



LAND POLICY IN AFRICA:

A FRAMEWORK TO STRENGTHEN LAND RIGHTS, ENHANCE
PRODUCTIVITY AND SECURE LIVELIHOODS.

FRAMEWORK AND GUIDELINES ON LAND POLICY IN AFRICA

Revised Version

March 2009



| | |
|---|----|
| Forward [TO FOLLOW]..... | 6 |
| List of abbreviations..... | 7 |
| Definition of key terms..... | 10 |
| Executive Summary..... | 12 |
| 1 Background..... | 13 |
| 1.1 Justification..... | 13 |
| 1.1.1 The mandate of the African Union..... | 13 |
| 1.1.2 The purpose of the Framework and Guidelines..... | 14 |
| 1.2 The Process of Developing the Framework and Guidelines..... | 15 |
| 1.2.1 The beginning of the process..... | 15 |
| 1.2.2 The extent of consultation..... | 15 |
| 1.2.3 The meetings of African Experts and Ministers..... | 16 |
| 1.2.4 The Summit of Heads of States and Governments..... | 17 |
| 2 The Context of the Land Question..... | 18 |
| 2.1 Conceptualising the Land Question..... | 18 |
| 2.2 The Geographical and Ecological Context..... | 18 |
| 2.3 The Political Context..... | 19 |
| 2.3.1 Colonial origins of the land question..... | 19 |
| 2.3.2 The impact of political liberalization..... | 20 |
| 2.3.3 Land and conflict in Africa..... | 20 |
| 2.4 The Economic Context..... | 21 |
| 2.4.1 Land in the agricultural economy..... | 21 |
| 2.4.2 Land in other sectors of the economy..... | 22 |
| 2.5 The Social and Cultural Context..... | 22 |
| 2.5.1 Land and spirituality..... | 22 |
| 2.5.2 Land and gender relations..... | 23 |
| 2.5.3 Other forms of marginalization..... | 23 |
| 2.6 The Demographic Context..... | 24 |
| 2.6.1 Population growth and migration..... | 24 |
| 2.6.2 Urbanization..... | 24 |

| | | |
|-------|---|----|
| 2.7 | Emerging Global and Strategic Issues..... | 25 |
| 2.7.1 | An overview | 25 |
| 2.7.2 | Global climate change | 25 |
| 2.7.3 | Food supplies, prices and changing land uses | 26 |
| 2.7.4 | The new scramble for Africa’s land resources..... | 26 |
| 2.7.5 | Regional co-operation and integration | 27 |
| 2.8 | Implications for the Role of Land in the Development Process..... | 27 |
| 3 | Land in the National Development Process..... | 29 |
| 3.1 | Recognizing the Centrality of Land in Development..... | 29 |
| 3.1.1 | Demonstrating commitment to land policy development | 29 |
| 3.1.2 | Integrating land issues into decision-making processes..... | 30 |
| 3.1.3 | Acknowledging the legitimacy of indigenous land rights systems | 30 |
| 3.1.4 | Strengthening the land rights of women..... | 31 |
| 3.2 | Mainstreaming Land in Poverty Reduction Programs | 32 |
| 3.2.1 | The persistence of poverty in Africa | 32 |
| 3.2.2 | Enhancing access to land through tenure reform | 32 |
| 3.2.3 | Balancing pro-poor priorities with market orientation..... | 32 |
| 3.3 | Making Agriculture an Engine of Growth..... | 33 |
| 3.3.1 | Creating an enabling environment for agriculture..... | 33 |
| 3.3.2 | Clarifying property rights in agriculture | 33 |
| 3.3.3 | Promoting the development of land rights transfer systems and markets..... | 33 |
| 3.4 | Managing Land for Other Uses | 34 |
| 3.4.1 | Land needs for other uses..... | 34 |
| 3.4.2 | Land needs for manufacturing | 34 |
| 3.4.3 | Land needs for mining..... | 35 |
| 3.4.4 | Land needs for energy development | 35 |
| 3.4.5 | Land needs for planning and infrastructure in the rural areas..... | 35 |
| 3.4.6 | Land needs for sustainable urbanization | 36 |

| | | |
|-------|---|----|
| 3.4.7 | Land needs for tourism..... | 36 |
| 3.5 | Protecting Natural Resources and Ecosystems | 37 |
| 3.5.1 | The state of Africa’s natural resources and ecosystems..... | 37 |
| 3.5.2 | Protecting forests and associated ecosystems..... | 37 |
| 3.5.3 | Protecting coastal and marine ecosystems..... | 38 |
| 3.5.4 | Protecting grasslands and pastoral ecosystems | 38 |
| 3.5.5 | Protecting water resources | 39 |
| 3.6 | Developing Effective Land Administration Systems | 39 |
| 3.6.1 | The state of land administration in Africa | 39 |
| 3.6.2 | Reform of land rights delivery systems..... | 39 |
| 3.6.3 | Reform of land governance institutions | 40 |
| 3.7 | Implications for Land Policy Development | 41 |
| 4. | The Process of Land Policy Development | 42 |
| 4.1 | An Emerging Consensus Across the Continent | 42 |
| 4.1.1 | On the factors that should inform comprehensive land policy development..... | 42 |
| 4.1.2 | On development goals and commitments | 42 |
| 4.1.3 | On fundamental aspirations..... | 43 |
| 4.2 | Developing a Vision for Land Policy Development | 43 |
| 4.2.1 | The need for a shared vision | 43 |
| 4.2.2 | The basis of the vision | 43 |
| 4.2.3 | Vision statement..... | 43 |
| 4.3 | The Status of Land Policy Development in Africa..... | 44 |
| 4.3.1 | The importance of land policy development..... | 44 |
| 4.3.2 | An assessment of progress | 44 |
| 4.4 | Challenges to Comprehensive Land Policy Development | 45 |
| 4.4.1 | Important lessons learnt..... | 45 |
| 4.4.2 | Low levels of stakeholder and civil society involvement | 45 |

| | | |
|-------|---|----|
| 4.4.3 | Sectoral focus to policy development | 45 |
| 4.4.4 | Inability to provide for adequate budgetary allocations | 45 |
| 4.4.5 | Inadequate human and institutional capacity | 46 |
| 4.5 | Appropriate Strategies for Land Policy Development | 46 |
| 4.5.1 | Clarifying roles in land policy development | 46 |
| 4.5.2 | Recognizing the role of indigenous institutions..... | 46 |
| 4.5.3 | Consultation with the land using public | 47 |
| 4.5.4 | Engagement with civil society organizations | 47 |
| 4.5.5 | Launching the land policy development process | 48 |
| 4.5.6 | Building capacity for land policy development | 48 |
| 4.5.7 | Ensuring availability of financial and human resources | 49 |
| 4.5.8 | Communication for land policy development | 49 |
| 4.5.9 | Providing anchorage for further policy development in land-related sectors and sub-sectors | 50 |
| 4.6 | Summary of Fundamental Steps in Land Policy Development..... | 50 |
| 5 | Land Policy Implementation | 51 |
| 5.1 | The Challenge of Land Policy Implementation..... | 51 |
| 5.2 | Some Common Impediments to Land Policy Implementation | 51 |
| 5.2.1 | Failure to agree on implementation strategies | 51 |
| 5.2.2 | Lack of capacity to manage change..... | 51 |
| 5.2.3 | Defects in policy development..... | 52 |
| 5.2.4 | Lack of baseline data | 52 |
| 5.2.5 | Inadequacy of implementation infrastructure..... | 53 |
| 5.3 | Necessary Steps for Effective Land Policy Implementation..... | 53 |
| 5.3.1 | The scope of a land policy implementation framework | 53 |
| 5.3.2 | Design of land policy implementation strategies..... | 54 |
| 5.3.3 | Preparation of an action plan | 54 |
| 5.3.4 | Mobilization of political commitment | 54 |

| | | |
|-------|---|----|
| 5.3.5 | Continuous public engagement through decentralised structures | 55 |
| 5.3.6 | Legislating land policy components | 56 |
| 5.3.7 | Domesticating relevant regional and international commitments | 57 |
| 5.3.8 | Responding to new policy challenges | 57 |
| 5.4 | Assessing the Impact of Land Policy Implementation Processes | 57 |
| 6 | Tracking Progress in Land Policy Development and Implementation | 59 |
| 6.1 | The Development of Tracking Systems | 59 |
| 6.1.1 | The scope and value of tracking | 59 |
| 6.1.2 | Designing systems/mechanisms for tracking | 59 |
| 6.1.3 | The need for adequate data | 60 |
| 6.1.4 | Building partnership for tracking..... | 60 |
| 6.2 | Challenges Related to Tracking | 61 |
| 6.2.1 | The problem of methodology | 61 |
| 6.2.2 | Stakeholder agreement on what should be tracked | 61 |
| 6.2.3 | Defining the parameters that should be tracked..... | 61 |
| 6.2.4 | Defining participatory and measurable indicators | 61 |
| 6.2.5 | The need for external backstopping..... | 61 |
| 6.2.6 | Effective capacity building programmes | 62 |
| 6.3 | Development and Application of Tracking Principles..... | 62 |
| 6.3.1 | Tracking principles | 62 |
| 6.3.2 | Criteria for application of tracking principles | 63 |
| 6.4 | The Need for Feedback | 64 |
| 7 | Overall Conclusion..... | 64 |

Forward [TO FOLLOW]

List of abbreviations

ACHPR: African Charter on Human and Peoples Rights

AfDB: African Development Bank

| | |
|-----------------|---|
| AU: | African Union |
| AUC: | African Union Commission |
| CSO: | Civil Society Organizations |
| DRC: | Democratic Republic of Congo |
| EAC: | East African Community |
| EC: | Executive Council of the African Heads of State and Government |
| ECA: | United Nations Economic Commission for Africa |
| ECOWAS: | Economic Community of West African States |
| F&G: | Framework and Guidelines on Land Policy in Africa |
| FDI: | Foreign Direct Investment |
| GDP: | Gross Domestic Product |
| GHCs: | Green House Gases |
| GNC: | Gross National Product |
| ICT: | Information Communication and Technology |
| IDPs: | Internally Displaced Persons |
| IGAD: | Inter-Governmental Authority on Development |
| IPCC: | Intergovernmental Panel on Climate Change |
| LIS: | Land Information Systems |
| MDGs: | Millenium Development Goals |
| NEPAD: | New Economic Partnership for African Development |
| NGOs: | Non-Governmental Organizations |
| PME: | Participatory Monitoring and Evaluation |
| PRC: | Permanent Representative Council of the African Heads of State and Government |
| RECs: | Regional Economic Communities |
| SADC: | Southern African Development Community |
| UN: | United Nations Organization |

UNEP: United Nations Environment Programme

UN-Habitat: United Nations Programme for Human Settlements

Definition of key terms

- “Agrarian reform”:** a process of “land reform” which also addresses the political economy and ontological context in which rural society uses land resources.
- “Civil society”:** non-state actors in decision-making.
- “Land administration”:** the structure and processes for the determination, archiving and delivery of land rights, and the systems through which general oversight on the performance of the land sector is managed.
- “Land governance”:** the political and administrative structures and processes through which decisions concerning access to and use of land resources are made and implemented including the manner in which conflicts over land are resolved.
- “Land information system:** a set of principles governing the collection, processing, storage and use of data on land ownership, usage, quality, location and change over time and the body of data sets prepared for use in decision-making on the basis of those principals.
- “Land policy”:** the set of agreed principles to govern ownership (or access to), use and management of land resources to enhance their productivity and contribution to social, economic, political and environmental development and poverty alleviation.
- “Land reform”:** a process which involves comprehensive restructuring or redesign of at least three components of the land system; namely its property structure, use and production structure and the support services infrastructure.
- “Land tenure”:** the nature of and manner in which rights and interests over various categories of land are created or determined, allocated and enjoyed.

