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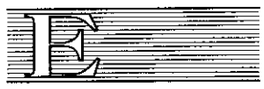

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African Review Report on Land

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I INTRODUCTION

1.1 Background and Justification

In order to ensure effective review of progress in and accelerate the implementation of Agenda 21, as well as to provide policy guidance to the follow up of the Johannesburg Plan of Implementation (JPOI), the Commission on Sustainable Development (CSD) at its eleventh session (CSD11) adopted a multi-year programme of work. In doing so, it decided that the CSD would be organized on the basis of two-year cycles with each cycle focusing on a selected thematic cluster of issues. Further more each 'implementation cycle' would consist of a review year and a policy year. In the review year, the Commission would evaluate progress made in implementing sustainable development goals and identifying obstacles and constraints, while in the policy year it would decide on measures to speed up implementation and mobilize actions to overcome these obstacles and constraints.

In line with JPOI which states that the implementation of Agenda 21 and the outcomes of the summit should be effectively pursued at the regional and sub-regional levels, through the United Nations Regional Commissions and other regional and sub-regional institutions and bodies, CSD 11 also invited the regional commissions to organize regional implementation meetings (RIM) in order to provide regional inputs to the work of the Commission, preferably before the review sessions.

Accordingly, CSD 16/17 in 2008/2009 will focus on Agriculture, Rural Development, Land, Drought, Desertification and Africa. ECA has therefore scheduled a RIM for October 2007 under the auspices of the fifth session of the Committee on Food Security and Sustainable Development (ACSD-5). This RIM will review progress achieved in the above thematic cluster based on commitments, goals and targets set out in the New Partnership for Africa's Development (NEPAD), the Johannesburg Plan of Implementation (JPOI), Agenda 21, Programme for the Further Implementation of Agenda 21 (PFIA21), taking into consideration the Millennium development Goals (MDGs).

The proposed Africa Review Report on Land, which constitutes an integral component of the above thematic areas, therefore is to be prepared pursuant to the above rationale and it will form background information for the Africa RIM and provide substantive input to the CSD16.

1.2 Objective and Scope of the Report.

The objective of this review is to assess the achievements, identify the constraints, and make recommendations for further actions needed to address land issues in Africa. The report deals with the review of efforts being made by African countries to ensure that policies and policy instruments support the best possible land use and sustainable management of land resources. This, in fact, is the pre-condition to attain the objective set by the JPOI on land: to promote and support efforts and initiatives to secure equitable access to land and clarify resource rights and responsibilities, through land and tenure reform processes that respect the rule of

law and are enshrined in national law, and provide access to credit for all, especially women, and that enable economic and social empowerment and poverty eradication as well as efficient and ecologically sound utilization of land.

More specifically the report aim at assisting African countries to formulate and implement land policy reform in support of the CAADP in other to achieve a broad-based sustainable development, eradicate poverty and hunger.

II. LAND QUESTION IN AFRICA

2.1 Overview of The importance of appropriate land Policies and land rights for Africa's development

Land lies at the heart of social, political and economic life in most of Africa. Land and natural resources are key assets for economic growth and development. In fact, most African economies continue to rely heavily on agriculture and natural resources for a significant share of GDP, national food needs, employment, and export revenue. Therefore, agriculture, natural resource use, and other land-based activities are crucial for livelihoods, income generation, and employment of the majority of Africans.

Although land may once have seemed an almost inexhaustible asset in Africa, population growth and market development are creating mounting pressure and competition for land resources, especially close to towns and cities, and in productive, high value areas. While Africa's predominantly customary land management systems are under pressure, formal land tenure and management systems introduced in the colonial period have generally very limited coverage. In practice, land rights claimed and allocated by the modern state often conflict with the land tenure practices of ordinary people. As a result land tenure and shelter are insecure for many Africans in both urban and rural areas, while the fact that property rights are frequently weak or unclear creates a major obstacle to investment both large and small. In addition, land remains extremely inequitably distributed in the former white settler economies of southern Africa, with the majority of rural people excluded from access to the most productive and valuable land. Reliance on land as a principal source of livelihoods and as a basis for economic development in Africa is likely to persist for the foreseeable future.

2.2 Major Africa's Land Issues

Africa land tenure Issues can be categorized into the following types: i) Land tenure insecurity; ii) unequal distribution of land/land administration; iii) gender discrimination; iv) natural resource management and conflict; v) land poaching, grabbing, and occupation, and vi) the impact of HIV/AIDS.

