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ON

**LAND POLICY IN AFRICA:
A FRAMEWORK OF ACTION TO SECURE LAND RIGHTS,
ENHANCE PRODUCTIVITY AND SECURE LIVELIHOODS**

ISSUES PAPER

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Introduction

The African Union's perspective is that agriculture and land are central in the social and economic development of the continent and that rights to land are fundamental for the participation of all people including women and disadvantaged sections of society in the development process. Africa's development remains dependent on agriculture and exploitation of natural resources, yet agriculture and livestock production is largely carried out by smallholder farmers under increasing pressure of scarce land resources managed under unsecured customary land ownership. African governments are seeking to address tenure insecurities to promote sustainable rural and urban development, and to address inequalities in land ownership between different social groups. The various programs within NEPAD (including CAADP, the Comprehensive African Agricultural Development Programme) as well as national development plans, strategies and programs of many African countries, all point to the importance of achieving a structural transformation as a means of attaining meaningful economic development that provides employment and hence reduces poverty. The AUC, ECA and ADB have pledged to work together in their support of Africa's economic and social development, which includes assisting African governments in their quest to achieve a structural economic transformation that not only provides employment and reduces poverty, but also ensures good governance of natural resources to ensure peace and security, and overall sustainability over time. Sound land policies which guarantee secure land access and clear property rights are a critical ingredient in achieving sustainable structural transformation which in most cases must begin with progress in developing the agricultural sector.

The African Union and African Heads of State are committed to providing a conducive environment for economic growth, poverty reduction and equitable, sustainable development. In this context, the quality of governance of land and natural resources is an important factor, and accordingly, better performance of land policies and institutions is required to deliver development goals. Land reforms must equitably address the needs of all land users, including smallholder farmers, the corporate private sector, women and the urban poor and slum dwellers, in a context in which, increasingly, land is no longer readily available, and there are rising pressures and tensions stemming from competition for this valuable resource. In fostering social stability and good governance, land policies need to give recognition to customary patterns of land holding, and provide fair compensation in cases of expropriation of land for public good, while also responding to economic opportunity. Equitable and transparent land distribution is also a pre-requisite for social and political stability at community and national levels in every country.

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

This issues paper is prepared for the High-Level Consultative Workshop convened by the African Union Commission, the United Nations Economic Commission for Africa (ECA) and the African Development Bank (ADB), under the leadership of the African Union Commission (AUC), in order to begin the process of developing a land policy and land reform framework for African nations. The paper is intended to provide the basis for the development of a platform document to be prepared by the workshop's organising partners.

With this in mind, it provides an analysis of the key issues, challenges and lessons learnt at different levels and based upon the outcomes of recent workshops and conferences on African land issues, so as to assist the workshop in the articulation of a shared vision and rationale for development of an Africa wide policy framework and related guidelines¹

¹ Following the workshop, the organisers envisage a process whereby the initial platform document is validated and subsequently developed into a comprehensive framework for action through a series of regional consultations with AU member states, Regional Economic Coordination organisations, and civil society, culminating in an Africa wide meeting to finalise the framework, to take place before September 2007

PART I

1. Land Issues in Africa

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

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

Although land may once have seemed an almost inexhaustible asset in Africa, population growth and market development are creating mounting pressure and competition for land resources, especially close to towns and cities, and in productive, high value areas. While Africa's predominantly customary land management systems are under pressure, formal land tenure and management systems introduced in the colonial period have generally very limited coverage. In practice, land rights claimed and allocated by the modern state often conflict with the land tenure practices of ordinary people. As a result land tenure and shelter are insecure for many Africans in both urban and rural areas, while the fact that property rights are frequently weak or unclear creates a major obstacle to investment both large and small. In addition, land remains extremely inequitably distributed in the former white settler economies of southern Africa, with the majority of rural people excluded from access to the most productive and valuable land. Reliance on land as a principal source of livelihoods and as a basis for economic development in Africa is likely to persist for the foreseeable future. Reductions in poverty must therefore build on the agricultural sector, while clearer structures of property rights can provide a foundation for structural transformation of Africa's economies, which in most cases will need to be led primarily by agriculture. In addition, where land has been inequitably distributed since colonial times, more equitable patterns of land ownership can generate higher levels and broader based patterns of economic growth.

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

- providing a sound basis for secure property rights, and for investment and the generation of economic opportunities, while also
- securing access to land for farmers and the urban poor as the basis for improved livelihoods and food security.

Improving land tenure security as a basis for investment, economic growth livelihoods, and poverty reduction

Ensuring a favourable climate for investors is vital to generating higher levels of economic growth, and thus indirectly for poverty reduction. Business activity of all kinds requires access to physical space. However in many countries, investing in capital-intensive activities is frustrated by a lack of clearly defined and well-documented land rights. Secure property rights provide not only the necessary certainty to do business but also, when held in the form of transferable land titles used as collateral, enable access to credit and contributes to the development of financial systems. Experiences and studies in Africa by the African

Development Bank have shown that inappropriate land tenure arrangements continue to hamper effective entry into agribusiness by the private sector including individual farmers and medium to large-scale operators². Secure access to land also facilitates investment by the poor in farm production or small scale business, enhancing self employment and food security, and providing sources of livelihoods, a low-cost social safety net, and ultimately the basis for structural economic transformation rooted in broad based participation in development. .

Successful structural transformation will mean that African economies will rely less and less on agriculture as the main source of employment and contributor to GDP, as other sectors contribute more to the economy in *relative* terms. In *absolute* terms, however agriculture will continue to grow and contribute to the economy. Indeed increased productivity in the agricultural sector should be a starting point of such a structural transformation given that the majority of people are currently employed in agriculture, and given the sector's importance to the economy. Historical lessons, for instance from the Far East, in the early 20th Century, but also from North Africa in the mid-20th Century, suggest that the take-off of economic growth results from building a positive, reciprocal relationship between agricultural and rural income growth, and the gradual expansion of urban industrial and service sectors. As rural producers generate the produce to feed a growing urban work force, rural incomes and purchasing power also rise, stimulating demand for industrial and consumer goods. As rural people become better off, they are also healthier and make greater investments in educating the younger generation, providing more skilled human resources for economic development.

Land policies and reforms can facilitate these changes by providing more secure land access both for small-scale farmers and for Africa's emerging corporate agro-enterprise. While there will be fewer people in agriculture as they move to other sectors of the economy, the profile of the African farmer will also change as farming systems become more market-oriented, more intensive, and in some cases larger, making greater use of modern inputs and technologies including irrigation. As rural economies develop and diversify, employment opportunities in agriculture, agro-processing and service sectors will expand and fewer people will need to farm and own their own land. Recent experiences of diversifying rural economies in India demonstrate the important complementary role of even very small household plots, when well-used, in providing household food needs, better nutrition, supplementary incomes, and financial security, particularly for women, in circumstances where seasonal or longer-term wage labour and labour migration are the principle income sources³. Remittances from urban sector jobs provide important sources of investment in small-scale domestic enterprise in agriculture, agro-processing or trade.

Secure land access for rural people can also complement and facilitate industrial growth, as it did in the case of South Korea, by enabling household food production, on which urban workers rely, to hold back the growth of real wages and help maintain the competitiveness of

² African Development Bank 2004 Framework Paper *Addressing Land Tenure Issues in West and Central Africa* (ADF/BD/IF/2004/104)

³ Hanstad T, Nielsen R, Bown J *Lands and livelihoods: making land rights real for India's rural poor*. FAO Livelihoods Systems Programme paper, FAO May 2004; Haris Gazdar and Julian Quan *Poverty and Access to Land in South Asia*: DFID / RSPN / NRI May 2004.

emerging industries⁴. In addition, as demands for land as the main source of income and subsistence for rural people decrease, new forms of agro-enterprise and land ownership become possible, for instance, cases where women's cooperative groups own land and produce new alternative cash crops. Where there are opportunities for agribusiness, and high value crop production, partnerships between rural communities and the corporate sector become possible, for instance, through out-grower schemes in which small farmers do not need to give up their land, or equity sharing schemes as in experiments in South Africa, where workers or indigenous land claimants hold shares in high value enterprises, instead of working their own plots. On a broader scale, as local economies transform and grow, recent experiences in Latin America and Southern and Eastern Europe show how participatory and negotiated territorial planning can help shape economic development to meet rural social needs. Although fewer people work and own the land, they can still retain a sense of territorial ownership over the development process and of cultural identity, linked to the land.