“Natural resources”: the constellation of all biotic and non-biotic substances which naturally occur on and are sustained by the physical *solum* including water

Executive Summary

In 2006, the AUC, the UNECA and the AfDB initiated a process for the development of a framework and guidelines for land policy and land reform in Africa with a view to strengthening land rights, enhancing productivity and securing livelihoods for the majority of the continent's population. That initiative was carried out by way of extensive consultations involving the participation of RECs in all the five regions of the continent, civil society organizations, centres of excellence in Africa and elsewhere, practitioners and researchers in land policy development and implementation, government agencies and Africa's development partners. The final outcome of the initiative was then presented before the formal decision-making processes of the AU for approval and adoption by the Assembly of Heads of State and Government in July 2009.

The *Framework and Guidelines* (F&G) which follow are presented in seven interrelated chapters. Chapter One provides the justification for and process followed in developing the F&G. Chapter Two describes the context which has defined the nature and characteristics of the land question in Africa in order to explain the reason why the land sector has not played its primary role in the development process. That role is examined in Chapter Three. Chapter Four sets out the key operational processes which African countries will need to follow in order to develop comprehensive policies that would enable the land sector to fully perform that role. Chapter Five analyses the difficulties likely to be met and conditions necessary for the effective implementation of such policies. Chapter Six discusses the measures which African countries may wish to put in place to track progress in the development and implementation of those policies. The final chapter is a concluding statement on how member countries of the AU might want to use the F&G.

1 Background

1.1 Justification

1.1.1 The mandate of the African Union

The Constitutive Act of the African Union places emphasis on the sovereignty and the sovereign equality of member states¹. All member states thus have the right to decide their own policies. The purpose of this Framework and Guidelines, therefore, is neither to develop a normative framework intended to be binding upon, nor to draft a land policy for adoption by member states. Further, it is not the objective of this Framework and Guidelines to instruct member states on how to formulate land policy in their specific country situations.

The *Framework and Guidelines* recognizes nonetheless that most countries regard the proper management of land as an important factor in development and ensuring or preserving peace and security. This is evident in the fact that a growing number of African member states have embarked on land policy reforms with a view to addressing prevailing land issues in the context of sustainable national development. Significant diversity is apparent however in the drivers that compel states to embark on these reforms, the level of comprehensiveness, the capacities for initiating, planning and implementing them and, consequently, the extent to which they have been achieved. The *Framework and Guidelines* recognizes further that to date, these reforms have proceeded in the absence of any articulated continental guidance or national consensus on the vision which should inform such reforms. In addition limited exchange of information and sharing of experiences and best practice have taken place across member states even where land and associated resources are shared by two or more states. There is also evidence that many African countries have, over time, accumulated a multiplicity of sectoral policies and laws relating to land, its management and use without over-arching policies which rationalize, harmonize and clarify the otherwise uncoordinated approaches and complex interactions between these sectoral laws and policies.

¹ The Constitutive Act of the African Union, 2000

This is the primary context which justifies a pan-African framework to assist member states in the process of undertaking or embarking upon and harnessing land policy reforms in the interests of their national development objectives.

1.1.2 The purpose of the Framework and Guidelines

Given that context, an attempt is made in this Framework and Guidelines to articulate some of the principles which should inform the development, content and implementation of land policies in African member states. Specifically the *Framework and Guidelines* seeks to:

- a) offer a basis for commitment by African member states to the formulation and operationalisation of sound land policies as a basis for sustainable human development that includes assuring social stability, maintaining economic growth and alleviating poverty and protecting natural resources from degradation and pollution.
- b) promote consensus for shared principles as the basis for securing access to land for all users, enhancing agricultural productivity and sustaining livelihoods
- c) underscore the need for popular participation in land policy formulation and implementation so as to facilitate improved governance of land resources
- d) suggest standards for best practices for land policy reforms and benchmarks for the performance of land institutions that member states can adopt in keeping with their respective contexts
- e) articulate a policy framework for addressing emerging issues and anticipating future trends relating to land resources,
- f) provide a basis for more coherent partnership between states, citizens and development partners in land policy formulation and implementation on the continent
- g) establish general principles for engaging development partners for the purposes of mobilising resources for building capacities for transformative land policy reform processes, and

- h) develop guidelines for regional convergence on the sustainable management and utilization of land and associated resources shared by two or more member states in various parts of Africa

1.2 The Process of Developing the Framework and Guidelines

1.2.1 The beginning of the process

In 2006 the African Union Commission (AUC), the UN Economic Commission for Africa (ECA) and the African Development Bank (AfDB) initiated a joint process of developing a framework for land policy and land reforms in Africa with a view to strengthening land rights, enhancing productivity and securing livelihoods. Building upon and complementing national and regional processes for land policy development and implementation, the process was conducted in close collaboration with Regional Economic Communities (RECs). African ownership of the process and envisaged end-product was ascertained through mobilising African expertise through the participation of African Member States and other African non-state stakeholders.

1.2.2 The extent of consultation

The first step in the process of developing the land policy framework was a **consultative continental workshop**, which took place in March 2006 in Addis Ababa. The workshop brought together representatives from African governments, RECs, civil society including farmers' organizations, African private sector representatives, Centres of Excellence, and Development Partners. The workshop established consensus around the elements and thematic issues that would characterize the framework, the features of a vision and guiding principles for the framework, actions and sequential activities of a roadmap, needed to develop a land policy framework, the roles of stakeholders and partners, and strategies for resource mobilization. The outputs of the workshop were a *background document* summarizing the main land issues in Africa that should be used as the basis for developing a preliminary outline of a land policy framework for Africa.

In the second step of the process, the RECs played a lead role in **regional processes**. These were successful in raising land policy issues that highlighted regional specificities. The RECs began by conducting regional assessments which resulted in the production of five *Regional Background Papers* highlighting existing initiatives and lessons that could enrich the framework. The assessments were followed by **Regional Consultative Workshops** hosted by the AU-ECA-AfDB. The workshops in Southern, Eastern, West, Central and North Africa were held between August 2007 and December 2008. Using the background document as well as regional assessments as the basis for discussion, the consultations in each region revisited the preliminary outline developed after the 2006 Consultative Workshop in the light of regional specificities, initiatives and lessons, thereby enriching it. The regional consultations also identified challenges, knowledge, institutional and resource gaps as well as on-going initiatives to assist in mapping out strategies for capacity building and lesson-sharing activities; that would be vital to the implementation of the framework. The key final outcome of the regional consultations was thus an *enriched draft of the continental framework*. In addition, regional *background documents* were also developed outlining the key elements and processes needed for the medium-and long-term implementation of the framework. The full extent of regional consultations is set out in Box 1 below.

BOX 1 TO FOLLOW

1.2.3 The meetings of African Experts and Ministers

An **African Experts Meeting** bringing together key experts from land related line ministries of all AU member States comprised the fourth step of the process. At this meeting, the draft framework was subjected to an extensive review and discussion. The key outcomes of the experts meeting were a *refined draft of the framework and an Experts' Report* on the land policy framework. The Experts Report included key recommendations on the implementation of the framework. Both documents were sent to the ministerial meeting, which was the fifth step in the process.

At the **Meeting of African Ministers Responsible for Land**, the Ministers reviewed and adopted the *Expert's Report and Recommendation* on the

Framework and Guidelines. This launched the *Framework and Guidelines* onto the formal policy-making processes of the AU Summit for consideration and adoption.

1.2.4 The Summit of Heads of States and Governments

Following scrutiny by **the Permanent Representative Council (PRC)**, the **Executive Council (EC)** of the Assembly prepared a draft Declaration for consideration, review and adoption by **the Assembly of African Heads of State and Government**. *The Declaration* containing resolutions and decisions on its implementation and follow-up was endorsed by African Heads of States and Government at Au Summit in July 2009.

2 The Context of the Land Question

2.1 Conceptualising the Land Question

The land question facing Africa has its origins in geo-political, economic, social and demographic factors more recently compounded by emerging global and strategic imperatives. These include different forms and modes of colonization experienced in various regions, the diversity and degree of persistence of indigenous cultural and normative systems and forms of economic organizations. These factors and imperatives have, in turn, given rise to a variety of legal regimes relating to land tenure, use, management and environmental governance.

In addition, contemporary processes of social organization and mobilization including those derived from class, gender, region, culture, ethnicity, nationality and generational cleavages now predominate in shaping access to, control and utilization of land, resulting in a complex basis of claims and conflicts over land resources. While these diverse contexts have led to variations in national approaches to land policy and land reforms, it is also the case that some commonalities and challenges have emerged leading to similar responses in the design of new land rights regimes.

2.2 The Geographical and Ecological Context

One of the key aspects of Africa's land question is that in spite of extensive dependence on farming, not much of the continent's land is arable or potentially arable. Large parts of the continent are deserts or semi-arid, and/or facing ecological damage. In many instances, unequal distribution of land has relegated a growing population of small farmers onto marginal areas leading to increasing physiological pressure and land and resource degradation including deforestation. In many parts of the continent, erosive downpours accompanied by flooding and intermittent droughts have also tended to accelerate soil exhaustion and land cover losses. This remains true despite the continent's enormous and untapped subterranean resources.

2.3 The Political Context

2.3.1 Colonial origins of the land question

Africa comprises five regions carved out into fifty-two countries with diverse political histories of colonial rule. The majority of these countries were colonized by Britain (through direct or indirect rule) others by the French (through assimilation strategies) Belgium, Portugal and Spain. German rule in Cameroon, Tanzania and Namibia was short-lived, while Apartheid South Africa; (itself first colonized in the 17th century by Dutch settlers and later by the British) also governed Namibia in the 20th century.

European settlers gained control over land through “agreements”, conquests and appropriation. Direct control management of land and engagement in agriculture was prominent in Southern Africa (i.e. South Africa, Zimbabwe, Namibia) and in North Africa (Egypt, Algeria and Libya), Kenya in East Africa, Ivory Coast in West Africa, and to a lesser extent in the DRC and Cameroon in Central Africa. The consolidation of such control and subsequent regulation of acquired lands was effected through the promulgation of a variety of European laws, and establishment of political, administrative and economic management systems, which were grafted onto a diverse range of indigenous economic and cultural practices thus leading to dualistic land tenure and land administration regimes.