2.2.1 Land Tenure insecurity

Poverty in Africa has a primarily rural face. Access to land and security of tenure, especially for rural poor people, is central to poverty reduction in rural areas. Very poor people tend to be landless or have limited access to land. Rural women, in particular widows and women-headed households, often have weaker land rights and as a result are among the most

vulnerable in a society. Land tenure insecurity has been a major cause of social instability and conflict in Africa at local, regional and national levels.

Ensuring a favourable climate for investors is vital to generating higher levels of economic growth, and thus indirectly for poverty reduction. However in many countries, investing in capital-intensive activities is frustrated by a lack of clearly defined and well-documented land rights.

Appropriate land policies and reforms can bring changes by providing more secure land access both for small-scale farmers and for Africa's emerging agro-enterprises.

2.2.2 Unequal Land Distribution and Conflicts: weak capacity of land administration

Most of the land tenure problems in Africa are legacies of the colonial period as reflected in the dualistic land tenure systems and inequitable land distribution patterns. This problem manifests itself in different forms across Africa and resulting in different types of land tenure (Table 1). For example, in Southern Africa, there is an extremely skewed distribution of land ownership. For example, in South Africa 5% of the population own almost 87% of the land (Moyo, 2000).

In West Africa, unlike other regions, existing land problems have less to do with past land expropriation by settlers than with the insecurity of tenure and the effect that this has on the effective exploitation of land (Toulmin and Longbottom, 1997). Under customary law, traditional leaders (chiefs) remain the dominant and de facto land owners.

In Central Africa land distribution has been generally less skewed. But, in some countries such as Rwanda, and Burundi the scarcity of productive lands has been the source of conflicts. In these countries, the problem of refugees, created by years of civil unrest, has compounded conflicts over land. There are simply too many people in relation to the arable land area to give households much more than a small farm, even if all land were to be redistributed.

In North Africa, smallholder agriculture has increased in countries like Tunisia and Algeria, a situation that is general, responding to, inter alia, the growing population; the influence of the Islamic inheritance system; a widespread tradition of partial renting or purchase of agricultural parcels; and government land policies that have failed to reinforce legal provisions prohibiting the subdivision of holdings below an approved minimum size (EL-Ghonemy, 1998).

Therefore, the existing structure and patterns of land holdings in Africa are based upon a unique distribution of demographic features including population, wealth, income, and employment patterns, which define economic control and management.

Land Administration plays a fundamental role in meeting the goals of the African development agenda including poverty reduction, economic growth, conflict prevention and management and the fight against land degradation. However, in most African countries, governments face difficulties establishing the institutional and legal framework necessary for "good land administration" and, consequently, lack accurate and reliable land information. In

1998, UN-Habitat estimated that, in Sub-Saharan Africa, only 1% of land sites or plots were documented. With an uncertain picture of the "land reality," governments are unable to make informed decisions in defining land policies and national development strategies.

Table 1: Principal forms of land tenure in Africa

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

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

Source: Issues Paper on Land presented at the AU/AfDB/ECA Consultative Workshop on Land Policy in Africa, 27 to 29 March 2006.

2.2.3 Land Tenure and Sustainable Resources Management

In Africa, because of rapid population growth, and low agricultural productivity, the need to meet increased food consumption has become more desperate. As a result, marginal land has been brought into production (cultivation or grazing); commercial operations continue to use fertilizers and chemicals for increased productivity while fallow periods have been reduced. Although such activities are designed to increase productivity, they can result in exhaustion of production capacity of the land which manifests itself in declining yields of the land, vegetation and soil degradation and, in some cases, desertification. Climatic variability and change, and inappropriate land-use or land tenure policies add to the pressures that magnify the impact.

The high fragility of Africa's environment tends to compromise food production and leaves a majority of the poor vulnerable. For example, the mountainous and hilly area that covers much of Burundi, Rwanda, and Uganda leaves insufficient arable land to support the high population densities of these countries.

2.2.4 Land Tenure and Gender Relations

Women play a pivotal role in both maintaining and strategically using land and natural resources. Women are often regarded as having stronger links with the environment than men, yet women do not control land and related natural resources such as forests. Allocation, occupation and use of communal lands are generally obtained through government selected bodies, which grant occupation according to customary law, where an adult married man is allocated land for use by himself and his family (Moyo, 1995). Thus, women only have access to land and related natural resources through their spouse or male relatives. This puts women at a disadvantage, as they remain subordinate within male-centered structures (ibid).

