posing different types of problems. Three other ecological regions are found in Central Africa: the wooded savannah found mostly in Central African Republic, Cameroon and Angola; the region under the influence of aridity stretches from the 9° north of the equator to the Chad-Libyan border; and the Sahelian region of Central Africa that suffers from permanent drought with its consequences on livelihoods. Central Africa is endowed with very rich but fragile ecoregions. The highland physiographic features vary considerably. They occupy west Cameroon and the Great Lakes region. They show different altitudes but are all above 1,000 m and are found in highly different bioclimatic contexts. These highlands are characterized by high

¹ However, Burundi joined the East African Community (EAC) in 2007.

population densities and continuous pressure on land.

Major humid zones are found on the coasts, from Cameroon to Angola, but also around Lake Chad. Generally, these areas are under severe man-induced threats; recently some of them have been occupied by invasive alien species.

1.2 Key resources and their use

The extension of these different ecosystems in many countries of the region creates competition for access to and control over resources. This leads not only to unsustainable use of resources but also likely creates conflicts between countries. There is evidence of increasing pressure on resources in all the ecosystems of the region. Desertification and land degradation continue to affect habitats and livelihoods in the southern humid zones where deforestation and its effects are difficult to reverse.

The key natural resources of Central Africa are forest resources and oil. Angola, Chad, Congo, Equatorial Guinea and Gabon are the main oil producers while Cameroon, Democratic Republic of Congo (DRC) and Gabon are the main timber producers. The hydroelectricity potential of Central Africa is huge, Cameroon and DRC concentrating almost half of the hydroelectric potential of the whole continent.

1.3 Population trends

The population of the Central African region was estimated at some 121 million inhabitants in 2007 (Table 1). This population is unevenly distributed. While the highlands of Cameroon and Burundi have high population densities (300 inhabitants/km² locally), some areas such as east Cameroon, the north of Congo, Central African Republic and the north of Chad have less than 5 inhabitants/km².

Table I. Populations of the countries in Central Africa

Country	Surface area (km ²)	Population
Angola	1 246 700	12 127 100
Burundi	27 834	8 691 005
Cameroon	475 442	17 000 000
Central African Republic	622 984	3 895 139
Chad	1 284 000	10 542 141
Congo	342 000	3 768 000
Democratic Republic of Congo	2 344 798	62 660 551
Equatorial Guinea	28 052	523 051
Gabon	267 667	1 424 906
Sao Tome and Principe	1 001	188 000
Total	6 640 707	120 819 893

Everywhere in the region, the proportion of the population living in cities is increasing steadily; this is the case in Libreville, Luanda and Kinshasa. Gabon and DRC are the most urbanized countries in the region while in Chad, Central African Republic and Burundi more than 70 per cent of the inhabitants live in rural areas. One of the major trends of the population of this region is the extreme diversity of the ethnic groups. Cameroon and DRC have respectively 234 and 350 different ethnic groups. Nevertheless, these groups are generally known as deriving from the main Bantu group.

1.4 Colonial legacy

The countries in Central Africa have been subjected to colonial domination of different origin: this includes French colonization, (Central African Republic, Gabon) Belgium colonization, but also German domination (in Rwanda and Burundi), British (part of Cameroon) and Portuguese colonization (Sao Tome and Principe) and Spanish colonization (Equatorial Guinea). All these external dominations have influenced land policies and laws, as well as the related institutional setting. One consequence of the colonial history in the region is the legal dualism, land and natural resources being governed by statutory law as well as by customary law. However, this legal dualism has been developing at the expense of customary land laws, as the latter were never clearly recognized. Another legacy of the colonial history is the State sovereignty over land. The colonial legacy continues to shape the land policy, legislation and land administration systems in the region.

1.5 Political and economic context

Politically, Central Africa used to be a rather unstable region. Only Cameroon and Gabon have been relatively stable over the past 20 years. Armed conflicts in Chad, Central African Republic, Congo, DRC and in Burundi generally cause important transboundary population movements with consequences on vulnerability, pressure on land and natural resources. The Great Lakes region is a typical example in this regard.

The Central Africa region does not represent a homogenous economic entity. Among the nine countries in the region, six (Cameroon, Chad, Central African Republic, Congo, Gabon and Equatorial Guinea) have regrouped into what is known as the Economic and Monetary Community of Central Africa (CEMAC) DRC and Angola seem to be closer to the Southern African Development Community (SADC). Burundi shows a unique economic setting, and recently joined the East African Community (EAC).

1.6 Others

The forest sector is one of the key fast growing sectors in the region. Efforts at conservation of Central African forests and their contribution of this sector in the gross domestic product (GDP) of the majority of the countries testify the importance of this sector. The Commissariat des forêts d'Afrique Centrale (COMIFAC) has been created to enable the Central African states harmonize their policies on the sustainable use of forests resources.

2. Key land issues/challenges in the region

2.1 General issues/challenges

In Central Africa, the key land issues are complex because land has different meanings: it is a factor of production; it is a family or community property; a capital asset; and a source of cultural identity and/or citizenship. Recently in almost all the countries of the sub-region the State has declared that the land does not belong to communities and individuals, but is under the exclusive control of the state. This is the origin of the key land issues in Central Africa. The question is very sensitive because the region is endowed with very large forests of highly important economic and cultural values. The State sovereignty over land in Central Africa is not accompanied by the development of appropriate land policy instruments likely to enable sustainable land management.

The importance of land issues to the socio-economic development in Central Africa is unquestionable. Growth and poverty reduction; governance in access and control of land; sustainable use of natural forests; and migration conflicts developments are in many ways integral parts of the land question in the region.

Increased and more secured access to land and natural resources for poor people is a key means for achieving food security. The question of considering customary rights in sustainable land management has been identified in almost all the countries. Currently, customary land tenure is not recognized in the majority of Central African countries. However, in reality most people in the region occupy their land under a customary system. This means absence of formal tenure rights and consequently insecurity of land tenure. Concerns about population growth and pressure on land in urban areas and coastal zones have been raised in countries like Angola, Cameroon, Congo and Gabon. Forced evictions, expropriations and related land issues are also critical issues in Central Africa.

2.2 *Top five issues for Central Africa*

There was a consensus at regional level that the following issues constitute the top five priority land issues in the region:

1. Lack of land policy, inadequate regulations and pluralism of decision making as regards land issues.
2. Gender issues with special attention to access to land for women and marginalized groups.
3. Lack of capacity in land policy development and implementation.
4. Lack of financial and human resources for land management.
5. Centralized land management administration and lack of participation.

2.3 *Issues and Challenges*

Three main stakes have been identified in Central Africa:

1. Good governance and peace keeping related to land management.
2. Achieve sustainable resource management with special attention to forest resources.
3. Economic growth, poverty alleviation and secure land rights.

The four key challenges to land policy in Central Africa are:

1. Participatory process in national land policy (NLP) development.
2. Readjust/reframe land policy through the decentralization process.
3. Implement a land policy aimed at sustaining agropastoral systems.
4. Developing land policy adapted to dealing with unpredicted events.

3. Experiences of land policy formulation/ implementation

3.1 Current status of land policies/legislations

In Central Africa, the State is responsible for the formulation and the implementation of land policy. Formulation of land policy is generally influenced by the colonial legacy; it does not take into consideration customary land rights. In some cases there is a dualism which does not necessarily give room to customary rights. It appears that the objectives of land policy in many countries of the region target financial objectives, particularly land taxation. Generally, Central Africa shows weak experiences in land reforms. Available legislations are old and characterized by the absence of consultation either in elaborating or updating the existing legislations.

Since there is no formal coherent land policy in the region, some sectoral instruments are available. They target sectors like forest and urban areas. Rural areas are not sufficiently covered. The process of land law formulation does not take into consideration the other sectors (agriculture, mines, town planning and others).

3.2 The implementation of land policy in Central Africa

3.2.1 Key actors involved in the implementation

Many actors intervene in the implementation of land policy in Central Africa. The first is the State which has the overall mandate to implement the policy.

In Central Africa, the States implement land policy through a set of instruments. They are fiscal, institutional, legal and technical. In general, the ministry in charge of land and domains has the overall responsibility to elaborate and implement the land policy. In all the countries different agencies under the umbrella of the State are in charge of different sub-sectors. Among

the stakeholders involved in the implementation of land policy in the region, some are formally assigned the implementation while others are limited to specific sectors (forests, mines, habitat etc.). In many countries the States have created parastatal agencies in charge of implementing land policies. The role and responsibilities of these parastatal agencies vary according to the stakes of the sector concerned.

Non-state actors are generally tolerated. These are usually customary actors who are active in almost all peripheral areas of Central African towns. The recent development of non-state actors is due to the fact the States, although they claim sovereignty over the land, are not able to provide planned and equipped plots for everyone. This same idea applies for private promoters.

3.2.2 *Tools to implement land policy in Central Africa*

These tools are different from the key sectors involved. In urban areas, these tools are basically regulatory, legal instruments and planning tools.

Among these tools, urban development master plans and land occupation plans are the most commonly used, as is the case in Cameroon, Chad and Gabon. The experience of using these tools shows that they are not adapted, are too rigid and lack flexibility. As a result, generally, they are not implemented. Unlike urban areas, rural areas lack specific tools for land policy implementation in the region. Nevertheless, some sectoral instruments are used in most of the rural areas of Central Africa. They deal with fishing, wildlife and flora. Most of the countries of the region possess a forest law or code.