Independence from colonial rule was staggered over time from the late 1950's through to the 1990's, with Zimbabwe, Namibia and South Africa coming last. Thus, the processes of nation building, such as, the establishment of independent political systems and the design of policies and development strategies including land reforms and land policy making, were staggered as well. Land reforms, especially to redress colonially based unequal ownership and to rationalize discriminatory land use policies and insecure land tenure systems begun in the 1950s and continued more vigorously from the 1960s onwards. This took the form of nationalization of settler and foreign corporate lands in Egypt, Algeria, Libya, Tanzania, Zambia, Mozambique and Angola. In the former colonial ‘protectorates’, which faced indirect colonial rule alongside cheap labour migrant systems, (such as in Botswana, Swaziland, Lesotho and Malawi), land expropriation for redistribution was used sparingly in the smaller areas of white

settlement. Land acquisitions through market-based compensation, with some finance from the former colonial master, were used in the 1960's in Kenya, Swaziland and Botswana, and in Zimbabwe during the 1980s. Efforts at the reform of land held by indigenous communities through a variety of measures including individual and group titling or appropriation for cash crop production in a number of African countries however, have been met with limited success as a result of the persistence of social and cultural attachment to land and, in some cases, contestation and conflict, as has been apparent in Kenya, Uganda, Malawi, Zimbabwe, Namibia and South Africa. These efforts have not, in consequence, adequately restructured the dualistic land holding systems resulting from colonization, nor have they improved government support for the development of the disadvantaged indigenous land tenure systems.

2.3.2 The impact of political liberalization

Liberal political reforms and especially the demise of military and authoritarian rule and the return to multiparty politics in Africa leading to changes in state-society relationships have in turn created opportunities for new approaches to land policy development. More specifically the overbearing role of the state as owner regulator and user of land resources is being increasingly challenged as land rights communities, non-state regulatory and administrative structures, organs of civil society and other public sector groups demand involvement in land policy development.

2.3.3 Land and conflict in Africa

Despite efforts at the liberalization of political space, the struggle for land and natural resources remains one of the key factors fuelling instability in Africa. In the former settler colonies such as Kenya, Zimbabwe and South Africa, the failure to resolve historical claims arising from colonial expropriations compounded by unequal re-distribution of land after independence, remains a primary source of conflict. In other parts of Africa such as the mineral rich countries of Angola, the DRC, Southern Sudan, Sierra Leone and Liberia, conflicts over land spurred by global commercial interests have been intense. In yet others such as Uganda, Rwanda, Burundi, Somalia the Central African Republic, the Republic of Congo

(Brazzaville) and Ivory Coast, persistent conflicts over the last two decades have led to large numbers of internally displaced persons (IDPs) raising complex issues about access to land, resettlement and rehabilitation. Moreover, these conflicts have, in many countries, led to forced evictions and horrific atrocities (including genocide) against non-combatants, mainly women and children. Thus apart from dealing with issues relating to the redress of historical injustices and the attainment of social equity, land policy development and reform must address the problem of conflict prevention and the restoration of peace and security in Africa.

2.4 The Economic Context

2.4.1 Land in the agricultural economy

The importance of land in development in Africa is underlined by the fact that approximately 60% of the population derives its livelihood and income mainly from farming, livestock production, and related activities. Indeed the contribution of the agricultural sector to the GDP in most countries in sub-Saharan Africa exceeds 25% and is as high as over 40% in countries such as the Central African Republic, the Democratic Republic of Congo, Ethiopia, Guinea Bissau, Rwanda, Sierra Leone, Tanzania and Togo. In addition livestock production is an important activity in the Sahelian countries and in the Horn of Africa.

The contribution of agriculture and livestock production to African economies could be considerably enhanced through radical restructuring of a number of constraints. The first is the relatively low levels of agricultural productivity in terms of land and labour in many countries which have led to overdependence on imports for food security. The second is equally low levels of mechanization especially in terms of irrigation development resulting in sub-optimal use of the continent's land resources. The third is the persistence of colonial policies that discriminated against the vast majority of African farmers and which continues to inhibit the growth of the small farm sector in terms of investment and infrastructure. Further, macro-economic stabilization policies since the 1990's, externally-oriented trade liberalization, and the deregulation of domestic markets, have restricted the scope and pace of improved land utilization among Africa's

predominantly small farmers, while large-scale commercial farming dominated by elites and foreign landowners is growing.

2.4.2 Land in other sectors of the economy

Beyond agriculture, land continues to be a significant factor in Africa's economy through its contribution to other sectors. In countries such as South Africa, Mauritius, Kenya, Egypt, Tunisia and Morocco, economic diversification has occurred towards tourism, manufacturing and services, while the economies of others such as Sudan, Angola, Libya and the DRC are increasingly dependent on oil and mineral revenues. In yet other countries such as Zimbabwe, Namibia and Botswana, nature conservancies and woodlands claim a substantial proportion of the land demand.

In addition, the process of urbanization, which is examined elsewhere in this chapter, is creating new and novel demands on land and land related resources for engagement in more sophisticated economic activities such as the provision of recreation, entertainment and catering services irrespective of residential or urban settlement patterns. This new and emerging service economy is becoming an important contributor to the GDP of many countries.

2.5 The Social and Cultural Context

2.5.1 Land and spirituality

To the vast majority of societies in Africa land is regarded not simply as an economic or environmental asset, but as a social, cultural and ontological resource. Land remains an important factor in the construction of social identity, the organization of religious life and the production and reproduction of culture. The link across generations is ultimately defined by the complement of land resources which families, lineages and communities share and control. Indeed land is fully embodied in the very spirituality of society. These are dimensions which land policy development must address if prescriptions for change are to be internalized.

2.5.2 Land and gender relations

It must be conceded, however that despite the reverence which surrounds land and land relations in Africa, the system of patriarchy which dominates social organization has tended to discriminate against women when it comes to ownership and control of land resources. This has been re-enforced, first, by imported land law that has tended to cement the system of patriarchy by conferring title and inheritance rights upon male family members on the theory that women, especially married women can only access land through their husbands or male children and second by “claw-back” clauses in many African constitutions and the *African Charter on Human and Peoples Rights* (ACHPR) permitting discrimination on matters of personal law which often operate against women’s right to equal treatment before the law. If law and policy are to redress gender imbalances in land holding and use, it is necessary to deconstruct, reconstruct and reconceptualise existing rules of property in land under both customary and statutory law in ways that strengthen women’s access and control of land while respecting family and other social networks. This would also be consistent with commitments made by African states as evidenced in the AU’s 2003 Maputo protocol to the ACHPR on the *Rights of Women in Africa* and the 2004 *Solemn Declaration on Gender Equality in Africa* both of which call for action to address gender inequalities including women’s unequal access to land. This is all the more important as women remain the primary users of agricultural land in most African communities.

2.5.3 Other forms of marginalization

Beyond the frequently acknowledged inequalities due to race, class and gender, the marginalization of particular ethnic groups with respect to access to adequate land remains a perpetual source of conflict. The marginalization of certain categories of indigenous people such as the San of Botswana; the Herero of Namibia; the Bakola, Bagyeli and Batwa of the countries of Central Africa; and the Ogiek of Kenya, has become contentious. Land policy reforms must also address these concerns.

2.6 The Demographic Context

2.6.1 Population growth and migration

Through a combination of factors including population growth, migration and urbanization, the overall per capita availability of land (particularly agricultural land) is decreasing in many countries. In a number of countries, such as in West Africa, as much as 50% to 75% of the populations live on about 25% of the national land along the coastal zones, leading to much higher densities in these areas. At current urban growth rates exceeding 3.5% per annum in many countries, this trend is likely to exert severe pressure on urban and peri-urban infrastructure and services.

2.6.2 Urbanization

Much as the African continent is still in the early stages of urbanization with only 38% of the people classified as urban, the rate of change of this transition is currently and will continue for several decades to be the highest in the world. By 2050, for example, half of Africa's population, or at least 1.2 billion people, will live in urban areas thus accounting for one quarter of the world's urban population. Much of this growth will be evident in Africa's capital cities where an aggregate of over 10% of the urban population of most countries often reside. Although the extent of urban concentration will continue to vary from country to country with South Africa, Zambia, Mauritius, Gabon and Egypt already at between 40% and 58% and others generally below 20% of their total populations, urbanization throughout Africa is still essentially driven by large scale migration from the country side as a result of a variety of factors including poverty, famine, drought, disaster, conflict and the general perception that the cities offer a better quality of life. An important factor to note, however, is that urbanization in Africa will continue to be characterized by informal settlement developments where over 60% of urban residents currently live. This is a phenomenon which will continue to compound inequalities in access to development resources in these areas; a factor which in turn has a direct impact on social and economic stability particularly in primary cities that are important drivers in national economies.

Finally a persistent phenomenon in the urban areas is the systematic discrimination against women in education, housing, access to land and opportunities to pursue basic livelihood skills despite the existence of formal gender-neutral laws. Much of this is as a result of social realignments in urban politics and economy and the primary perception of women's roles as being mainly dependants. Although there are indications that many women are beginning to take advantage of opportunities and challenges presented by urbanization, progress towards active participation in urban politics and economy remains relatively slow.

2.7 Emerging Global and Strategic Issues

2.7.1 An overview

A number of changes in the global environment politics and economy are beginning to exert new and significant impacts on Africa's land resources. The most visible of these are in response to changes in the global ecosystem, demand for energy supplies and rapid increase in foreign direct investment (FDI). An important challenge for the state in Africa will be to put in place adequate policies to ensure that the risks associated with these changes and, in particular the risk of uncompensated loss of land rights by the poor are avoided or effectively managed.

2.7.2 Global climate change

The impact of global warming on climate change is expected to affect land use systems in Africa, although its extent and magnitude is still unfolding. Nevertheless direct impacts such as reduced availability and scarcity of water, saline intrusion, increased temperatures, biodiversity loss and desertification as a consequence of more frequent droughts, are now known to reduce productivity of land and hence likely to accelerate poverty. In as much as the African continent contributes least to green house gas emissions (GHCs) which are primarily responsible for global warming, the overall impact of climate change on the continent's ecosystems will continue to be disproportionately severe. Land policy reforms will need, therefore, to pay particular attention to the design and implementation of mitigation and adaptation measures, including the mobilization

of capacity to manage long-term implications of such change. For coastal countries evidence already indicates that rising sea levels will require relocation of populations, innovative land use planning and massive land acquisitions accompanied by large scale infrastructure and service delivery not to mention the costs associated with the flow of “climate” refugees into the contiguous urban areas.

