



LAND POLICY IN AFRICA:  
A FRAMEWORK TO STRENGTHEN LAND RIGHTS, ENHANCE  
PRODUCTIVITY AND SECURE LIVELIHOODS

*Draft*

**FRAMEWORK AND GUIDELINES  
ON LAND POLICY IN AFRICA**

**Revised Version**

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# 1 Foreword **(TO BE SUPPLIED)**

## **2 Background**

### **2.1 Justification**

The centrality of land to survival and sustainable development invariably results in a multiplicity of sector-driven policies and laws relating to land, its management and use. In this regard, a guiding land policy which rationalises, harmonises and clarifies the otherwise uncoordinated approaches and complex interactions between these sector-driven laws and policies, is of critical importance.

#### **2.1.1 Land, the economy and society**

In view of the importance of land to social and economic development as well as its role in ensuring or preserving peace and security, a growing number of African Union (AU) 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 not just in the drivers that compel States to embark on such reforms, but also in the degrees of comprehensiveness, the capacities for launching, planning and implementing reforms and, consequently, the extent to which these can succeed. To date, these reforms have proceeded in the absence of any articulated continental framework to guide national consensus on the vision behind them. So far, information, experiences and best practice have been shared only to a limited extent across member States. This situation provides the rationale for a pan-African framework to help member States undertake and harness land policy reforms in pursuit of the above-mentioned development objectives.

The Constitutive Act of the African Union emphasizes the sovereignty and the sovereign equality of member States<sup>1</sup>. All member States have a sovereign right to decide their own policies. Accordingly, the purpose of this framework is neither to develop a normative framework intended to

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<sup>1</sup> The Constitutive Act of the African Union, 2000

be binding for all member States, nor to draft a model land policy for them. In addition, it is not the objective of this framework to instruct member States on how to formulate policy. Nevertheless, some of the principles articulated in this framework may be significant in informing land policy processes and the content of land policy in African States.

### **2.1.2 The purpose of the framework**

The purpose of this framework is, therefore:

- a) To provide *a basis for commitment* by AU member States to the formulation and implementation of sound land policies in order to achieve sustainable human development, which includes ensuring social stability and economic growth, alleviating poverty and protecting natural resources from irrational use and pollution.
- b) To *promote consensus* around shared principles as the basis for securing property rights for all land users, enhancing agricultural productivity and sustaining livelihoods.
- c) To provide the *basis for popular participation* in land policy formulation and implementation, in order to improve the governance of land resources.
- d) To provide *guidelines for best practice* in land policy reform, along with benchmarks for the performance of land institutions, which member States can adopt in keeping with their respective domestic conditions.
- e) To provide the basis for *engaging development partners* for the purposes of mobilising resources in favour of building capacities for transformative land policy reforms.
- f) To provide a policy framework which can *address emerging issues and anticipate future trends* in connection with land resources.
- g) To provide the basis for more coherent *partnerships* between governments, the citizenry and development partners in land policy formulation and implementation on the continent,

## 2.2 Developing the framework

### 2.2.1 The early stages of the process

In 2006, the African Union Commission (AUC), the UN Economic Commission for Africa (UNECA) and the African Development Bank (AfDB) jointly launched the development of 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 formulation and implementation, the joint project was conducted in close collaboration with Africa's regional economic communities (RECs). African ownership of the process and of the expected end-product was secured through mobilization of African expertise, including government officials and other, non-governmental stakeholders.

### 2.2.2 The extent of the consultations

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), the African private sector, Centres of Excellence and development partners. The consultative workshop reached consensus around five elements and thematic issues that would characterize the framework, namely: (i) the features of a vision and guiding principles for the framework; (ii) the actions and sequential activities of a roadmap, as needed to develop a land policy framework; (iii) the roles of stakeholders and partners; and (iv) resource mobilization. The workshop produced a *background document* summarizing the main land issues in Africa; this document was to be used as the basis for developing a skeleton framework for land policy and land reform in Africa.

The second step of the process took place at regional level with the RECs playing a lead role. As could be expected, the land policy issues they raised highlighted regional specificities. The RECs began with regional assessments, which highlighted existing initiatives and lessons that would enrich the framework. From these assessments they derived a number of *Regional Background Papers*. In the next (third) steps, the assessments were followed by **Regional Consultative Workshops** hosted by the AU, UNECA and AfDB. The workshops in Southern, East, West, Central and North Africa were held between August 2007 and December 2008. Using the original background document and the regional assessments as the basis for discussion, the consultations in each region applied regional specificities, initiatives and lessons to the skeleton framework resulting from the 2006 consultative workshop, thereby enriching the framework. On top of a number of challenges, the regional consultations identified knowledge, institutional and resource gaps as well as ongoing initiatives, the objective being to help map out strategies for capacity-building and lesson-sharing that would support implementation of the framework. The major outcome of the regional consultations was an *enriched draft of the continental framework*. In addition and as mentioned above, *regional background documents* were also developed, outlining the main elements and processes needed for medium- and long-term implementation of the framework.

### **2.2.3 The meetings of African experts and ministers**

An **African Experts Meeting**, bringing together major experts from land-related government departments from all AU member States was the fourth step in the development of this framework. At that meeting, the draft framework was subjected to an extensive review and discussion. The major 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 recommendations for implementation of the framework. Both documents were sent to the ministerial meeting, which was the fifth step in the process.

At their own meeting, **the African ministers in charge of land-related affairs** reviewed and endorsed the *Expert's Report and Recommendations on the Land Policy Framework*. This propelled the framework onto the policy-making processes of the AU Summit for consideration and adoption.

#### **2.2.4 The Summit of Heads of States and Governments**

Following scrutiny by **the Permanent Representatives' Council (PRC)**, the **Executive Council (EC)** of the AU Assembly prepared a draft Declaration for consideration, review and endorsement by **the Assembly of African Heads of State and Government**. *The Declaration* (complete with resolutions and decisions on implementation and follow-up) was endorsed by African Heads of States and Government at an AU Summit in July 2009.

### **2.3 The structure of the Framework and Guidelines**

The framework and guidelines which follow are presented in five interrelated parts. Following the two introductory sections, Part 3 describes the background behind the nature and characteristics of the land question in Africa, discussing why the land sector has not played its proper role in the development process. That role is elaborated on in Part 4. Part 5 outlines how African countries could best develop comprehensive policies enabling the land sector to perform its role to the full. Part 6 analyses the difficulties likely to be met, and the conditions required for effective implementation of such policies. Finally, Part 7 discusses how African countries could track progress as they develop and implement land policy reforms.

### **3 The Land Question in Context**

#### **3.1 Conceptualising the land question**

The land question facing Africa has its origins in a number of socio-political structures and arrangements. In many countries, these have been shaped by the different forms of colonization experienced, including the modalities of colonial rule, the degree of land expropriation by settlers, and the nature of the land laws and land management systems that were introduced by colonial governments. Since independence, ongoing changes in the various political, economic, social and cultural systems and ecological conditions have introduced new dimensions to the land question – even though in many instances, colonial laws and systems remain influential, whether by default or through active preservation.

In addition to historical factors, more contemporary political processes of social organization and mobilization (including those derived from class, gender, religion, culture, ethnicity, nationality and generational gaps) now predominate when it comes to shaping access to land, or its control and uses. This results in a complex and diverse basis for land rights and land use. Still, and although national land policies and land reforms vary in relation to those different backgrounds, some common experiences and challenges have emerged which suggest some similar policy responses. Contemporary land policy in Africa must, therefore, adequately respond to these contextual issues.

#### **3.2 The geographical and ecological backgrounds**

One of the main aspects of the land question in Africa is that not much of her land is arable or potentially arable, in spite of the population's extensive dependence on farming. Large parts of the continent are deserts or semi-arid, and/or facing ecological degradation. In many instances, unequal distribution of land has relegated a growing population of small farmers onto marginal areas, leading to increasing pressure on land as well as to

resource degradation (including deforestation). In addition, low levels of fertilizer and manure uses result in accelerating soil exhaustion. Widespread 'overgrazing', alongside more frequent droughts and increasing flooding, also undermines effective land utilization.