The situation is particularly critical for the pastoral sector, as there are no specific related policies or laws. The lack of adequate policy for the pastoral is evident. There is no instrument to prevent agropastoral conflicts: in almost all the countries studied herders are not aware of their rights. It has been observed that efforts to implement land policy are generally driven by financial purposes such as taxes, particularly in forest, mines and urban sectors.

In Central Africa, the best results for policy implementation relate to the forest sector. The critical issues yet to be addressed are identified in urban areas where forced evictions confirm the absence of prospective instruments. In rural areas, no concrete measure has been taken to solve the question of local communities in forest areas.

3.2.3 *The ongoing land policy reforms in Central Africa*

The main changes in land related policies in the region are observed either in specific sectors (forest and mining) or in the issuing of land titles. In Cameroon, decree n°2005/485 of December 2005 aims at reducing the time limit for issuing land titles through devolution of power and simplification of procedures.

Another important innovation is the strict observation of deadlines, which are fixed for each stage of the procedure. This institutional reform is supported in some countries by efforts to adapt the communication channels to the majority of all the categories of stakeholders. In a nutshell there is no full experience of land policy in Central Africa.

4. Lessons, gaps, bottlenecks in policy implementation

4.1 *Lessons derived from the assessment on land policy implementation*

In Central Africa, two major lessons can be derived from the assessment on land policy. The first highlights the importance of monitoring and evaluating land policy development and implementation, following the principle of participation. In this regard, relevant indicators to measure progress and the impacts of land policy on livelihoods, economic growth and sustainable use of natural resources must be developed and used adequately.

The second lesson is linked to the importance of having appropriate human resources and adequate financial means to implement land policy. In Central Africa, due to the lack of well trained and sufficient staff, the data and other relevant information related to land management are not available.

4.2 *Bottlenecks and gaps in land policy implementation*

Among the bottlenecks in policy implementation in the region are the inequity in access to land and the non-recognition of other actors (a consequence of the monopoly of the State over land).

The need for capacity building is critical in the region. Training and capacity building should target not only official staff but also other stakeholders such

as private promoters and leaders of relevant local communities. The question of land policy development and implementation should be included in curricula at the university and professional training schools, in order to sustain the overall process.

4.3 *Key recommendations to enrich the continental framework and guidelines*

Among the regional specificities to be considered, special attention should be paid to the issues of sustainable forest management, and cross-border population movements and its consequences on land (for example, conflicts). But as discussed above, the effects of climate change on pastoral activities have consequences for land disputes and sustainable use of pastures. This problem needs adequate solutions. Even if the issue of land expropriation and forceful evictions is not a specific issue in Central Africa, appropriate responses should be formulated.

Countries in the region should therefore develop partnerships with relevant African institutions which have experience in land policy development and implementation. The process of land policy elaboration and implementation should be participatory and multi-sectoral. A formalized mechanism of sharing experiences at the level of Central Africa would be an important step towards the improvement of the whole process.

II. Eastern Africa

I. Regional Background

1.1 Ecological specificities

The Eastern African Region of Africa comprises 14 countries: Burundi, the Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tanzania and Uganda.

Land is a primary asset for survival and development in the region. It supports the livelihoods of most rural people. The rural population in all the countries is high, with more than 80 per cent of the people living in rural areas in Eritrea, Ethiopia, Rwanda and Uganda and more than 60 per cent in Kenya, Somalia and Tanzania. However, in Djibouti only 16.3 per cent of the population live in the rural areas. 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 has 3.8 per cent and Djibouti has a negligible amount. Potential arable land is almost non-existent in Djibouti because of the extremely arid conditions in the country. 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, except the Island States, pastoralism is a major land use. The Island States are faced with critical environmental problems resulting from land degradation and the effects of global warming and coastal erosion.

Pastoral land use is key to the development of the Eastern Africa region. In Kenya, 60 per cent of the national livestock herd is owned and managed by pastoralists; livestock accounts for at least 42 per cent of agricultural and 10 per cent of the total GDP. In Ethiopia, livestock makes up 40 per cent of the agricultural GDP and 20 per cent of the total GDP. In Somalia, 98 per cent of

the country is made up of rangelands. Here options for crop production are limited. Pastoral land rights and resources are significant issues and a number of pastoralist groups remain highly mobile across the region, moving from the north of East Africa into Sudan, Somalia and Ethiopia. This calls for the formulation of regional and national dry land/rangelands policies.

Eastern Africa has a substantial desert land mass making the UN Convention to Combat Desertification (UNCCD) very relevant to land management and rights. The effects of global warming are already affecting the region, resulting in droughts, floods, unpredictable weather and rising sea levels (especially important for the Island States).

1.2 Key natural resources

The key natural resources in Eastern Africa include large lakes such as Lake Victoria and long rivers such as the Kagera-Nile; extensive wetlands, high mountain ranges (some facing loss of their glaciers as a result of environmental degradation and global warming); minerals and fossil oil; extensive forests (which, however, are rapidly disappearing); long coastlines; rangelands; and national parks. All the countries in the region are experiencing high levels of natural resources degradation.

Countries in the region have transboundary resources and porous borders. The River Nile Basin, for example, covers Burundi, DRC, Egypt, Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda. Lake Victoria, the largest lake in Africa, is shared by three countries and by those in the Nile Basin. Pastoralists practise international transhumance, moving their animals from one country to the other. Activities in one country can affect the resources in another country.

There is renewed interest by foreigners to exploit natural resources in the region.

1.3 Population

The population densities in the countries in the region are high with Mauritius, Comoros and Rwanda having densities of 581, 315 and 340.1 people per square kilometre respectively. However, countries like Madagascar, Somalia and Tanzania have low population densities. Burundi, Rwanda and Seychelles are facing land shortage as their populations continue to increase. As a general observation, the population in Eastern Africa is young and the birth rates are high.

Most of population lives in rural areas but urbanization is rapid and ranges from 85 per cent in Djibouti to 13 per cent in Uganda.

1.4 Colonial legacy

The countries in Eastern Africa 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 the region. These regulations ranged from expropriation and eviction of local people through various forms of nationalization and exclusion and systems of permits and concessions, to the delegation of control to local chiefs who represented the “natives”. 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. The colonial legacy continues to influence land tenure regimes.

1.5 Conflicts

The region is characterized by political instability and conflicts, many of which emanate from or have an impact on access to land resources. The region is one of the largest refugee holding and refugee hosting parts of the world (including internally displaced persons). The region also suffers from past regimes being involved in slavery.

2. Key land issues/Challenges in the region

2.1 General issues/challenges

Key land issues in the region are: legal pluralism; land resources degradation; land tenure insecurity; State sovereignty over land; land and natural resources related conflicts; inter- and intra-generation equity issues; precarious land rights for women, pastoralists, hunters and gatherers and over common property; the impact of the HIV/AIDS pandemic; global warming and climate change; biofuels, food security and environmental concerns; the onslaught of foreigners seeking land for investment in the region; and rapid urbanization leading to new land problems in both rural and urban areas.

2.2 Top five priority issues in the region

The top priority issues in the region are:

1. State sovereignty over land and tenure insecurity, especially with regard to the commons.
2. Land and natural resources degradation.
3. Conflicts over land resources including the question of pastoralism.
4. The onslaught of foreign investors in land and natural resources.
5. Legal pluralism including the need to incorporate traditional and customary systems in land policy regimes.

3. Experiences of land policy formulation/ implementation

3.1 Current status of land policies/legislations

There has been pressure on all the countries in Eastern Africa to carry out land reforms, to formulate new land policies and to enact new land laws. Some countries have gone all the way and have NLPs and land laws in place. Tanzania is one such country. Some have land laws, but are in the process of formulating NLPs, such as Uganda. Others are in the process of formulating new land policies out of which new land laws will be formulated. Such countries include Kenya. The Island States generally have not embarked on the formulation of land policies and land laws, but have concentrated more on the environmental problems facing their countries.

Common features

Among the features that can be discerned from a number of land policies and laws is the reinforcement of State sovereignty over land but with a recognized need to include customary and traditional systems of land management. The need for decentralization is stated in many policies but the centralization tendency is still discernible. Land rights for vulnerable groups, especially women, have been included.

Most countries have taken steps to link land policies and legislations with increasing agricultural productivity and addressing issues of poverty and food security. Land policies have been linked to national poverty reduction strategies. Furthermore, the need to make countries conducive to foreign investment has been a discernible commonality. Some countries have set

up national investment centres whose portfolio has included making land available for investment.

Many reforms have included improving conflict resolution mechanisms by, among others, using traditional systems.

National specifics

Except Madagascar which drafted a land policy in 2005, the Island States have not embarked on formulating comprehensive national land policies. However, a number of reforms exist, such as the cadastre reform of the Seychelles. Madagascar is experimenting with a promising land certification and decentralized land administration programme (*Guichets Fonciers*). In general, island countries are more focused on environmental protection and biodiversity preservation. In Mauritius land issues are subsumed within the National Development Strategy that was passed in 2003. Countries that are suffering from political strife such as Somalia find it difficult to embark on land policy formulation. For Djibouti, which is highly urbanized and has little or no arable land, land policy has to be mainly urban focused, and also target sound management of pastoral lands.

Countries with acute ethnic problems such as Sudan and Ethiopia have found that there is need to have different approaches to land policy and land tenure in the same country.

3.2 Key institutions in charge of land policy reform/ implementation

Key institutions in charge of land policy reforms and implementations have been central government institutions. In most cases, the process has been conducted with the aid of development partners such as the World Bank, the Department for International Development (DFID, United Kingdom) and the European Union (EU).