While there is no single blue print solution, sound and equitable land policy plays a critical role in facilitating changes such as these. The implication is increasingly that agricultural development planning, suitable land tenure and access arrangements, and local economic development strategies must be worked out hand in hand. At the same time, a progressive improvement in the quality and completeness of cadastral and land information data bases is required to facilitate planning, land use change and ensure that the land claims and economic needs of the poor and vulnerable are not ignored in the process of structural economic transformation.

African governments have often focused on the need to attract foreign direct investment (FDI), through advantageous tax regimes, rather than the promotion of local enterprise. Despite its importance however, growth in FDI has remained slow while at the same time there are risks that the drive for foreign investment can facilitate alienation of land from indigenous rights holders and concentration in private and sometimes unproductive hands. However, improving the investment climate is also vital to Africa's own private sector, composed largely of family farms and small and medium scale enterprises. A major challenge is to mobilise domestic African capital formation and investment⁵, which involves overcoming a series of barriers constraining the investment climate, including market access, political risk and uncertainty, access to technology, bureaucratic inefficiency and corruption. Investors, both large and small, need assured rights to the land and property in which they invest, yet the time periods required to register property in Africa are amongst the highest in the world, with costs ranging from 5% to 35% of property values⁶. Although, investors do not necessarily require full freehold property rights in order to do business, alternatives in the form of secure tenancies, concessions and leases, or locally documented and legally protected customary rights, generally more suitable for small investors or family farmers are not widely available. Many African countries do not allow for foreign ownership of land. Renewable

⁴ Gillian Hart (2002), *Disabling Globalisation: places of power in post apartheid South Africa*. University of Natal Press, Scottsville, South Africa

⁵ Adebayo Olukoshi (CODESRIA) 2005 *Property rights, investment, opportunity and growth: Africa in a global context* Keynote Paper for the conference on *Land in Africa: market asset or secure livelihood?* London November 8-9, 2004. Olukoshi contends that Africa's great mistake has been to seek universally applicable models transferred from elsewhere, that decisions about property rights are not purely economic in view of their social, political and cultural aspects, and that excessive emphasis on formalising property rules is diversionary and irresponsible, shifting attention away from the unfavourable terms of trade and extensive use of subsidies in the north which constrain African smallholders' development, and from the thoroughgoing agrarian reforms which are necessary to avoid reinforcing an unjust status quo

⁶ *Doing Business 2005: removing obstacles to growth* World Bank Washington DC 2005

leases of up to 99 years generally prove adequate for most forms of foreign investment, including perennial crops, although not all countries offer leases of this length.

The dualistic colonial legacy of formalised and customary tenure

Many of the challenges arising from land reform in Africa stem from the colonial legacy of dual or pluralistic systems of tenure and authority related to land. Throughout Africa, colonial powers imported European systems of civil and common law for their own purposes, to guarantee settler interests in land. These were operated alongside continued customary management of land by indigenous African people, frequently co-opting traditional leaders and Chiefs to colonial rule by granting them administrative powers over so-called communal areas. Within these areas, responsibility for land management was allotted to local chiefs and village headmen, and in turn to family heads and individual household members. Substantial areas were reserved for grazing and other forms of communal use and land rights could be transferred through indigenous inheritance practice, and when sanctioned by the community or kin group, to outsiders.

Early post-independence reforms sought to extend state control over customary land through nationalisation. The state used its rights of “eminent domain” to develop land for public purposes and allocate land to private users on a leasehold or freehold basis, frequently overriding pre-existing customary rights. In some cases, for instance in Kenya, governments sought to introduce a unified system of property rights based on an imported European model, through programmes of land registration and titling. These however proved at best only partially successful, and, while customary law was hardly acknowledged in national legislation, it continued to dominate land management in practice, particularly in rural areas and amongst poor and marginalised groups. More recently, some countries have come to recognise the integral role that customary law has in social and economic life, and its equivalent status to formal law as a legitimate source of land rights, and local systems of land rights or deeds documentation have begun to emerge. However, African nations continue to grapple with the co-existence of customary and formal tenure systems, symptomatic of the “bifurcated power”⁷ of the colonial state, and the question remains of how, in practice, to bridge the legal and institutional divide between tenure systems based on imported concepts of private property and more complex customary frameworks of individual and group based rights⁸.

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

⁷ Mahmood Mamdani, 1996 *Citizen and Subject: contemporary Africa and the legacy of the late colonialism* Princeton University Press.

⁸ see Martin Adams and Stephen Turner, 2005 *Legal dualism and land policy in eastern and Southern Africa*. Paper for the UNDP Drylands Development Centre / ILC conference *Land Rights for African Development: from knowledge to action*, Nairobi 31st October – 3rd November 2005. www.undp.org/drylands/lt-workshop-11-05.htm

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 distinguished from undocumented land		Widespread in African cities; less common in rural areas

	occupation permitted by customary owners.		
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.

Land and agricultural development

For the time being Africa remains predominantly rural⁹. Poverty is concentrated amongst rural people and the rural poor continue to depend substantially on agriculture and related natural resources for their livelihoods.¹⁰ Across sub-Saharan Africa 78.6 percent of exports are primary natural resource products, providing 21.2 percent of GDP and much more in some West and Central African countries.¹¹

⁹ The World Bank predicts that those living in poverty in Africa will increase to 353m by 2015. Regional fact sheet from *World Development Indicators 2005*, Sub-Saharan Africa, World Bank, www.worldbank.org/data/datatopic/ssa_wdi.pdf.

¹⁰ Africa's urban population is projected to increase to 46.5 percent in 2015, but 500 million Africans will still live in rural areas in 2015. *UN World Urbanization prospects: the 1999 revision*.

¹¹ This is based on 2000 data. Data on economic and livelihood dependence on agriculture and natural resources are difficult to obtain and not comprehensive. In a five country study (TS Jayne et al 2002, see footnote no. 3),

In practice, smallholders make an immense contribution to agricultural output, generally holding land under customary tenure systems. African agriculture faces many challenges in a globalising world with increasing competition and barriers to both local and global markets, and the difficulties are particularly acute for smallholders. Cheap foodstuffs produced by heavily subsidised farmers are dumped in Africa's domestic markets, displacing local produce, which is unable to compete. In European and US markets, imports from Africa are facing rising barriers, through imposition of new standards and regulations by governments, and private sector actors. Smallholders, although central to the agricultural economies of most African nations and very responsive to new markets and opportunities, are unable to guarantee production at sufficient scale, quality and regularity to meet the needs of global markets dominated by supermarket chains. Despite the advantages of agribusiness in terms of market integration, smallholder farming makes efficient use of labour, generates the bulk of produce in many countries for domestic and regional markets especially for food crops, and, in the absence of widespread industrialisation, provides a critical source of employment and the foundation of food security.

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

Within NEPAD, the Comprehensive African Agricultural Development Programme (CAADP) aims to achieve and sustain a six percent annual growth rate in agriculture, through investments in high productivity commercial farming for both small and large-scale farmers. Since this is likely to impact on existing land use rights, the programme will need to find ways of addressing tenure and equity issues at the local level.

