

INDEPENDENT REVIEW OF LAND ISSUES, VOLUME III, 2006-2007

EASTERN AND SOUTHERN AFRICA

JUNE 2007

Edited by Martin Adams¹ and Robin Palmer²

Introduction.....	2
Angola.....	3
Botswana.....	5
Burundi	6
Democratic Republic of Congo (DRC) (Eastern).....	9
Eritrea.....	10
Ethiopia	11
Kenya	16
Lesotho.....	19
Malawi	20
Mozambique	22
Namibia.....	25
Rwanda	29
Somalia	31
South Africa.....	33
Sudan.....	41
Sudan Transitional States.....	43
Southern Sudan	47
Swaziland.....	49
Tanzania.....	50
Uganda	55
Zambia	60
Zimbabwe	66
Concluding thoughts	72

¹ madams@mokoro.co.uk

² rpalmer@mokoro.co.uk

Introduction

This review of land issues in twenty countries in Southern and Eastern Africa is the third since 2004.³ The idea of conducting a regular review arose in an informal meeting of land rights activists in Pretoria in 2003. They were drawn from NGOs, research and teaching institutions and/ or were working on assignments for international agencies and/ or African governments. The meeting took place around a concern about the seeming lack of progress with land reform in the region and what might be done to improve land rights delivery. It was recognised that there was a lack of systematic information as to what was actually happening and the need to track the progress of the various national programmes underway, as well as monitor land rights under serious threat.

As with previous reviews, the information contained herein has been gathered from individuals working in the countries concerned in response to the editors' requests for updates. This has been the preferred method of compiling the review. In the absence of 'volunteers', country reviews have been prepared by the editors from a variety of sources. Land reform workers on the spot have then been asked to comment on the drafts.

In some instances, contributors have asked not to be mentioned. However, we are happy to be able to acknowledge the contributions and assistance of the following: Judy Adoko, Bernard Ajwang, Ruth Hall, Chris Huggins, Ingunn Ikdahl, Faustin Kalabamu, Simon Levine, Henry Machina, Shenard Mazengera, Mike McDermott, Diress Mengistu, Willem Odendaal, Laurel Rose, Lala Steyn, Chris Tanner, Stephen Turner and Richard White.

The editors would very much welcome responses and comments on the review.

³ Previous reviews: Eastern 2004-5

http://www.oxfam.org.uk/resources/learning/landrights/downloads/independent_review_land_issues_2004_5_vol_2_number_2_eastern_africa_dec_2005_final.pdf

Eastern 2003-4

http://www.oxfam.org.uk/resources/learning/landrights/downloads/ind_land_newsletter_eastern_africa_aug_2004.rtf

Southern 2004-5

http://www.oxfam.org.uk/resources/learning/landrights/downloads/independent_review_land_issues_2004_5_vol_2_number_1_southern_africa_dec_2005_final.pdf

Southern 2003-4

http://www.oxfam.org.uk/resources/learning/landrights/downloads/ind_land_newsletter_sth_afr_june_2004.rtf

Angola

‘As oil barrel price increases, human rights respect decreases in countries where oil is extracted.’⁴

In Angola, the overall picture in 2006 and early 2007 was dominated by oil and by the prospect of elections. The extraction of oil continues to grow, along with associated activities. As the barrel price goes up,⁵ the government revenues increase. This has allowed the Angolan Government to play a more prominent international role than in the past; some observers hope that in the process it might be held more accountable to international law. Although the effects of the oil boom reach some poor people, mostly in Luanda, and there is some investment in large infrastructure, such as the ‘new bay of Luanda’ project and the Chinese spreading tarmac over old, destroyed roads, the majority of the country’s estimated 15 million people still await the benefits of peace. Child mortality rates, for example, increased in 2006 for the first time since the end of the war. Access to education is proving difficult or impossible, with state schools generally of very low quality, offering little prospect of future employment beyond the menial. The country was taken by surprise by the electoral registration process, begun on 15 November 2006 and set to continue to 15 June 2007 (i.e. throughout the rainy season). Already concerns over transparency and pre-election violence are appearing.