Traditional systems have been successfully implemented in some countries such as Madagascar. Tanzania has also relied on the village set-up to implement land policy reforms and land administration.

The United States Government (through the United States Agency for International Development, USAID), for example, has funded a Customary Land Security Programme operating in Nuba/Southern Kordofan and Blue Nile states in Sudan, whereby tribal communities delineate the precise boundaries of their respective communal domains using global positioning system (GPS) technology. Each community is establishing a community Land Council to hold the root customary title of the domain and administer inter-

ests on its behalf. The Southern Sudan Government has drafted a Southern Sudan Land Bill (2007). USAID has funded the Customary Land Tenure Programme of Sudan (2006–2009) which aims to ensure that customary rights to land and resources are protected and formalized.

3.3 Results of land policy/legislation implementation

The results of land policy/legislation implementation have been varied, but (with the exception of countries like Ethiopia and Madagascar) generally modest. Many of these reforms are not known to the populations. Besides, the formulation of land policies and land laws seems to have given limited importance to implementation. Thus, although the new policies and laws are in place, there are no resources for implementation. A good example may be Tanzania where the NLP was passed in 1995, land laws were enacted in 1999, but implementation is still at the pilot stage.

Traditions are still very strong with regard to rights such as those of women. The expected increase in productivity and access to credit has been limited due to the universal observation that poor societies are afraid of using their land for credit (even if they could pass the test of being creditworthy).

3.4 Key recent/ongoing land policy reforms in the region

Land reform processes are taking place in the region in almost all countries since some have no national NLPs and others have focused on environmental problems.

Processes used in land policy formulation

The process of land policy formulation is following a common trajectory as follows: issues paper prepared by a panel of experts or emanating from a commission of enquiry; consultations; formulation of NLP; formulation of legislation; institutional reforms; implementation preceded by piloting; and dissemination of information to the public, training and capacity building. However, some countries such as Uganda have “put the cart before the horse” by passing land legislation without having a policy in place.

Trends in current reforms

Trends in current reforms are placing less emphasis on individualization and more on environmental protection, protection of the commons, and enabling traditional systems of land tenure and land management.

Institutional Reforms

The new land policies and land laws that many countries in the region have adopted in recent years provide for greater decentralization in land admin-

istration and management. This facilitates 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 indigenous/customary institutions in land conflict/dispute management.² The countries face global pressures to decentralize land administration and management and to participate. This has led to institutional reforms in the land rights administration in the region. Most governments now have some form of decentralization policy. The extent to which this represents a real decentralization of power or a de-concentration of centralized function is open to question. Tanzania and Uganda would be an example 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.

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 which further limits the autonomy of local bodies.

4. Lessons, gaps, bottlenecks in policy implementation

The countries in Eastern Africa are at different stages of formulating land policies and 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.

4.1 Lessons derived from the assessment on land policy implementation

Sequencing is essential. There is need to realize that the processes are long and costly. Moreover, reforming land laws alone is inadequate since other sector laws must be addressed as well. The focus on individualization weakens the rights of secondary rights owners including women, hunters and gatherers, pastoralists, and poor households in general.

2 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).

Development partners have been key in land reforms, but there is need to know their agenda. Relying on aid for implementation of land reforms may impinge on sustainability. Public consultation has been found necessary, involving communities, professionals and non-state actors from policy formulation to implementation.

4.2 Gaps

Identified gaps include: poor understanding of traditional systems; limited concern with urban and peri-urban problems and the macroeconomic and social effects of urbanization; and lack of involuntary resettlement policies.

Others include lack of a clear policy to accept and guide foreign investment in the exploitation of land and natural resources including mining and commercial agriculture (in addition to biofuels); and lack of a clear policy on global warming and climate change. This is particularly serious for the low-lying Island States.

In conflict resolution, it is unclear what should happen when whole communities are against contemplated or actual government action which has an impact on land.

Finally, there is still a major gap with regard to pastoralism which is a major land use in the region. Policies in the various countries have not succeeded in addressing the needs of pastoralists, and hunters and gatherers. As a result, conflicts have continued to flare up between farmers and herders. Governments promise to demarcate land for pastoralists, but such promises have largely remained on paper. National policies and laws have little information on how to address the problems of those societies whose livelihoods depend on migration.

4.3 Needs in capacity building

While there is a recognized need for decentralization, there is no capacity at local levels to handle the processes and results of land reform.

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 land law in most countries in Eastern Africa, 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.

5. Key recommendations to enrich the continental framework and guidelines

5.2 Regional specifics to be considered

The Eastern African region has both the largest and the smallest country in Africa; the highest mountain ranges, and the largest water bodies. The 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 been unstable for the past few decades generating many refugees and internally displaced persons. 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.

5.3 Specific issues to be addressed

These include:

- While secure land rights are important, these are being threatened by factors such as State sovereignty over land, conflicts, marginalization of customary/traditional systems, foreign investors, resource degradation, climate change, among others.
- State sovereignty over land needs to be revisited with a clear definition of “public” land and checks and balances against the misuse of State power.
- Property systems are not dual, but plural. Legal pluralism needs also to address the needs of communities that may have suffered from slavery institutions in the past or still suffer from them. This is because even if slaves are freed they may have no land or have to live on the land of their former masters as serfs. Formalization of customary land rights should not mean replacement of customary tenure with modern/tenure.
- Traditional systems of land management need to be explored and utilized. Likewise, ways and means for pastoralists and agriculturalists to coexist need to be explored. The continued degradation of land and natural resources (in particular the serious deforestation) in the Eastern Africa region needs special attention. Desertification is a serious challenge in the region.

- The commons in Eastern Africa are under serious threat, partly because of the misuse and abuse of State power, partly because of the 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.
- 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.
- Situations of latent and small conflicts should be recognized early and nipped in the bud.
- The policy framework needs to address how to minimize natural disasters. It should also address how the affected communities can be assisted to recover their livelihoods, to be stronger after disaster and to be better prepared each time.
- Climate change is causing havoc within the region in terms of unpredictable weather, floods, droughts, rising sea levels, and changing inland water bodies. The policy framework needs to address this issue in terms of designing both mitigation and adaptive strategies, such as growing drought resistant crops and formulating steps to minimize natural resources degradation.
- The onslaught of investors seeking to acquire large chunks of land in Eastern Africa to grow crops for production of biofuel needs to be addressed. This practice will exacerbate food insecurity in terms of both availability and price. It may also lead to environmental degradation and to new conflicts over land. However, biofuel production may well offer genuine development opportunities. The pros and cons need to be clarified.
- A lot of land in Eastern Africa is being taken up by local and foreign interests for commercial investment. People are being dispossessed of their customary rights where land is suspected to hold valuable minerals or oil. The commons are being privatized. A number of countries have laws restricting land ownership by foreigners, but these are being 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 land shortages.

- The framework needs to be strengthened to address intra- and inter-generational issues such as the rights of women, children, migrants, refugees, internally displaced persons, and communities with their unique socio-economic cultures based on living directly off land produce and owning land in common. These include the Batwa in Rwanda and Burundi, the Hadzabe in Tanzania, the Eyle in Somalia and other such communities.
- 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 further away from urban areas.

5.4 Other recommendations

Other recommendations include:

- There is need to extend the protection of property rights for women and children within the household set-up.
- Urban and peri-urban land rights need to be addressed, as do the macro impacts of urbanization in African countries.
- Implementation options and resources should be part and parcel of reform formulation.
- Coordination between the land sector and other sectors and with the donor community is important.

III. North Africa

I. Regional Background

The Northern Africa region comprises seven countries: Algeria, Egypt, Libya, Mauritania, Morocco, Saharawi Arab Democratic Republic (SADR) and Tunisia.

1.1 Ecological specifics

North Africa has an arid and semi-arid environment. The vertical and the horizontal variations from north to south create wide biological diversity. The marine components in the region also reflect great variety. One of the attributes of North Africa is the mountainous area; the desert is another.

1.2 Key natural resources

North Africa is among the richest areas of the world in mineral deposits, such as iron and phosphate, and oil and natural gas reserves. It is also one of the poorest in renewable water resources. Many countries in the region continue to rely excessively on natural resources for their development. Land and water are the main productive factors in the region that are increasingly becoming scarce due, in part, to growing population.

1.3 Population

The population of North Africa was estimated at 159.7 million in 2005. It is projected to reach 271.3 million by the year 2030. The population of North Africa is young. In 2005, those under 15 years old represented about 32.7 per cent of the total population.

1.4 Colonial legacy

France occupied many of the North African countries during the colonial period. French troops invaded Egypt in the late 1790s, and then Britain occupied the country from 1882 to 1956. Italy occupied Libya (1934–1951). The colonialists supported a feudal system and held major areas of land.

1.5 Others

North Africa shares common legal and institutional frameworks. Algeria, Egypt and Tunisia base their legal systems on Islamic laws and French Civil Law. Libya, Morocco and Mauritania base their legal systems on religious law. These legal systems explain the problems common to these countries and enable the processes of sharing experiences in land policies and management.

2. Key land issues/Challenges in the region

2.1 General issues/challenges

Population

The population of North Africa is growing. Since land and water are limited, population growth is among the pressures on these two resources. The resources require careful planning and management in order to generate job opportunities, provide social services and create physical infrastructure.