The predominance of patriachical system relegates women and children to minority positions. As a result, gender relations influence access to and control over resources in the context of power relations, policy regimes and livelihood strategies.

2.2.5 Land Poaching, Grabbing and Occupations

Land and natural resources conflicts revolve around five major issues. First among these is the general scarcity of land, which forces villagers to occupy land perceived as vacant. Secondly, political issues have a tendency to encourage illegal settlements among villagers in return for political favors. Thirdly, communities also choose to dishonor boundaries in pursuit of their survival strategies. Fourthly, the marginalization of certain social groups forces them to defy certain rules and regulations. Lastly, armed conflict often results in the destruction of the environment.

Land tenure and land-use conflicts have the potential to undermine both environmental stability and food security. These forms of conflict are prevalent across and between land tenure categories. While conflicts are normal in society (Widstrand, 1980), their management is a major challenge.

2.2.6 Land and the HIV/AIDS Pandemic

The impact of land reform on poverty should also be considered in terms of the emergence of the HIV/AIDS pandemic. There is a tendency for those living with HIV/AIDS to be excluded from land reform programmes due to the effects of already existing illness, and/or for them to lose recently acquired land due to illness. Across Africa, between 15nand 35% of adults between 15 and 49 years are HIV positive. Most of them do not know they are positive but the vast majority is likely to become chronically ill and die within the next five to ten years. Given that at least half of today's 15 year olds are likely to contract HIV, the future impacts are grim (Mullins, 2001). Where HIV/AIDS affects people running the institutions that directly or indirectly support land reform, and supply essential goods and services or provide markets, 20 to 35% of staff may be affected. This has implications for institutional capacity to carry out land management functions.

III. Concrete Actions taken to address Land Issues in Africa

In order to address the above land issues, African countries are making efforts to achieve the commitments of Agenda 21 in line with the framework of the Johannesburg Plan of Implementation (JPOI). The integrated approach to the planning and management of land resources recommended in Agenda 21 has the broad objective to facilitate allocation of land to the uses that provide the greatest sustainable benefits and to promote the transition to a sustainable and integrated management of land resources. In doing so, environmental, social and economic issues should be taken into consideration. Protected areas, private property rights, the rights of indigenous people and their communities and other local communities and the economic role of women in agriculture and rural development, among other issues, should be taken into account.

3.1 Policy Reformulation

3.1.1 Actions at National Level[1]

Most African countries have embarked in land and land tenure reforms since The specific solutions, approaches and institutional arrangements differ from case to case. The extent to which countries have adopted new legislation, the approach taken to legislative change and the specific effects also varies. African nations can be clustered according to the status of ongoing land policies and reforms as follows:

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

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

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

Country	***Key developments***	***Current Issues and processes***
Benin	1994 Rural Land Plan (Plan Foncier Rurale) Decree	Land Policy founded on village level land use planning and decision making, which facilitates subsequent land administration. Benin now addressing policy on urban land tenure and

[1] Source: Issues Paper on Land presented at the AU/AfDB/ECA Regional Consultative Meeting,

		territorial planning
Botswana	Has operated a system of decentralised land boards since 1970. Policy Review 2002 and Draft Land Policy 2003	Refocusing land policy on urban areas now that more than 50% of the population are urbanised; further development in local management of customary land
Cote d'Ivoire	1999 Land Law enshrining the 1998 Plan Foncier Rurale (Rural Land Plan)	Rural Land Plan provides policy on land administration, and has evolved into a decentralised management approach involving systematic registration of ownership rights and secondary rights held by tenants and migrants. However policy did not provide for resolution of tensions between long term migrants and nationals over ownership rights, leading to wider ethnic conflict.
Ethiopia	1993 and 1997 Land Laws	1997 law enables each state to develop its own decentralised land policies and laws; being actively pursued in Tigray and Amhara National Regions.
Ghana	1999 Land Policy, aims to improve state land administration and recognises role of customary authorities in land management. Multi donor supported Land Administration Project assisting with legal and institutional reforms	Comprehensive legal and institutional reform proposed to create a new single state land agency; piloting of Customary Land Secretariats; measures to clear large backlog of land cases from the courts and introduce ADR systems,
Kenya	Draft Land Policy 2003, Land issues addressed by 2004 Constitutional Review	Government committed to legislative and institutional reforms, including decentralisation and eradication of multiple channels for land allocation. Progress is linked to progress of wider constitutional reform
Mozambique	1997 Land Law enables demarcation and titling of community lands, requires negotiation of investors with communities to access land and establishes local land tribunal system accepting oral evidence	Implementation slow and difficulties with absence of unified cadastral database. Implementation now being tackled through a donor supported Community Land Fund in 3 provinces, providing resources for land demarcation and economic development projects
Mali	2000 Land Law (*Code Domanial et Foncier*) and 2001 Pastoral Charter (*Code Pastoral*) 2001	Decentralisation of land management and administration underway; Following regional analysis of tenure practices, national inventory of pastoralist rules and customs and examination of existing legislation, the *Code Pastoral* empowers pastoralists to manage their own lands and recognises customary tenure; under gradual implementation
Namibia	1995 Commercial Land Act 1998 Land Policy and 2002 Communal Lands Reform Act	Accelerated redistribution of commercial farmland underway though compulsory purchase of "excessive" land holdings and first refusal on land purchases by the state, supported by a system of land taxes; new decentralised