The legal framework

As stated in previous reviews in this series, following unprecedented campaigning by civil society organisations the Land Law was approved in 2004 and came into force in February 2005, despite a number of serious flaws and ambiguities. Since then, several CSOs have concentrated their hopes on the creation of the necessary implementing regulations (*regulamentos*) - lobbying for them to be sufficiently flexible to accommodate regional and cultural differences, to facilitate the legalisation of land titles, to ensure greater tenure security for the poor and vulnerable, etc.

The Council of Ministers approved the *regulamentos* in October 2006, but disregarding the issues determined that, after the 3-year deadline for legalising land titles, all ‘occupants’ of land not registered would become illegal, including rural communities. The onus is on each individual to request ‘regularisation’, failing which the government can take their land, by force if necessary.

However, the *regulamentos* have not yet been published in the official Gazette (*Diario*), as stipulated in order for the Land Law to come into effect and for the 3-year countdown to begin. Some observers believe that the fact that they are still not published is yet another signal that Government is preparing for elections in 2008.

⁴ *New York Times*, May 2006.

⁵ David Sogge, Angola: Global ‘Good Governance’ Also Needed, Madrid; FRIDE Working Paper 23, 2006.

Urban land issues

In Luanda, following the national and international reactions to the violent and illegal urban demolitions between 2004 and 2006, the aggression and evictions have stopped (with isolated exceptions). Around one third of these cases have reached negotiated solutions; another third are on standby (threats not fulfilled, but situations unresolved); while in the final third the houses were destroyed, many slum dwellers left, while others are still living in the ruins of their former homes, with no solutions being negotiated.

A recent report on forced evictions of the urban poor in Luanda between 2002 and 2006 by Human Rights Watch and SOS Habitat argues that a critical underlying factor was insecurity of land tenure⁶ which left residents particularly vulnerable. This had three root causes: 'inadequate land legislation and lack of public information about land rights and urban management policies; inadequate registration procedures; and a consequent false perception of security of tenure by residents.'⁷

Points which should be stressed

- Stopping actions backed or directed by the Angolan Government is difficult and almost unprecedented. The negotiated settlements were obtained only due to the outstanding courage, advocacy and strategy of the local committees working with SOS Habitat.
- The strategies included: most citizens living in the affected *bairros* (suburbs) going to present petitions and requests to the Luanda Provincial Government (twice) and to Parliament (once) in person and all at the same time (thus sidestepping the ruling that demonstrations are illegal unless authorised by the authorities); the SOS Habitat leader living for a week in the demolished zone of Cambamba and inviting ambassadors, the media, agencies and official bodies to meetings there; visits and contacts with the EU Commission and Parliament, and joint work with Southern African, European and North American organisations and networks.
- When elections were due to take place in 2003-4, the political wing of the Angolan power structure apparently made the vested business interests in land in Luanda wait. When the elections were postponed indefinitely, there was a government campaign designed to create and expand private housing. The fact that demolitions, evictions and aggression have now stopped again would seem to indicate pre-electoral restraint for possible elections in 2008. But once the elections are over, people fear that the urban evictions will resume.

⁶ Human Rights Watch and SOS Habitat, 'They Pushed Down the Houses': Forced Evictions and Insecure Land Tenure for Luanda's Urban Poor, (New York: Human Rights Watch, 2007)
<http://hrw.org/reports/2007/angola0507/angola0507webwcover.pdf>

⁷ Ibid, p.60. They also argue that 'Angola has not passed specific legislation detailing when and how evictions can be carried out legally... As a result of this complex legal situation, people cannot know with certainty where they can legally settle for residential or other purposes. They cannot, therefore, be presumed to have illegally occupied (or, indeed, be known to be illegally occupying) land from which they were evicted. The government's actions, however, indicate that it does presume that all people are illegally occupying land and fails to ascertain whether this is, in fact, true in each individual case.' Ibid, p.63

- In some provincial capitals forced and violent evictions have also occurred but on a smaller scale - and without resistance by the dispossessed.

Rural areas

Angola is a huge, sparsely populated country. The problem is not access to land in general, as Steve Kibble has argued,⁸ but rather the greed for land with better soils, access to water, to roads etc.