Sustaining the Commons

Approximately 40% of sub-Saharan Africa's land area comprises forests, rangelands and wetlands, of which well over half is under some form of collective customary management¹². These Common Property Resources (CPRs) such as grazing, woodlands, ponds and fisheries are still vital for many peoples across the continent. Yet there are growing pressures on these resources, and trends towards privatisation and enclosure. In many cases, the breakdown or absence of management rules creates a situation of unregulated access by multiple users, leading to unsustainable levels of use and degradation. Although some see the disappearance of the commons as an inevitable part of economic progress, access to common land is often critical for poorer groups, who rely on them for their daily livelihoods, and as fallback resources in times of stress.

households with smallest land holdings all earned more than 50 percent of their income (more than 80 percent in Rwanda in Kenya) on farm, despite very small plot sizes

¹² Liz Alden Wily *The commons and customary law in modern times: rethinking the orthodoxies*. Paper presented at the UNDP / ILC conference Land Rights for African Development: from knowledge to action, October 31st – November 3rd 2005

CPRs are particularly important for pastoralist groups who continue to provide a major part of the meat and milk produced in much of Africa. Mobility and flexibility are key to the sustainability of pastoralist livelihoods and production systems, and accordingly, pastoralist peoples need assured rights to access grazing and water over extensive areas. Resource scarcity, due to land enclosure and development as well as periodic drought, leads to restrictions on herder mobility and to conflicts between pastoralist groups and settled communities. Finding ways to maintain and strengthen mobility and reduce risks of conflict (e.g. through locally agreed rules for rights of way, access to water and compensation for crop damage) are important not only at national but also sub-regional level, given the extensive patterns of movement found in West and East Africa.

Land for housing and urban development

Currently, high and increasing population growth and market development are creating mounting pressure and competition for land resources, especially in urban and peri-urban areas. Africa's urban population is expected to increase from 37.9 percent in 2000 to 54.5 percent by 2030¹³, the majority of them at risk of living in slums. The growth of cities and towns creates upward pressures on land values in peri-urban areas, and rising insecurity for those living on and working there. Within urban areas, informal settlements are usually not recognised by the state and squatter communities have no access to basic services. Rights to the land and housing occupied for many years are frequently swept aside when more powerful interests seek to acquire and develop urban land, forcing the poor to create new informal settlements. However, city governments are increasingly recognising the need to strengthen rights for slum dwellers, as a means to bring them more effectively into the urban economy, ensure better provision of water and sanitation, and ensure the rule of law, and commitments to improve the lives of slum dwellers as are enshrined in the Millennium Development Goals¹⁴. Africa's urban poor generally obtain land through informal transactions based on customary practice, systems often tolerated by governments but rarely benefiting from formal backing and regulation. Meanwhile, formal titling procedures, intended to provide secure property rights which can be used as collateral for loans, generally suffer from high costs and cumbersome procedures, and lead to the development of urban land markets inaccessible to the majority of Africa's urban dwellers. Accordingly, alternative and lower cost forms of land rights documentation are required which regularise occupation in established informal settlements and build on the efficacy of customary based land delivery so as to provide tenure security while facilitating access to credit and services in urban areas¹⁵.

Land and gender

Women face discrimination under both customary and formal systems of land tenure, as a result of culturally embedded discriminatory beliefs and practices and male control of inheritance systems. Customary practices regarding land are particularly adverse for women, who rarely have full rights in land but must negotiate as secondary claimants through male

¹³ *UN World Urbanization prospects: the 1999 revision*

¹⁴ MDG 7, target 11 includes "a significant improvement in the lives of at least 100 million slum dwellers" – the one MDG target indicator that explicitly mentions security of tenure

¹⁵ see Anna Kajumolu Tibajuka *Security of tenure in urban Africa: where are we now and where do we go from here?* Paper for the conference on *Land in Africa: market asset or secure livelihood?* London November 8-9, 2004; and *Safe as Houses? securing urban land tenure and property rights*, Insights in Development Research No.48, ID21, DFID / IDS, University of Sussex, Brighton, October 2003

relatives - their father, brother, husband or son. Succession and inheritance rights remain problematic, since women usually cannot inherit the matrimonial home, on the death of their spouse. Women's rights are affirmed in a number of African nation's constitutions, but in most cases, entrenched and discriminatory social practice overrides constitutional provisions. While legislative reform is needed to strengthen women's property rights (for instance through provision for spousal co-ownership, opportunities to hold land in their own right, and prevention of sales of family land in the absence of agreement by both husband and wife) and to improve inheritance rights, wider action is needed, including education advocacy and legal literacy work.

In addition, the spread of HIV/AIDS further weakens land rights and livelihood options of widows and orphans. Efforts by afflicted African families to cope with the HIV/AIDS pandemic include: abandonment, sales and renting out of land. Widows and orphans can lack the capacity to work the land, and may be forcibly dispossessed when male relatives die. Land policy and law can assist HIV/AIDS afflicted families to retain their land by, for example, increasing tenure security and regulation of land rental markets and inheritance practice to ensure that land which passes into the hands of others can be restored.

Achieving more equitable land distribution

Colonial conquest in South Africa, Namibia and Zimbabwe alienated the greater part of arable land, and the more productive rangelands from indigenous groups, concentrating land in the hands of small minorities of white settlers. In South Africa 13.7% of the population controlled 89% of the land, in Namibia, 11.1% controlled 43%, and in Zimbabwe 0.8% controlled 49%¹⁶. Only limited progress in reversing racially inequitable land distribution has been made since independence and the end of apartheid, in part owing to political settlements for majority rule which left existing patterns of land distribution largely intact. In Kenya and Malawi land alienation was substantially reversed after independence, and a first phase of redistribution in Zimbabwe proved partially successful. However, since then, the international donors have not mobilised the resources for land reform, leading to the perception that white land owners are protected by the donor community. Racial inequality in land distribution in South Africa, Namibia and Zimbabwe, together with the opposition this engenders can be considered a serious risk to stability and security in the southern African region¹⁷. Donor reluctance to commit funds to land acquisition and redistribution on the government's terms led to a wave of state sanctioned land expropriation in Zimbabwe. A purely market-based approach based on the principles of "willing seller - willing buyer" has proved incapable of delivering land to the poor on any significant scale, and the countries affected are now seeking to develop alternatives¹⁸. Namibia has introduced a land tax and is proceeding with the redistribution of state acquired land. South Africa has asserted willingness to acquire land more proactively for redistribution.

¹⁶ F Hendricks 2000 "Questioning the land question: agrarian transition, land tenure and rural development in the former settler colonies of southern Africa" In Kwesi Kwaa Pra and Abdul Ghaffar Ahmed (eds) *Africa in Transformation: Political and Economic issues* Vol 1. OSSREA, Addis Ababa

¹⁷ Sam Moyo 2004 *The politics of land distribution and race relations in southern Africa*. Identities, Conflict and Cohesion series, Paper No.10, UNRISD, Geneva

¹⁸ see Edward Lahiff 2005 *From 'willing seller, willing buyer' to a people driven land reform*, PLAAS Policy Brief No.17. Programme for Land and Agrarian Studies, University of Western Cape, Capetown

In addition to the problems of southern Africa, research reveals growing inequalities in land access in various countries across the continent¹⁹, with, land increasingly scarce, plot sizes diminishing and land competition growing in some cases, such as Rwanda. Elsewhere urban elites invest increasingly in peri-urban and rural land, customary leaders can come to dominate informal land markets, and the state reserves land and allocates private concessions for logging, game ranching, tourism and other purposes, leading some to identify a “new land question” in which land related citizenship issues regarding the nature of ownership and the rights of indigenous groups, migrants, women and youth have come to the fore²⁰.

Land institutions

In the land sector as in others, institutional effectiveness demands strong public sector and administrative institutions, which are transparent, predictable and accountable to the people, as well as legal and regulatory frameworks that encourage and protect civil society. However current land institutions and practices are strongly embedded in the history and culture of African countries, dating back to pre-colonial, colonial and post-independence periods. Land administration institutions are tasked with judicial, regulatory, fiscal, cadastral and conflict resolution functions, but their roles are generally restricted to land under formal tenure arrangements, often little more than two percent of the land²¹. These institutions fail widely to deliver on their tasks, and do not function well as a result of weak technical and human capacities, as well as outdated equipment and their limited spatial coverage. They also suffer from vested interests, rent-seeking behaviour and corruption, compounded by the use of land as a tool of political patronage. Land title registration can take from 6 months to 10 years or more in some countries, as functions are frequently split between a variety of different land agencies.