		land administration systems being introduced for urban and rural communal areas, controlling and ratifying land allocations by chiefs..
Niger	1993 Rural Code decentralises land administration to Land Commissions at commune level, with planning and decision-making powers including transformation of customary land allocations into ownership rights through registration.	Popularisation campaign in 1994 and eleven Commissions set up by 1998 with official and elected representatives and guidelines systematically issues. The legal framework provides assurance for incoming farmers in their agreements with traditional land owners, allowing them to make long-term investments for sustainable agriculture. A supplementary decree (1997) provides for pastoralist home areas (*terroirs d'attache*)
Rwanda	Land Policy 2003, Land Law 2004	Seeks to develop a comprehensive system of registration of land rights, land administration by local government at district level, and dispute resolution using indigenous mechanisms, plus resettlement for returnees and compensation for those losing land. Road Map for systematic implementation under development with donor support
South Africa	Land Policy Framework (1994) and Green Paper (1996). Wide Range of subsequent legislation including Restitution of Land Rights Act (1994), Communal Property Associations Act (1996) and Extension of Security of Tenure Act (1997). Communal Land Act 2005 transfers responsibilities for management of communal lands to traditional authorities or other local bodies.	Pressures to speed up settlement of rural land restitution claims and increase land distribution. Current programme (LRAD) aims to stimulate the emergence of new small-scale commercial farmers. Mechanisms needed for management of communal lands given lack of institutional capacity and land information systems
Tanzania	1999 Land Act and Village Land Act; latter devolves power and responsibility for land allocation and management to Village Assemblies.	Widespread implementation frustrated by lack of financial resources and institutional capacity. Strategic Plan for Implementation drawn up in 2005 following stakeholder consultation makes a number of policy and practical proposals, including establishment of decentralised land administration support services, land administration infrastructure, and District Land Boards, and greater emphasis on gender equity. Strategy calls for investment independent of the Medium Term Expenditure Framework.
Uganda	No land policy but principles enshrined in the constitution. 1998 Land Act introduced Customary Land Certificates and decentralised system of District and Land Boards	Piecemeal implementation due to high costs and insufficient budgetary resources for hierarchy of decentralised institutions created by the law. Retrospective development detailed land policy guiding implementation of

	Local Committees and Tribunals	the law.
Zimbabwe	1990 Draft National Land Policy; 1992 Land acquisition Act (20:10) subsequently amended; 2005 Constitutional Amendment Act No.17	Under the constitutional amendment Act No. 17: 5256 farms gazetted for resettlement became state land; the state is able to acquire agricultural land for any purpose; and the powers of the courts were restricted to matters of compensation for acquired agricultural land, becoming unable to challenge land acquisitions. Under the fast track land reform programme over 150,000 families have so far been resettled on almost 5000 former commercial farms.

Source: Issue

3.1.2 Actions at Sub-regional Level[2]

3.1.2.1 Southern Africa

Most of southern Africa – notably South Africa, Zimbabwe, Namibia and Swaziland, and to a lesser degree Malawi and the other neighbouring states underwent extensive colonial settlement and land alienation, leading to a rigorous geographical separation of commercial in which Western notions of property rights prevailed and communal areas, in which customary tenure systems predominated. As a result these nations are grappling with problems of continuing racial inequalities in land holding as a potential source of conflict and instability; land degradation affecting the communal areas where African populations were concentrated; and the development of viable systems of land administration for communal lands. White commercial farmers in these countries have slowly had to give up land as a result of agrarian reforms promoted by the majority governments of the sub-region. As a result, and because of the drive for expansion by organised agribusiness, particularly from South Africa, the entry of white commercial farmers into neighbouring states, (and even well beyond into East, Central and West Africa) offering investment, and seeking to broker arrangements for secure land access with governments and customary leaders has become a significant feature of land relations in the region.