Some of the victories achieved against illegal rural evictions during 2004-5 were not repeated in 2006; the investment in informants, in 'civil defence' and the security forces, is proving much more effective in less populated areas, and the current pre-election climate is spreading fear, intimidation and repression (though many CSOs react as though everything were normal).

In several zones there are rumours of growing abuses by powerful people and of land taken from communities (from agro-pastoralists in dairy production zones, and in zones where granite or diamonds are found); but the 'blanket of silence' outside Luanda is quite effective. Little information is available as to the extent of these processes, except for the granite exploitation in Huila province which is a confirmed disaster.

Botswana

The previous review anticipated that the government's land policy paper, pending since 2005, would be tabled in Parliament in 2006. It is now expected that the Minister will submit the paper to Cabinet in 2007. Its publication was heralded in the annual Budget Speech in February 2007. The paper is to:

‘review of all land related laws and policies’

and set out ‘a comprehensive policy which will promote equitable land distribution and address land use conflicts, land pricing and land rights, as well as strengthen land management. The new policy will establish a favourable environment for both domestic and foreign direct investment, thus contributing to economic diversification and global competitiveness. In addition, a number of land-related Acts will be reviewed, including: the Town and Country Planning Act, the Deeds Registry Act, the Tribal Land Act, the State Land Act and the Land Survey Act. These Acts will be aligned with the Land Policy and other relevant pieces of legislation.’⁹

For those concerned about the state of land rights in Southern Africa, Botswana can be a source of inspiration as well as despair: inspiration because of Botswana's well-conceived land policy and supporting legislation and its adherence to the rule of law; despair because of what is often perceived as heavy-handed action by government authorities to deny the land rights of the poor. The most well known example of the latter was the expulsion in 2002 of the Bushmen, also known as Basarwa, from their ancestral lands in the Central Kalahari Game Reserve and the long-running court case which

⁸ Steve Kibble, 'Angola: Can the Politics of Disorder Become the Politics of Democratisation & Development?' *Review of African Political Economy*, 109, 2006, 535-6.

⁹ Minister of Finance, Budget Speech to Parliament, 5 February 2007

ensued. The court found in December 2006 that the community had been wrongly evicted and should be allowed to return. Numerous but less publicised cases relate to the loss of communal land rights of poor stock keepers when the range is allocated to outsiders, wealthy townspeople and/or foreigners.

In Botswana, the rights attached to urban, rural and agricultural land are quite distinct in the sub-region. Freehold, or land held in 'full ownership', now constitutes less than 5% of the total and is steadily diminishing as it is purchased by the State for allocation in urban areas for residential, commercial or industrial purposes, and in rural areas where it is placed under the control of 'tribal' land boards, in the appointments to which government authorities still have a large say. The Ministry of Lands is responsible for overseeing the rule-based allocation of both State and Tribal land.

From time to time, allegations of corrupt allocation are examined by commissions of inquiry¹⁰, the courts and the Land Tribunal. The purpose of the last-mentioned is to settle disputes and appeals with respect to Tribal Land, an innovation introduced in 1997. In a landmark case, in which negotiations for a settlement were in progress early in April 2007, two Kgalagadi community trusts have challenged the land board's decision to lease what they consider to be their communal grazing land to two foreign-owned companies. Settlement is expected to be in the communities' favour. They are claiming that in not consulting the District Council or neighbouring communities and not advertising the land (to give citizens a chance to either apply or object) the land board has breached its duty of trust and is acting contrary to the principles of natural justice. Allegations of corruption have been made. The problem is one of governance, in that Land Board staff has a big say in the appointment of Land Board members and evaluate their performance so Land Board members are not in a position properly to supervise the actions of the staff. Land Board personnel are appointed by a central institution and are not accountable to Board members who have no say in their promotion or appointment. Whether the land policy reforms promised by Government will provide for more transparent and democratic land allocation in rural areas remains to be seen.

Burundi

Burundi has been increasingly free of mass violence since 2004. The 2004-5 review noted that a new constitution, establishing power-sharing along ethnic lines, had been approved in a referendum. Elections were held in June 2005 and the former rebel group National Council for the Defence of Democracy-Forces for the Defence of Democracy (CNDD-FDD) won the vast majority of parliamentary seats and the Presidency.