2.7.3 Food supplies, prices and changing land uses

The recent surge in world food prices and food supply bottlenecks have tended to affect Africa the most, given the continent’s current food production deficits and increasing dependence on imports and food aid. Rising food prices are the result of complex interactions between a number of major factors including the diversion of land resources and farm inputs towards the production of food grains and oil seed for agro-fuel stock feeds in North America, and Europe, the failure of African countries to pursue policies that promote increased agricultural productivity and persistent inequities in the global trade system. Land policy reforms will have to address these issues.

2.7.4 The new scramble for Africa’s land resources

The first ‘scramble for Africa’ which took place in the 19th century involved Belgium, France, Britain Portugal and Italy carving out sections of the continent and sharing the spoils. Since then these nations have receded in political strength in comparison to the United States of America and China. What has not changed, however, is the importance of Africa to western economies by virtue of its rich endowment in natural resources. In recent times, the significance of bio-fuels, minerals and oil has gained prominence. Increased oil production from existing discoveries in African countries has taken on a new strategic significance in the light of the unpredictability of future Middle East oil supplies, the USA’s apparent insatiable appetite for oil, and China’s colossal energy and raw material requirements. The accelerated exploitation of resources by, together with the establishment of, industries and processing infrastructure in these countries, have led directly to a ‘new scramble’ for Africa’s land resources..

While this new scramble for Africa is often discussed primarily in the context of valuable mineral endowments, the concept has become more widespread, as demonstrated in relation to demand for land for a wide range of investments in timber, tourism, commercial development, and lately food production for consumption abroad. The question to be asked is whether these foreign demands can be met while observing sustainability guidelines and without marginalizing the land rights of African communities.

2.7.5 Regional co-operation and integration

Increasingly African countries are embarking upon regional cooperation and integration, under the auspices of various pan African and sub-Regional organizations. A growing number of cross-border developments point to the need for co-operation over many issues including migration, the movement of pastoral communities, refugees, trans-boundary ecological stresses (land and water degradation, desertification, and deforestation). Thus RECs currently have agreements on the management of shared water, forest resources and desertification. Civil society organizations are also mobilizing in a bid to influence land and resource management policies across national boundaries. Regrettably, however, these ongoing regional cooperation and integration initiatives have not resulted in binding convergences in land policy frameworks, processes and management systems.

2.8 Implications for the Role of Land in the Development Process

The contextual issues set out above are important in a number of ways. First, they enable governments to identify the critical questions and challenges which must be tackled and opportunities which must be seized if the land sector is to play its primary role in Africa's development process. That clearly must be the starting point in any meaningful process of policy development and reform. Second, they provide a basis for realistic policy development and reform in the land sector. Third, they point to the fact that although national strategies on how to resolve these issues may vary, there are important commonalities in terms of their origin

and characteristics which make the sharing of experiences across countries useful and even critical. These are elaborated further in the chapters next following.

3 Land in the National Development Process

3.1 Recognizing the Centrality of Land in Development

Although land is central to sustainable livelihoods in Africa, development initiatives in many countries do not always take comprehensive account of this reality. African governments need to take appropriate measures to ensure that land plays its primary role in the development process and more particularly in social reconstruction, poverty reduction, enhancing economic opportunities for women, strengthening governance, managing the environment, promoting conflict resolution and driving agricultural modernization.

It is nonetheless encouraging to note, that many African governments have begun to make important changes in the institutional structures of government to enable more systematic consideration of land, and the environment in policy-making in general. New forms of dialogue are also developing across the continent in support of better synergies among stakeholders including national and local governments, industry, science, civil society organizations and the public in the process of developing effective approaches to the integration of land in sustainable development.

3.1.1 Demonstrating commitment to land policy development

The commitment of the African Union to the eradication of poverty is evidenced in several initiatives, including NEPAD and its long-term objectives which include eradicating poverty in Africa and placing African countries, both individually and collectively, on a path to sustainable growth and development and halting its marginalization in the globalization process. Under the African Union, African leaders are committed to taking joint responsibility for strengthening mechanisms for conflict prevention, management and resolution as well as promoting and protecting democracy and human rights. As members of the United Nations, African countries are also committed to the attainment of the Millennium Development Goals (MDGs) among which are the eradication of extreme hunger, poverty reduction and gender equality. These call for land

policies which support a wide range of economic, social and political objectives including the prevention of conflicts and their prompt and effective resolution through mutually acceptable dispute processing mechanisms. When acceptable to a broad stakeholder base effective land policies will also play a role in peace-building by inspiring a higher degree of trust in regulatory systems among various interests competing for scarce land resources.

3.1.2 Integrating land issues into decision-making processes

The administration of land resources has an important bearing on the democratic process. Structures governing access, control and management of land are as much about the consolidation of democracy as they are about asset stewardship. Linked to this is the need to integrate land administration and management into systems of governance at all levels. Best practice points to the fact that devolution of power over land management and the decentralization of the delivery of land services to local land governance institutions are key considerations if inefficiency and corruption are to be exposed and addressed. This orientation will require readjustments or even fundamental reshaping of economic and political decision-making processes.

Further policy making processes should promote holistic approaches instead of the tendency to pursue sector specific paths or foci to policy development with little or no co-ordination or harmonization with other sectors and cross-cutting policies. This would entail ensuring that all necessary linkages within and contributions of land related issues to other development processes are accounted for. The integration of land policy with natural resource management strategies and poverty reduction programmes would be of particular – but not exclusive – importance in this regard.

3.1.3 Acknowledging the legitimacy of indigenous land rights systems

A major continual challenge which evolving land policies have to face, especially in sub-Saharan Africa, is the need to blend tradition and modernity in land rights regimes. In this respect land policies should seek to remove age-old rigidities in traditional structures and systems which tend to discriminate against women while at the same time building on and thereby improving indigenous tenure

arrangements. In thus acknowledging the legitimacy of indigenous land rights, land policy processes must also recognize the role of local and community-based land administration/management institutions and structures, alongside those of the State. Land policy processes should also seek to provide for the necessary interface between state and indigenous systems, particularly with regard to the certification of land rights, the empowerment of decentralized institutions in land rights administration, and the management of land as a resource at the local level. Colonial legacies which tended to denigrate indigenous land rights systems and suppress and sabotage their evolution and which ignored community land administration structures must now give way to new and innovative policies including the provision of statutory frameworks for the documentation and codification of informal land rights regimes. It is encouraging that a number of African countries including Ethiopia, Southern Sudan, Ghana and the pastoral communities of the Sahel are already moving in this direction.

3.1.4 Strengthening the land rights of women

Throughout Africa, agricultural production and preservation of land resources is primarily the responsibility of women and children. It is still generally the case, however, that gender discrimination in access to land resources is a serious problem particularly in rural Africa. This is both undemocratic and a constraint on economic development. Better and more productive use of land requires that the land rights of women be strengthened through a variety of mechanisms including the enactment of legislation that allows women to enforce documented claims to land within and outside marriage. This should come hand in hand with equal rights for women to inherit and bequeath land, co-ownership of registered land by spouses and the promotion of women's participation in land administration structures. To ensure full enjoyment of land rights, these measures must be part of an ideology which removes issues regarding the land rights of women from the private sphere of marriage and family, and places them in the public domain of human rights.

3.2 Mainstreaming Land in Poverty Reduction Programs

3.2.1 The persistence of poverty in Africa

Poverty, which refers to an inability to satisfy basic needs, is widespread in both urban and rural settlements in Africa. Equally distributed and effectively managed, land can be instrumental in eradicating poverty. Securing land tenure, redistributing land, to those in need, improving access to land resources and spreading land related services can also contribute to poverty eradication. This will require a number of specific policy strategies

3.2.2 Enhancing access to land through tenure reform

Provision of secure access to land through various forms of tenure will facilitate economic opportunity and livelihood security for all land users. Tenure reforms accompanied where necessary with programmes of land redistribution will improve access to land and confer security for vulnerable groups, especially women who constitute most of the urban and rural poor. Addressing the issue of tenure security is particularly important if the cycle of dependency and systemic and institutional poverty among these groups is to be broken and if women are to be protected against the tendency towards high risk behaviours especially in times of crises caused by pandemics such as HIV/AIDS and persistent conflicts in Africa. The choice of which tenure systems to adopt will depend on the specific context and production system in operation in each country.

3.2.3 Balancing pro-poor priorities with market orientation

Many African countries perceive an apparent contradiction between the pursuit of pro-poor strategies of land development on the one hand and market-driven options on the other. Mainstreaming land issues in poverty reduction strategies requires that these apparently inconsistent objectives be engaged and rationalized. In particular, there is need to ensure that adequate measures are put in place to ensure that increased market-driven policies of land development do not expose vulnerable groups, particularly women, to further marginalization through speculation and costly land rights transfer systems.

3.3 Making Agriculture an Engine of Growth

3.3.1 Creating an enabling environment for agriculture

In most African countries, agriculture is the main source of livelihood for the majority of the population and major contributor to economic growth. Land is important for all forms of agricultural production, including cereals, horticultural products, livestock, fishing, and hunting. Land is also a major factor in the processing and marketing of the products derived from these activities. All African countries still have traditional systems for the management and administration of land. These systems which are not always homogenous even within the same country, can, more or less, be either conducive or counterproductive to effective management of land for agriculture. A number of improvements in the land sector will be necessary to ensure that an enabling environment is created for agricultural development.

3.3.2 Clarifying property rights in agriculture

One such improvement is to ensure that the systems of property under which land is held and used is clarified for the variety of agricultural forms and participants in that sector. This is crucial not only for rural farmers, particularly women who produce most of Africa's food crops and whose access to land is based on various indigenous tenure systems, but also for foreign or local commercial investors, some of whom seek to engage in large scale operations (including extensive irrigation networks). The ability to secure access to land resources through a variety of tenure systems that guarantee returns for short or long term investments is important for the improvement of agricultural productivity in general and food security in particular. Clear property rights in agriculture also have the potential of increasing revenues through taxation and enhancement of agricultural exports.

3.3.3 Promoting the development of land rights transfer systems and markets

Yet another improvement is to create an enabling environment for the transfer and exchange of land rights either formally through documented transactions or informally through intra-family or community arrangements. Promoting the development of robust land rights transfer systems and markets offering various types of rights (whether primary or secondary) will expand opportunities for the

acquisition of land resources for many agricultural users engaged in large or small scale, formal or informal operations. Properly regulated, this kind of flexibility can be of great value to those whose land rights are precarious especially women and people living in informal settlements in the agricultural or urban sectors. That flexibility will need to be accompanied by the support services infrastructure, particularly low-cost credit facilities, which will enable such groups take full advantage of the market.

3.4 Managing Land for Other Uses

3.4.1 Land needs for other uses

Beyond agriculture, land is an important factor for many other uses that are increasing in importance to the development of African economies. These include manufacturing, mining, energy development, the development of physical infrastructure in the rural areas, the management of sustainable urbanization, and tourism. These uses require large fiscal, technological and human investments, which are often provided by foreign investors or international financing. If those investing in these activities are to use land in a manner that is environmentally sustainable and cost-effective government policies will have to be such as to guarantee net gains for African populations.