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

[2] This section is based on information drawn from various sub-regional workshop on land reform (ECOWAS, SADCC, ECCAS, COMESSA).

3.1.2.2 Eastern Africa

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

3.1.2.3 West Africa

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

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

3.1.2.4 Central Africa

There is limited research and data availability on land issues in central African countries including Congo, DRC, Central African Republic, Chad, Cameroon, Gabon, and Equatorial Guinea. With the exception of Cameroon where a new Land policy has been developed and is being implemented, these countries are not currently undergoing land policy reform processes. In common with the rest of Africa, they suffer from the contradictions of received colonial land policies and customary tenure practices. Central Africa, have also been profoundly affected by conflict, in which control of territories, people, and natural resource revenues have been prime objectives of rival armed groups.

3.1.2.5 North Africa

North African countries have undertaken major land reforms. Algeria, Tunisia, Egypt, and Libya all undertook extensive land reform programmes in the period 1950 -1975, achieving significant benefits in favour of peasant farmers, landless workers and pastoral nomads, and substantially improving access to European export markets, and reducing the high rates of malnutrition, illiteracy and landlessness which had prevailed in the low income traditional rain fed agricultural sector. The state-interventionist approaches adopted (supported by high levels of capital investment) by the land reforms included: recovery of foreign-owned lands; ceilings on maximum land ownership (in Algeria and Egypt); and provision of subsidised modern agro-inputs, irrigation water, free extension services and primary education. Although not all expropriated land were redistributed to the poor, and the state became the largest landowner in the region, creating state farms, nearly, one million farmers across the region became landowners.. Land reform and new land settlement schemes contributed to agricultural growth across the region, inducing technical change, providing beneficiaries with

security of tenure, and contributing substantially to poverty reduction. Rapid urbanisation, the oil boom and rising domestic consumer demand all contributed to rising agricultural incomes. However rural workers (as opposed to tenant farmers) were however excluded from land redistribution, as were women. Inequality persists in North African agriculture, and as land distribution and rural investment fell away during the 1970s and 80s, richer farmers and those with larger land holdings came to benefit disproportionately from agricultural services. Large numbers of landless rural labourers remain, whose livelihoods are threatened by population growth, the falling quality of agricultural land and the withdrawal of state support during the structural adjustment period of the 1980s and 90s. The arid and semi-arid rangelands fringing the Sahara remain under customary forms of pastoral management. Islamic land law has also had a significant influence on tenure relations in North Africa.[3]

IV. Challenges

African governments in their quest for appropriate land policies to achieve broad-based economic growth and sustainable natural resources use, are still facing some major challenges. These are:

4.1 Capacity Building Issues

4.1.1 Land administration

With a few exceptions in cases where land institutions were more highly developed in the colonial period, the capacity of state land institutions is generally weak and restricted to the administration of formal property rights, usually only a very small fraction of the full range of interests in land. Technical and human resource capacity building is a significant element in donor assistance to the land sector in Africa, and there are fundamental needs to extend the coverage of cadastral systems and accessible land registration and documentation procedures. However the need is not simply to build capacity for business as usual, but to re-orient capacity and expertise in developing appropriate land administration systems so as to meet the needs of land users as a whole and assist with national development.

Importantly, capacity needs to be built at the local level, not only for government institutions but also for customary, community based and private sector organizations, which under current trends in African land policy, can expect to assume growing responsibilities for land management in partnership with the state.

Africa will need to develop its own Centers of Excellence in land policy, tenure and management in order to supply the knowledge and expertise necessary for the implementation of new land policies and development of land institutions to support African economic development and renewal of governance systems in the 21st Century. These tasks will require growing pools of trained professionals with technical, developmental and policy skills related to land, able to operate in public and private sectors and in civil society

[3] Julian Quan *The importance of land tenure to poverty eradication and sustainable development in Africa*, DFID / NRI 1997

4.1.2 Implementation processes

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

4.1.3 Capacity of civil society

The important complementary role of civil society actors in the development of the continent and its countries is now well recognized and accepted. However, capacity in civil society is highly variable across African countries and often weak. Even where civil society is quite well developed, and engaged in matters of governance and access to justice, activity does not necessarily extend to land issues. The existence of NGO capacity at national level does not necessarily reach down and give voice to concerns at the community level. In addition to advocacy, civil society has important roles in facilitating consultation on land policy issues and delivery of land services and technical assistance at community levels in partnership with government. This is particularly important to bridge the gaps between policy and implementation and in achieving wider development impacts from land policy reforms.