Due to the increase in stability, hundreds of thousands of refugees have returned to Burundi, mostly from refugee camps in Tanzania. By October 2006, more than 319,000 refugees had repatriated to Burundi since UNHCR started assisting the return process in 2002.¹¹ Some Burundians were also forcibly returned by the Tanzanian authorities in mid-2006.

¹⁰ e.g. the Lesetedi Commission of Inquiry on State Land in Gaborone in 2004

¹¹ UNHCR (2006) Growing numbers of Burundians return home from the DRC, 23 Oct 2006. Accessed online on 25 May 2007 at <http://www.reliefweb.int/rw/rwb.nsf/db900SID/AMMF-6UUE3Y?OpenDocument&rc=1&cc=bdi>

Most refugees had been away for ten years or longer, leading to complex land claims upon their return. Many returnees discovered that family members who occupied their houses and fields were unwilling to hand over control of the properties. In other cases, land vacated by refugees had been systematically given by the state to third parties. Because of high population densities, land disputes were common in Burundi even prior to the refugee returns. Human rights observers noted some instances of land dispute-related violence, including deaths, in parts of the country.

On 7 September 2006 the Government of Burundi and the last remaining Burundian rebel group, *Forces Nationales de Liberation* (FNL) signed the Dar-es-Salaam Comprehensive Ceasefire Agreement. Despite these general improvements, the governance situation in 2006 was mixed. Human rights organizations noted dozens of abuses by government security agents during 2006 and a number of former and current politicians, including the former Vice-President, were arrested on allegations of planning a coup d'état. Observers were sceptical about the veracity of the allegations, and the suspects were later acquitted.

The United Nations Mission in Burundi (ONUB) was established in 2004. ONUB did not provide for specific support for legal or other kinds of approaches to land problems, but in conjunction with UNDP, FAO, and the Office of the High Commissioner of Human Rights, and in collaboration with the Government of Burundi, ONUB did fund a one-day conference on 'The Impacts of Land Conflicts on Food Security and Human Rights' in February 2006. The final recommendations of the workshop were aimed at the government and 'international organizations', rather than UN agencies. UNDP and the Norwegian Refugee Council jointly sponsored a meeting between returning refugees and local people involved in land disputes in Makamba province in October 2006.¹²

In November 2005 the Government of Burundi requested that the peacekeeping operation be gradually scaled down, and its mandate expired at the end of 2006. A new civilian mission, called BINUB, has been deployed since January 2007. It is likely that BINUB's mandate will include capacity building to assist government institutions to tackle 'root causes' of conflict, as well as support to government attempts to reintegrate refugees and IDPs.¹³ These both offer possibilities for action on land issues, and the issue of land disputes was raised by both the Government and UN personnel at meetings of the UN Peacebuilding Commission in New York in October 2006.¹⁴ UN staff envisage that BINUB will provide institutional capacity building support to the newly instituted national land commission.

The Arusha Peace Accords for Burundi provided for the creation of the *Commission Nationale de Réhabilitation des Sinistrés* (CNRS) which was mandated to facilitate the return of the refugees and IDPs, and address land-related issues including allegations of abuses during the (re) distribution of land, and rule on individual cases according to

¹² IRIN (2006) Burundi: Bid to Resolve Land Dispute Underway. 23 October 2006. Accessed online on May 30 2007 at <http://www.reliefweb.int/rw/RWB.NSF/db900SID/STED-6UUQ8Q?OpenDocument>

¹³ See <http://www.un.org/Depts/dpko/missions/onub/background.html>, accessed on 29th August 2006

¹⁴ United Nations Peacebuilding Commission (2006) Country Specific Meeting: BURUNDI Relevant Highlights Recorded by R2PCS Economic and Social Council Chamber, 13 October 2006 accessed online on 25 May 2007 at <http://www.reformtheun.org/index.php?module=uploads&func=download&fileId=1780>

specific principles.¹⁵ The CNRS was established in February 2003, but was affected by technical and political problems, which in turn led to reduced funding.¹⁶ The CNRS ran out of funding at the start of 2006.¹⁷ In late March 2006, a National Commission for Land and Property was formally established to take over its functions, though it has taken time for the Commission to become operational. Indications are that UNDP and possibly other UN agencies plan to support the new Commission.¹⁸ However, by late 2006, the Commission was still centralized in Bujumbura, without functioning offices or staff at the provincial level.¹⁹ The question of the composition of the Commission at these levels remained critical, especially in areas where land disputes have an overtly ethnic or political dimension.²⁰