3.4.2 Land needs for manufacturing

The provision of land for Africa's growing manufacturing sector often involves expansion at the expense of urban agriculture and other land uses including settlement in peri-urban in zones. This usually involves compulsory acquisition of land held under indigenous tenure and its conversion to statutory regimes after compensation is paid. Such expansion also involves relocation of informal settlements in those areas. In addition, manufacturing can be a stationary source of air and water pollution and the discharge of solid and liquid wastes which are hazardous to the environment. Land policy must address these issues if a proper balance is to be struck between investment in manufacturing and the requirements of human health and safety, and environmental protection.

3.4.3 Land needs for mining

Africa is blessed with a wide range of mineral deposits which often attract land concessions for extraction. Many specialized multinational companies are, in consequence, attracted to Africa for this purpose. Exploring these minerals has not, however, been without problems, particularly in rural areas. In several African countries, the failure of expected direct benefits to materialize is causing tension between local communities and mining companies. Questions relating to compensation for land lost, resettlement of displaced people, reparations for environmental damage (especially in cases of surface mining) and the sharing of revenues accruing from mining operations, must all be properly addressed in land policy reforms.

3.4.4 Land needs for energy development

Energy development has become an important economic activity in many African countries. This includes the exploration and extraction of oil, gas, and geo-thermal resources, the harnessing of hydrological wind, and to some extent solar power as well as bio-fuel production. Most of this activity is driven by foreign investors and is geared towards the export rather than local market. Energy development often involves the relocation of human settlements to create buffer zones resulting in significant loss of land to and social dislocation of agricultural communities. These outcomes have raised serious concerns about the capacity of many countries to meet their internal agriculture food production requirements as land is taken out and the ecological trade-offs involved in the scramble by foreign investors for land for such activities.

3.4.5 Land needs for planning and infrastructure in the rural areas

The development of rural areas remains an important policy objective for African countries especially those faced with post-conflict reconstruction and resettlement. Substantial investment will, in particular, be required for systematic regional planning involving the rationalization of land uses for an efficient delivery of services including the acquisition of land for relocation of existing populations, reservation of easements and development of the physical infrastructure necessary

for faster development in these areas. These are issues which land policy development must adequately address.

3.4.6 Land needs for sustainable urbanization

The fact that the African region is in the process of rapid urbanization presents special challenges requiring systematic local planning, provision of housing (or shelter), and service delivery. A key goal, therefore, is to work towards interventions involving, *inter alia*, the provision, in properly planned communities, of affordable and legally secure land and housing (or shelter) rights, and access to complementary services including water and electricity irrespective of tenure and structure status. This will entail a range of interventions designed to respond to the variegated nature of African urban settlements, rationalize public sector management, lower entry costs, and improve the overall quality of life, such as the design of flexible development control requirements, introduction of property taxes (where appropriate), and good and socially inclusive urban governance. These interventions will be critical not only within metropolitan boundaries but also in peri-urban areas where the greatest unplanned change takes place often on high potential agricultural land.

3.4.7 Land needs for tourism

Tourism is an important revenue earner for many African countries. The development of this industry is however complicated by the fact that the facilities which are required are often located in coastal and dry-land areas which are already hosts to significant human settlements. In addition, tourism is a delicate industry which requires systematic land use planning and service infrastructure to avoid ecological and other forms of environmental damage, and adverse social and cultural impacts. Today many African countries are engaged in the implementation of principles of sustainable tourism including eco-tourism, community participation in wildlife management and revenue sharing. These developments have the potential of reducing some of the conflicts arising from contestation over the land between the industry and other social and economic uses. They also require extensive investments for the benefit of local communities

if the participation of such communities is to be meaningful and mutually beneficial.

3.5 Protecting Natural Resources and Ecosystems

3.5.1 The state of Africa's natural resources and ecosystems

Africa still has a rich heritage of natural and ecological resources. These comprise untapped minerals, dense tropical rain forests, some of the highest equatorial mountains, abundant wildlife, unique biological diversity and massive freshwater reserves in rivers, lakes and wetlands even though the continent also has some of the driest deserts in its northern and southern regions. Many of these resources are, however, not evenly distributed. For example, more than 20% of Africa's forests are located in one country, the DRC and most of the fresh water reserves are found mainly in the Congo, Niger, Nile and Zambezi basins. Because these resources and ecosystems remain central to development in Africa, strong systems of land governance rooted in the principles of sustainability will be critical in an effort to ensure their protection and renewability. Deliberate steps will also be necessary to protect and preserve indigenous knowledge systems that have accumulated over generations in support of these resources and ecosystems.

3.5.2 Protecting forests and associated ecosystems

Forests and associated ecosystems provide many African households with sustenance. In addition they play a significant role in combating systemic global environmental challenges, such as climate change and loss of biodiversity. In recent times, however, Africa's forests and associated ecosystems have been subjected to destruction under various types of pressure including civil wars, population growth, commercial harvesting of wood products, agricultural expansion, fuel wood demand, livestock grazing and other competing land uses. Nonetheless, since the 1992 Earth Summit and following the World Summit for Sustainable Development in 2002 many African countries have been actively involved in protecting forests and planning for their regeneration through a variety of schemes including soil stabilization, tree plantations and agro forestry.

3.5.3 Protecting coastal and marine ecosystems

An issue which is closely related to urbanization is that of growing human settlements in coastal zones. In these areas where ecological systems are relatively fragile, rapid urban growth enhances the risks of environmental damage, erosion and pollution. Demand for infrastructure combines with tourism to put these ecosystems under pressure leading, in many respects to loss of land by local communities. In some of East Africa's coastal areas land is being reclaimed and coastal wetlands drained. In the Seychelles for example, coastal sand dunes are now being used for construction and land is being reclaimed from the sea with irreparable damage to reefs and wetlands as well as to marine eco-systems. There is need for states to undertake land policies which provide strong regulatory frameworks for responding to human settlement needs without causing irreparable damage to Africa's coastline.

3.5.4 Protecting grasslands and pastoral ecosystems

Although human population densities in grasslands and pastoral ecosystems remain relatively low when compared to the medium and high potential agricultural areas, and urban settlements, these ecosystems typically support a vast amount of livestock and wildlife resources which contribute significantly to the economies of many countries. Today, these ecosystems are under threat from several factors, including creeping desertification resulting from global climate change, invasion by agricultural communities and a long tradition of neglect in the national development policies of many countries. As a result the valuable contribution of grasslands and pastoral ecosystems to economies including as reservoirs for wildlife and biodiversity is slowly receding. This is often exacerbated by outmoded stock management and environmental practices. The protection of pastoral ecosystems will require policies that address issues of tenure security, the role of pastoral communities in pastoral management, guarantee equal access to pastoral resources for women, establish processes for the resolution of cross-boundary disputes, and improve technologies of resource use.

3.5.5 Protecting water resources

Africa's rivers, lakes, wetlands and other water bodies are a source of sustenance for human settlements as well as agriculture and livestock. Although fresh-water demand for a variety of uses (including agriculture and urban services) is increasing exponentially, the rate of regeneration (including recycling of wastewater) is well below the continent's future needs. Contributing factors include changes in the global hydro-meteorological cycle, rapid deforestation pollution and siltation of fresh water bodies. Further deterioration in Africa's water balance is likely to have adverse effects not only on agricultural land use but also on energy production, urban and industrial development. A comprehensive approach to land policy development must therefore include measures for the protection, development and conservation of these resources. Attention will also need to be paid to issues concerning the management of trans-border water resources.

3.6 Developing Effective Land Administration Systems

3.6.1 The state of land administration in Africa

For land to play its primary role in national and regional development in Africa, attention will need to be focused, as a matter of urgency on the state of land administration systems. There are two aspects to this issue, namely; the state of land rights delivery and the efficiency and efficacy of the laws, structures and institutions for land governance. Both aspects are in dire need of reform.

3.6.2 Reform of land rights delivery systems

Land rights delivery systems comprise those processes that are concerned with ascertainment, demarcation, survey, registration, and documentation of land rights and systematic tracking of land rights transactions. In many African countries, these systems are in various conditions of disuse and mismanagement and are largely paper-based and manually operated. Further many are generally inaccessible and expensive to the ordinary land using public. These will require not merely redesign but also technological upgrading including the establishment of computerized Land Information Systems (LIS) for faster and more efficient

delivery. In addition land delivery systems may also need to be privatized or out-sourced so as to liberate the provision of services from complex government bureaucracies.

3.6.3 Reform of land governance institutions

An important factor in land administration is to foster good governance of land, natural resources and processes of land use change. “Land governance” refers to the processes by which decisions regarding access to, and use of, land are made, the manner in which those decisions are implemented, and the way in which conflicting interests in land are resolved or reconciled. Land governance is thus a techno-legal, procedural and political exercise. This is because the process of allocation and enjoyment of land rights cannot be separated from the civil, political and human rights, of the citizenry and are dependent on the political, administrative and professional will to ensure fair treatment and equal opportunities for all. In addition because land governance entails control over land rights it is, in many African countries, a means of accumulating and dispensing political and economic power and privilege through patronage, nepotism and corruption.

Over the past two decades, many African countries have put in place a wide range of new laws and institutions especially in the field of environmental governance without proper rationalization or harmonization with existing legal and institutional structures governing other aspects of the land system. One unfortunate result of this otherwise laudable response to environmental concerns has been significant fragmentation and duplication of authority and responsibilities in land governance that has led to serious conflict and competition not only across line ministries and institutions but also between central and local government authorities. It is important therefore that if institutions responsible for land governance, including land held by the state, are to operate in a transparent, accountable, and efficient manner, that they be harmonized and their respective mandates rationalized. Further, experience has shown that where such institutions are decentralized, thus facilitating the devolution of decision-making power and authority to local communities and other stakeholders, land resources are likely to

be more productively used and preserved. Addressing these issues will require considerable will and commitment from policy-makers and practitioners.

3.7 Implications for Land Policy Development

There is no doubt that land in Africa is a fundamental social and cultural asset as well as a critically important development resource, especially for the poor, in both rural and urban situations. The realization of those values will require effective land policy development which balances the rights and interests of all users, and ensure the inclusion of all members of society especially women, persons with disability and other landless poor, to enable them realize full social, environmental and economic benefits from land, and which in addition enhances political stability and democratic institution building.

4. The Process of Land Policy Development

4.1 An Emerging Consensus Across the Continent

4.1.1 On the factors that should inform comprehensive land policy development

The continental and regional consultations documented in Chapter Two established an emerging consensus among African stakeholders, on a number of considerations that should inform comprehensive land policy development. These are that (i) land policy development should be seen as a prerequisite for economic growth and sustainable human development; ii) land is a highly sensitive political issue and as such the process of land policy development, implementation and evaluation, needs to be as inclusive and participatory as possible; iii) national ownership in the development of land policy is critical for engendering broad grass roots endorsement which is more likely to lead to successful implementation; iv) there are a range of indigenous principles and emerging innovative local practices that can inform sound national land policy development and implementation (v) deliberate steps must be taken to ensure the full and informed participation of women - Africa's primary land users - in policy development and implementation; and (vi) successful implementation of land policies will contribute to improved governance, environmental management and the consolidation of peace.