Land Management and Policies

Land policy formulation and land management in North Africa have been evolving in close association with institutional transformations in these countries since gaining political independence. Land property rights in the region are very comparable and are the result of common factors such as geography, history and religion. The land rights are multiple, complex and include *melk* lands (private ownership), collective lands and *habous* lands (also known as *waqf*). They are inherited from pre-Islamic rules, Islamic, and colonial and post-colonial legislation. All these rules co-exist.

Farm Size and Land Distribution

Farms in the region tend to be small and fragmented. Such dispersed farming has for decades prevented economies of scale in production, inputs and marketing, raising the cost of production and keeping agriculture relatively inefficient.

Urbanization

North African countries have an extended history of urbanization. Population densities (persons per unit of land) in North Africa will increase. Most of the cities of North Africa are within 100 km from the coastal line of major international water bodies.

North Africa is heading towards being the location of major urban megalopolises. Currently, the urban population in North Africa represents 51 to 53 per cent of the total population, and is projected to be more than 60 per cent by 2030. Almost all North African countries suffer from urban primacy, i.e., concentration of the majority of the urban population in one or two cities, often the capital and the main port. This is a sign of regional disparities, and is often associated with urban ills such as environmental degradation, informal urban sector, rural–urban migration, sprawling at the expense of agricultural land, among others. In most countries of North Africa, peri-urban agriculture plays an important role in securing agricultural commodities for the cities. Peri-urban agriculture is subject to growing population pressure and competition over land resources.

Land Tenure and Security

Land tenure and security are essential for efficient, effective land market mechanisms. Without secure, acknowledged property rights, the economy lacks the necessary capital, resulting in environmental losses. In 1997, de Soto (1998)³ estimated the unregistered informal holdings in urban Egypt to be worth about \$241,000 million, where 70 per cent of these frozen assets are in the hands of the poor. These informal holdings are “dead capital”, because the poor cannot trade the land and dwellings on the market or use them as collateral to formally access funds to finance their small- and micro-enterprises. Legal acknowledgment of informal holdings will have a positive impact on the national economy. It will: revitalize dead capital; put credit at the disposal of the poor; and enhance tax revenues and lower inflation.

Poverty and Access to Land

In the urban settlements of North Africa, poverty is evident and causes discontent that, in the past, has developed into violent unrest. Poverty in rural areas is relatively high in this region. The multidimensional and dynamic nature of poverty–land linkages poses two fundamental challenges for planning and management of land use:

- The need to manage and sustain the long-term capacity of the environment, particularly land resources, to provide the goods and ser-

³ de Soto, H. 1998. *Dead Capital and the Poor in Egypt*. Distinguished Lecture Series. The Egyptian Center for Economic Studies.

VICES on which sustainable human development depends; and

- The need to ensure secure and equitable access of the poor to land resources and the benefits that they can derive from them.

Key constraints to agricultural development and food security in North Africa are numerous. The countries in the region face a number of converging trends that threaten the future of livelihoods of the poorest stratum of the society; this is an impediment to achieving the first Millennium Development Goal (MDG 1).

Land tenure and Gender Issues

Islam has honoured and given women rights to possession of land and other assets through direct purchases and inheritance. The governments of North Africa have taken serious measures to enable women. Customary practices are, however, different from land tenure legislation (modern or traditional). Customary rules in land division discriminate against women at the time of transmission of real estate. The United Nations Sudano-Sahelian Office and United Nations Development Programme (UNSO-UNDP) documented best practices for involving women in sustainable land uses in North Africa. Countries in the region have to assure gender balanced development policies and plans, where women have the right to hold land and are generally able to access wealth. Sustainable land use cannot be attained without enabling women to receive an equitable share of wealth. It cannot materialize without the full involvement of women in the development process by acknowledging their roles at home and in the field: reproductive, production and community development and networking.

Global Systemic Environmental Issues

The River Nile, groundwater and rain are the sources of freshwater in the North African region. It is likely that the impacts of climate change will affect the water resource system in the sub-region in the form of reduction in water availability. North African countries share environmental issues including: a) water scarcity and quality; b) land and coastal degradation, and desertification; c) urban and industrial pollution; and d) weak institutional frameworks.

Foreign Direct Investments

North African countries are attractive to foreign direct investment (FDI), particularly in the form of real estate developments. The planned developments might have negative effects on social solidarity and environmental resources.

Need for Water and Energy

Countries in this region are searching for ways to diversify their sources of energy. Several countries have considered the nuclear energy option and the solar and wind energy options; all these put pressure on land resources.

Explosive Remnants of War

Land mines and explosive remnants of war (ERW) are a common hurdle for land development in the region. They are the result of the North African Campaign of World War II, the Egyptian-Israeli wars, and border conflicts between North African countries.

2.2 Top five priority issues in the region

Framework and Institutional Set-up for Land Policies and Management

The countries in North Africa have a number of laws, executive regulations and decrees, in addition to several sources of legislation (traditional, religious and civil) which, as mentioned earlier, are sometimes sources of conflict as well as the basis for a negotiated settlement. There is a need for a consolidated framework for land policy formulation and implementation.

The legal framework in North Africa is, to certain extent, conducive to managing land and developing human settlements. However, there are a number of gaps. There is also institutional overlap between ministries and agencies involved in managing human settlements, agriculture, irrigation, local administration, environment, etc. The source of these overlaps lies within the originating legislation. Coordination of decision making at the central level is more effective than coordination of implementation processes at the local levels. Local administrations face challenges that arise from the amount of coordination required to attain comprehensive and integrated land management activities. The coordination of implementation activities is difficult because of the cross-sectoral nature of these issues and the competing economic activities for land resources.

Information and Monitoring of Land Resources

Proper land policy formulation and implementation require appropriate and timely information. Municipalities and central agencies responsible for land policy formulation and implementation often lack continuous, valid, reliable information conducive to proper decision making.

Human Resources for Land Management and Administration

Proper human resources are required for legal and institutional reform and for all steps of strategy, policy, plans, programmes and projects for land re-

sources development, use and conservation. Many of the public bodies in North Africa responsible for the development of economic sectors, in addition to managing human settlements, need new cadres who are able to utilize modern planning technologies in land policy formulation and implementation.

Financing Land Policies

Mismanagement and inefficient use of land resources are direct outcomes of malfunctioning land market mechanisms. One of the reasons for market malfunctioning is insecure, unacknowledged property rights. A fundamental condition for the efficient operation of land markets is to have well-defined, exclusive, secure, transferable and enforceable property rights over land. Financing land policies and management is central to these processes.

Financing land policies and management is a real challenge. Some governments are short of funds to implement schemes for land management, enforce laws and plans for land use, etc. One of the ways in which to meet this challenge is to acknowledge property rights and secure tenure to achieve economic growth, social equity, and protect, regenerate and conserve the environment. Securing tenure can lower inflation rates; set land values to real market prices which avails credit to landholders to finance their businesses; and increase government revenues that can finance schemes for land management and development.

3. Experiences of land policy formulation/ implementation

3.1 Current status of land policies/ legislations

Common features

Land policy is part of national plans for development. Agriculture is among the major economic activities in North Africa. Industry, including manufacturing and extracting oil and natural gas, is another significant economic activity. Tourism is also a booming industry in the region. All of these economic activities require access to land and spatial planning where land is central to the overall national development.

National Specificities

The State-interventionist approaches adopted (supported by high levels of capital investment) by the land reforms included: 1) recovery of foreign-

owned land; 2) ceilings on maximum land ownership (in Algeria, Egypt and Libya); and 3) provision of subsidized modern agro-inputs, irrigation water, free extension services and primary education.

The post-independence period was one of immense optimism in North Africa that land reform would generate economic growth. The colonial inheritance in Algeria, Egypt, Libya and Tunisia was one of high concentrations of smallholders, and high levels of landlessness and rural poverty. Many North African countries attempted to conserve urban cultural assets and upgrade informal urban settlements. The Aga Khan Foundation awarded its prizes to several initiatives in North Africa. Based on the success of small home-grown and self-financed pilot programmes, the central and local governments of Mauritania, in partnership with urban poor communities and the private sector, combined forces to scale up and develop a national strategy and programme for slum upgrading.

3.2 Key institutions on land policy reform/implementation

A number of institutions are responsible for land management and administration. In North African countries key authorities involved in the process of land policy formulation, reforms and administration are:

- Agriculture Land Agencies (Agences foncières Agricoles, previously called Agence de la reforme agraire): in charge of land consolidation programmes;
- The Agriculture and Fisheries Union (Tunisia): plays an active role in advising farmers on the process of land reform;
- Regional and local land commissions: responsible for dividing and distributing collectively held land among newly formed cooperative members;
- Land (real estate) Court (Tribunal immobilier): taking care of land registration;
- Land Property Conservation Bureau: registration of property transformation according to land management plans;
- Central ministries: since reforms take place mostly on State owned lands (nationalized lands or previously part of the State domain), the ministry responsible offers the land to the agency in order to implement the consolidation and distribution programmes;
- Topography and Cartography Agency: in charge of realizing housing development according to urban master plans and providing accurate maps.

3.3 Results of land policy/legislation implementation

Countries in the region have undertaken major land reforms. All the countries undertook extensive land reform programmes in the period 1950–1975, achieving significant benefits in favour of landless peasant farmers and pastoral nomads. These reforms also substantially improved access to European export markets, and reduced the high rates of malnutrition, illiteracy and landlessness, prevailing in the low income traditional rainfed agricultural sector.