Many civil society organizations were actively engaged in land issues. Several local and international organisations published case studies on land problems. Others distributed summaries of the current land law in the national language, produced radio programmes on land issues, or facilitated conferences bringing together a wide range of stakeholders. Strengthening of local dispute-resolution capacity has been achieved through training programs for existing local institutions, or establishment of new institutions such as the Catholic Peace and Justice Commissions which have been installed across most of the country. Local legal clinics have been established by direct material support to vulnerable populations affected by land and housing problems have also been provided by a variety of NGOs.

Despite all this activity, civil society groups have not yet formed a formal network on land issues, and hence impact on government thinking, including development of the draft land law, has not been maximized. Debate continued over the draft land law, which has been in development for several years. Questions remain over many issues, including government responsibility for compensation of those whose land was used for the construction of IDP camps.²¹ Donors invited international consultants to assist the Government of Burundi in finalizing the law and developing a comprehensive land policy.

The draft national land code continues to be in hiatus although some within the government see it as becoming more of a priority in the next six months. Donors have recently gained more entrée to government stakeholders, and the National Land Commission; Ministry of Territorial Administration, Tourism, and Environment; Ministry of Agriculture and Livestock; and the First Vice President's Office have said it

¹⁵ Ntampaka, C. 'La question foncière au Burundi. Implications pour le retour des réfugiés, la consolidation de la paix et le développement rural.' Rome: FAO, 2006 (p. 25)

¹⁶ See Kamungi, P. M., Johnstone Summit, Oketch and Chris Huggins, (2005) 'Land Access and the Return and Resettlement of IDPs and Refugees in Burundi' in Chris Huggins and Jenny Clover (eds), *From the Ground Up: Land Rights, Conflict and Peace in Sub-Saharan Africa*, ACTS and ISS, June 2005, pp. 250-3

¹⁷ Interview with Eliphath Gahera, former vice-president of the sub-commission on land, CNRS, Bujumbura 22 March 2007

¹⁸ Pers. comm. from UNDP staff, 11 May 2006

¹⁹ Burundi Réalités (2006) *Burundi/conflit foncier : La commission Terre et Autres Biens visite la commune de Ruhororo en province de Ngozi*. 20 October 2006

²⁰ Ibid.

²¹ Pers. Obs. Ministère de l'Aménagement du Territoire, du Tourisme et de l'Environnement/Global Rights, *Forum sur la Problématique Foncière au Burundi*. Bujumbura, 15-17 February 2006

will accept and consider input on the draft land code. These GoB entities have also said they are willing to accept input from donor experts on the draft inheritance bill.

The new National Land Commission (NLC) has a 3-year mandate to create and administer uniform mechanisms at the local level to address land conflicts arising from repatriation. With Dutch Cooperation providing useful technical assistance, the NLC is now getting established and defining its mission, and activities. It just recently appointed provincial representatives. Dutch Cooperation is assisting the NLC in the development of a strategic plan, a one-year action plan, and guiding principles for population resettlement. The NLC is composed of a 23-person team. Much of this staff has been recruited from ministries and includes some women representatives and one representative from the Batwa. Political support appears moderately strong for the NLC. The NLC is currently receiving financial support from the GoB, the UNDP, and the New York-based UN Peace Building project.

Democratic Republic of Congo (DRC) (Eastern)

2006 was an eventful year for the DRC. Elections late in the year resulted in the victory of Joseph Kabila, who had been serving President during the Transitional period. The elections were conducted without widespread violence, but there was fighting in Kinshasa between forces loyal to Kabila and his nearest rival, Jean-Pierre Bemba. Voting patterns revealed the political differences between the East and West of the country.