As a result land reform in Africa must focus not only on the land policies themselves, but also on reforming institutions of land administration that hinder the successful implementation of land policies²², requiring institution building within broader public sector reforms, to overcome resistance to change and build more accountable, transparent and “business-like institutions”. Public land agencies also need to decentralise and work in closer collaboration with local government to deliver land services closer to the users, building on local innovations by informal and customary institutions such as local documentation and witnessing systems which have arisen in the absence of effective coverage by the state.

Land in post-conflict reconstruction and conflict avoidance

Conflict is widespread in many parts of Africa, and security is fundamental for development and poverty reduction. Struggles for control of territory and natural resources and the power

¹⁹ Data analysed by the study by TS Jayne et al (2002) *Smallholder income and land distribution in Africa: implications for poverty reduction strategies* Michigan State University / US showed growing land inequalities in Kenya, Rwanda, Ethiopia, Mozambique and Zambia in the 1990-2000 period.

²⁰ Adebayo Olukoshi 2005, *ibid*.

²¹ African Development Bank 2005; also Clarissa Augustinus and Klaus Deininger 2005 *Innovations in land tenure, reform and Administration in Africa*. Paper presented at the UNDP / ILC conference Land Rights for African Development: from knowledge to action, October 31st – November 3rd 2005

Coverage of cadastral systems is higher in some cases, around 15% in Kenya and Uganda. Although the greater part of the surface area is covered in South Africa and Namibia, the communal areas where the majority of their populations live are largely excluded.

²² Joan Kagwanja 2003, *Challenges of land administration and current reforms by African Countries*. ECA

and revenue they yield, are frequently at the root of these conflicts, and competition for access to land between social groups serves to inflame ethnic tensions which are susceptible to political manipulation. Countries in conflict are unable to resolve land policy issues, and conflicts generally lead to the seizure of land resources by armed groups, and to displacement of large number of people who require temporary land and shelter as refugees in neighbouring states, or as internally displaced people.

Post-conflict settings frequently involve overlapping sets of land claims, as in Rwanda, where cycles of civil conflict produced successive waves and associated groups of long-term refugees and returnees in need of resettlement. Reconstruction and reconciliation processes require the disentangling and negotiated settlement of these claims. The establishment of legitimate institutions governing access to land for re-settlement of migrants and refugees has become very important, as are questions of land restitution. Following conflict, the rebuilding of land institutions and the revision of outdated legal frameworks are important steps in the restoration of governance and creation of an equitable basis for long-term and sustained development.

Land policy and legislative reform and implementation processes

During the last decade, a large number of African countries have gone through processes of land policy change, leading in some cases to comprehensive legislative reforms and to institutional change. In most cases these processes have involved a greater or lesser degree of stakeholder consultation and public debate, and considerable study often organised through appointment of presidential commissions of enquiry into the necessary reforms. Most national land policy reforms undertaken in the last decade recognise the legitimacy of customary land rights and provide for some form of registration, and a role for local and community based institutions in land management, alongside that of the state. Gender equality is also now high on the policy agenda. Policymaking has sought to balance, in different ways, imperatives for social justice and sustainable livelihoods, with the stimulation of rapid economic growth. This latter objective has tended to persuade policy makers of the benefits of individual land title on the received colonial model. The new policies differ, however in the instruments and arrangements adopted to interface customary and formal tenure, in particular concerning the extent to which they seek the registration of rights to land, and the empowerment of decentralised institutions in the management of land rights at the local level.

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

2. Lessons learnt

2.1 Lessons from policy and technical experience²³

Systematic land titling has been expensive, difficult and inappropriate

Twenty years ago, much emphasis was placed on formal land titling programmes, which have proved slow, expensive, difficult to keep up to date, and hard for poor farmers to access. Evidence shows that titling is neither necessary nor sufficient to generate tenure security. Indeed, title and registration may generate conflicts rather than resolve them. Recently, much progress has been made in testing new approaches to securing land rights.

A variety of alternative, simpler approaches to land rights registration are available

Pilot cases from the field show how rights can be registered at much lower cost, in simple ways, for example in Ethiopia, Mozambique, and Benin. Equally, in some places, titling and registration may be much less important than working to strengthen local institutions with responsibility for managing land rights and related disputes. Building on local knowledge and existing land management practices at local level are critical ingredients, and systems of land rights documentation can be gradually refined over time. The costs and techniques of land administration also need to match the value of land. Computerisation 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.

Legal recognition and protection for customary rights within coherent policy, legal and institutional frameworks

Although customary land rights differ from formal 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, recognise secondary and collective rights and avoid the pitfalls of drives for comprehensive individual titling.

Land institutions require reform and regulation

In many countries, the ultimate ownership of land remains in government hands, with land allocated administratively, rather than through the market. This brings serious risks of rent-seeking and corrupt behaviour. Progressive institutional change in land sector agencies needs to be integrated into wider processes of public sector reform. Government land agencies need to provide 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

²³ The summary of lesson learned is based substantially on the findings of the conference on *Land in Africa: market asset or secure livelihood?* London November 8-9, 2004.

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.

There is a role for decentralised, local and customary bodies

Rights can be secured at different levels, such as the individual or family, at collective levels, such as the village or clan. The state plays a fundamental role in managing or facilitating the process, and this is best done in a decentralised way, in partnership with local institutions, including traditional and customary institutions where adequate checks and balances are in place. The recent shift towards decentralising 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 better understanding which results 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.

Reforms must include practical strategies to safeguard Africa's commons

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 utilised by different users, prior to formalising private property rights of individuals and groups²⁴.

Investments in workable systems for dispute resolution are at least as important as support for land rights registration.

Registered and documented land rights are not secure if they are under dispute and litigation. In a number of countries such as Ghana and Tanzania, widespread land litigation, and large backlogs of land cases in the courts are significant barriers to investment and land development. These problems stem from complex sets of legislation and administrative rulings dating from colonial times, and from the existence of multiple channels for land

²⁴ Liz Alden Wily, 2005 *ibid*

allocation, which legitimise conflicting claims. While legislation needs to be simplified and harmonised, 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.

Market based approaches to land reform are not enough

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 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.

Land is a key factor in post conflict reconstruction

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 localised land scarcity have been a cause of ongoing conflict²⁵. A recent conference on conflict and land tenure in Africa²⁶ 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. On the other hand, although customary practice has an important role to play, land disputes should not simply be left to the customary courts.

²⁵ *From the Ground Up: Land Rights, Conflict and Peace in Sub-Saharan Africa* Chris Huggins and Jane Clover (eds) ACTS, Nairobi 2005

²⁶ *Report of the conference on land tenure and conflict in Africa: prevention, mitigation and reconstruction* . 9 - 10 December 2004, ACTS, Nairobi

Civil society organisations also have an important role in mobilising 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 processes have been coupled with processes to set the basic elements of a conflict-sensitive land policy and new land institutions in place.

Land policy and tenure reform is a long-term process requiring long-term support

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.

Stakeholder participation is critical

The distribution and management of land has important political aspects. Civil society organisations can play an important role in providing checks and balances on government decision-making and the implementation of land policy. Because land issues involve political choices, broad public debate of the options at stake is essential. Drawing up new legislation is usually not the first thing to be done. Rather government needs to engage with different parts of society, to understand diverse interests and priorities. Taking time to consult effectively and following a flexible calendar are essential to build confidence between government and people. Political leadership and key statements matter a lot in providing assurance about the

process to be followed, which will likely take several years. The importance of land rights across and within African societies highlights the need to support development of civil society actors and networks with knowledge of land issues – national, Pan-African and global.