### **3.3 The political background**

#### **3.3.1 The colonial experience**

Africa comprises five regions and 52 countries, each with diverse political histories of colonial rule and indigenous political systems, along with specific customary structures and experiences with democracy. The majority of these countries were colonized by Britain (through direct or indirect rule), others by France (through assimilation strategies), Belgium, Portugal and Spain. German rule in Cameroon, Tanzania and Namibia was short-lived, while Apartheid South Africa (a country first colonized in the 15th century by Dutch settlers and later by the British) also governed Namibia for some time. Colonial diversity introduced a variety of European laws and political, administrative and economic management systems, which were grafted onto a diverse range of indigenous economic and cultural practices.

European settlers gained control over land through agreements, conquest or appropriation. In some cases, laws were promulgated for the purposes of gaining control of land. Direct control 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), in Kenya (East Africa), the Ivory Coast (West Africa) and, to a lesser extent, in the Democratic Republic of Congo (DRC) and Cameroon (Central Africa). The subsequent regulation of such settler-acquired lands was effected through the introduction of dualistic land tenure and land administration systems.

### 3.3.2 Post-colonial reforms

Independence from colonial rule on the continent was staggered over time, from the late 1950s through to the 1990s, with Zimbabwe, Namibia and South Africa coming last. This is why 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), have been staggered as well.

Land reforms – and especially those looking to redress colonial-based unequal ownership and to rationalize discriminatory land use policies and insecure land tenure systems – begun in the 1950s and spread more widely from the 1960s onwards. Such reforms included 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 (Botswana, Swaziland, Lesotho and Malawi), land expropriation for redistribution was used sparingly in the smaller areas of white settlement. Land acquisition through market-based compensation (with some financial support from the former colonial ruler) was used in the 1960s in Kenya, Swaziland and Botswana, and in Zimbabwe during the 1980s. Privatization of customary lands was also attempted in many African countries, but with limited success in the face of controversy and conflict as has been apparent in Zimbabwe, Namibia and South Africa. These reforms, however, have not adequately restructured existing dualistic land holding systems, nor have they improved government support to the development of marginalized customary land tenure systems.

Liberal political reforms □ and especially the demise of military and authoritarian rule and the return of multiparty politics in Africa, leading to changes in the relationship between government and society □ have in turn created opportunities for fresh approaches to land policy

development. More specifically, the overbearing role of government as owner and regulator of land resources is being increasingly challenged, as land rights communities, non-State regulatory and administrative structures and civil society organizations (CSOs) join efforts with other public interest groups to demand involvement in land policy development. In addition, the persistence of armed conflict over the last two decades resulted in large numbers of internally displaced persons (IDPs) and refugees in at least 20 countries (including Angola, the DRC, the Central African Republic, Congo [Brazzaville], Sierra Leone, Liberia, the Ivory Coast, Sudan, Somalia and Uganda). This has raised complex issues about access to land, resettlement and land use, which together also call for novel approaches to policy development.

Thus, apart from redressing historical inequities and reducing social disparities, land reform has become an essential instrument in the quest for political stability, peace and economic development in Africa.

### **3.4 The economic background**

#### **3.4.1 Land and the agricultural economy**

The importance of land in Africa's development is underlined by the fact that approximately 60 per cent of the population derive their livelihoods and incomes from farming, livestock production and related activities. Indeed, the contribution of the agricultural sector to GDP in most sub-Saharan countries exceeds 25 per cent, reaching as high as over 40 per cent in countries such as the Central African Republic, the DRC, Ethiopia, Guinea Bissau, Rwanda, Sierra Leone, Tanzania and Togo. In addition, livestock production is a significant activity in most of the Saharan countries and in the Horn of Africa.

The central role of land in agriculture and livestock production notwithstanding, four major constraints requiring radical restructuring

remain to this day. To start with, agricultural productivity of both land and labour remains relatively poor, and as a result many countries in Africa depend on imports for food security. Second, the degree of mechanization (and particularly with regard to irrigation networks) is also below the continent's potential. Third, the persistence of colonial policies that discriminated against the vast majority of African farmers inhibits the growth of the small farm sector in terms of investment and infrastructure. Finally, the economic policies of the 1980s and 1990s – including macro-economic stabilization policies, externally-oriented trade liberalisation and the deregulation of domestic markets – constrained 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.

#### **3.4.2 Land and other economic sectors**

Beyond agriculture, land remains a significant factor in Africa's economy through its contribution to other sectors. In countries such as South Africa, Mauritius and Kenya, national economies have diversified into manufacturing, tourism and other services, while others are increasingly dependent on oil and mineral revenues. In some other countries, nature conservancies and woodlands claim close to 30 per cent of the demand for land.

Further, note should be taken of the importance of sustainable land development in cities, and in particular capital cities which are often the main drivers of national economies. It is important, therefore, for policy development to address large-scale inequalities within urban areas, which are often reflected in skewed distribution of land and the existence of vast informal settlements which sometimes are associated with conflict and social instability. These often have a negative impact on the national

economy. Thus, the importance of land for basic social reproduction can be expected to persist.

### **3.5 The social and cultural backgrounds**

#### **3.5.1 Land and spirituality**

The vast majority of societies in Africa regard land not simply as an economic or environmental asset, but also as a social and cultural 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 extent 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 by the populations.

#### **3.5.2 Land and gender relations**

For all the reverence which surrounds land and land relations in Africa, though, it must be recognized that the patriarchal system that dominates social organization has tended to discriminate against women when it comes to ownership and control of land resources. This has been exacerbated by imported land law, which has tended to reinforce patriarchy by conferring title and inheritance rights upon male family members only, on the theory that women, especially married women, can only access land through husbands or male offspring. If law and policy are to redress gender imbalances in land holding and use, it is necessary to deconstruct, reconstruct and re-conceptualise existing rules of land property under both customary and statutory law, and to do so in ways that strengthen women's access to and control of land. This is all the more

important as women remain the primary users of agricultural land in most African communities.

### **3.5.3 Other forms of marginalisation**

Beyond frequently acknowledged inequalities due to race, class and gender, the marginalisation of some ethnic groups with respect to access to adequate land remains a perpetual source of conflict. Marginalisation of certain categories of indigenous people – such as the San (or ‘bush men’) in Botswana, the Herero in Namibia, the Bakola, Bagyeli and Batwa (or ‘Pygmies’) in Central Africa, and the Ogiek in Kenya – has become contentious. Land policy reform must also address these concerns.

## **3.6 The demographic background**

### **3.6.1 Population growth and migrations**

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 West Africa, for instance, as many as 50 to 75 per cent of the population live on about 25 per cent of the national land along the coastal zones, resulting in much higher densities in these areas.

At current (annual) urban population growth rates, which are in excess of 3.5 in many countries, this trend is likely to exert severe pressure on urban and peri-urban infrastructure and services.

### **3.6.2 Rapid urbanization**

Urbanization is on the increase in African countries. In South Africa, Zambia, Mauritius, Gabon and Egypt, the proportion of urban to total population today ranges between 40 and 52 per cent, while elsewhere it remains below 20 per cent. This situation emphasizes the growing importance of land in the context of urban settlements. A significant proportion of poor urban residents currently reside in ‘slum’ or informal

settlements, since national capacities to regulate settlements and to supply land are so poor. The phenomenon of primate cities in most countries means that increased urban population densities go hand in hand with inadequate facilities and services.

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

### **3.7 Emerging issues**

#### **3.7.1 The contextual framework**

A number of changes in the global environment 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, to demand for energy supplies and to rapid increases 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 – including uncompensated loss of land rights by the poor – are properly managed if not avoided altogether.