Although not all expropriated land was redistributed to the poor, and the State became the largest landowner in the region, establishing State farms, nearly one million farmers across North Africa became landowners. Land reform and new land settlement schemes contributed to agricultural growth across the region, including technical change, providing beneficiaries with security of tenure, and contributing substantially to poverty reduction. Rapid urbanization, the oil boom and increasing domestic consumer demand all contributed to rising agricultural incomes.

After UNCCD, the countries of North Africa embarked on elaborating and executing plans and projects to combat desertification and manage drought. The countries in the region executed these activities based on sectoral approaches through government institutions and public authorities. The activities were of limited duration and sporadic in nature. This approach changed later—combating desertification and managing drought cannot be sustainable if not elaborated and initiated via a multi-stakeholder approach that results in interventions that balance economic growth, social equity and ecological conservation at the same time.

The North African countries have formulated plans for spatial development, particularly for urban management and development control. Plans for land uses at the national level are central to economic and social development, and to conserving natural resources, including land. Most countries in the region have adopted economic reform and structural adjustment programmes (ER-SAP) that call for trade liberalization, limiting State control on the national economies, and encouraging foreign and national private initiatives. Land policy in the region has followed the national economic adjustment plans which by the end of the 1990s had embraced a market economy model. The agricultural sectors of the Middle East and North Africa region could have benefited from high oil prices in the 1970s. The revenue that accrued from

the sale of oil might have funded radical and far-reaching agrarian reform but it did not. Investment in agriculture across the Arab world slumped in the 1970s and 1980s as regimes opted to import food and consumer goods rather than to produce them nationally. Meanwhile, agricultural productivity per worker fell across North Africa together with the number of people working in agriculture.

3.4 Key recent/ongoing land policy reforms in the region

3.4.1 Processes used in land policy formulation

The tradition of managing land resources and the life forms that they support is not new to the Arab culture. This is witnessed by the *hema* system of managing rangelands. This system restricted the timing, frequency and intensity of grazing, and was instrumental in the maintenance of the rangeland. It was strictly applied in the region before and after Islam. Many North African countries adopt participatory modalities in land management and administration. The consultative mechanism used in Algeria, Morocco and Tunisia in the course of formulating plans and programmes for combating desertification and regenerating forests indicates serious institutional transformation towards multi-stakeholder participatory decision making for administering land resources.

The coexistence of religious, traditional and civil legislation is among the reasons for land disputes in the region. Many North African countries lack updated, full, model systems for land registration. These systems include cadastral and other information necessary to facilitate land management and trade. Governments in North Africa depend on direct negotiation, arbitration and mediation in an attempt to reach win-win agreements concerning the disputed land.

3.4.2 Trends of the current land reforms

New laws have been passed to enable the private sector (local and foreign) to own/use land to develop production and services establishments. In some North African countries, such as Egypt and Tunisia, new constitutional amendments were passed to facilitate the process of attracting foreign investments and to assure capital accumulation.

3.4.3 Institutional reforms

Land policies need to be formulated in a holistic fashion not a sectoral one. The success of some North African countries in the processes of afforestation and combating desertification and in land policy formulation relies on

a multi-stakeholder participatory planning process. In several cases in the region, participatory, consultative planning for land use and management has proved to be an appropriate modality for decision making that preserves land resources and assures equity and efficiency.

Participation in itself should not be an end, but rather a means towards land policy formulation and management. The problem with participatory planning in communities of tribal structure and remarkable adult illiteracy is the dominance of myth and misconception that enable one group to dominate and exercise power over another. Thus, for sustainable use of land resources, countries in the region have to initiate a process of institutional transformation based on cultural change, which is among the reasons for planning. This is possible through efforts to enlighten the public and its representatives and advocates, to take control of its destiny.

3.5 Lessons, gaps, bottlenecks in policy implementation

3.5.1 Lessons derived from the assessment on land policy implementation

The laws governing land management and policy formulation are closely associated with the inappropriate sequencing of passing the law and elaborating the policy.

Planned economy and State capitalism were the paths to economic development and financial independence in the region. The States of many North African countries conducted land reform through successive decrees setting ceilings on land ownership to weaken the political powers of big property owners. The result of these actions was achieving some social equity by availing the landless access to wealth (land), but these actions also contributed to inefficient use of land.

In the past two decades the scene has changed. Countries in the region have adopted neo-liberal economic policies. This meant transforming the role of the government from a benevolent, egalitarian position with a State that is only a regulator. It also meant replacing a planned economy with a free market mechanism. This is easier said than done. Some of the laws, regulations and decrees passed in the 1950s and 1960s in many North Africa countries still exist beside new laws that promote free market mechanisms. The co-existence of these two types of laws is not conducive to proper land market mechanisms.

Land management practices are often viewed and conducted from a sectoral point of view and therefore cannot assure sustainable use of land resources.

3.6 Gaps

Many of the constitutions in North Africa use the public interest as a criterion to justify eminent domain actions. The use of public interest as a measure for assessing what the people really need is not always appropriate.

Despite attempts at decentralization and de-concentration of powers to local administrations, some North African countries are still centralized because of geography and the fear of widening regional disparities, where regions blessed with resources are bound to get richer, while other regions will continue to lag behind. Thus for social solidarity and equity, financial, administrative and political decentralization is not expected in the near future.

3.7 Needs in capacity building

Adult illiteracy and moderate human resources are real barriers to understanding the legal system and procedures, thus many residents and citizens of North Africa are not able to defend their ownership of land. Furthermore, it is not possible for marginalized population groups, such as women and the poor, to access natural resources and fully participate in decision-making processes. These groups neither have the legal knowledge nor the endowments to hire a lawyer to defend their interests. Non-governmental organizations in the region have limited capacities, and lack the means for proper networking to advocate for the interests of marginalized populations.

Government land administrators who are required to implement new land policies and laws need training in strategic thinking; in developing an understanding of the dynamics of markets; and in developing a constructive discourse with the private sector and non-government entities. They also need training in economic, social and environmental impact assessment. Often, qualified and trained land administrators leave public employment for private sector companies that provide higher salaries. Governments must find ways to retain this category of staff.

Members of civil society organizations, including private sector companies, also need capacity building and to have their awareness raised about issues in land management and administration. Major landholders in rural communities donate monies for mosques and to the poor, but few of them pay for educational and health services. Private sector leaders need to understand their corporate social responsibilities, particularly in coastal areas and industrial estates. Geospatial data in many North African countries are available, yet scattered and sometimes incomplete and unreliable and invalid. There are a number of technical impediments that face this trend including the definitions of geospatial data, such as scale, projections, level

of details, etc.; platform and compatibility problems; and some institutional difficulties with respect to defining national boundaries to make these data usable internationally.

4. Key recommendations to enrich the continental framework and guidelines

4.1 *Regional specifics to be considered*

North African countries have several factors/elements in common that might seem more contradictory than in accord. The first element is the commonality of language, culture and religion and last, but definitely not least, is traditions. The second element is ties to sub-Saharan Africa through trade and, in the case of Egypt, the Nile. Sub-Saharan African countries also have strategic importance to North African countries in terms of security and stability. The third element is the Mediterranean Sea that links the region with Europe. These regional specifics of North Africa stem from these three elements and the need to reach a balance between these three forces for the sustainable development of North Africa, and Africa in general.

The need for secured sources of water and sustainable energy for economic and social development, while combating desertification and managing drought, are major issues that challenge the sustainable development of the countries in North Africa.

4.2 *Specific issues to be addressed*

Three specific issues should be addressed. First is the issue of water scarcity and deposits of oil, natural gas and other mineral resources. There is need for development initiatives that maximize the use of abundant resources to secure water resources, with the resultant implications on land development. This requires revisiting the issue of equity and efficiency. The second is FDI and its impact on land, particularly funds allocated to real estate for luxurious developments with severe negative ecological consequence. The third issue covers gender and the need to assure women their rights of inheritance.

IV. Southern Africa

I. Regional Background

The Southern Africa region comprises 14 countries, all member of SADC: Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

1.1 Ecological specificities

The SADC region faces serious environmental challenges. These challenges are likely to be exacerbated by the impact of climate change including, for Island States and coastlines, rising sea levels. Much of the region is water-stressed and prone to drought, requiring urgent attention to the integrated management of land and water resources. Many of the issues are cross-border and cannot be addressed by national policy alone. This is exemplified in the development of important regional protocols on water, fisheries, forestry and wildlife management. Land degradation, soil erosion and the loss of forests (particularly severe in certain countries) threaten not only biodiversity but also agrarian livelihoods and therefore have a severe impact on the livelihoods of the rural poor. The continued dependence of poor households on firewood as a primary source of energy is a serious issue; the production of biofuels has been identified as an alternative source of energy and an economic growth point within the region. However, this is a controversial policy option because of serious concerns about the implications for already fragile household and national food security, and the ecological trade-offs involved.

1.2 Key natural resources

The SADC region is extremely rich in terms of biodiversity (both flora and fauna). The region is also exceptionally well-endowed with mineral resources, although these are not uniformly distributed across the different countries. There are important water resources in the region, particularly in the north, but much of the region is arid and prone to drought.

1.3 Population

The population of the SADC region (DRC excluded) is approximately 185 million people. The rate of urbanization is generally rapid, posing significant challenges for land policy. With the exception of Botswana and South Africa, the region is still predominantly rural.