4.2 Knowledge and knowledge gaps

Although African nations face common land policy issues in many respects, they do so in different historical, geographical, demographic social and economic contexts. Policy making needs to be guided by better knowledge management, including documentation and dissemination of what has worked elsewhere, but also by better empirical knowledge of national and local circumstances and country and context- specific analysis of policy options and the implications of policy choice.

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

a. The nature and policy implications of changing customary land relations need to be understood
b. The effectiveness of new decentralized approaches to land registration and land rights management are many and diverse, and although research has begun[4], wider coverage of the many practical initiatives underway is needed to inform policy and programme development.

[4] Securing land rights in Africa: can land registration serve poor and marginalized groups? IIED 2005

c. The role of land policy and land reforms in supporting African economic development and transformation need to be considered in a broad historical context to insure the linkages of land tenure, land reforms with economic development

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

V. Lessons Learned

5.1 The overwhelming presence of the state in land matters must change

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

5.2 Alternative systems of land rights documentation are being explored

Twenty years ago, much emphasis was placed on formal land titling programmes, which have proved slow, expensive, and difficult to keep up to date, and hard for poor farmers to access. Evidence has shown that land titling has been expensive, difficult and generally inappropriate. Indeed, titling may generate conflicts rather than resolve them. Recently, much progress has been made in testing new approaches to securing land rights. Pilot cases from the field show how rights can be recorded at much lower cost, in simple ways, for example in Ethiopia, Mozambique, and Benin. Equally, in some places, titling may be much less important than working to strengthen local institutions with responsibility for managing land rights and related disputes. Building on local knowledge and existing land management practices at local level are critical ingredients, and systems of land rights documentation can be gradually refined over time. The costs and techniques of land administration also need to match the value of land. Computerization of land records and the use of new technologies, such as Geographical Positioning Systems (GPS) to automate land survey and demarcation, and Geographical Information Systems for comprehensive parcel maps and an aid to spatial planning, can all help bring down costs and streamline administration processes. However,

technology in itself can be no substitute for locally legitimate processes to allocate and record land rights, approve land transactions and adjudicate disputed claims.

5.3 The legitimacy of customary land rights are being recognized in state law

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

5.4 Land administration institution should be professionalized

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

5.5 Land governance needs to be decentralized

The new land laws and policies that many countries have adopted in recent years provide for greater decentralization in land management and administration – with a great variety of models and approaches to the nature and roles of local-level institutions; the role granted to customary chiefs; and the powers of decentralized institutions in land conflict management. Examples of such decentralization processes are the Botswana's Land Boards, Uganda's District Land Boards and Sub-Country Land Committees, Namibia's Communal Land Boards, Tanzania's Village Councils, Niger's local land commissions and Ghana's decentralized Deeds Registries and pilot Customary Land Secretariats.

Rights can be secured at different levels, including at the individual, family, or collective levels, such as the village or clan. The state plays a fundamental role in managing or facilitating the process, and this is best done in a decentralized way, in partnership with local institutions, including traditional and customary institutions where adequate checks and balances are in place. The recent shift towards decentralizing government has been valuable as a means to get land administration closer to the field, and linking it to tenure practices with which communities are already familiar. The lessons of experience are that formal land administration services can be provided at different levels but they will more effectively document the land rights that are recognized as legitimate locally, if they are organized at

district level. In addition formal land administration services need mechanisms to interface with and support land management arrangements at the very local level, which might be provided by the lowest levels of local government, by village councils, traditional councils, customary authorities, or local secretariats, based on customary practice and backed by simple manual systems of documentation and witnessing. The better understanding which results from land administration at the local level allows governments to tailor approaches to different settings, and for upgrading of rights and systems over time. In some places, the registration of rights may be systematic, with all land in a given village or area being adjudicated and registered at the same time. There are advantages to such a method, as it is more efficient and less liable to fraud. In other cases, registration is done on demand, leading to a patchwork of registered and unregistered land. A shift away from blueprint solutions allows for solutions appropriate to the context.