#### **3.7.2 Global climate change**

Global warming and the resulting climate change in Africa is already affecting land use systems, although these effects have not yet been adequately quantified. Nevertheless, adverse effects such as reduced availability or scarcity of water, flooding and saline intrusion as well as

higher temperatures are now known to reduce soil productivity. In addition, biodiversity loss and desertification may accelerate poverty, as a consequence of more frequent droughts. Apart from reducing the direct impacts of climate change on land loss and agricultural yields, land policy reform must also include the design and implementation of mitigation and adaptation measures.

For coastal countries, evidence 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 inflows of ‘climate’ refugees in contiguous urban areas. Therefore, capacities must be mobilized if land policy-making is to take into account the longer-term implications of climate change.

### **3.7.3 Food supplies, prices and changing land uses**

The recent surges in world food prices and food supply bottlenecks have tended to affect Africa the most, given her current food production deficits and increasing dependence on imports and food aid. Price rises reflect complex interactions between two major factors: (i) the diversion of land resources and farm inputs towards the production of food grains and oil seed for agro-fuel stock feed in North America and Europe; and (ii) the failure of African countries to pursue policies that promote agricultural productivity, along with broader persistent inequities in the global trade system. Land policies will have to address these issues.

### **3.7.4 The new scramble for Africa’s land resources**

The first ‘scramble for Africa’ involved Belgium, France, Britain and Italy carving out sections of the continent and sharing the spoils. Since then, these nations have seen their political strength shrink in comparison to the United States and China. What has not changed, however, is the importance of Africa to Western economies by virtue of her rich

endowment in natural resources. In recent times, the significance of bio-fuels, minerals and oil has gained prominence. Increased oil production from recent discoveries in African countries has taken on a new strategic value, in the light of unpredictable future oil supplies from the Middle East and of the USA's apparently insatiable appetite for oil, together with China's colossal requirements in energy and raw materials. Against this background, the accelerated exploitation of resources, together with the establishment of manufacturing and processing infrastructures, have implications for land resources which have led to the current 'new scramble' for African land.

While this new scramble is often discussed in relation to valuable mineral riches, the concept is broader in scope, as demonstrated in relation to demand for land for a range of investments such as timber, tourism, commercial developments, etc. The question to be asked is the extent to which these resource requirements can be met while observing sustainability guidelines and without marginalizing the land rights of local communities. Systems of land governance rooted in sustainability will be critical in this regard.

### **3.8 Regional co-operation and integration**

Increasingly, African countries are embarking upon regional co-operation and integration initiatives under the auspices of various pan-African and sub-regional organizations. An increasing number of cross-border developments point to the need for co-operation over land issues, including migration, pastoral movements, refugees, and cross-border ecological stresses (land degradation, desertification, deforestation, and water basin degradation). For instance, RECs currently have a number of agreements in place on the management of shared water and forest resources and desertification. Civil society organizations are also mobilizing in a bid to influence land and resource management policies across national boundaries. However, ongoing regional co-operation and

integration have not resulted in the desired degree of convergence in policy-making frameworks, processes or systems.

### **3.9 Implications for decision-making**

The contextual issues set out above are important for a number of reasons. First, they enable governments to identify the critical questions and challenges which must be tackled, and the opportunities which must be taken advantage of, if the land sector is to play its proper role in Africa's development process. This, clearly, must be the starting point in any meaningful policy development and reform. Second, the above-mentioned issues point to the fact that although national strategies and solutions 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. Thirdly, the above-mentioned issues provide a basis for realistic policy development and reform in the land sector. This is elaborated further in the next following sections.

## **4. Land in the National Development Process**

### **4.1 Recognizing the centrality of land in development**

Although land is central to sustainable development, in Africa development initiatives do not always take the fullest possible account of this reality. However, the African Union recognizes that land issues are highly relevant to the continent's economic development, including poverty reduction and enhanced opportunities for women, governance, the environment, agriculture, and conflict resolution.

Indeed, some African governments recently begun to make significant changes in their own institutional structures, in a bid to enable more systematic consideration of land, and the environment at large, when they make decisions on economic, social, fiscal, energy, agricultural,

transportation, trade and other policies. New forms of dialogue are also developing across the continent for more synergies between stakeholders – including national and local government, industry, science, civil society organizations and the public – in the development of effective approaches to sustainable development. More specifically, African governments will need to take appropriate measures to ensure that land plays its proper role in the development process.

#### **4.1.1 Demonstrating commitment to land policy development**

The commitment of the African Union to the eradication of poverty is evidenced in its initiatives, including NEPAD and its long-term objectives which also include placing African countries, both individually and collectively, on a path to sustainable growth and development, and halting the marginalisation of Africa in the globalisation process. Under the African Union, the continent's leaders take joint responsibility for strengthening mechanisms for conflict prevention, management and resolution, and for promoting and protecting democracy and human rights. This calls for land policies which both support the prevention of conflicts and their prompt and effective resolution through mutually acceptable dispute-processing mechanisms. When acceptable to a broad stakeholder base, land policies also play a role in conflict prevention, as they inspire a higher degree of trust in the regulatory systems among communities competing for scarce land resources.

#### **4.1.2 Integrating land in 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 asset stewardship as they are about the consolidation of democracy. There is need to integrate land administration and management into systems of governance at all levels. Therefore, devolution of power or decentralisation of the delivery of land services to local land governance institutions is of the essence if

inefficiency and corruption are to be eliminated. This will require adjustments, if not even a fundamental reshaping, in economic and political decision-making processes.

Further, holistic approaches should be promoted instead of the tendency to pursue sector-specific paths or focus on policy development with little, if any, coordination or harmonisation with other sectors and cross-cutting policies, in particular in the natural resources management sector and poverty reduction programmes. This would ensure that all necessary linkages within, and contributions of land to, other development processes are accounted for.

#### **4.1.3 Acknowledging the legitimacy of indigenous land rights systems**

A major, continual challenge which evolving land policies have to face on the continent is the need to blend tradition and modernity in the regimes, structures and operations of land systems. In this respect, land policies should seek to democratize traditional structures and systems while building on, and improving, customary tenure arrangements. Land policy processes should recognize the legitimacy of customary land rights, as well as a role for local and community-based land administration/management institutions and structures, alongside those of the State. Land policy processes should also provide for the necessary interface between State and customary systems, particularly with regard to the following: (i) documentation of land rights; (ii) the empowerment of decentralized institutions in land rights administration; and (iii) the management of land as a resource at the local level. Colonial legacies tended to denigrate indigenous land rights systems and to suppress or sabotage their evolution, without regard for community land administration structures; today, these attitudes must give way to fresh and innovative policies, including the provision of statutory frameworks for the documentation and codification of informal systems.

#### **4.1.4 Strengthening land rights for women**

Throughout Africa, agricultural production and preservation of land resources are primarily the effective responsibility of women and children. It is still the case, however, that gender discrimination in access to land resources remains a serious problem, particularly in rural Africa. Better and more productive use of land requires that the land rights of women be strengthened through a variety of mechanisms, including enactment of legislation that puts women in a position to assert documented claims to land within or outside marriage. This should come hand in hand with equal rights to inherit land, co-ownership of registered land by spouses, and women's participation in land administration structures. If full enjoyment of land rights is to be secured, these measures must be part of an ideology that recognizes land rights as basic human rights.

### **4.2 Mainstreaming land in poverty reduction programmes**

#### **4.2.1 The persistence of poverty in Africa**

Poverty is evident in both urban and rural human settlements in Africa. Poverty refers to an inability to satisfy basic needs. Now, land can be instrumental in eradicating poverty. Securing land tenure, redistributing land and improving access to land resources can all contribute to poverty eradication. This will require a number of specific policy strategies.

#### **4.2.2 Enhancing access to land through tenure reform**

Provision of secure access to land through various forms of tenure will facilitate economic opportunities and livelihood security for all land users. Tenure reform will also improve access to land for vulnerable groups; in some cases it will also support programmes for land redistribution to the landless poor as well as improvements in land delivery, on top of tenure security for the urban poor. Which type(s) of tenure can best deliver these benefits will depend on the specific context and production systems in operation in each country.