Mechanisms are needed to institutionalise lesson learning and capacity building

A wealth of practical experience is now emerging in Africa, and learning lessons between countries provides ideas and experience from which to build. Although some regional and 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, organised into strong and effective regional networks.

2.2 Key issues and principles in the design of land reforms

Policy Process

Public debate on the key features of policy debate should precede legislative reform. Typically this may involve publication of a policy discussion paper or “green paper” (in the Anglophone system) following the investigations of a commission of enquiry, which should have consulted with the principle stakeholder groups and in different regions of the country. Commissions of enquiry and policy steering groups should be interdisciplinary and inter-sectoral in character and have strong civil society and independent expert advisory support, not dominated by land sector institutions themselves, who often have vested interests and whose roles and mandates may need to change. The policy paper should identify the key areas and options for legislative reform. Public debate should inform parliamentary debate, in parallel with the drafting of legislation. Cross-party parliamentary committees should actively track the process and consider proposals prior to presentation of draft legislation to parliament.

Despite the need to gain clarity in advance on the principle policy issues, detailed policy formulation, legislative reform and institutional change need to take place in parallel, through a phased and iterative process, rather than on a sequential linear model whether policy leads to law which in turn leads to legislation. The overall stages can be encapsulated in a road map for reform with clear milestones to which the key stakeholders subscribe. Policy needs to be informed on the practicalities and in particular the costs of implementation, especially in relation to institutional reform and strengthening, above all where new institutions are to be created. The law should avoid detailed prescriptions and timetables for institutional change, unless it is very clear that these are feasible and the costs can be met. However fundamental changes in institutional arrangements (e.g. the merger of land agencies, creation of new land agencies independent of the civil service, and formalising the status, mandate and authority of new bodies such as local level land boards or village level and customary land secretariats) will most likely require new legislation to clear the way for practical implementation.

Once the general lines of policy and proposed legislation are in place, there is a role for piloting, or for phased implementation. These pilots require careful monitoring of any new

institutional arrangements, processes and technical systems before undertaking detailed design, or finalising legal regulations prescribing new administrative procedures.

Substance

Very much in line with the lessons set out above, the key issues of substance which African land policies are seeking to address include:

Poverty reduction

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

Overcoming the dualistic legacy of colonial land law

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

Clarification of property rights as a basis for investment

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

Gender equality

- Joint spousal titling and women's rights to own property; spousal and family consent for land disposals by household heads; women's representation on land management bodies.

Reform of government land agencies

- Clarification of institutional mandates and roles and establishment of business-like and customer oriented single land agencies; modernising survey procedures, land information and cadastral systems; streamlining of land titling procedures; better documentation of land transactions to support development of formal land markets; improving revenue collection and cost recovery for land related services; creation and empowerment of decentralised land management agencies such as district land boards, village and customary land secretariats.

More effective land dispute resolution and avoidance of land conflict

- Harmonisation of land laws and repeal of outmoded or contradictory legislation so as to reduce conflicting claims; introduction of systems of alternative dispute resolution (ADR) and use of customary dispute settlement mechanisms to reduce the pressure on the formal courts; action to reduce backlogs of land cases in the courts; elimination of multiple channels for land allocation; development of negotiated mechanisms and conventions to reduce stakeholder conflicts over natural

resources and common land; settlement of historical claims and grievances of traditional land holding groups.

More sustainable environmental and natural resource management

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

In addition to linking land law and policy to environmental and natural resource management, a further set of issues which need to be addressed outside the land sector itself are those of harmonisation and integration of land law and policies with the wider development context, notably questions of law and policies governing: FDI and investment; agricultural strategies; urban planning and management; and inheritance and matrimonial law.

3. Status of land policy and land reforms in Africa

3.1 To what extent and how African countries are addressing land issues

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

Broadly speaking, the sets of issues discussed in section 2.2 all fall within the scope of the policy reforms under consideration or already proposed in those countries which are actively addressing land policy issues. 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. The extent of practical implementation of new laws and policies, is highly dependent on the budgetary and human resources available; these are often very limited according to the extent to which former colonial regimes developed land institutions and skilled professionals, and how far these have been maintained since independence.

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

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

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

Table 2: Selected countries undertaking land policy, legislative and institutional reforms²⁷

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

²⁷ Principal source: Liz Alden Wily *Governance and Land Relations: a Review of Decentralisation of Land Administration and Management in Africa*, IIED, London 2003

	evidence	development projects
Mali	2000 Land Law (<i>Code Domanial et Foncier</i>) and 2001 Pastoral Charter (<i>Code Pastoral</i>) 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 <i>Code Pastoral</i> 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 through 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 (<i>terroirs d’attache</i>)
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) caters mainly for 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	Widespread implementation frustrated by lack of financial resources and institutional capacity. Strategic Plan for

	land allocation and management to Village Assemblies.	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 Local Committees and Tribunals	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 the law.

3.2 Regionally distinctive issues and challenges

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 and communal areas, in which, Western notions of property rights and customary tenure systems predominated. As a result these nations are grappling with problems of continuing racial inequalities in land holding being or becoming a source of potential 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.

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. Uganda and Tanzania have both adopted land policies and laws granting security to customary land holdings, and are now beginning to implement these through district and village based land institutions. Pastoralist land rights are significant issues in all three of these countries. Rwanda and Burundi both have a legacy of politicised ethnic conflict and land scarcity as a result of high population densities. Rwanda is now seeking to address this through a new land policy and legal framework.

West Africa: Distinctive features in West Africa include systems of land access through a diversity of customary land transactions and highly developed informal land markets; extensive migration from the Sahelian to the sub-humid zone leading to questions of tenant farmers rights, and on occasion to civil conflict (notably in Cote d’Ivoire); high rates of urbanisation and peri-urban land use change, and in the Sahel, the co-existence of pastoralist and settled agricultural groups. In some countries, such as Ghana, customary authorities retain considerable political influence and responsibilities for land management at local level.

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, and 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. The governing framework in Cameroon, for example is still that of 1974 Land Ordinances which seek to rescind customary land rights. However, the reach of formal land institutions in the region is highly limited and customary land holding remains the *de facto* norm. Customary land and resource use is nevertheless widely affected by extensive timber and also mineral extraction which are primary sources of foreign exchange earnings. Some countries of the region, notably those parts of DRC bordering the Great Lakes regions of East – Central Africa, have also been profoundly affected by conflict, in which control of territories, people, and natural resource revenues have been prime objectives of rival armed groups.

The Horn of Africa: In Ethiopia farm de-collectivisation is a distinctive feature of the land policy environment, as a result of the revolutionary *Derg* government's nationalisation of private farms, and cooperativisation of land holdings administered by party – led peasant associations, not based on pre-existing indigenous groupings. The region has also been substantially affected by conflict, most recently in Sudan which has been subject to waves of population displacement and return.

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.²⁸

²⁸ Julian Quan *The importance of land tenure to poverty eradication and sustainable development in Africa*, DFID / NRI 1997

4. Capacity Issues

Land administration and management institutions

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

Management of land policy and implementation processes

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

Higher education and training

Africa will need to develop its own Centres of Excellence in land policy, tenure and management in order to supply the knowledge and expertise necessary for the implementation of new land policies and development of land institutions to support African economic development and renewal of governance systems in the 21st Century. These tasks will require growing pools of trained professionals with technical, developmental and policy skills related to land, able to operate in public and private sectors and in civil society. Higher Education and Research institutions are also needed to provide empirical knowledge and analytical, technical and developmental skills to governments and other stakeholders to inform land policy and its implementation. At present the capacity of African education and training institutions is weak and training provision relies substantially on the international centres of expertise, is relatively high cost and not sufficiently focussed on the distinctive

needs of African countries. There is scope to expand the role of African research and higher education institutions in partnership with the RECS and with national and international sources of expertise, to develop regional centres of excellence. These in turn would need to support satellite national institutions in providing more systematic research and training to meet the human resource needs of national agencies and civil society for both technical and developmental skills in land matters. To achieve this, a concerted and long term effort to invest in the capacity of African training institutions in land policy and related technical and developmental areas will be needed, with partnership and support from international centres of expertise.