1.4 Colonial legacy

The colonial legacy continues to exert a profound influence on land issues across the region and dominates the politics of land reform. While the former settler colonies of Angola, Mozambique, Namibia, South Africa and Zimbabwe all experienced major (but varying) levels of land dispossession by settlers, the entire region was affected by colonial land practices and policies, notably in the persistence of legal dualism with regard to land ownership and administration. This has ignited common concerns among countries to re-establish their sovereignty over their land and natural resources, to redress highly unequal and race based land distribution and to reform their dualistic land tenure systems. Settler land expropriation and migrant labour (focused primarily but not exclusively on South Africa's industrial, mining and commercial farming enclaves) have created areas of extreme land shortage and contested land rights, and highly inequitable, race based income and consumption patterns and the persistent marginalization of smallholder rural and informal economies. Accompanying the history of land dispossession was the imposition of hierarchical, inequitable and racially discriminatory land tenure systems, which pitted imported statutory (freehold and leasehold) tenure systems against indigenous customary tenure systems. Colonial diversity also grafted a variety of official European languages, cultural orientations and political and administrative systems onto indigenous systems of land administration.

1.5 Others

The SADC region is recognized as the epicentre of the HIV and AIDS pandemic globally and any meaningful land policy framework for the region

has to grapple with the implications of HIV/AIDS not only for land-based livelihoods, but also for State capacity to implement ambitious land programmes. While the prevalence rate is low in a few countries (notably Angola, Madagascar and Mauritius), in the rest of the region the prevalence rate varies from 12 per cent in Tanzania to 33.4 per cent in Swaziland. Resolving the political and economic crisis in Zimbabwe also poses a major challenge for the region.

2. Key land issues/challenges in the region

2.1 General issues/challenges

The issues can be clustered in terms of several broad themes:

- Issues relating to the ways in which land is held and distributed, including the question of State sovereignty in relation to land (where does radical title lie?); legal dualism in national land tenure systems; severe inequities in the distribution of land, particularly in the former settler States of the south, and widespread tenure insecurity, including among those holding land in terms of customary law and especially in urban and peri-urban areas, informally.

Women, pastoral communities and people living with HIV/AIDS are often further marginalized; young people, both male and female, may also be disadvantaged in terms of access to land.

- Issues relating to land use (which cannot be de-linked from the debate on tenure security): increasingly these have an urban and not only a rural and agrarian dimension in the region, and include questions around the protection of the commons against land-grabbing and privatization, and sustainable environmental management more broadly.
- Issues relating to the development and implementation of land policy, including State capacity to implement the land policies that have been introduced since the 1990s and manage land administration in ways that are accountable, efficient and transparent; the integration of land policies with other national policies and regional initiatives, including macroeconomic policy, gender policy, urban and housing policy, youth development, and environmental management.

- Issues relating to post-conflict reconstruction, including issues relating to land restitution by those unjustly dispossessed of land rights, the resettlement of internally displaced people and refugees in neighbouring countries, and the rehabilitation of environments damaged by warfare.

The above issues intersect in complex ways, and the policy implications have to be understood holistically, in relation to each other. Some issues, such as those of gender and HIV/AIDS, are cross-cutting and have important redistributive, land use and legal dimensions.

2.2 *Top five priority issues in the region*

At the Consultative Workshop on Land Policy in Southern Africa (Windhoek, Namibia) in August 2007, delegates identified the following as priority issues to be addressed in the region:

- The unequal distribution of land;
- Tenure (in) security;
- The colonial legacy, including legal dualism; and
- The management of natural resources to ensure present and future livelihoods and sustainability.

The issue of State sovereignty over land, i.e., the extent of State authority over land, and women's property rights were also identified as major issues of concern.

3. Experiences of land policy formulation/ implementation

3.1 *Current status of land policies/legislations*

Since the 1990s there has been an intensive process of land policy formulation and reform across most of the region. The end of apartheid in South Africa, the demise of socialist ideals in other countries in the region and the advent of more market-friendly economic policies can be said to have stimulated this process. NLP frameworks are now in place in Botswana, Malawi, Mozambique, Namibia, South Africa, Tanzania and Zimbabwe. Madagascar developed its NLP in 2005 while Angola has adopted a new Land Law, although it has not yet passed the enabling regulations. In Mauritius land

issues are subsumed within the National Development Strategy that was passed in 2003. Draft policies also exist in Lesotho (2002), Zambia (2002) and Swaziland, although in Swaziland the policy process that started in 1999 appears to have stalled.

Processes followed for land policy development have not been uniform. The processes have covered the spectrum from the highly consultative process followed in Mozambique to more top-down processes, with the State generally playing the dominant role. Levels of popular involvement tend to reflect the strength of civil society in the region, which is generally weak.

There is a major division within the region in terms of the extent of private ownership of land, which is extensive in Namibia and South Africa, and the degree to which private ownership of land is enshrined in land policy. In most of the region, however, all or most of the land is vested in the State, which means that governments enjoy extensive powers over land held and used by people under customary law. Land policy development is beginning to give greater recognition to customary tenure systems, but the development of effective land management systems that protect local people's rights in situations of externally driven economic development projects and local contestations over rights remains a challenge. While the devolution of land administration to local government structures is generally regarded as desirable, the extent to which authority over communal land has been devolved to local institutions varies considerably across the sub-region—high in Tanzania, for instance, but low in Swaziland.

3.2 *Key institutions in charge of land policy reform/implementation*

After independence, countries tended to maintain the colonial systems of land law and administration that they had inherited. In the 1990s these came under review, although the imprint of the different colonial legacies on land administration institutions and practice can still be seen across the region. As already noted, the extent to which land administration has devolved to the local level varies. In Botswana community land is administered by land boards and in Tanzania by village councils.

Determining the role of traditional leadership institutions in the allocation and administration of land is a major policy challenge in the region, with different trajectories in place. Whereas some countries, notably Botswana, Lesotho and Tanzania, have reduced the role of traditional leaders in land administration, others, for instance Swaziland, continue to rely on them. In South Africa the powers of reformed traditional councils to administer land, including land awarded to local people through land reform, have been en-

hanced. A major issue with regard to traditional institutions is how to ensure that women's land rights and tenure security are promoted, given the patriarchal nature of these institutions.

Developing appropriate land administration institutions in urban and peri-urban areas, where the demand for land is high and informal markets active, remains a key challenge in much of the region.

3.3 Results of land policy/legislation implementation

The results vary enormously across the region and within States between projects and districts, and therefore need to be unpacked on a case by case basis. Thus, while the implementation of the Land Law of 1997 in Mozambique is widely regarded as an example of best practice there are concerns about the weakening of local land rights as a result of the awarding of land concessions in certain areas. The fallout from the manner in which Zimbabwe's fast track land reform programme was carried out since 2000 continues to reverberate through the region. Generally the realization of the anticipated results in terms of greater tenure security, increased investment in land, and improved livelihoods among rural people, has been hampered by weak implementation.

3.4 Key recent/ongoing land policy reforms in the region

See Appendix 1 of the SADC Regional Assessment for a summary.

4. Lessons, gaps, bottlenecks in policy implementation

4.1 Lessons derived from the assessment on land policy implementation

Perhaps the major lesson is that it is as important to invest in appropriate mechanisms for implementation of policy as it is to invest in the policy formulation itself. In the development of national policy, widespread and meaningful consultation with people across all levels of society is critical, as is effective communication around the policy formulation process as it unfolds and dissemination of information and ongoing popular education programmes once the new policy frameworks are in place. This requires meaningful targets to be set in terms of time frameworks and targets, and the involvement of civil society on an ongoing basis, and the fostering of a climate of constructive public debate. The cost implications of new policy and institutional frameworks has

to be carefully considered; building on existing structures may prove more cost-effective and sustainable in the longer term, provided these are consistent with the principles of gender equity and the protection of smallholder rights.

4.2 Gaps

The following critical gaps and challenges have been identified:

- Developing the capacity (human and financial) to implement policies once they have been developed.
- Ensuring land rights holders are aware of their rights and what the new policy involves.
- Integrating traditional institutions into the new policy and legal frameworks effectively.
- Developing representative rural institutions.
- Harmonizing customary law with the principle of gender equality.
- Inadequate land administration systems that do not take customary tenure systems into account sufficiently.
- Provision for tenure security of vulnerable groups, including those affected by HIV/AIDS.
- Harmonizing pro-poor land reform policies, environmental management and economic growth.
- Developing appropriate models of beneficiary selection, settlement and post-settlement support in land redistribution programmes.
- Developing appropriate land policies for urban and peri-urban areas, including around land allocation and tenure security.

4.3 Needs in capacity building

New policies need to be translated into institutional frameworks with sufficient resources to implement, administer and maintain the new policy frameworks and to undertake public education programmes. Many land rights holders across the region are not aware of their rights and thus are unable to use the new legislation to assert and/or defend their rights. This is especially the case for women. Local authorities in urban and peri-urban areas are over-extended in responding to rapid urbanization and the pressures this is placing not only on available land but also on service provision and dispute resolution. Training of land administrators, land use planners, extension officers and dispute resolution officers at both national and local

level is important. Also required is the development of appropriate land information systems that are user-friendly and can be administered and maintained at the local level, where resources and technical skills are likely to be in short supply. If the development of land policy frameworks is to be an iterative process, then the development of robust methods for monitoring and evaluating the implementation of policy is also critical.

5. Key recommendations to enrich the continental framework and guidelines

5.1 *Regional specifics to be considered*

In addition to the issues identified above, the specific history of the region, in particular the legacy of colonialism has to be recognized.