### **4.2.3 Balancing pro-poor priorities with market orientation**

Many African countries perceive a degree of antagonism between the pursuit of pro-poor strategies for land development, on the one hand, and market-driven options on the other hand. Mainstreaming land issues in poverty reduction requires that these apparently inconsistent objectives be rationalized without exposing vulnerable groups in society to further marginalisation.

## **4.3 Agriculture as an engine of growth**

### **4.3.1 Creating an enabling environment for agriculture**

In most African countries, agriculture is the main source of livelihood for the majority of the population and a major contributor to economic growth. Land is important to all forms of agricultural production, such as cereals, horticultural products, raising livestock, fishing, hunting, etc. Land is also a major support not just to agricultural production, but also to the processing and the marketing of these products. All African countries have traditional systems for land management and administration. These systems and principles are not always homogenous, even within individual countries, and they can be either conducive or prejudicial to effective land management. A number of improvements in the land sector will be necessary to ensure that agriculture plays a central role in development.

### **4.3.2 Clarifying property rights in agriculture**

The variety of agricultural forms and participants in that sector requires that the property systems under which land is held and used be clarified. This is crucial not only for rural farmers, whose access to land is based on a variety of indigenous tenure systems, but also for commercial investors, whether foreign or local, 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 if productivity in agriculture is to improve. In addition, securing property

rights in agriculture has the potential to add to government revenues through taxation and increased agricultural exports.

#### **4.3.3 Promoting the development of land markets**

An important consequence of a clarification of property rights is the creation of an enabling environment for the transfer and exchange of those rights, either formally through documented transactions or informally through intra-family arrangements. Promoting the development of robust land markets offering various types of land rights (whether primary or secondary) will expand opportunities to acquire land resources for many agricultural users, whether these are engaged in large- or small-scale, formal or informal operations. 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.

#### **4.4 Managing alternative land uses**

##### **4.4.1 Land needs for alternative uses**

Beyond agriculture, land is a significant factor for many other uses that are playing an increasing role in the development of African economies. These uses include manufacturing, mining, energy, physical and service infrastructure, and tourism. These activities require large technological and human investments, which are often provided by foreign investors or international financing. If these businesses are to use land in a manner that is environmentally sustainable and cost-effective, government policies must be such as to guarantee net gains for African populations.

##### **4.4.2 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 in pre-urban 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. Besides, manufacturing is a stationary

source of air pollution, and typically discharges solid and liquid wastes that are hazardous to the environment. Urban land policy must address these issues if a proper balance is to be struck between investment in manufacturing and the requirements of basic human health and safety.

#### **4.4.3 Land needs for mining**

Africa is blessed with a wide range of mineral resources. Mining activities require land concessions for extraction. Many specialized multinational companies come to Africa in search for minerals. However, exploring these minerals has not been without problems, particularly in rural settlements. In several African countries, lack of expected direct benefits to local communities is causing tension between these and mining companies. Questions relating to compensation for land loss, resettlement of displaced communities, 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 any land policy reform.

#### **4.4.4 Land needs for energy development**

Energy development has become a significant economic activity in many African countries. This includes exploration and extraction of oil/gas and geo-thermal resources, the harnessing of hydrological and wind power, as well as bio-fuel production. These activities often require the relocation of human settlements to create buffer zones, resulting in significant loss of land to agricultural communities. These have raised serious concerns about the capacity of many countries to meet their food production requirements as well as the ecological trade-offs involved in the scramble by foreign investors for land for such activities.

#### **4.4.5 Land needs for physical and service infrastructure**

Development of rural and urban areas requires substantial investment in physical and service infrastructure. To achieve this, many African countries are engaged in systematic regional and local planning, including

zoning and sub-division control. This, in turn, will require some rationalization of land uses for efficient service delivery. Achieving these goals calls for large land purchases, human settlement planning, and the acquisition of way-leaves and other service easements in both rural and urban areas. These are issues which policy development must rationalize.

#### **4.4.6 Land needs for tourism**

Tourism is an important revenue earner for many African countries. However, expansion in this economic sector is complicated by the fact that the necessary facilities are often located in coastal and dry-land areas, which are already hosts to significant human settlements. In addition, tourism is a special industry, as it requires systematic land use planning and service infrastructure, pre-empting on any ecological or other forms of environmental damage or adverse social and cultural impacts. Today, many African countries are implementing the principles of sustainable tourism, including eco-tourism and community participation in wildlife management and revenue-sharing. These developments are expected to reduce land disputes between the industry and other social and economic users.

### **4.5 Protecting natural resources and ecosystems**

#### **4.5.1 Protecting forests and associated ecosystems**

Forests and associated ecosystems provide many African households with some sustenance. In addition, they play a significant role in combating systemic global environmental challenges, such as climate change. In recent times, these ecosystems have been subjected to destruction under various types of pressure, including population growth, farming 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 protecting forests and planning for their regeneration, including for the purposes of soil stabilization or tackling desertification.

#### **4.5.2 Protecting coastal ecosystems**

An issue which is closely related to urbanization is that of expanding human settlements in coastal zones. In these areas, where ecological systems are relatively more fragile, rapid urban growth enhances the risks of environmental disturbance, erosion and pollution. Demand for infrastructure combines with tourism to put these ecosystems under pressure. In some East African coastal areas, land is being reclaimed and coastal wetlands drained. In Seychelles, coastal sand dunes are now used for construction, and land is reclaimed from the sea with irreparable damage to the reefs and wetlands as well as marine and land eco-systems. Sound land policy must provide States with regulatory frameworks that can respond to human settlement needs without causing irreparable damage to the environment.

#### **4.5.3 Protecting pastoral ecosystems**

Human population densities in pastoral ecosystems remain relatively low compared with those (respectively medium and high) of agricultural areas and urban settlements. Still, pastoral ecosystems typically support vast amounts of livestock and wildlife, which make significant contributions to the economies of many countries. However, these ecosystems are under threat from several factors. These include 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 economic contribution of pastoral ecosystems, even if only as reservoirs for wildlife and biodiversity, is slowly receding. This is often exacerbated by outmoded stock management policies and environmental techniques. The protection of pastoral ecosystems will require innovative policies that address issues of tenure and communities' role in the management thereof, along with adequate settlement systems for cross-boundary disputes, and better technologies for resource use.

#### **4.5.4 Protecting water resources**

Africa's rivers, lakes, wetlands and other water bodies are a source of sustenance for large settlements as well as for 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 hydrological-meteorological cycle, rapid deforestation, 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 and industrial development. A comprehensive approach to land policy development must, therefore, include measures for the protection, development and conservation of water resources.

### **4.6 Developing effective land administration systems**

#### **4.6.1 The current state of land administration in Africa**

For land to play its proper role in national development in Africa, attention must, as a matter of urgency, focus on the current state of land administration systems. There are two aspects to this issue: (i) the state of land rights delivery, and (ii) the structures and institutions in place for land governance. Both aspects are in dire need of reform.

#### **4.6.2 Reform of land rights delivery systems**

Land rights delivery systems comprise those processes that are concerned with the demarcation, survey, registration or documentation and systematic tracking of land transactions. In many African countries, these systems are in disuse, opaque, largely immune to modernization, and expensive for ordinary land-users. They require not merely redesign, but also modernization, including computerized databases for faster and more efficient delivery.

#### **4.6.3 Reform of land governance institutions**

It is critical to foster good governance of land, natural resources and the processes of land use change. Land governance can be understood as ‘the process by which decisions are made regarding the access to, and use of, land, the manner in which those decisions are implemented, and the way that conflicting interests in land are reconciled.’ Good governance in land matters is of a technical, procedural and political nature. This is because rights over land cannot be separated from civil, political and human rights, and are dependent on political, administrative and professional readiness to ensure fair treatment and equal opportunities for all. In many African countries, control over land rights is a means of accumulating and dispensing political and economic power and privilege through patronage, nepotism and corruption. Addressing these issues is critical to improving governance, but it will require considerable commitment from policy-makers and practitioners. The role of the State is to manage land in the public interest. Its own performance as land owner and regulator is critical to governance. It is important, therefore, that those institutions responsible for land governance (including those with responsibility over land owned by the State) operate in a transparent, accountable and efficient manner. In addition, experience has shown that where such institutions are decentralized (facilitating devolution of decision-making power and authority to local communities and other stakeholders in general), land resources are likely to be more productively used and better preserved.