Following heavy fighting in late 2006 between dissident militia leader Laurent Nkunda and government forces, supported by MONUC²², in North Kivu Province, a peace deal was brokered in early 2007. This peace agreement could lead to increased stability in the volatile Province, which is particularly affected by land disputes of all kinds. One of Laurent Nkunda's justifications for opposing integration into the Transitional Government was the alleged threat to the minority Kinyarwanda-speaking community in North Kivu, especially Congolese Tutsi. Thousands of Tutsi remain in IDP camps in the Province, some stating that they are unable to return to their fields because they are occupied by armed individuals and groups, including the Democratic Forces for the Liberation of Rwanda (FDLR) which includes *ex-interahamwe* Rwandan Hutu militiamen. However, the land claims of some of the IDPs have been questioned by some local politicians. They allege that some of the camp inhabitants are in fact Rwandanese citizens who have no basis for claiming land in the DRC. The issue is likely to remain a serious problem for the foreseeable future.

Because of the focus on elections, there was little movement at the national level on questions of land reform during 2006. However, at the local level, UNHCR and some international NGOs continued to provide support for local civil society's efforts to mediate in land disputes. In Ituri, where a 1999 land dispute sparked mass killings, international NGO *Réseau des Citoyens pour la Justice et la Démocratie* (RCN) supported training in the land law for members of the judiciary.

Land disputes are rife in Eastern DRC because of widespread displacement during previous years of conflict, because most smallholders lack title documents, and because

²² Mission de l'ONU en RD Congo

customary chiefs and local administrators have been open to bribery and intimidation.²³ While progress was made in some cases through the intervention of trained local mediators, NGOs reported that it was particularly difficult to resolve disputes involving members of the military. In an area of South Kivu where returning refugees often find their lands occupied by others, a local NGO identified local customary courts as part of the problem. The NGO asserted that many traditional courts were making decisions which contravened the land law and tended to rule against the returnees, contributing to local tensions.²⁴ There were reports that in parts of South Kivu, where population density is high, some members of local militia were being hired by parties involved in land conflicts to intimidate or kill rival claimants.

The Batwa, a pygmy group, continued to be particularly vulnerable to land-grabbing. 150 Batwa people were displaced after their houses were burnt down in a land dispute in Bufamandu North Kivu in early 2006.²⁵ According to local media, the destruction was carried out by government soldiers under the orders of the local chief.

Competition for control over resource-rich areas has been identified as a key cause of violent conflict in the DRC. According to Human Rights Watch, 'a Congolese parliamentary commission investigating contracts for the exploitation of resources signed during the war years reported many irregularities and recommended ending or renegotiating dozens of contracts'.²⁶ It is unclear whether the Commission's recommendations will be followed, as some politicians have tried to suppress the Commission's report, but the findings have the potential to affect local land claims to forest zones and mineral-rich areas.

As local and multinational corporations involved in mining, timber extraction and commercial agriculture expand their operations across the country, there is a continuing need to reform the land law that dates from 1959 and which does little to define or protect customary land rights.

Eritrea

The two previous reviews in this series have lacked up-to-date information on land issues in Eritrea, especially relating to the incidence and impact of periodic land redistributions. In a one-party state, with 'no freedom of expression'²⁷ and constantly on the verge of mobilisation to defend its borders, independent reports of conditions in the rural areas are scarce. According to Amnesty International's annual report for 2007, the government has expelled several international NGOs that were providing humanitarian aid and 18 journalists remain in detention, 10 since 2001. The land issue is particularly sensitive

²³ Vlassenroot, K. and Huggins, C., 'Land, Migration and Conflict in Eastern DRC', in Chris Huggins and Jenny Clover (eds), *From the Ground Up: Land Rights, Conflict and Peace in Sub-Saharan Africa*, ACTS and ISS, June 2005

²⁴ Arche D'Alliance (2006) 'Rapport d'Activites de Monitoring sur les Conflits Fonciers en Territoires d'Uvira et Fizi, province du Sud Kivu' August 2006

²⁵ Radio Okapi (2006) 'Plus de 150 pygmées chassés de leur terre à Masisi, au Nord-Kivu'. Accessed online on February 3 2007 at <http://www.radiookapi.net/article.php?id=4181>

²⁶ Human Rights Watch (2007) 'World Report 2007'. Accessed online on January 28 2007 at <http://hrw.org/englishwr2k7/docs/2007/01/11/congo14780.htm>

²⁷ Reporters Without Borders, 'Eritrea – Annual Report 2005' www.rsf.org/article.php3?id_article=13567

following the abrogation of customary rights and the strict control over land allocation by government's land administration bodies.