5.6 The Commons must be safeguarded

Research indicates that Africa's CPR are under severe threat. Between 1990 and 200 Africa lost more than 7.8% of its forest cover, numerous wetlands have dried up or been invaded by private development projects and water resources in lakes and river basins heavily polluted. Land policy reform and programmes therefore must include practical strategies to safeguard these resources. While it is desirable that the state should continue to hold and manage some of these resources, it is necessary to engage local communities and a wide range of other stakeholders in their protection and management.

5.7 New paradigms for the management of pastoral lands should be adopted

Programmes for settlement of pastoralists and those aimed at substituting pastoral production with private group ranching schemes have generally proved unsuccessful. Pastoralist livelihood systems have demonstrated considerable resilience in arid and risk prone environments. More successful approaches, such as Conventions locales for resource management in the West African Sahel, provide frameworks for negotiation and agreement between different groups with interest in a common resource. Production from extensive common land and household farm plots forms an integrated livelihoods system for many rural communities, yet land registration has failed to cater for common resources, or worse, allocated individual private rights to former common property. In practice, the management of the commons works well when two factors come together: the establishment of secure legal rights for local communities over the common resources on which they depend; and support to enable those communities to manage these resources in an equitable and sustainable manner. Registration should concentrate first on securing customary community domains, and proceed incrementally to address the management needs of the common resources, including those utilized by different users, prior to formalizing private property rights of individuals and groups[5].

5.8 Appropriate land disputes mechanisms are emerging

Registered and documented land rights are not secure if they are under dispute and litigation. In a number of countries such as Ghana and Tanzania, widespread land litigation, and large backlogs of land cases in the courts are significant barriers to investment and land

[5] Liz Alden Wily, 2005 ibid

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

5.9 Market assisted land reform remains problematic

Efforts to re-distribute land and settle historic injustices in Southern Africa have moved slowly and Zimbabwe's experience demonstrates that frustration and disillusion can provoke land invasions, undermining the rule of law and leading to political and economic instability. The South African government's target of redistributing 30% of white owned farmland by 2015 will not be achieved at the current rates of progress. The principles of "willing seller – willing buyer" and grant and credit packages for market based land acquisition by landless groups themselves have proved unsuitable for poor landless farmers and have been unable to deliver land transfers at scale. Rural land restitution has also moved slowly as landowners have been unwilling to give up land. Although partnerships with the private sector may be needed to manage high value enterprises on redistributed land, more proactive approaches by the state are likely to be needed, within the rule of law, stepping in to acquire land and redistribute it to beneficiaries and land claimants, while land taxes levied on large and unproductive land holdings can create incentives for landowners to accept compensation and return the land. Donor support for the land redistribution process has slackened and needs reinvigorating. Given the strong historic responsibility for current inequities in land ownership, there are strong arguments for some of these costs to be borne by the donor community.

5.10 New approaches to the resolution of land issues in post-conflict situations are being tested

Sound and equitable land policies can be a tool for promoting social stability and reducing the risks of conflict, in a number of different ways. In post-conflict settings, establishing a new, accountable basis for managing access to land is a key element of institution building in post-conflict settings. In a variety of situations, such as in Rwanda, and more recently in DRC, land disputes and localized land scarcity have been a cause of ongoing conflict[6]. A

[6] From the Ground Up: Land Rights, Conflict and Peace in Sub-Saharan Africa Chris Huggins and Jane Clover (eds) ACTS, Nairobi 2005

recent conference on conflict and land tenure in Africa[7] found that substantial attention to building capacity for land dispute resolution is needed to help rebuild social cohesion in countries recovering from and at risk of conflict. Approaches need to be locally legitimate and not imposed from above.

Civil society organizations also have an important role in mobilizing community involvement and providing independent checks and balances. Furthermore, there is the need for better dissemination and application of international policy and procedural guidelines for meeting the widely neglected land needs of internally displaced people, and for careful examination of the treatment of land issues in ongoing peace processes, supported by research and local knowledge. A constructive strategy (developed by FAO and applied in Angola and Sudan) is to pursue negotiated territorial settlements at local level to unravel and resolve overlapping and competing sets of land claims, and to ensure adequate temporary access to land and shelter for refugees and returnees, pending long term solutions. These have been coupled with processes to set the basic elements of a conflict-sensitive land policy and new land institutions in place.