#### **4.6.4 Implications for land policy development**

In view of the above, effective land policy-making should recognize that land is a fundamental development resource, especially for the poor, and in a variety of rural and urban situations. Since land is an instrument for economic development, policy should balance the rights and interests of all users, ensuring the inclusion of all sections of society in the pursuit of the social, environmental and economic benefits to be derived from land.

Effective land policy processes can also enhance political stability and democratic institution-building.

## **5. The Process of Land Policy Development**

### **5.1 The need for a shared vision**

#### **5.1.1 An emerging consensus on land policy development**

The continental and regional consultations documented above have evolved an emerging consensus among African stakeholders regarding the major elements to factor in the development of land policy. This consensus can be summarized under the five following points: (i) comprehensive land policy development needs to be considered by all African nations 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, must be as inclusive and participatory as possible; (iii) national ownership of land policy development is critical for broad grassroots endorsement, more likely leading to successful implementation; (iv) a number of customary principles and emerging innovative local practices can inform sound national land policy development and implementation processes; and (v) sound land policies contribute to improved governance and environmental management, as well as to the consolidation of peace.

#### **5.1.2 The role of the African Union**

If the African Union is to assist member States as they address land issues that underpin the sustainable and inclusive development of the continent, then all stakeholders and development partners must have a shared understanding of the need for land policy as a major factor in national development. In its effort to articulate a common vision on land policy, this *Framework and Guidelines* seeks to ensure that the potential of land is fully realized in support of the continent's development agenda.

### **5.1.3 Statement of development goals**

AU member States are all striving to achieve the Millennium Development Goals (MDGs) through various programmes and practical policies. In addition, African States have subscribed to the principles and ideals of the NEPAD framework. These endeavours require governments to demonstrate commitment to three major achievements, as follows: (i) achieving greater economic growth through enhanced equity, and reducing poverty; (ii) promoting good governance and democracy; and (iii) reducing conflicts, enhancing political stability and consolidating peace. Land policies should contribute to the realisation of those development goals and commitments.

### **5.1.4 Statement of aspirations**

Equitable access to land, secure land rights, 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 economic development, on top of being part of the cultural heritage and social identity of African peoples. Land policies across the continent must reflect such aspirations.

### **5.1.5 Elements of a vision**

The vision behind the **AU Land Policy Framework and Guidelines** derives from the development goals and commitments of African nations, including the general aspirations of African people regarding land and the emerging consensus on land policy (as identified through the regional consultations conducted during the AU land policy consultation process).

### **5.1.6 Vision statement**

On the basis of the aspirations and development goals of Africa's peoples, as well as of consultations and partnerships with all stakeholders, African governments will seek to develop land policies in a manner that is inclusive and responsive to the needs of all land users □ policies which

contribute to political stability, conflict reduction, sustainable management of natural resources and orderly urban development; and which put all stakeholders on the path to higher economic growth and better quality of life.

## **5.2 The current status of land policy development in Africa**

### **5.2.1 The importance of land policy development**

That land policy development has already become a major item on 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 the fundamental problems underlying the sustainable development of land and related sectors.

### **5.2.2 An assessment of progress**

The inadequate performance of past land policies as described above is evidenced in a comprehensive review of the performance of the land sector over the two previous decades that has been completed in a large number of countries. These include Algeria, Egypt, Libya and Tunisia (North Africa); Benin, Ghana, Mali, Niger and Sierra Leone (West 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), Burkina Faso (Central Africa), Angola, Lesotho, Madagascar and Swaziland (Southern Africa), and Kenya and Uganda (East Africa) are currently undertaking comprehensive reviews 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 piecemeal reforms, or enacted land laws which embody 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

relevant policy concerns. What the vision statement set out above offers is a set of parameters, drawn from emerging best practice, within which the development of new, or revision of existing, land policies ought to occur.

### **5.3 Challenges to comprehensive land policy development**

#### **5.3.1 Lessons learnt**

An assessment of the processes used by those countries that have attempted comprehensive or systematic land sector reviews suggests that a number of challenges 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.

#### **5.3.2 Low levels of stakeholder and civil society involvement**

So far in Africa, stakeholder and civil society involvement in policy formulation has been thin on the ground. Despite community participation in some countries, the State has generally played the dominant role, 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 fully taken into consideration.

#### **5.3.3 Sectoral focus to policy development**

Policy development has tended to follow sectoral paths or focus, or tended to be sector-driven, with little if any co-ordination or harmonisation with other sectors and cross-cutting policies. This is particularly the case with the natural resources management and poverty reduction programmes. As a result, land policies have failed to provide broader-ranging prescriptions for the promotion of environmental protection and improvement of land and labour productivity.

#### **5.3.4 Failure to provide for adequate budgetary allocations**

African countries have failed to make provision for adequate budgetary allocations in order to meet the costs of land policy development and implementation (including capacity gap assessments 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; this in effect jeopardized both the ownership and the sustainability of the whole reform exercise, especially as donor funds are liable to be cut altogether, or to dwindle with donor fatigue, among other factors.

#### **5.3.5 Inadequate human and institutional capacities**

Many countries simply do not possess the capacities required to design and undertake policy development. This often means that what passes off as national policy is little more than the desktop products of bureaucracies or consultants assigned to produce position papers for land ministries or other government departments. Such exercises frequently produce documents which do not fully identify the fundamental land questions which policy development must deal with, or which make prescriptions that would not be acceptable to the general land-using public.

### **5.4 Appropriate strategies for land policy development**

#### **5.4.1 Clarifying roles in land policy development**

A notable feature of African land policies is that the State has always had an overriding interest in access, control and management of land, irrespective of the tenure categories under which land is held or owned. More often than not, national land policies are only a collection of *ad hoc* statements of what the State seeks to achieve at any particular time with respect to land.

A major challenge that evolving land policies continue to face on the continent is the need to blend tradition and modernity in the regimes,

structures and operations of land systems. Therefore, land policies should strive to democratize traditional structures and systems while building on, and improving, customary tenure arrangements. Land policy processes should recognize the legitimacy of customary land rights, providing a role for those local and community-based institutions and structures involved in land administration and management, alongside the State's own role. Land policy processes should also seek to provide for the necessary interface between State and customary systems, particularly regarding the extent to which policies promote the documentation of rights to land, as well as the empowerment of decentralized institutions in the administration of land rights and the management of land as a resource at the local level.

#### **5.4.2 Launching the policy development process**

The sequencing of activities and events along the path of land policy development has also varied across countries. To start off the policy development process, some looked to identify the major land-related issues and associated problems and opportunities on a national scale through consultative processes of varying degrees of intensity. Generally, this has been achieved through State-led processes, complemented by series of research papers and public forums where stakeholder views were solicited and collated. Some other countries have proceeded simply according to constitutional provisions as well as primary and subsidiary legislation, dealing with land-related issues and problems without any specific or coherent overall land policy. In this latter respect, land policy development has *followed*, rather than preceded, promulgation of land legislation.

It is important to remember, however, that despite the need to gain clarity on the main policy issues at the earlier stage of the process, detailed policy formulation and legislative as well as institutional reforms must take place through a phased and iterative process, rather than on a sequential, linear

model. The major stages must be set out in a roadmap for reform, with clear milestones to which the key stakeholders subscribe. The roadmap should avoid detailed prescriptions and timetables for institutional change, unless it is quite clear that these are feasible and that costs can be met.