4.1.2 On development goals and commitments

In addition, African states have subscribed to the principles and ideals of the NEPAD framework and are further committed to the attainment of the MDGs. These require governments to demonstrate commitment to: (i) achieving greater economic growth with equity, and reducing poverty; (ii) promoting good governance and democracy; (iii) reducing conflicts, enhancing political stability and consolidating peace and (iv) ensuring the sustainable management of the environment. Land policies will contribute to the realization of those development goals and commitments.

4.1.3 On fundamental aspirations

Equitable access to land, secure land rights, gender equity, improved governance in the land sector and reduction of land related conflicts, are fundamental aspirations of African people as together they pave the way to secure livelihoods and prosperity. Land is also an important resource for the development of other sectors of the economy, in addition to being part of the cultural heritage and social identity of Africa peoples. These are aspirations which land policies across the continent must reflect.

4.2 Developing a Vision for Land Policy Development

4.2.1 The need for a shared vision

In order for the African Union to assist member countries in addressing land issues that underpin the sustainable and inclusive development of the continent there is need for all stakeholders and the continent's development partners to have a shared vision regarding the need for land policy development as an important process in national development. In articulating that vision, this *Framework and Guidelines* seeks to ensure that the potential of land is fully realized in support of the continent's development agenda.

4.2.2 The basis of the vision

The vision deriving this *Framework and Guidelines* is therefore based on the emerging consensus on the need for comprehensive land policy development as identified through the regional consultations documented in Chapter Two, the development goals undertaken and commitments made by African nations, and the general aspirations of African peoples regarding the centrality of land in economy and society.

4.2.3 Vision statement

On that basis, African governments will seek to develop land policies in a manner that is inclusive and responsive to the needs of all land users, contribute to political stability, promote gender equity, foster the reduction of conflict, enhance the sustainable management of natural resources, ensure orderly urban

development, and which put all stakeholders on the path to higher economic growth and a better quality of life.

4.3 The Status of Land Policy Development in Africa

4.3.1 The importance of land policy development

That land policy development has already become a major item in Africa's economic and political reconstruction agenda is no longer in doubt. Central to that exercise is the conviction that past policies, many of which have been *ad hoc* or sector specific have failed to resolve fundamental problem underlying the sustainable development of the land economy and those of related sectors.

4.3.2 An assessment of progress

This is evident in the fact that in the past two decades alone a large number of countries have completed the review and assessment of the performance of their land sectors and formulated new policies for reform. These include, but is not limited to, Algeria, Libya, Egypt, and Tunisia (North Africa); Benin, Mali, Niger, and Ghana (West Africa); Burkina Faso (Central Africa); Rwanda and Tanzania (East Africa); and Botswana, Malawi, Mozambique, Namibia, South Africa, Zambia, and Zimbabwe (Southern Africa). Many other countries including Mauritania (North Africa); Sierra Leone and Liberia (West Africa); Angola, Lesotho, Madagascar, and Swaziland (Southern Africa); and Kenya, Southern Sudan, and Uganda (East Africa) are currently undertaking comprehensive review of their own land policies. Although the countries not mentioned here have not undertaken comprehensive or systematic reviews in the past two decades, it is important to note that many of them have indeed been engaged in significant reforms or enacted land laws embodying the overall policy priorities in their various land sectors. Throughout Africa, therefore, there is no doubting the need to inform land related legislation or institution-building with an assessment of policy concerns in that sector. What the vision statement set out above offers is a set of parameters, drawn from emerging best practices, within which the comprehensive and systematic development of new or revision of existing land policies, laws, and institutions ought to occur.

4.4 Challenges to Comprehensive Land Policy Development

4.4.1 Important lessons learnt

An assessment of processes in countries that have attempted comprehensive or systematic review of their land sectors suggest that there are a number of challenges that must be overcome before adequate land policies can be developed. These challenges are of a conceptual, technical and operational nature. African countries will need to formulate clear strategies to overcome these challenges before policy development or revision can begin. Although such challenges are many, only four important ones are identified here.

4.4.2 Low levels of stakeholder and civil society involvement

The first is relatively low levels of stakeholder and civil society involvement. Despite evidence of community participation in some countries, the state has generally played the dominant role in driving and shaping land policy formulation. In addition, inputs from stakeholders and civil society to land policy development have all too frequently been ignored or at least not been taken fully into consideration.

4.4.3 Sectoral focus to policy development

The second is that land policy development has tended to follow sectoral paths or foci or to be sector-driven with little or no co-ordination or harmonization with policies regarding other sectors. As a result land policies have failed to provide broader ranging prescriptions for the management of cross-cutting issues such as those impinging on the environment and poverty reduction.

4.4.4 Inability to provide for adequate budgetary allocations

The third is that African countries have not always been able to make provision for adequate budgetary allocations to underwrite the cost of land policy development and implementation (including capacity gap assessments, monitoring and evaluation and medium to long term strategies and programmes to deal with capacity constraints). Many countries have tended to place too much reliance on

donor support for policy development, thereby jeopardizing the ownership and sustainability of the entire reform enterprise, especially when donor funds dwindle as a result of donor fatigue or otherwise become unreliable.

4.4.5 Inadequate human and institutional capacity

The fourth is that many African countries sometimes have no capacity to design and undertake comprehensive policy development. This often means that what counts as national policy is little more than the desk-top product of bureaucrats or consultants assigned to produce position papers for land ministries or government departments. Such exercises frequently produce documents which do not identify fully the fundamental land questions which policy development should address or make prescriptions which are unacceptable to the broad land using public.

4.5 Appropriate Strategies for Land Policy Development

4.5.1 Clarifying roles in land policy development

Emerging best practices suggest, that the development of appropriate land policies require that the interests and roles of all stakeholders in the land sector and, in particular, indigenous institutions, the land using public and civil society organizations be first clarified and taken on board before the process is launched. This is crucial if the vision articulated in this Chapter is to be attained. This would also neutralise a persistent factor in African land economies, namely the over-bearing role of the state in the determination of conditions of access to, control and administration of land resources, irrespective of the tenure categories under which land is held or owned; a factor which has led to the reality that in a large number of cases land policies read mainly like *ad hoc* statements of how the state seeks to perform that role.

4.5.2 Recognizing the role of indigenous institutions

A major and continual challenge which land policy development on the continent faces is the need to recognize the legitimacy of and improve on the role and operation of indigenous structures, institutions and land rights regimes and to

provide a necessary interface between them and state-led systems of land management and administrations. In doing so it is imperative that the issue of equal access to and representation on all structures that are responsible for land management and administration are addressed. This is particularly critical since many indigenous land management structures do not allow any or sufficient women's representations. This is all the more necessary in the context of land policies which seek the documentation of land rights, the empowerment of decentralized institutions in the administration of land at the local level and the provision of statutory frameworks for the evolution of informal land rights systems.

4.5.3 Consultation with the land using public

Adequate preparation must be made for informed consultation with the land using public on the major issues to be addressed in the policy. This can be done in a variety of ways including the publication and circulation of discussion papers or representation of various categories of land users before Commissions of Enquiry or policy steering committees backed by strong inter-disciplinary expert support. In doing this, care must be taken to ensure that all categories of the land using public, especially women, are reached. In this way, dominance of established land sector institutions and other interest groups whose roles and mandates may need to change in the course of land reforms, will be neutralized.

4.5.4 Engagement with civil society organizations

Land policy development should recognize and adequately provide for a deep engagement with Civil Society Organizations (CSOs). These organizations can provide necessary checks and balances on government decision-making during the development and implementation of land policies. Effective opportunities for feedback and iterative processes with CSOs and other special interest groups should therefore be built into the consultative process. The deeper the engagement with such groups, the more enriched and the higher the degree of public acceptance and ownership will the policy be. Where parliamentary review and approval is required to validate or legitimize the outcomes of the policy development process, it would be ideal if these and other groups are given

opportunity to offer additional input at that stage, if only to ensure that their initial contributions have not been glossed over in the final drafts of the policy document.

4.5.5 Launching the land policy development process

The actual sequencing of activities and events in the trajectory of land policy development has, however, varied across countries. While some countries have initiated the process by first identifying key land related issues and problems through public consultations of various degrees of intensity, others have proceeded through state commissioned researches or position papers. Yet others have, through constitutional provisions as well as primary and subsidiary legislation, simply dealt with land related issues and problems without any specific and coherent articulation. In this latter respect, land policy development has *followed* rather than preceded the promulgation of land legislation. It is important to remember, however, that whatever route is taken, detailed policy development and legislative and institutional reform should take place through a phased and iterative process rather than on a sequential linear model. The major stages in the road map for reform should, nonetheless, be set out with clear milestones to which the key stakeholders subscribe. That roadmap should avoid detailed prescriptions and timetables for institutional reform unless it is quite clear that these are feasible and that associated costs have been budgeted for

Taking time to consult effectively and following a flexible calendar are essential to confidence building between government and the people. Political leadership and development of key messages for delivery to the public matter in providing assurance about the process to be followed, which will likely take several years. The importance of land rights across and within African countries underscores the need to support development of civil society actors and networks with knowledge of land issues on both national, Pan-African and global levels.

4.5.6 Building capacity for land policy development

An important objective of land policy development and reform should be to comprehensively restructure institutions for land administration so as to achieve decentralized, transparent, efficient and cost-effective delivery of land services, in a manner which meets customer requirements and that is financially self-sustaining. Institutional restructuring does not always mean creating an entirely

new institutional arrangement from scratch. Sometimes design and implementation could be around existing national, regional and local structures following a credible re-engineering process. Public or state sector land institutions could be re-engineered to address problems such as scattered and restricted access to records, poor internal communication systems, obsolete operating procedures, overlapping, conflicting and unclear mandates, duplication of efforts and responsibilities, and waste of resources.

4.5.7 Ensuring availability of financial and human resources

More often than not, the development of land policies in Africa does not take into account full financial and economic cost appraisals hence provide only for inadequate resource commitment and mobilization for reform implementation. In addition, land policies have been designed, promulgated and even launched without any genuine concern for the human resources and other logistical requirements necessary to carry out the wide-ranging reforms that are proposed. In some cases existing laws and implementation mechanisms have been swept away by new policies even though no new arrangements had been put in place to manage the transition. Similarly transitional arrangements and preparations such as staff capacity building and training, public information and communication, have not always been taken into account in the policy development process. These are important issues which land policy development must address.