5.2 *Other recommendations*

Land issues have strongly affected economic development in the SADC region. It is therefore important for member States to give serious attention not only to the development but also to the implementation of land policy within the region, while learning from developments in other parts of the continent and working with continental institutions to explore solutions. While these need to be attuned to the specific conditions prevailing within each State, they also need to be discussed as regional concerns. Regional bodies, such as the SADC Land Reform Technical Support Facility, should focus on the priority regional land issues.

V. West Africa

I. Regional Background

The West Africa regional assessment includes the following 17 countries: Benin, Burkina Faso, Cape Verde, Chad, Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo.

1.1 Ecological specificities

The West African region transcends different ecological zones, from the coastal areas through tropical rainforests to savannah and the Sahelian zone in an east–west direction. The ecology largely affects how livelihoods are organized and presents different opportunities and challenges. It also influences key land policy issues in the region. Thus, in the Sahelian zone land policies are primarily aimed at conflict prevention in the use of shared resources and creating the appropriate balance between agriculture and pastoralism. In the forest and coastal zones the emphasis is on private property development either on large-scale plantation developments or individual small-scale developments. The region faces several environmental challenges including drought, desertification and floods. It is a fragile region prone to conflicts among various ethnic groups.

1.2 Key natural resources

West Africa is a relatively poor region in Africa even though the region is endowed with numerous natural resources. These include fishing along the entire coastal region, tropical rain forests that are rich in tropical hardwood in countries such as Côte d'Ivoire, Ghana, Guinea, Nigeria and Sierra Leone. The region also abounds in minerals such as gold, diamonds, rutile,

bauxite, manganese, iron ore, uranium, etc. These minerals are produced in Ghana, Liberia, Mali, Niger, Nigeria and Sierra Leone. Crude oil is produced in Chad, Côte d'Ivoire and Nigeria and has recently been discovered in commercial quantities in Ghana.

1.3 Population

The population in the region ranges from as low as 507,000 people in Cape Verde to as high as 131.5 million in Nigeria, the most populous country in Africa. The population growth rate also ranges from as low as 1.4 per cent per annum in Liberia to as high as 4.1 per cent per year in Sierra Leone. Generally, population growth rates in the Sahelian region are higher than in the forest and coastal regions. The rate of urbanization is also relatively high and ranges from 2.6 per cent per annum in Côte d'Ivoire to 6.08 per cent per year in Niger. Urban population ranges from as low as 18 per cent of the total population in Burkina Faso to as high as 64.3 per cent in Mauritania. This rate of population growth and percentage of urban population presents critical challenges for development in the region, in the face of relatively low economic growth.

1.4 Colonial legacy

The colonial legacy left West Africa with three main language groupings: anglophone, francophone and lusophone. Land policy and land tenure relations have also developed within a legal-pluralistic environment underpinned and influenced by the different colonial systems—English, French, Portuguese and German, as well as different customary systems. Islamic rules also apply in some countries such as Mauritania and Nigeria while a hybrid system (colonial legacy, traditional beliefs and Islamic religious values and jurisprudence) has developed in the Gambia. The legal-plural environment establishes the framework for dealing with land issues in the region.

1.5 Economic Development

West Africa is a relatively poor region in Africa with a fairly high percentage of the population living below the poverty line. In Liberia 80 per cent of the population lives below the poverty line; in Nigeria the proportion of the population living below the poverty line is 60 per cent. Burkina Faso, Chad, Guinea Bissau, Mali and Niger are classified among the 10 poorest countries

in the world. In Chad, 80 per cent of the population lives below the poverty line. The countries are at varying levels of development and have different levels of population growth and other demographic characteristics. Many of the countries have very low human resource development. Out of the 17 countries only three are ranked as countries with medium human development index. These are Cape Verde (ranked 105), Ghana (ranked 138) and Togo (ranked 143) out of 177 countries. The rest are all ranked as countries with low human resource development. Indeed the last six countries in the Index are all in West Africa. Only Cape Verde falls within a middle income economy, but with 37 per cent of the population living below the poverty line.

Many of the countries in the region are dependent on agriculture and produce cash crops for export, even though Chad, Côte d'Ivoire and Nigeria also produce oil for export. Agriculture provides the source of livelihood for more than 60 per cent of the rural population in each country and provides employment for at least 50 per cent of the labour force. GDP per capita ranges between \$736 in Guinea Bissau to \$6,418 in Cape Verde. There is growing competition for land between small-scale agriculture which offers sustainable livelihoods to many of the rural dwellers and large-scale commercial agriculture usually driven by national or foreign investors. This competition has serious implications for the socio-economic development of the people and for sustainable livelihoods.

2. Key land issues/challenges in the region

2.1 General issues/challenges

The key land issues and challenges identified in the region can be listed as follows:

1. Colonial legacy and legal-plural systems.
2. High population growth rate, dynamic demography, and high rate of migration and urbanization.
3. Conflict and post-conflict reconstruction and development issues. Three of the countries in the region are emerging from conflict situations where access to land and natural resource management have been part of the causes of the conflict (Côte d'Ivoire, Liberia and Sierra Leone). The challenge is how to ensure equitable distribution of

the benefits from such resources in post-conflict reconstruction and development.

4. Shared resources and ecosystems. These include river basins, forest estates, nature reserves, etc. Managing such resources requires closer collaboration and joint initiatives from many countries to ensure that benefits accrue to the larger population.
5. State sovereignty over land which includes the political interest of States that determine sovereignty over territories and the State dealing directly in the way land is appropriated and used by citizens.
6. Private and customary land rights which are strong in most countries in the region. The challenge is how to secure rights under customary systems and to gradually transform them or make them marketable.
7. Land and mining activities. Even though minerals are major sources of employment, economic growth and foreign exchange for the countries where mining is done, the exploitation has not been without challenges. These include loss of agricultural lands and livelihoods, tension between local communities and mining companies with regard to expected direct benefits and social responsibilities of mining companies, security of land rights, livelihoods and compensation, resettlement packages, pollution and environmental degradation.
8. Drought, desertification, floods and climate change. The region is prone to drought, floods and desertification, which are being accentuated by climate change. Policy responses should address these issues within the wider regional context. Water resources and their relationship with land tenure must be carefully analysed, as in many pastoral communities access to land is obtained through control of water. Land rights and land tenure relationships and security between pastoralists and sedentary farmers thus become a complex system that requires critical analysis.
9. Protecting the commons and managing pastoral land use. The common property resources in West Africa include forests, wetlands, fisheries, ponds, rangelands, biodiversity colonies and sacred groves and are major sources of livelihoods for many rural and coastal dwellers. The major issue of concern here is the relationship between pastoralists and sedentary farmers, protection of pastoral corridors across the region and the preservation of grazing lands. The absence of defined relationships and country responsibilities has often been sources of conflicts between pastoralists and local communities.

10. Security of land tenure and evolution of land markets. The customary system of land tenure which provided security of tenure based on legitimacy and acceptability is gradually breaking down in the peri-urban and urban areas, giving way to economic considerations in the granting of land. State rules and regulations operate as layers on top of the customary rules, creating a legal-plural environment for land administration, resulting in a large informal sector. The land administration infrastructure that underpins the efficient operations of a land market is lacking. There are low human capacity and inappropriate institutional structures for efficient land administration.
11. Good governance in land administration. Almost all the countries in West Africa have weak governance structures in land tenure and administration represented by weak leadership, lack of clarity of laws and procedures, lack of transparency and accountability, ineffective and inefficient bureaucracy. The result is the large informal sector and a land administration system that is not pro-poor and contributes to insecurity of tenure.
12. Decentralization. Decentralization is widely practised in West Africa. The challenge is that it is still heavily dependent on technocrats and bureaucrats.
13. Gender and land tenure. Gender issues are critical in customary systems of land tenure, especially in areas of land ownership and inheritance. Women are usually excluded from decision making in land management, have secondary rights obtained through primary male rights holders and cannot usually inherit land, except in countries where Islamic laws are practised. Addressing issues of gender will require multi-faceted approaches that include legislation, extensive public education and awareness creation and pilot projects to demonstrate the benefits to women and society when the inequality gap is bridged.
14. Biofuels and the impact of HIV/AIDS. These two subjects are considered as critical emerging issues that require detailed study of their impact on food security, land tenure operations and agricultural productivity.

2.2 Top five issues in the region

The five top priority issues in the region, which emerged during the regional consultation, are:

- Security of tenure
- State sovereignty over land
- Good governance in land administration
- Funding for the development and implementation of land policies
- Protecting customary land rights.

3. Experiences of land policy formulation/ implementation

3.1 Current status of land policies/legislations

Only four countries in the region have developed land policy documents to provide direction for the development of land laws and land administration. They are Ghana (1999), Guinea (2001), Burkina Faso (2007) and a draft policy formulated in Sierra Leone in 2005. The policy formulation processes have been different, but were participatory in Ghana and Burkina Faso. Whilst Ghana used the services of consultants to gather data and draft policy proposals then held one big national workshop to discuss the proposals, Burkina Faso used land policy dialogues at the local and regional levels for key stakeholders followed by a national forum for final agreement on the policy options. All the other countries in the region have land laws made to deal with various aspects of land problems which are not anchored on specific policy proposals. Many of these laws were passed in the 1990s and early 2000s. However, Cape Verde, Liberia and Togo have not passed any new laws since 1984. Many of the laws on land are embedded in agricultural development (Nigeria), rural orientation laws (Mali and Niger), natural resource management (rural land plans in Benin, Burkina Faso and Niger) or environmental protection laws whose primary focus is not on land tenure, particularly in the francophone countries. Very few countries have specific land laws that deal with both urban and rural land issues.