Voice and capacity in civil society

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. Across Africa however, national NGOs, CSOs and regional NGO and CSO networks need greater capacity to engage more effectively in land policy processes, and to assist with implementation. Financial and technical support to civil society capacity in all of these areas merits inclusion in regional and sub-regional frameworks for land policy.

5. 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 documentation 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 identified by recent research work and policy discussions on land in Africa fall broadly into four areas:

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

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

social and economic outcomes in specific cases, before policy either legitimates or discounts the roles of customary systems.

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

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

- The effectiveness of new decentralised approaches to land registration and land rights management are many and diverse, and although research has begun,²⁹ wider coverage of the many practical initiatives underway is needed to inform policy and programme development. Research to date has concentrated on rights registration systems and to a much lesser extent on dispute resolution mechanisms which are an essential component of land rights management. Among the issues which need to be better understood are questions of the role, legitimacy and viability of indigenous and local community institutions in land administration and management. More systematic comparative studies of decentralised systems within and between countries would assist in understanding and disseminating good practice
- Improving land delivery and the utility of intermediate forms of tenure in urban areas in view of good evidence that low-cost and intermediate forms of title are well suited to the needs of the poor but require the upgrading of informal urban settlements and also can benefit from applying customary practices as a principal means of land access in major cities. However there has been insufficient work on how to build constructively on these systems in urban planning, avoid the risks of exclusion of the poor, and how to scale up successful experiments and transfer them to different contexts

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

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

- a) Mechanisms for equitable community – investor partnerships for agricultural development; retaining community property rights. The drive to attract foreign and domestic investment and develop agribusiness in Africa risks displacement of small farmers who could be major contributors to agricultural growth. Consequently the

²⁹ *Securing land rights in Africa: can land registration serve poor and marginalised groups?* IIED 2005

opportunities and constraints of existing patterns of land holding and different tenure options need to be properly investigated with the full participation of existing land users. Land restitution and redistribution programmes in southern Africa are also creating demands for new forms of partnerships between local communities and the private sector if the benefits of viable commercial enterprises are not to be lost to radical changes in land use. There is a need for participatory research into practical opportunities for partnership focussed on the locations of inward investment and existing commercial farms

- b) Links between land policy, land reforms and the opportunities for investment and local economic development. Past research has concentrated on the relative advantages of land titling and customary rights in stimulating agricultural development and facilitating access to formal credit. While the general conclusion has been, contrary to conventional property rights theory, that land titling offers no particular advantages for agricultural livelihoods and production, and may even create problems, there has been very little research into the differential impacts of more diversified tenure arrangements on investment and local economic development. This question includes the effects of registering customary rights, and different forms of tenancy on investment, both on and off-farm., In particular there has been little work on how to facilitate better access to credit, without relying on land titles as collateral for mortgages, and how credit delivery can be improved in an African land tenure environment. Other related, and broader under-researched topics are the role that tenure reforms and improvements in land access can play in stimulating employment and local and regional economic development and how to link land policy in practice with agricultural and enterprise development strategies, for instance through participatory and negotiated territorial planning.
- c) The impacts of land market development and appropriate forms of land market regulation need to be investigated to understand how these markets operate to allocate and redistribute land rights in practice, their social and economic impacts, and the barriers and opportunities for participation in markets by poor and vulnerable groups.
- d) Land tenure impacts and policy implications of global trade liberalisation need to be better understood as agricultural investment in Africa grows and trade becomes more liberalised. 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.

iv) *Relationships between land tenure, conflict and conflict resolution*

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

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

PART II

6. A possible vision of a land policy framework for African institutions

6.1 The NEPAD context

The New Partnership for Africa's Development (NEPAD), a program of the African Union, “is a pledge by African leaders, based on a common vision and a firm and shared conviction, that they have a pressing duty to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable growth and development, and at the same time to participate actively in the world economy and body politic.” NEPAD’s programme provides “a new framework of interaction with the rest of the world, including the industrialised countries and multilateral organisations based on the agenda set by African peoples through their own initiatives...” and “anchored on the determination of Africans to extricate themselves and the continent from the malaise of underdevelopment and exclusion in a globalising world.”³⁰

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 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 this paper has sought to show, land issues are highly pertinent to Africa’s economic

³⁰ *The New Partnership for African Development*, October 2001 www.uneca.org/nepad/

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.

CAADP

African Heads of State and Government adopted the Comprehensive Africa's Agriculture Development Programme (CAADP) of AU/NEPAD in Maputo in 2003, as a framework for the restoration of agriculture sector development in Africa. The Maputo Declaration on *Agriculture and Food Security in Africa* called on Member States to adopt sound policies on agricultural and rural development; prepare collaborative bankable projects under CAADP for the mobilization of resources; and to allocate at least 10 percent of their national budgetary resources to the agricultural sector within five years³¹. In addition the Sirte Declaration on *the Challenges of Implementing Integrated and Sustainable Development in Agriculture and Water in Africa* reaffirms and complements the Maputo declaration and the CAADP framework. The AU Commission's Department of Rural Economy and Agriculture's (DREA) Strategic Plan of Action aims to initiate and promote policies and strategies for developing Africa's agriculture and the livelihoods of its people within this common CAADP framework. The AU also recognises that sustainable land management depends substantially on secure access to land and clarification of property rights.³²

A recent AU Conference of Ministers of Agriculture³³ urged the African Union Commission and the NEPAD secretariat to speed up the implementation of CAADP and Sirte, and to implement policies and programs that support small scale farmers and the expansion of agribusiness activities, including contract farming for smallholder farmers.

³¹ CAADP focuses investments into four mutually reinforcing pillars. Pillar 1 emphasizes the need for expansion of the area under sustainable land management and reliable water control systems. Pillar 2 underlines the need for improvement of rural infrastructure and trade-related capacities and market access; Pillar 3 focuses on increasing food supply and reducing hunger, by accessing improved technology so as to enable small farmers to play a major role in increasing food availability close to where it is most needed. Pillar 4 is a long-term pillar which focuses on agricultural research, technological dissemination and adoption to sustain long-term productivity growth. (*Status of Food Security and Prospects for Agricultural Development in Africa*, Conference of African Union Ministers of Agriculture, January 31 – February 1, 2006 Bamako, Mali)

³² In addition *TerrAfrica* provides a multi-partner (Countries of SSA, the NEPAD Secretariat, the UNCCD Secretariat and Global Mechanism, multilaterals, regional and sub-regional organizations, bilateral donors, civil society, and scientific organizations) platform to enable African governments and their partners to “*scale-up the mainstreaming and financing of effective and efficient country-driven sustainable land management approaches*”.

³³ Report of the Expert meeting on Agriculture, Conference of African Union Ministers of Agriculture, Bamako, Mali January 31 – February 1, 2006

6.2 The need 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.

6.3 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

7. Stakeholders

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

some extent in Lusophone Africa, producers and peasant organisations that were formed to defend the interests of their members have intervened in land debates. It is essential to note the great diversity amongst small scale land users as the principal stakeholder group in Africa's land resource, including men and women, youth and older people, migrants, new settlers, and indigenous groups. In addition, while many poor households seek to establish footholds in urban as well as rural areas, emerging urban middle classes are increasingly interested in establishing rural properties for investment, and recreational purposes.