4.5.8 Communication for land policy development

Effective and robust communication through a variety of channels including newspapers, television messages, radio broadcasts and newsletters is critical in the development of land policies. Effective communication should be integral and cross-cutting hence requires the development of a coherent strategy that takes account of the entire policy development process. Communication is particularly crucial when soliciting and collating stakeholder inputs and feedback as well as driving public education and awareness campaigns before and during implementation. Information and Communication Technologies (ICTs) are today considered the driving force of the global information society and knowledge-based economies hence should play a significant role in land policy development.

ICTs can benefit land policy development in two main ways. First, ICTs can improve the efficiency and effectiveness of service delivery through computerized systems. Secondly, ICTs can help with information delivery and dissemination of policy components and associated legal instruments. Appropriately used, this can reduce the digital divide, improve the awareness of rural communities of their rights and enhance their participation in policy development.

4.5.9 Providing anchorage for further policy development in land-related sectors and sub-sectors

The status of land resources is an important determinant of the health and vitality of sectors and sub-sectors which depend on them for productivity. Among these are agriculture, livestock, energy, minerals, water, wildlife, forestry and human settlements. In addition, the overall condition of the environment depends to a large extent on how land resources are used and managed. Consequently land policy development must provide anchorage for further policy development for these related sectors and sub-sectors. Conversely it is important that existing laws, plans and management systems in these other sectors and sub-sectors are appropriately revised to ensure that they do not impede the implementation of the reforms contemplated in new land policies.

4.6 Summary of Fundamental Steps in Land Policy Development

Land policy development is clearly a complex, interactive and often long drawn out exercise. Reduced to its fundamentals, however, the process may be conceptualized as consisting of the steps summarized in Box 2 below.

BOX 2: Sequencing the Policy Development Process

1. Stakeholder consultation and identification of salient problems in the land sector;
2. Preparation of working drafts for further discussion with stakeholders.
3. Appraisal of institutional and financial/budgetary options;
4. Refinement, processing and approval of the national land policy
5. Design of implementation programmes and rationalization of institutional responsibilities for implementation;
6. Enactment of new and revision or repeal of existing land and land-related legislation
7. Further dissemination of information to the public, training and capacity building to support implementation

5 Land Policy Implementation

5.1 The Challenge of Land Policy Implementation

Although many African countries have utilized a variety of strategies, in developing new or revising existing national land policies in response to perceived problems in their land and related sectors, the rate of implementation of these policies has been slow and in some cases disappointing. In East and Southern Africa where most countries have completed the land policy development stage, devising the legislation required for the implementation of major aspects of the policy has taken as much as five years or more. More often than not, countries have spent a considerable amount of resources in the development of action plans than on the actual execution of policy prescriptions. A preliminary examination of some of the more common impediments to land policy implementation is therefore necessary if rapid progress is to be made.

5.2 Some Common Impediments to Land Policy Implementation

5.2.1 Failure to agree on implementation strategies

The first impediment is that implementation strategies and modalities are seldom considered as important elements which require as much debate and consensus building as the substantive problems targeted in policy development. A cursory examination of the documents embodying completed land policies shows that, in most cases, implementation modalities do not form part of drafts submitted for public debate or stakeholder consultations nor do they form part of drafts submitted for cabinet and parliamentary endorsement. Rather, implementation modalities are usually addressed in in-house operational guidelines prepared after the policy development process has run its course. Thus no opportunity is accorded to the public or specific stakeholders to evaluate the capacity or technical proficiency of those modalities in the light of challenges arising from the additional and often complex tasks contemplated by new land policies.

5.2.2 Lack of capacity to manage change

The second typical impediment to land policy implementation is that in many countries the task of implementation is assigned to existing institutions or

agencies responsible for the administration of the land sector. The problem is that the orientation of these agencies often stands as a major obstacle to change and innovation. There are three major reasons for this. First most land administration institutions or agencies draw their mandates from a colonial heritage characterized by operational conservatism. That heritage is not only inflexible and driven by path dependent objectives; it is also fundamentally averse to change and adaptation. Second, most of these institutions or agencies are not just slow or inefficient; they also lack the technological know-how required to manage contemporary land reform programmes. Third the bureaucratic structures developed around these institutions or agencies are not only complex and inaccessible, but may also be deeply implicated in patronage and corruption. Many observers have therefore concluded that existing land administration institutions or agencies in Africa are virtually incapable of managing systems and processes which require transparency and accountability.

5.2.3 Defects in policy development

The third impediment is that the process of policy development itself has proved to be defective in several countries. Desktop research leading to quick fixes has, in several countries, produced policy prescriptions that do not answer to the needs of those individuals and communities who depend on land resources for their livelihoods. The idea of stakeholder and civil society participation is still regarded by many governments as an usurpation of their residual responsibility to direct and implement public policy. In many countries formerly under British colonial rule, the process of policy development still proceeds primarily by way of cabinet briefs and white or green papers rather than through public enquiry and consultation. Attempts to implement policies devised in this manner have often been resisted or ignored by their intended targets.

5.2.4 Lack of baseline data

The fourth impediment is that a number of policies have been prepared in the absence of adequate baseline data on the conditions of land as an integrated political, economic and social system. In addition, in many African countries land data are still manually operated and inaccurately recorded. Efforts to put together

efficient land information systems have been hampered by lack of adequate resources and modern technology. Land policies prepared in this manner have led to prescriptions that do not adequately reflect the realities obtaining in the land sector.

5.2.5 Inadequacy of implementation infrastructure

The fifth impediment to land policy implementation is the evident lack of implementation infrastructure in terms of capacity, financial resources and institutional arrangements. Donor assistance in correcting this deficiency has not always been reliable and sustainable. In such circumstances, policies, however comprehensive or innovative simply cannot be implemented.

5.3 Necessary Steps for Effective Land Policy Implementation

5.3.1 The scope of a land policy implementation framework

Land policy implementation entails the systematic identification and execution of all steps necessary for the attainment of the goals and prescription set out in the national land policy. It is the translation of policy into a programme of land reform designed to deliver a wide range of services and benefits to the land using public and to sectors which depend on the land system for value addition. Broadly speaking, that range includes, but is not limited to, the redistribution of land resources, the delivery of secure land rights, the improvement of sustainable methods of land use, the reorganization of land administration structures and services and the facilitation of the support services infrastructure required for optimum development of the land and related sector functions. The greater the number of elements in that range the more comprehensive will be the policy development process as well as the implementation steps which seek to deliver them. Efficient, cost-effective and sustainable delivery of that range of services and benefits require that a number of additional steps be taken beyond the conclusion and presentation of national land policy.

5.3.2 Design of land policy implementation strategies

The first step in effective land policy implementation is the design of realistic and achievable implementation strategies. Important elements in that design are the preparation of a comprehensive checklist of activities to be included in an implementation plan and programme, assessment of the capability of the various agencies whose participation is needed and the mapping out of the terrain both physical and cultural which is likely to be affected by the implementation process. The crucial thing to appreciate here is that the implementation process is more than just technical, it is a deeply social and political exercise.

5.3.3 Preparation of an action plan

The second step is the preparation of an action plan. This must involve realistic programming and sequencing, proper costing, accurate assessment of financial and technological needs, along with capacity building and mobilization of resources required for the short, medium and long term implementation of key components of the policy. Because programmes contemplated in land policies cannot be implemented *en bloc*, good practice demands that the implementation of certain aspects be preceded by piloting in order to test novel approaches and methodologies. Such piloting enables policy-makers to take lessons learnt on board before scaling up implementation programmes on a regional or national scale.

Further, even the best designed land policy implementation processes will barely get off the ground unless sufficient financial, technical, logistical and human resources have been secured. Caution must be taken to avoid donor-driven processes since these sometimes attract only short to medium term funding. Enduring land policy reforms must therefore be cost effective and financially self-sustaining. Consequently African governments would do well to develop land service delivery systems that are affordable for the majority of the population.

5.3.4 Mobilization of political commitment

The third step is to ensure a high level of political commitment by the governing elites. The importance of political commitment cannot be over-emphasized. Many

policy components are bound to be unpopular with and therefore resisted by some segments of the population. This will be the case with any components calling for widespread re-distribution of land or the conversion of absolute land rights to systems which restore radical title to the state as was the case with the agrarian programmes carried out in Egypt in the 1950s and more recently in Ethiopia, Zimbabwe, and the former Portuguese colonies. Such resistance can easily frustrate the successful delivery of services intended for vulnerable groups in society. Further, reform packages contained in land policies often prove to be onerous and therefore require diversion of resources from other social and economic programmes.

The nature and extent of political commitment will understandably vary from one country to another. In certain situations such commitment may take the form of reattribution of the land reform portfolio to the most powerful offices in the land such as the Presidency. More often though, this commitment entails the establishment of dedicated land reform ministries or autonomous institutions whose exclusive function is the execution of programmes outlined in the policy. Only then will the goals of the national land policy remain part of the development agenda of the state.

5.3.5 Continuous public engagement through decentralised structures

The fourth step in effective land policy implantation is to maintain continuous public ownership and acceptance of the main elements of the policy. Without effective engagement of primary stakeholders at all stages in the implementation process leadership *per se* will not guarantee the delivery of outcomes contemplated in the policy. It is important that stakeholder engagement continues beyond completion of the policy development stage. Experience has shown that the implementation of land policies will move much faster where such engagement is organized in terms of decentralized structures that are fully controlled by those targeted in land policies. The participation of women, who remain the primary users of land in rural Africa, remains critical in this regard. Consequently, implementation processes should strike a balance between the roles

of relevant central, regional and local entities, institutions and groups in order to ensure that public engagement in land services delivery remains effective.

Placing decision-making powers at the local level is arguably the most efficient way to secure land rights of individual households and communities, even though some form of nationwide monitoring and review may be required. In this regard, land policy implementation processes should aim to ensure that public sector land institutions work in collaboration with local structures in order to bring services closer to the people and that they build on local innovations by informal and indigenous authorities as is often the case in regard to local land parcel demarcations and documentation systems and dispute settlement procedures, many of which are time-tested and have served the people well in the absence of intervention by the state.

5.3.6 Legislating land policy components

The fifth step is to identify those components of the policy which must be legislated and the preparation of instruments and development of structures and procedures for the management of those components. In most cases the components requiring legislation and the design of new institutional structures will be contained in the policy document itself. It is reasonable to expect nonetheless that new laws will need to be enacted, existing ones revised or amended and institutions designed or re-designed before many aspects of a new policy can be operationalised. It is advisable to take these steps as part of the preparatory stages of the implementation program. What is important however, is to avoid unnecessary proliferation of legislative and institutional structures as has happened in a number of countries in East and Southern Africa. Apart from the fact that such proliferation adds to complexity, more often than not, it increases the costs of the implementation processes.

A number of countries may feel the need to proceed by way of enactment of interim measures as was done in post-apartheid South Africa or is in process in Southern Sudan or other countries emerging from protracted conflicts. Such measures must, however, give way to more permanent legislative and institutional

arrangements if long term sustainability of land policy programmes is to be secured. An emerging practice is to ensure that such arrangements are fully anchored in the relevant country's Constitution (whether interim or final).