#### **5.4.3 Public consultation on main policy features**

Public debate on the major features of land policy should precede comprehensive land reform. Typically, such debate may involve publication of a policy discussion paper, unless the proposed reform is based on the investigations of a Commission of Enquiry which in the first place should have consulted with the main stakeholder groups across the country. Any such commissions of enquiry and policy steering groups should be of an interdisciplinary and cross-sector nature; they should also feature strong civil society and independent expert advisory support, if dominance by land sector institutions and their vested interests is to be neutralised, as they are those whose roles and mandates may need to change. The policy paper should identify the major areas and options for reform.

#### **5.4.4 Stakeholder engagement**

Land policy must recognize the need, and adequately provide, for deep engagement with all stakeholder groups and individuals. Civil society organizations can play an important role, providing checks and balances on government decision-making during formulation and implementation of land policy. Because land issues involve political choices, broad public debate on the options at stake is essential. Drawing up new legislation is often not the first thing to be done. Rather, government must engage with various segments of society if it is to take in a wide range of interests and priorities. Taking time to consult effectively and to a flexible calendar is essential to confidence-building between government and the population. Political leadership and major statements are good ways of providing

assurances 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 the development of civil society entities and networks with knowledge and awareness of land issues on national, pan-African and global scales.

#### **5.4.5 Summary of ideal**

In an ideal world, the land policy development process consists of a number of steps, as shown in Box 2 / the box below.

#### **BOX 2: Sequencing the Policy Development Process**

1. Stakeholder consultation and identification of salient problems in the land sector;
2. Enactment of new laws and rationalisation of existing land-related legislation;
3. Appraisal of institutional and financing/budgetary options;
4. Rationalisation of institutional responsibilities for implementation;
5. Dissemination of information to the public, capacity-building and training in support of implementation.

#### **5.4.6 Building capacity for land policy development**

An important objective of land policy development and reform should be a comprehensive restructuring of the institutions involved in land administration; the objective here is decentralized, transparent, efficient and cost-effective delivery of land services, one which meets customer requirements and is financially self-sustaining. Institutional restructuring does not always entail deploying an entirely new institutional arrangement from scratch. Sometimes, design and implementation could simply bear on existing national, regional and local structures as part of a credible re-engineering process. Public or State sector land institutions should be re-engineered to address problems such as scattered and restricted access to records, obsolete operating procedures, overlapping, conflicting or unclear mandates, duplication of efforts or responsibilities, and waste of resources.

#### **5.4.7 Garnering financial and human resources**

More often than not, the development of land policies in Africa does not fully take in financial and economic cost appraisals, providing only for inadequate resource commitment and mobilization for the purposes of reform implementation. In addition, land policies have often been designed, promulgated and even launched without any genuine concern for the human resources and other logistical requirements needed to carry out the wide-ranging reforms that were proposed. Moreover, in some cases existing laws and implementation arrangements have been swept away by new policies while no new arrangements had been put in place to manage the transition. Similarly, transitional arrangements and preparations such as staff capacity-building and training, or public information and communication, have not been adequately taken on board in the policy development process.

#### **5.4.8 Civil society organizations**

Given the centrality of the land question to national development, it is absolutely crucial that land policy development be preceded by extensive and wide-ranging stakeholder engagement, in order to enhance grassroots ownership and acceptance of the processes and outcomes. Effective opportunities for feedback and iterative processes should be built into the consultations. Much as NGOs and other civil society entities may play a key role in such stakeholder engagement, effective involvement from those holding land rights is also needed. The deeper the engagement with stakeholders, the more enriched the policy will be, and a high degree of public acceptance and ownership will be achieved as a result. Where parliamentary review and approval is required to validate or legitimize the outcomes of the policy processes, it would be ideal if stakeholders could be given an opportunity to offer additional input at that late stage, if only to ensure that their initial contribution has not been minimised in the final drafts of the policy document.

#### **5.4.9 Communication for land policy development**

Effective and robust communication is critical in the development of land policies. Communication should be integral and cross-cutting. Effective communication requires development of a proper strategy that takes in the entire policy formulation process. Communication is particularly crucial when soliciting and collating stakeholder inputs and feedback, as well as for public education and awareness campaigns both before and during implementation. Information and Communication Technologies (ICTs) are today considered as the driving forces of the 'Global Information Society' and of 'knowledge-based economies', and therefore 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 policies and legal documents; this will reduce the digital divide, improve rural communities' awareness of their rights, and enhance their participation in policy development.

#### **5.4.10 Providing support to land-related policies and laws**

Several complementary land-related policies and laws can facilitate, or at times impede, implementation of land reform. The status of land resources is an important determinant of the vitality of those sectors and sub-sectors whose productivity depends on land. Among these sectors are agriculture and livestock, energy, mining, water, wildlife, forestry, and human settlements. In addition, the overall condition of the environment depends, to a large extent, on the way land resources are used and managed. Consequently, land policy should also ensure that effective support is provided to associated sectors and sub-sectors through specific policies, laws, plans and management systems.

## **6. Land Policy Implementation**

### **6.1 The challenge of land policy implementation**

#### **6.1.1 The scope of an implementation framework**

Land policy implementation entails the systematic identification and execution of all the steps necessary to achieve the goals and prescriptions that the policy sets out. In this process, policy is turned into a programme of land reform designed to deliver a wide range of services and benefits to the land-using public as well as to those sectors depending on the land system for their value-adding activities. Broadly speaking, that range of services and benefits includes, but is not limited to, the following five items: (i) redistribution of land resources; (ii) delivery of secure land rights; (iii) improved, sustainable land use methods; (iv) reorganization and enhancement of land administration structures and services; and (v) the facilitation of the support services infrastructure required for optimum development of land and related sector functions. The greater the number of elements in that range, the more comprehensive will be the policy development and implementation processes that are designed to deliver them.

#### **6.1.2 Progress in land policy implementation**

Many African countries have been through a variety of strategies, developing national land policies in response to perceived problems in their land-related sectors. However, 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 many as five or more years. More often than not, countries have spent more resources on the development of action plans than on actual execution of policy prescriptions. Typically, a number of impediments can account for such disappointing records, as discussed in the section below.

## **6.2 Impediments to land policy implementation**

### **6.2.1 Failure to agree on implementation strategies**

The first impediment to effective land policy implementation is that the relevant strategies and modalities are seldom considered as important elements that require as much debate and consensus-building as the substantive problems targeted in policy development. A cursory examination of the documents related to completed land policies shows that, in most cases, implementation modalities are not included in the drafts submitted for public debate or stakeholder consultations, or in those 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 such agencies in the light of the challenges arising from any additional and often complex tasks contemplated by new land policies.

### **6.2.2 Lack of capacity to manage change**

The second typical impediment to effective land policy implementation is that in many countries, this exercise is assigned merely to those existing institutions or agencies responsible for the administration of the land sector. The problem is that their typical orientation often stands as a major obstacle to change and innovation. There are three main, distinct factors at play here. First, most land administration institutions and 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 are not just slow or inefficient: they also lack the technological know-how required to manage modern-day land reform programmes. Third, the bureaucracies manning these agencies are not only complex and inaccessible, but also deeply engaged in patronage and corruption. Many observers have concluded

that land administration institutions are virtually incapable of managing any systems and processes that require transparency and accountability.

### **6.2.3 Defects in policy development**

The third obstacle to effective land reform implementation has to do with the very process of policy development itself, which has proved to be defective in several countries. Desktop research leading to quick fixes has on occasion produced policy prescriptions that do not answer to the needs of those individuals and communities that depend on land resources for their livelihoods. The idea of stakeholder and civil society participation is still regarded by many governments as a usurpation of their residual responsibility to control and implement public policy. In many countries formerly under British colonial rule, 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 along these lines have often been resisted or altogether ignored by their intended targets.

### **6.2.4 Lack of baseline data**

The fourth impediment to effective land reform implementation in Africa is that a number of policies have been prepared in the absence of adequate baseline data on the conditions of land as a self-contained political, economic and social system. Note has been taken in this regard of the fact that in many African countries, land data are still handled manually and are often insufficiently and inaccurately recorded. Efforts to put together efficient land information systems have been hampered by lack of adequate resources and modern technology. Such policies have led to prescriptions that do not adequately reflect the realities obtaining in the land sector.