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

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

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

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

Traditional authorities and customary institutions

Traditional authorities and leaders frequently continue to exercise roles as custodians of customary lands and are therefore key stakeholders in land matters. Traditional leaders or their representatives tend to be active participants in decentralised land management bodies such as district land boards or village land committees where these bodies exist. In many cases they also play important roles in advocacy for the restoration of customary land nationalised by the state or alienated to private investors, and they can be important repositories of knowledge about common property resources and the territorial claims of specific groups. However, their engagement in land policy and reform processes has not always been unproblematic (for instance in Ghana and South Africa), for two main reasons. First, with growing market development land has become a source of revenue, leading to development of financial self-interests by chiefs in land allocation and a blurring of their rights of land ownership and duties of fiduciary control. And second, because of the resurgent recognition of the importance of customary land tenure and land management, land policy represents a key opportunity for traditional leaders to assert and recover political authority and territorial control vis-à-vis the state. For these reasons traditional authorities may argue for exclusive control and responsibilities over land, which may be undesirable from the point of view of good governance, transparency and accountability to their communities. Where broader customary institutions for land and resource management retain authority, independent of the personal authority of the chief, they can be more effective, for example in land allocation, dispute resolution and territorial negotiation between different groups, providing a strong basis on which decentralising land reforms can build. Where traditional leaders are organised into national assemblies or Houses of Chiefs their re-assertion of authority and demands for control are likely to be more prominent. These institutions also provide opportunities for the interests of chiefs as a whole to be debated and represented, and for negotiation and consultation with the state and other stakeholders.

Pan African institutions

African Union

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

continent as a prerequisite for the implementation of the development and integration agenda of the Union.³⁴

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

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

ECA

Established in 1958, ECA is one of five regional commissions under the administrative direction of United Nations (UN) headquarters. As the regional arm of the UN in Africa, it is mandated to support the economic and social development of its 53 member States, foster regional integration, and promote international cooperation for Africa's development. It reports to the UN Economic and Social Council (ECOSOC). The Commission is organized around six substantive programme divisions: [Development Policy and Management](#); [Economic and Social Policy](#); [Gender and Development](#); [Information for Development](#); [Sustainable Development](#); and [Trade and Regional Integration](#). Five sub-regional offices contribute a sub-regional perspective to the work programme and support outreach. Drawing on this structure, ECA deploys several modalities and services to support its [member States](#): policy analysis and advocacy; enhancing partnerships; technical assistance; communication and knowledge sharing; and supporting sub-regional activities.³⁵

The maiden edition of UNECA's Sustainable Development Report on Africa³⁶ carries the theme of *Managing land based resources for sustainable development*. The report addresses issues related to the management of agricultural land, common property resources including pasture and forests, as well as water and minerals. The report highlights the importance of secure land rights, sound land policies and participation if land and land resource policies are to achieve the intended outcomes.

A 2004 UNECA paper focussing on the links between land tenure, food security and sustainable development in Africa³⁷ found that land is central to rural livelihoods in Africa because secure land access is the main means through which food security can be realised. Although Africa does not require a radical land reform in so far as customary tenure systems continue to provide adequate security, inappropriate land policies constitute a serious

³⁴ The African Union in a Nutshell www.african-union.org

³⁵ www.uneca.org

³⁶ UNECA, forthcoming 2006

³⁷ Land Tenure Systems and their impacts on food security and sustainable development in Africa. Economic Commission for Africa ECA/SDD/05/09 December 2004 . Available at: www.uneca.org/eca_resources/publications/sdd/land_tenure_systems.pdf

constraint on Africa's economic and social development, and the colonial legacy of dual, unequal and hierarchical systems of tenure that African land reforms should address.

UNECA's 2005 Economic Report³⁸ identified access to land and security of land rights as central to policy efforts and strategies for agricultural transformation, which in turn is critical to economic growth as the majority of Africans – some 270 million – are employed in the agricultural sector, and because of low productivity. In addition the report finds that securing property rights is important to improve business efficiency and enterprise development, especially for female entrepreneurs who have extremely limited land access opportunities.

African Development Bank

The African Development Bank (ADB) is a regional multilateral development finance institution established in 1964 supported by 77 nations (member countries) from Africa, North and South America, Europe and Asia and engaged in mobilising resources towards the economic and social progress of its Regional Member Countries (RMCs). Headquartered in Tunis, Tunisia, the Bank's mission is to promote economic and social development through loans, equity investments, and technical assistance. The ADB Strategic Plan 2003-2007 prioritises agriculture and sustainable rural development, including infrastructure and cross cutting themes such as gender, good governance environmental protection and assistance to post-conflict countries.³⁹ Land fits well into these priorities.

Regional Economic Communities

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

Within the mandate of the RECS are cross-border issues, development of convergent policies promotion of regional economic development, integration and investment, commissioning of research on regional development, and technical support and training to member states. Given the importance of food security in all the sub-regions of the continent, many of the RECs have now either prepared or are in the process of preparing their strategic plans and priority intervention programmes⁴⁰.

SADC has established a Regional Land Reform Technical Support Facility, in response to common land problems faced by member states, including racially unequal land distribution,

³⁸ Economic report on Africa 2005: meeting the challenge of poverty and unemployment in Africa, UNECA, Addis Ababa www.uneca.org/era2005 Chapters 4 and 6

³⁹ African Development Bank Group *Strategic Plan 2003-2006*, November 2003. www.afdb.org

⁴⁰ At the time of drafting, the extent to which the RECs' strategic plans for food security these make reference to land policy and tenure issues remains to be established

and political difficulties faced in relation to financial and technical support from international donors.

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

Donor Agencies

African nations need assistance to negotiate changing aid modalities to obtain effective support for land reforms, since these are long term processes that need sustained donor commitments. As such donor agencies, previously in many cases, the drivers of land policies and intended reforms in Africa remain stakeholders in Africa's own land policy agenda. Based on the consensus achieved through recent World Bank and European Union consultative processes, there is a growing and constructive trend for coordinated multi-donor approaches to land sector reform reflected in key documents which have emerged from these institutions in recent years⁴¹, but there is as yet limited experience. Donor financing mechanisms have shifted towards budgetary support for governments agreed through the framework of the Poverty Reduction Strategy Programmes (PRSPs), but on the whole these have not proved effective in addressing issues of land, property rights and agrarian change, despite their strategic significance for growth and poverty reduction. Land ministries compete for resources with other high profile sectors of more direct concern to governments and donors. Africa's land reforms will involve extensive capacity building, requiring finance but also technical assistance, facilitation, stakeholder dialogue and careful monitoring and evaluation (M&E), for which project based and sector-wide approaches are generally more appropriate.

The MDGs as the donor developed global policy framework for development assistance are themselves silent on the complex processes by which they are to be attained, including how to build sustainable livelihoods, income growth, assets, security and environmental sustainability, all of which are particularly challenging in sub-Saharan Africa. PRSPs, and financial and budgetary aid, as the principal current donor instruments designed to help developing countries achieve the MDGs, do not always reflect realities on the ground and the processes through which people can move and remain out of poverty. On current trends, the MDGs will not be achieved for sub-Saharan African and poverty will increase⁴²

Research and Training Institutions are important sources of technical and policy expertise on land matters at national and regional levels, often offering the only independent sources of expertise available to back up national government and civil society by providing evidence-based research outputs and policy options developed within the African continent. However, they frequently suffer from limited capacity, and their ability to train sufficient and competent personnel to meet the staff needs of current and emerging land institutions is extremely

⁴¹ Land Policies for Economic Growth and Poverty Reduction : a World Bank Policy Research Report. Klus Deininger, World Bank 2003 and the European Union Land Policy Guidelines. Commuicaiton of the European Commission, adopted by the Council of Ministers

⁴²

limited. A small number of key research institutions have played important roles in networking and cross-disciplinary training in land tenure and natural resource management.⁴³

Civil Society: CSOs and NGOs have been important players in land policy debate and advocacy, generally benefiting from a constructive, although sometimes also critical relationship with government. In a number of cases NGOs have formed national land alliances or LandNets, generally in response to national policy initiatives and sometimes as a result of regional network initiatives. Successful examples have used links to the research community and funding and advisory support from international NGOs, to provide important checks and balances on governmental policy processes, facilitating public debate and civil society inputs.⁴⁴ Elsewhere, network initiatives have been short-lived and civil society capacity has been weak, without specialist knowledge of the land sector, engaging in policy debate more at the behest of government than to give voice to concerns in civil society.