5.3.7 Domesticating relevant regional and international commitments

Where policy prescriptions touch on issues that require regional convergence or the domestication of international obligations, those dimensions should be factored into the processes of legislating and institutional design. Domestic enforcement of international and regional commitments will require that the management of resources otherwise controlled by one member state takes into account the needs of nationals of other member states. Land policy development and implementation is one critical area in which domestic legislation and institutions must provide avenues to facilitate the convergence of such interests and needs. Efforts to develop a common land resource agenda among SADCC member states is an important initiative in this direction.

5.3.8 Responding to new policy challenges

Finally, when considering the steps necessary for the effective implementation of land policies, African governments are advised to appreciate that however technically sound or meticulously implemented their various land policies are these cannot resolve all of Africa's problems for all time. Fresh pressures both internal and external will continue to impact on the land sector after current implementation programmes and processes are completed. Such pressures are likely to require radically new policy options, management regimes or technical solutions. It is important, therefore, that governments should put in place realistic time-frames for the review, revision or even replacement of current policies. Such reviews should be stakeholder driven, informed by the most up-to-date information on the performance of the land sector as well as by lessons learnt from similar experiences elsewhere.

5.4 Assessing the Impact of Land Policy Implementation Processes

Once the steps outlined in this Chapter are taken, there will always be need to monitor and evaluate the impacts of the various components of land policy. This

will require the establishment and institutionalization of mechanisms that will enable policy-makers and all stakeholders in the land sector to assess and deal with any such issues including those arising from processes which precede land policy implementation. The next chapter provides a set of guidelines which African countries may wish to use for these purposes.

6 Tracking Progress in Land Policy Development and Implementation

6.1 The Development of Tracking Systems

6.1.1 The scope and value of tracking

Effective tracking of land policy development and implementation is a complex though important process for African governments and their development partners. Its major objective is to enable governments perform a number of functions, namely (i) make timely re-adjustments to policy processes; (ii) take appropriate measures to ensure the effectiveness and efficiency of land policies; (iii) learn from past successes and failures; (iv) disseminate local good practices for use at the national level; (v) improve the quality of knowledge and building capacities for further monitoring and evaluation; (vi) secure and consolidate the participation and commitment of all stakeholders and development partners; and (vii) enable governments to manage emerging issues and other incidental developments in the land sector in an organic and systematic way. The regional consultations conducted during the process of developing this *Framework and Guidelines*, suggest that to date there have been few significant national experiences on the continent, with respect to the efficient and systematic tracking of progress in land policy development and implementation.

6.1.2 Designing systems/mechanisms for tracking

Nonetheless there are, in Africa, tracking mechanisms in other fields which can be supportive of land policy development and implementation. For instance, there are land observatories in existence in a number of African countries including Chad which can be adapted to this purpose. Other methods include the use of objective tools or indicators to track the performance of various components of the land sector. In addition, a number of agencies including UNEP, UN-Habitat and the Norwegian Survey and Mapping Organization, have developed useful tools which can be adapted to this purpose. A similar mechanism has also been established to track development in the Sahel region. Finally, UNECA and other partners are also developing benchmarks and indicators for tracking progress in land reform in Africa.

6.1.3 The need for adequate data

If it is to be effective any system for tracking progress in land policy development and implementation must be fed with appropriate and relevant information. In this regard it is very important to characterize the baseline which is the starting point of the tracking process. Consequently the issue of appropriate data collection/processing tools must be addressed as early as possible. A tracking system which is regularly fed with relevant data will deliver the pertinent information required to steer the whole land policy development and implementation processes.

6.1.4 Building partnership for tracking

Monitoring and assessing the effects of land policy on livelihoods, economic growth and sustainable use of natural resources require the active collaboration of different institutions, with each playing a specific role. At country level, depending on the institutional settings, other ministries (such as those in charge of physical planning, agriculture, forests, urban development and scientific research) can, apart from the Ministry in charge of land, make significant contributions towards the tracking process. In addition national statistics departments, as well as Universities, CSOs and Centres of Excellence could be involved in the collection and processing of land policy information.

At the regional and continental levels, there is need to devise and implement tools and mechanisms that would facilitate the sharing of experiences in land-related participatory monitoring and evaluation (PME) systems. Such tools and mechanisms should be built on evidence provided by observatories specializing on land policy issues. **Networking** is thus critical if these efforts are to be sustained.

Another useful tool is to collect and process geospatial data on land issues and transform them into thematic maps. The value of this particular tool is that it provides visual opportunity for updating land information as frequently as possible.

6.2 Challenges Related to Tracking

6.2.1 The problem of methodology

The main challenge to the tracking of land policy development and implementation relates to methodology. Five elements of this are examined here.

6.2.2 Stakeholder agreement on what should be tracked

The first and starting point is the need for a clear and common understanding amongst all stakeholders, of the major elements of policy that should be tracked. Among these are: (i) effective use of resources, (ii) the extent of organized consultative and other participatory processes, (iii) effective institutional capacities, (iv) equality of access to decision-making by all stakeholders, particularly women, (v) the rate of delivery of outputs, (vi) the adequacy of outcomes and (vii) the achievement of desired impacts.

6.2.3 Defining the parameters that should be tracked

The second element is the need for a clear and precise definition of the parameters that should be tracked. This involves identifying at a very early stage, a number of crucial questions regarding policy development and implementation for which the government (and other involved stakeholders) need clear answers. Comprehensive identification of such crucial questions should form the basis for information gathering and data collection.

6.2.4 Defining participatory and measurable indicators

The third element is the design of measurable indicators which can be used to gauge progress or lack thereof. For the development of these indicators to be participatory, their initial design as well as conclusions and findings drawn from their application should be disseminated and feedback obtained from all stakeholders. Such feedback should subsequently be used to improve the indicators.

6.2.5 The need for external backstopping

When measuring the progress achieved, in policy development and implementation, it is important to anticipate any resistance which may be encountered from internal stakeholders. The fourth element therefore is the need to combine internal tracking mechanisms with independent or external systems.

That can be done through engagement of regional or internationally established tracking systems.

6.2.6 Effective capacity building programmes

The fifth element is to build capacity for tracking. This is critical for the sustainability of tracking systems. This will require not only financial means but also technical assistance, at least in the earlier stages. The specific capacity building needs for PME should however, be clearly expressed. Given the fact that decentralization is being gradually implemented in Africa, it is important to extend capacity building programs to local levels.

6.3 Development and Application of Tracking Principles

6.3.1 Tracking principles

At least seven main principles should be considered in the development of effective tracking mechanism for land policy development and implementation. The first principle is to assess the extent to which the policy development or implementation process conforms to initial designs. The second principle is to match land policy objectives with the expectations of beneficiaries as well as with the main requirements for sustainable development. This principle should guide tracking right from the development stage of a given land policy to its implementation.

The third principle is to assess the extent to which the objectives of the land policy are achieved (for example objectives related to tenure security, equitable access to land, and reduction of conflicts...). This principle measures the gap between the objectives and the result obtained, and also seeks to give coherent explanation to the observed differences especially in regard to implementation.

The fourth principle is to measure the effectiveness of the use of resources. This assesses the extent to which the resources mobilized for the development and implementation of the land policy have been rationally used in order to achieve satisfactory results with minimal inputs.

The fifth principle is to assess the sustainability of the land policy. This aims at verifying whether benefits derived from the implementation of land policy are sustained and whether they can support further land reforms.

The sixth principle is to measure direct and indirect (whether positive or negative) effects of the land policy on beneficiaries as well as on natural resources.

And the seventh and final principle in the development of effective tracking systems is to determine the overall coherence or consistency of land policy. This involves three main elements, namely (i) internal consistency i.e. the compatibility of the key components of the land policy to each other (customary rights/statutory rights, conservation purposes/economic objectives); (ii) cross-sector consistency i.e. compatibility with and conformity among the key sectors involved in land policy (forest, fisheries, agriculture, pastoral activities, mining, urban development); and inter-regional consistency, i.e. whether there is convergence between national land policies and synergy with regional developments and policies.

6.3.2 Criteria for application of tracking principles

Application of tracking principles should conform to at least five criteria. First, the tracking process should be fully participatory. A sound tracking mechanism should be based on clear issues, questions, benchmarks, targets and indicators, developed through a systematic and participatory process. All relevant stakeholders should be involved from the initial stage of the process. Every effort should be made to achieve this even if the government is responsible for leading the process. Second, an effective tracking mechanism must be run on the basis of transparency, and good governance. Besides it should be iterative, and systematic with adequate mechanisms for communication and feedbacks. Third, proper tracking indicators should be adaptable to time, space and geographical specificities. Fourth, realistic benchmarks, including datelines, must be defined after a consultative process. Fifth and finally, it is important to set relevant frequencies for different components of the tracking system. For example inputs and impacts indicators cannot be measured within the same timeframe. While input indicators can be measured annually, budgetary constraints permitting the

periodicity of assessment of impacts would depend on available information from research and similar sources. In particular, assessment of changes arising from land policy implementation, such as its effects on livelihoods, economic activities and sustainable natural resource management, would require much more time. Indeed such assessments are often long-term processes which require additional investments.

6.4 The Need for Feedback

Given its iterative dimension, a good system for tracking land policy development and implementation must have solid links with decision making processes at various levels. This must appear clearly in the PME conceptual model. Experiences from other initiatives indicate that short of regular and systematic feedback on the successes, failures and the institutional bottlenecks, no effective political remedy can be applied to re-adjust the whole land policy system. Feedbacks should systematically be documented and disseminated to all stakeholders. For large groups, seminars and workshops are adequate means of communication while reports with precise recommendations are preferable for decision makers. Inter-sectoral round tables could be also used to share feedback.

7 Overall Conclusion

Sustainable growth and development in Africa as well the continent's contribution to the world economy in the 21st century will continue to depend largely on the manner in which land and land-related resources are secured, used and managed. This will require that these issues be addressed through comprehensive people-driven land

policies and reforms which confer full political, social, economic and environmental benefits to the majority of the African people. Although considerable progress in this direction is already being made throughout Africa, a great deal more still needs to be done. This calls for both commitment from individual member states and co-operation at the regional and continental levels.

The *Framework and Guidelines* set out in this document seeks to provide a set of iterative processes which urge that countries should first identify the contextual challenges facing their specific national land and associated sectors and economies before policies and programmes of reform can be developed and implemented. Central to those processes is the need for a fully gendered, informed and participatory mobilization and continuous engagement of all stakeholders in the land and related sectors at all stages of policy development, implementation and review. An important dividend, the *Framework and Guidelines* argue, is not simply the sustainable stewardship and utilization of Africa's primary development resource, but the deepening and consolidation of peace, security and democracy. The African Union expects that member countries which are in the course of or are contemplating the initiation, review, revision or comprehensive development and implementation of all or part of policies designed to ensure that their land systems are fully integrated into national development processes, will find them a useful guide.

Addis Ababa

Ethiopia, 2009