3.2 Key institutions in charge of land policy reforms/implementation

Institutions in charge of land policy reforms/implementation differ from country to country. Depending on the country, responsibilities for implementing land policy fall either on a single ministry or straddle several sectoral ministries, as in Benin. Coordination has sometimes not been seamless and tensions arise regularly. In Burkina Faso, Guinea and Niger lands commissions have been established as local decentralized structures for the implementation of the land law. These commissions have representation of technical government departments at the local level, municipal departments, customary authorities and local civil society. In Côte d'Ivoire village land management commissions are used to implement the rural land plan (PFR). In Nigeria rural land management is the sole responsibility of the local government assisted by a local rural land management advisory council while urban lands are vested in the State governor, assisted by land management committees. In Ghana lands commissions operate at the national and regional level and there are other institutions such as the Land Title Registry and the district assemblies that also perform land management or land administration functions.

Customary authorities also play significant roles in the implementation of land policies in the countries with strong customary rules, particularly in Ghana and Nigeria. Even though they are yet to be integrated into the formal land administration structures they, nevertheless, are very strong forces to contend with, resulting in the plurality of institutions that support the legal-plural environment for land administration.

3.3 Results of land policy/legislation implementation

Results of land policy/legislation implementation have been mixed. Successes have largely been achieved in the area of participatory policy formulation in some countries. Implementation of new policies and legislation has been done through decentralization, as in Burkina Faso and Niger and de-concentration of national functions, as in Ghana through regional land commissions. The lands commissions in Niger have been largely successful in handling land allocation, recording and protecting the commons (pastoral grazing areas and lanes, at the local level, even though there are problems with technical capacity, especially in some locations, and internal financial resources for sustainability. One clear area where success has been achieved is the relationship between pastoralists and sedentary farmers in Niger. Land observatories—which are tools for observing and understanding existing land tenure practices, reflection and gathering of information and experi-

ences on land tenure issues and in formulating new land policies—were tried in Chad and Mali with little success.

3.4 Key recent ongoing land policy reforms in the region

Key recent/ongoing land policy reforms in the region include the formulation of land policies in many countries, either as stand alone policies or as part of other sectoral policies. These policies are largely formulated through participatory processes (Burkina Faso, Ghana, Mali, Niger and Senegal). There is wide recognition that customary land tenures are strong and need recognition in national laws in the region. The implementation of rural land codes in Benin, Burkina Faso, Côte d’Ivoire and Niger in which innovative methodologies are used to record land rights in a participatory process reflect the desire to improve security of tenure in rural areas.

Current land reforms are geared towards improving security of tenure, reducing land related conflicts and improving local governance structures for land administration. Experiences from countries in the region show that where local structures are empowered they are able to handle many of the land related disputes and reduce local tensions, and increase security of tenure and land productivity and livelihoods.

Key institutional reforms ongoing in the region include decentralization of land administration institutions and functions to local level, empowerment of local communities to handle local level disputes and the reform of national level institutions, such as in Ghana where four national level institutions are to be merged into one corporate entity. However, there is still the issue of capacity at the local level to handle complex land tenure issues, the adoption of appropriate methodologies and technology for building local level land registers that require regular updating and personnel. Local level bureaucrats still dominate the decentralized structures even though local communities are represented and take part in the decision-making processes.

4. Lessons, gaps, bottlenecks in policy implementation

4.1 Lessons derived from the assessment on land policy implementation

1. Land policy formulation is driven by different considerations in different countries, but they are all principally aimed at ensuring that

greater consideration is given to customary practices in the laws and regulations.

2. The extent to which land policies and land use interventions or the outcome of pilot projects are taken into account in legislation depends, among other things, on the challenges that reforms need to address and includes emergency situations, conflict and post-conflict situations, socio-political upheavals and donor conditionalities. These also depend on the tenure security tools and options chosen—titling and registration, redistribution of State land, land observatory, etc.
3. Implementation of land policies and or laws requires political will and depends also on the level of participation of development partners. The issue is how to develop sustainable endogenous mechanisms for implementing land policies.
4. A wide range of institutional arrangements exist by which people can have access to land (land rental, sharecropping, grant and bequests) and not only through title and leaseholds.
5. Good decentralized transparent land governance is vital to the implementation of land tenure policies and in preventing land related conflicts.
6. Promoting new policies and legislation is useful but not enough to improve access rights to land and land ownership for women. Customary systems do not adequately guarantee secure tenure for women as women cannot inherit land and cannot transfer their rights.
7. Well-articulated, innovative, pragmatic and creative approaches are needed when addressing most of the local land tenure issues.
8. Laws on decentralization, landed property and the use of natural resources are not always compatible and will need to be harmonized in the countries that have embarked on decentralization.
9. Privatization of land tenure through land registration and titling should be pursued with caution and must ensure that the poor and vulnerable will not be deprived of their rights in the process. A range of different tools that are best suited to the local needs and acceptable should be chosen as forms of secure tenure without making land registration the only procedure for granting secure rights.
10. There is a compelling need for a paradigm shift regarding the management of pastoral lands and delimitation of grazing areas. Efforts must be made by national and local governments to protect common areas.

11. The overbearing presence of the State in land tenure must change.

4.2 Gaps

1. Some land tenure reforms fail to take into account cross-border or regional dimensions of managing access and development of lands, natural resources, use and management of water resources and cross-border transhumance.
2. The issue of refugees and returnees in conflict and post-conflict situations as the rules and laws governing ways of using land in most countries do not reflect changing circumstances.
3. Poor dissemination and popularization of land policies and laws leaves room for subjective interpretations by people competing for land and looking to promote personal objectives. This compels communities to adopt anticipation strategies based on their understanding of the law and their perception of the way their specific interest might be served.
4. There are laws without policies and policies without laws. In other situations there are incomplete statutory provisions where orders or legislative instruments are not enacted.

4.3 Needs in capacity building

1. Innovative tools designed to specifically deal with imperfect and informal transfer or commercialization of land rights, the recording/registering of land rights, the issuance of appropriate documents and the recognition of the rights of minorities and derived rights to improve the security of tenure associated with these rights.
2. Capacity to develop trans-regional texts and policies that recognize production systems, agro-ecological contexts, socio-demographic characteristics and economic development frameworks that go beyond national frameworks and State borders, particularly in the area of pastoralism, transhumance and natural resource management.
3. Development and maintenance of appropriate land information systems that are sustainable and respond to the varied land tenure systems and land rights available in the region.
4. Networking between West African researchers and institutions to help strengthen existing capabilities and build research capacities.

5. Financial support through appropriate national budgets and donor support to secure long-term investment in land tenure issues to improve security of tenure, poverty reduction and secure livelihoods.

5. Key recommendations to enrich the continental framework and guidelines

5.1 *Regional specifics to be considered*

1. The five top priorities identified in the region. These are security of tenure, State sovereignty over land, good governance in land administration, funding for the development and implementation of land policies, and protecting customary land rights.
2. Dominance of customary rights and developing appropriate innovative tools such as in the rural land plans for recording those rights.
3. Shared resources and ecosystems, transhumance, land and mining activities and benefit sharing from natural resources to reduce the propensity for conflicts.
4. Decentralization as an effective means for land policy implementation.

5.2 *Specific issues to be addressed*

1. Monitoring and evaluation is an essential component of the framework. In this sense the methodology for establishing a monitoring and evaluation system and performance indicators should be emphasized in the framework.
2. The role of research is weak in the framework and this should be strengthened. For example, whereas the impact of HIV/AIDS on land is well documented for some of the regions the picture is not so clear in West Africa and calls for research.
3. The document should emphasize the issue of continued political commitment of member countries as it underpins the successful implementation of the initiative.
4. Emphasis should be placed on financing the initiative from local or national budgets. The land issue should be identified by all countries in the region as being critical to their socio-economic development

and should not be donor dependent. In many instances once donor funds stop projects also stop, irrespective of the importance of the project.

The Framework and Guidelines on Land Policy in Africa (F&G) has been developed through a regional approach, including the preparation of regional assessment studies. This publication is a synopsis of the outcomes of the 5 regional assessment reports, prepared during the development process of the F&G.

This synthesis report clearly shows that certain land related issues are common to the whole continent and therefore gives legitimacy to the development initiative of a continental Framework and Guidelines on land policy. Such commonalities include issues like state sovereignty on land, legal pluralism or gender biases in access and ownership of land. However, other land issues are region-specific which constitutes a call for reflecting the high ecological, historical, political, economic, social and cultural diversity of the continent in the drafting process of the continental Framework and Guidelines on land policy.

The regional assessments also identified some important emerging issues which need to be further assessed and discussed in the future in order to inform national and regional land policy processes with longer term perspectives. The emerging issues are, among other things, foreign direct investments in land and climate change.

The synthesis reveals that African countries are at different stages of land policy formulation and implementation. Consequently, experience sharing (i.e learning from successful stories as well as from failures) or benefiting from best practices developed at local, national or regional levels are critical needs for all African countries.

African stakeholders will learn a lot about land issues and policy processes in the continent from this synthesis report. Readers who need to learn much more about a specific region may refer to the full regional assessment reports which are also published.

For this and other publications, please visit the ECA website at:
<http://www.uneca.org>

or contact:
Publications
Economic Commission for Africa
P.O. Box 3001
Addis Ababa, Ethiopia
Tel: +251-11-551-58-26
Fax: +251-11-551-03-65
E-mail: ecainfo@uneca.org, landpolicy@uneca.org



Sida