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

8. Opportunities and constraints in developing the framework

There are now significant opportunities for African nations to undertake land policy reforms, given the new awareness of the importance of land to economic development and the growing body of practical experience, but there are also considerable constraints. These include inappropriate institutional frameworks, a lack of skilled human resource capacity, shortages of financial resources, both within national budget and donor aid allocations, the contestation over the use of increasingly scarce land resources between development actors, and uncertainties about exactly what type of policies can deliver the right balance between improving livelihoods, protecting the poor and raising opportunities for economic growth and investment. It is these constraints that a Pan-African framework on land policy would seek to address. However, before setting out the possible features of such a framework it is worth setting out the different strengths, weaknesses, opportunities and strengths that will confront such a framework in gaining African and international support. These are presented below in Table 3.⁴⁵ Generally speaking opportunities and risks for the development of an effective framework exist at national, sub-regional, regional, and international levels.

⁴³ Notably PLAAS, the Programme for Land and Agrarian Studies, University of Western Cape, South Africa; GRAF, the *Groupe de Recherche Foncier Africain*, coordinated from the University of Burkina Faso; and ACTS, the African Centre for Technology Studies, a CGIAR organisation based in Nairobi.

⁴⁴ e.g. Notably in Kenya, Uganda, Rwanda, Burkina Faso, Angola, Togo and to a lesser extent in Tanzania.

⁴⁵ This rapid analysis remains to be validated in consultation with stakeholders, before or during the workshop

STRENGTHS and OPPORTUNITIES	WEAKNESSES and THREATS
<i>Country level</i>	
Many African countries are actively addressing land policy issues	Lack of long term strategic planning and lack of budgetary resources for effective implementation
Strong focus on need for secure property rights to promote investment and economic development	Drives for agribusiness investment may concentrate land, alienate small holder rights, and revert to conventional approaches to land titling, according to national perceptions and priorities
Global policy emphasis on improved governance and elimination of corruption	Risk that established land institutions resist change due to vested interest and rent – seeking opportunities
Many African countries have now undertaken policy and legislative reforms and have practical experience in addressing community participation in natural resource and environment management	New institutional frameworks remain at an early stage without adequate capacity to operationalise good policies and laws
Recognition that land problems contribute to wider conflict and are important in post-conflict reconstruction	Lack of evidence that land is a major causal factor in conflict obscures its proper consideration in peace processes; risk that continuing conflict overshadows land reforms
<i>Regional and sub-regional levels</i>	
Presence of NEPAD / CAADP as a Pan-African programme for development	No direct focus on land issues in NEPAD / CAADP, and risk that land falls between other funding priorities
Interest by AU / ECA and AfDB consortium in developing a pan-African framework on land policy; development of food security strategies and interest in land policy issues within African RECS.	Relative lack of technical capacity in RECS and pan-African organisations; risk that RECS may be unable to sustain a focus on land or add much value to processes at national level.
Broadly common set of land issues faced by government in sub-Saharan Africa, stemming from dualism of colonial and customary concepts and practices.	Genuine regional differences (different economic context and history of land reform in North Africa; focus on need for land redistribution in Southern Africa; absence of land policy processes in Central Africa) deter countries from a comprehensive pan-African approach.
Widespread experimentation and innovation in land rights management in Africa.	Long term nature of institutional change; risk that innovations do not receive sustained support and successes are not documented due to changing funding priorities.
Active civil society and research constituencies engaged in land policy across Africa, including regional networks.	Precarious funding base for civil society and research institutions and failures to institutionalise networking efforts.

<i>International level</i>	
Reasonably strong donor consensus on the importance of land policy.	Relative ineffectiveness of current project based and budgetary support aid models as mechanisms for sustained and coordinated support to land policy and its implementation
Recognition that agricultural development and secure land rights are an essential basis for local and regional economic development as building blocks for wider growth creates an opportunity for renewed focus on role of land policy	Risk that failures to achieve the MDGs in Africa lead to continued focus on aggregate national growth and concentration of donor resources on sectors directly relevant to MDG targets and indicators

9. Recommendations: towards a Pan-African framework for land policy

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

The scope and content of the framework would include:

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

9.1 Core functions

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

- A basis for political commitment by African nations at the AU level to programmes of common action at Regional Economic Community (REC) and national levels
- A platform for gaining commitment of the G8 and the international community in establishing a lasting framework for funding land policy and land reform to support policy processes, legislative change, the roll-out of implementation programmes.
- Developing clear guidelines and benchmarking of good practice for land policy land reforms and the performance of land institutions.
- In the context of CAADP, promoting land policy to underpin agricultural transformation, and ensure the constructive and equitable treatment of tenure issues in relation to agricultural investment projects.
- Promotion of programmes for tenure upgrading to secure urban land rights, and access to services, reduce and eliminate forced evictions and generally support orderly urban growth and development of peri-urban areas.
- Making land policies and the performance of land institutions subject to the African Peer Review Mechanism, as an important component of strategies to address the broader issues of governance, peace and security.

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

9.2 Suggested guiding principles and land policy benchmarks

The overall guiding principles of the framework would include:

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

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

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

A set of possible policy benchmarks is set out here, for discussion and further development, under a set of headings, including: protection of land rights; transparency in land management; improvements in land administration; improvements in land access and

distribution; land management in conflict and post-conflict situations; and prioritisation of land issues in development planning.

Protection of land rights

- Legislative guarantees to protect the security of both customary and formal (freehold / leasehold) land and property rights: equal status before the law of “modern” and customary freehold rights (held by groups or individuals and transferable and inheritable subject to customary norms)
- Commitments to gender equity, through provision for joint spousal title or land rights certificates, women’s land ownership and spousal / family consent to land disposals; efforts to end discrimination in inheritance and matrimonial property law, and in customary practice
- A moratorium on forced evictions and removals without provision of adequate alternative land and shelter
- Recognition and provision for registration of the land rights of indigenous minority groups
- Constitutional and legislative enshrinement of the fiduciary responsibilities of the state and traditional authorities in matters of land management, with checks and balances on abuse and recourse to appeal by aggrieved parties
- Introduction and performance of alternative dispute resolution systems with links to the formal courts and to customary conflict resolution mechanisms; reductions in the incidence of cases of land disputes and litigation
- Introduction of negotiated mechanisms for resolving inter-group and multi stakeholder disputes and management arrangements for access, use, control and benefits of common property resources, including those wholly or partially reserved by the state, allocated to the private sector, and in post-conflict situations

Transparency in land management

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

Improvements in land administration

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

Improvements in land access and distribution

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

Land management in conflict and post-conflict situations

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

Prioritisation of land issues national development planning

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

9.3 Programme structure

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

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

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

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

- A land institutions facility: to support institutional change, development and decentralisation in government land agencies

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

9.4 Operational and Management Mechanisms

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

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

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

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

Another important function of the management group of Pan-African institutions would be to coordinate the application of the African peer review process to land policy. Land policies, legislation and the performance of land institutions should be subject to the African Peer Review mechanism, with provision for full incorporation of these aspects in the national peer review process and for periodic stand-alone assessments in finalising land policies, laws and,

based on stakeholder demands and concerns, reviewing the effectiveness of land institutions and existing policy and law.

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

Once capacity is in place the management and steering arrangements could be replicated by the RECs which would establish their own expert panels and refine and adapt the principles, policy and practice benchmarks, programmes and facilities of the framework to specific sub-regional needs. Regular meetings of policy makers, senior officials and opinion leaders on land policy would take place at sub-regional level coordinated by the RECs, for purposes of steering the development of the land policy facility in each region, and to exchange information, experience and lessons. There would however need to be provision for cross regional meetings, learning and networking at the Pan-African level.

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