### **6.2.5 Inadequate implementation infrastructure**

The fifth impediment to effective land policy implementation in Africa is none other than an evident lack of relevant infrastructure in terms of capacity, financial resources and institutional arrangements. Whenever it

comes to correcting this deficiency, donor assistance has not always proved reliable or sustainable. In such circumstances, policies, however comprehensive or innovative, simply cannot be implemented.

### **6.3 The conditions for effective land policy implementation**

#### **6.3.1 Designing strategies for land policy implementation**

Efficient, cost-effective and sustainable implementation of land policies requires that a number of additional steps be taken once the development stage is completed. The first such step is the design of realistic and achievable implementation strategies. This includes preparation of a comprehensive checklist of activities as part of an implementation plan and programme, together with an 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 here is to appreciate that the implementation process is more than just a technical exercise: it is of a deeply social and political nature.

#### **6.3.2 Preparing an action plan**

The second condition for effective land policy implementation is the preparation of a relevant action plan. This must involve realistic programming and sequencing, proper costing and accurate assessment of financial and technological needs, along with capacity-building and mobilization of the resources required for the short-, medium- and long-term implementation of the crucial components of the policy. Because the programmes contemplated in policies cannot be implemented *en bloc*, best practice demands that implementation of certain aspects be preceded by piloting in order to test/try novel approaches and methodologies. Such piloting would enable policy-makers to take lessons learned on board before they widen the scale of implementation. Further, even the best-designed land policy implementation processes will hardly get off the ground unless sufficient financial, technical, logistical and human

resources have been secured. Sometimes, donor-driven processes attract short- to medium-term funding. However, sustained land policy reforms must be cost-effective and financially self-sustaining. Therefore, African governments would do well to develop land service delivery systems that are affordable for the majority of the population.

### **6.3.3 Mobilizing political commitment**

The third condition for effective land policy implementation in Africa is high-level political commitment by the governing elites. The importance of political commitment cannot be over-emphasized. Many reform policy components are bound to be unpopular with, and therefore resisted by, some segments of the population. This is the case with any components calling for widespread re-distribution of land, or the conversion of absolute land rights to systems that restore titles to land to the State. This was the case with the agrarian programmes carried out in Egypt in the 1950s, and more recently in Ethiopia and former Portuguese colonies. Such resistance can easily frustrate effective delivery of services intended for vulnerable groups in society. Further, reform 'packages' included in land policies often prove to be onerous and, therefore, require diversion of resources from other social and economic schemes. 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 re-tribution of the land reform portfolio to the most powerful offices in the country, such as the Presidency. More often, though, this political commitment entails the establishment of dedicated land reform ministries or autonomous institutions whose exclusive function is the execution of the programmes outlined in the policy. Only then will the goals of the national land policy remain part of the development agenda of the State.

### **6.3.4 Continuous public engagement**

The fourth condition for effective land reform implementation in Africa is continuous public ownership, and acceptance, of the main elements of the policy. Short of effective engagement by primary stakeholders at all stages

in the implementation process, leadership *per se* will not guarantee the delivery of outcomes as contemplated in the policy. It is important that stakeholder engagement continues beyond completion of the policy development stage. Experience has shown that implementation of land policies will move much faster where structures are decentralized and fully controlled by those they target. Consequently, implementation processes should strike a balance between the roles of the relevant central, regional and local entities and institutions, in order to ensure that land services delivery is effectively decentralized. Placing decision-making powers at the local level arguably is the most efficient way of securing land rights for 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 closer collaboration with local structures in order to bring services closer to local communities, and that they build on local innovations by informal and customary authorities (as is the case with local land-plot demarcations, documentation, dispute settlement procedures and approaches, many of which are time-tested and have served the people well in the absence of effective intervention by the State).

#### **6.3.5 Legislating land policy components**

The fifth condition for effective land policy implementation in Africa is the identification of those policy components that must be implemented through legislation. In this respect, governments must devise proper instruments, structures and procedures for the participatory and accountable management of those components. In most cases, those elements requiring legislation, or the nature of the design of any new institutional structures, will be contained in the policy document itself. What is important is to avoid further proliferation of the legislative and institutional framework, as has happened in a number of countries in East and Southern Africa. Apart from the fact that such proliferation would

only add to complexity, more often than not it is also bound to increase the costs of the implementation process itself. Because new laws will need to be enacted, existing ones revised or amended, and institutions designed before many aspects of a new policy can be effectively deployed, it is important that these steps be taken as part of the preparatory stages of the implementation programme. A number of countries may feel the need to proceed through enactment of interim measures, as has been demonstrated in post-apartheid South Africa or in countries emerging from protracted conflicts. However, any such measures must 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 anchored in the relevant country's Constitution. Where policy prescriptions touch on issues that require regional convergence or formal domestic endorsement of international obligations, these dimensions should be factored into the processes of legislating and institutional design. Domestic extension of policies and law-making powers of regional economic organizations will require that the management of resources, otherwise controlled by member countries, takes into account the needs of relevant member State populations. 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 launched to develop a common land resource agenda among SADC member States are an important initiative in this direction.

#### **6.3.6 Monitoring and evaluation**

Once the above-mentioned steps are taken, it is important that mechanisms for the monitoring and evaluation of the impacts of implementation processes be designed and institutionalized. Setting up land observatories in a number of African countries is a useful method for doing this. Others may include the design of objective tools or indicators for tracking the performance of various land sector components once

implementation is effective. A number of agencies, including the United Nations Environment Programme (UNEP), UN-HABITAT and the Norwegian Survey and Mapping Organization (NSMO) have developed useful tools for this purpose. A similar mechanism has also been established to track developments in the Sahel region. Such tools would enable governments and participating agencies to manage emerging issues and other incidental developments in an organic, systematic sort of way.

### **6.3.7 Responding to new policy challenges**

Finally, when considering the conditions for effective land policy reform, African governments are advised to appreciate that however technically sound or meticulously implemented their various components may be, ongoing land policy development processes cannot resolve all of Africa's problems forever. Fresh pressures, both internal and external, will continue to weigh on the land sector once current implementation programmes and processes are completed. Such fresh pressures will require radically different policy options, management regimes or technical solutions. It is important, therefore, for governments to put in place realistic timeframes for the review, revision or even replacement of current policies. It must be emphasized that 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 any lessons learnt from similar experiences elsewhere.

## **7 Tracking Progress in Land Policy Development and Implementation**

### **7.1 The need to develop tracking systems**

#### **7.1.1 The scope and value of tracking**

Tracking land policy development and implementation is a complex though useful process for African governments. Though the focus typically bears on implementation, efforts should be made to provide feedback on policy formulation processes, in order to give opportunities

for timely re-adjustments. Further, effective tracking of progress will enable governments to carry out the following four functions: (i) take appropriate measures to ensure the effectiveness and efficiency of national land policies; (ii) learn from past success and failures, and make timely changes to on-going processes; (iii) disseminate local best practice across the country; and (iv) improve knowledge and build capacities for further monitoring and evaluation, and consolidate the participation and commitment of all stakeholders and development partners. The regional consultations undertaken 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 formulation and implementation.

#### **7.1.2 Designing tracking systems/mechanisms**

Africa features various mechanisms which can be supportive of the land policy tracking process. This is the case, for instance, with land observatories, as established in a number of African countries including Chad. Other methods may include the design of specific, objective tools or indicators for tracking the performance of various components of the land sector once implementation is completed. Again, a number of agencies, including UNEP, UN-HABITAT and NSMO have developed useful tools for this purpose. A similar mechanism has also been established to track developments in the Sahel region. The current initiative by UNECA and other partners to develop benchmarks and indicators for tracking progress in land reforms in Africa should draw from the work of those agencies. Here again, this would enable governments and participating agencies to manage emerging issues and other incidental developments in an organic, systematic sort of way.