5.11 Resources for land policy implementation must be developed

Africa's recent experiences imply that land policy and legislative reforms, and the practical institutional foundations for implementation can take 10 years or more. Shortage of funds and technical capacity to manage reforms, and the fact that land reforms can take time to deliver visible benefits may dissuade governments from investing scarce resources into land reform processes. Donor funding modalities may not be supportive however, and governments need to manage these carefully to apply them successfully to land reform. Short-term project funding tends to have narrower objectives and may undermine the creation of national capacity, while successive project interventions can lead to a stop-go cycle of support with changing emphasis and objectives. On the other hand, medium term budget support coordinated through Ministries of Finance may be directed to other sectoral priorities with closer linkages to PRSPs and more direct impacts on the attainment of the MDGs, in part due to the limited lobbying power of sectoral land ministries. Budget support to "business as usual" sectoral programmes is likely to be ineffective in producing the kind of policy and institutional changes required. For these reasons, African governments and donors alike need to devise mechanisms to support land policy reform and implementation in line with the centrality of land issues in strategies for sustainable economic growth, ensure adequate coverage in national planning and strategy processes including PRSPs, and establish medium-long term programmes to support policy change and development of appropriate institutions. Ideally these should be based on political consensus and benefit from cross-party support, given the limitations imposed by 4-5 year electoral cycles and the reluctance of governments to effect radical changes as elections approach. Land reform programmes should also receive sustained, combined support from international donors, directed to the specific processes of change and the institutions where reforms are underway.

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[7] Report of the conference on land tenure and conflict in Africa: prevention, mitigation and reconstruction .

9 -10 December 2004, ACTS, Nairobi

5.12 Stakeholders must be effectively engaged at all levels of land policy development and implementation

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

5.13 Capacity building for land reform is crucial

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

VI. The Way Forward[8]

6.1 Towards a Pan African Land Policy Framework

6.1.1 The NEPAD context

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

NEPAD includes three major initiatives to address: peace, security, democracy; democracy and political governance; and economic and corporate governance. The programme also addresses a number of priority sectoral areas, including: infrastructure, especially information

[8] See Background Paper on AU/AfDB/ECA Land Initiative. The Pan African framework is still at the stage of preparation.

and communications technology (ICT) and energy; human resources, including education, skills development, and reversing the brain drain; health; agriculture; and access to the markets of developed countries for African exports.

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

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

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

6.1.2 The Rationale for a Pan-African policy and normative framework on land

In view of the emphasis currently given to land policy and land reforms by African governments, the wide range of experimentation and innovation underway, and the commitments of the AU and other pan-African institutions to achieving greater economic growth, reducing poverty, raising agricultural production, improving food security and reducing conflict, there is a clear case for a pan-African framework to assist African nations in addressing the land issues which underpin these objectives. In summary the rationale for such a framework rests upon:

- Land as a basis for investment and economic growth

  - The critical importance of land in supporting the high priorities of food security and agricultural development as a basis for economic growth and poverty reduction, which already benefit from pan-African strategic frameworks.

- The importance of clear and secure property rights as part of an enabling environment for inward and national investment and for domestic capital formation. Insecure land rights, involving inadequate legal frameworks leads to disincentives for investment in agriculture and other forms of land development.
- The rapid pace of urbanisation and the urgent need to improve living conditions of and security of tenure in Africa's growing informal settlements.

- Land as a means for reduction of poverty and inequalities:

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

- The need and better governance of land resources and renewal of land institutions:

  - The limited capacity and inefficiency of Africa's inherited land administration institutions.
  - The need to overcome the legacies of colonialism and put in place distinctively African forms of tenure security and land management institutions incorporating indigenous customary concepts and principles.
  - The prevalence of dispute and conflicts relating to land in some countries and sub-national regions, as one factor underpinning wider civil and military conflict, and the need to address land issues in conflict resolution and reconciliation processes and secure land for refugees, internally displaced persons and returnees.

- The potential value added of an African wide approach in generating additional resources and capacity to tackle land issues

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

- Land policy in relation to environmental management and existing commitments

- Decentralised land management as a means for broadening and deepening of democracy

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

6.1.3 Main features of a potential framework

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

- Providing a basis for political commitment by African nations at the AU level to programmes of common action at Regional Economic Community (REC) and national levels for putting in place sound land policies as a basis for sustained economic growth and poverty reduction.

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

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

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

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

- Making land policies and the performance of land institutions subject to the African Peer Review Mechanism

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