#### **7.1.3 The need for adequate data**

If it is to be effective, any tracking system of land policy progress must be fed with appropriate, relevant information. It is very important to precisely characterize the baseline serving as the starting point for the

tracking process. The issue of appropriate data collection/processing tools must be addressed as early as possible in policy development. Tracking progress with regularly updated, relevant data can only provide for more accurate steering of the whole land policy implementation process.

#### **7.1.4 Building partnerships for tracking**

Monitoring and assessing the effects of land policy on livelihoods, economic growth and sustainable use of natural resources requires active collaboration from various institutions, with each playing a specific role. At country level, depending on the institutional settings and apart from the government department specifically in charge of land, other ministries (those in charge of territorial planning, agriculture, forests, urban development and scientific research) can make significant contributions toward the monitoring process. In addition, national statistical institutes and universities could also be involved in the collection and processing of land policy-related data.

At the regional and continental levels, there is a need to devise and implement tools and mechanisms to **share experiences** in land-related participatory monitoring and evaluation (PME). Such tools and mechanisms should be based on evidence provided by those observatories dedicated to land policy issues. **Networking** is critical if these efforts are to be sustained.

Given the specific nature of land issues, it is important to collect and process geospatial data on land issues and transform them into thematic maps. This is important as it opens up the possibility of updating land information as frequently as possible. Some data might be available in land-dedicated government departments. Information should also be gathered from other sources such as CSOs, Centers of Excellence and development partners.

## **7.2 Challenges related to tracking**

The main challenge to tracking of land policy development and implementation lies with methodology. Five factors and elements are at play here, and are examined below.

### **7.2.1 Stakeholder agreement on what should be tracked**

The starting point should be a clear and common understanding amongst all stakeholders involved of what is to be tracked. The six elements to be monitored include: (i) effective use of resources; (ii) well-organized consultative decision and other participatory processes; (iii) effective institutional capacities; (iv) the delivery of outputs; (v) the adequacy of outcomes and (vi) achieving the desired effects.

### **7.2.2 Defining the parameters that should be tracked**

Efficient tracking of progress made in land policy formulation and implementation also requires, at the very early stages of the process, a clear and precise definition of the parameters that need to be tracked. This involves identifying a number of crucial questions regarding policy development and implementation for which the government (and other involved stakeholders) needs clear answers. Comprehensive identification of such crucial questions should form the basis for information gathering and data collection.

### **7.2.3 Defining participatory, measurable indicators**

The third element in a tracking mechanism is the design of measurable indicators which can be used to gauge progress, or lack thereof. For the development of indicators to be participatory, the conclusions and findings of the design exercise should be disseminated to, and feedback obtained from, all stakeholders. Such feedback is subsequently used to improve the indicators.

### **7.2.4 The need for external backstopping**

When measuring progress in land reform policy development and implementation, it is important to anticipate any resistance which may be

encountered from internal stakeholders. This necessitates a combination of internal tracking systems with independent or external ones.

#### **7.2.5 Effective capacity-building programmes**

To sustain the whole monitoring process, capacity-building is a critical issue that needs to be addressed. This requires not only financial means but also technical assistance, at least in the earlier stages. However, the specific capacity-building requirements for PME should be clearly expressed. Given the fact that decentralization is being gradually implemented in Africa, it is important to extend capacity-building programmes to local levels.

### **7.3 Tracking principles and criteria**

At least seven main principles and criteria should be considered while elaborating and implementing an effective tracking mechanism for land policy processes. The first is to assess the extent to which the policy development process *conforms to initial designs*. This can be extended to the implementation stage, to measure the extent to which those regulations and procedures that are essential for implementation are effectively put in place. 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 aspect should be tracked right from the formulation stage of any given land policy. The third principle for effective monitoring is to assess the extent to which *the objectives of the land policy are achieved* (for example, achievement of objectives related to tenure security, equitable access to land, reduction of conflicts, etc.). This criterion measures any gaps between the objectives and the result obtained, and also seeks to provide coherent explanations for the observed differences. The fourth principle is to measure the *effectiveness of resource uses*. This criterion assesses the extent to which the resources mobilized for land policy development and implementation have been used rationally in order to achieve satisfactory results with minimal inputs. The fifth of seven principles for effective monitoring is to assess the *sustainability of the*

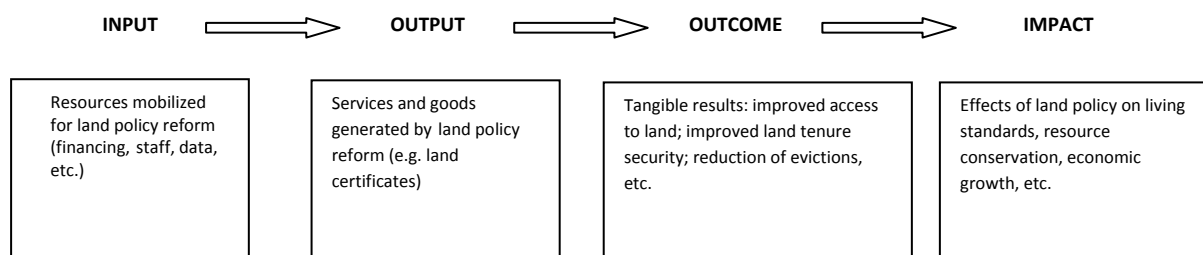
*land policy*. The idea is to verify whether any benefits derived from the implementation of the land policy are sustained, and whether they can capitalize on further land reforms. The sixth principle is to measure the direct and indirect (whether positive or negative) *effects of the land policy on beneficiaries as well as on natural resources*. The seventh and final principle for effective monitoring is to determine the *overall coherence or consistency of land policy*. Three main elements must be considered here: (i) *internal consistency* refers to the compatibility of the main land policy components with each other (customary rights/modern rights, conservation purposes/economic objectives); (ii) *cross-sector consistency* seeks compatibility and conformity among the main sectors involved in land policy (forest, fisheries, agriculture, pastoral activities, mining, urban development, etc.); and (iii) at *regional* level, national land policies should also be consistent and in synergy with regional developments and policies.

#### **7.4 Applying tracking principles and criteria**

Application of tracking principles and criteria should conform to five principles. First, the tracking process should be *fully participatory*. Any sound progress-tracking mechanism is based on clearly defined issues/questions, benchmarks, targets and indicators, as developed through a systematic and participatory process. All relevant stakeholders must be involved from the initial stage of the process. Participation can be fully achieved even if the government is responsible for leading the process. Second, any effective progress-tracking mechanism must consider *transparency and governance*. Besides, it should be iterative and systematic, with adequate mechanisms for communication and feedback. Third, proper tracking indicators should be *adaptable* to time, space and geographical specificities. Fourth, *realistic benchmarks* must be defined after a consultative process. This principle applies to datelines for tracking progress. Finally, it is important to set *relevant timelines* for tracking.

Input and impact indicators cannot be measured with the same frequency. Input indicators can be measured annually, budgetary constraints permitting. The periodicity of assessments would depend on available information from research institutions.

When it comes to assessing changes in land policy implementation □ and particularly the effects of a newly introduced land policy on livelihoods, economic activities and sustainable natural resource management □ much more time is needed. A fair amount of realism is in order when setting datelines as well as regular backups. This is a long-term process which requires additional investments. The principles to be observed with regard to timelines are elaborated in the diagram below.



## 7.5 The need for feedback

Given its iterative dimension, any effective progress-tracking system must feature solid links with decision-making processes at various levels. This must appear clearly in the PME conceptual model. Experiences from other initiatives show that short of **regular and systematic feedback** on achievements, failures and any institutional bottlenecks, no effective political remedy can be applied in order to re-adjust the whole land policy system. Any feedback **should be systematically documented and disseminated** to all stakeholders. For large groups, seminars and workshops are adequate means of communication, although decision-makers retain a preference for reports with specific recommendations. Cross-sector round- tables are another channel for sharing feedback.

## **8 Conclusion [TO BE SUPPLIED]**