Occasional chinks of light emerge in the publication of uncontroversial 'technical' papers; for example, a recent study of informal land rental markets in the highlands.²⁸ The paper assesses the effect of access to 'non-land factors of production' (i.e. labour, oxen, and farm skills) on the extent of land-renting by farm households. The results show that through the land rental market, land has moved from households that were land-rich, but poorly endowed in other factors of production, to households that were land-poor, but rich in other production factors. In this sense it can be said that the land rental market improved resource allocation. This unexceptional conclusion matches the results of similar studies in neighbouring Ethiopia.

According to an IRIN report²⁹, several thousand families who were forced to abandon their homes during the 1998-2000 war between Eritrea and Ethiopia have now returned to their home villages. According to a government statement, more than 3,400 families returned to the Gash-Barka region. Another 928 families from the Adi-Baare makeshift camp in Shambuko sub-zone returned to Binbina, Adi-Maelel and Tologumja, while 498 families had returned to Anagulu, Barentu sub-zone. One thousand others, originally from the Gerset area, had also been resettled, the statement added.

Ethiopia

For the last fifty years, the economy of the highlands has been dragged down by the consequences of population increase, diminution of farm holdings, natural resource depletion and declining returns to land and labour. Deforestation and ploughing of steep slopes continue to result in severe soil erosion and force the abandonment of large areas of land. Soil conservation works have proved largely ineffective in the face of high intensity rainstorms and continuous cultivation.

Lack of adequate access to and control over land by peasants are said to be among the principal reasons for rural poverty and food insecurity. The enforced land redistributions of the last thirty years remain a major cause of perceived tenure insecurity in the highlands. Land policies have also marginalised pastoralists in the semi-arid lowland areas. They have lost access to vital drought fall-back areas which have been requisitioned by the authorities for irrigated and rainfed crop production.

Notwithstanding this bleak picture, there are signs of growing flexibility in official circles. The case for reducing state control over land use and for transferring more land rights to the land users is increasingly debated in the regional states. There have been modest policy and legal reforms at both regional and federal level. Efforts have been made to increase farmers' confidence that they will be able to harvest the benefits of their labour and investment. There is now a more sophisticated understanding of the nature of

²⁸ Mahari Okbasillassie Tikabo, Stein T. Holden and Olvar Bergland, 'Factor Market Imperfections and the Land Rental Market in the Highlands of Eritrea: Theory and Evidence', Department of Economics and Resource Management, Norwegian University of Life Sciences, 2006
http://www.umb.no/statisk/ior/discpaper/tenancy5_final5.pdf

²⁹ IRIN Eritrea: War displaced families resettled, says government' 23 May 2007
www.irinnews.org/Report.aspx?ReportId=72332

the required agrarian transition and the likely place of land tenure reform in the process. Aid donors seem to be playing a constructive role.

By reference to recent published accounts, this note aims to provide an update of developments in the land sector.

Legal framework

A brief explanation of the existing powers and responsibilities for land administration arising from the system of ethnic federalism introduced by the 1994 Constitution may be helpful, together with a few points on the rights of individuals.

Under Article 40 (1) of the 1994 Constitution, the right to ownership of rural and urban land, as well as of all natural resources, is ‘exclusively vested in the State and in the peoples of Ethiopia’. Land must not be sold or exchanged privately. A qualification however was made to accommodate the interests of private investors. Article 40 (6) states: ‘Without prejudice to the right of Ethiopian Nations, Nationalities, and Peoples to the ownership of land, the government shall ensure the right of private investors to the use of land on the basis of payment arrangements established by law’.³⁰

Land-related powers of the Regional States include Article 52 (2) (d), specifically the responsibility ‘to administer land and other natural resources in accordance with Federal laws’. Article 35 (7) of the Constitution affirms that women have the right to acquire, administer, control, use and transfer property. In law, at least, they have equal rights with men. Article 40 (4) provides that adult Ethiopian peasants have the right to be allocated land for farming by the State without payment.

Federal Proclamation No. 89/1997 on Rural Land Administration defined the scope of the land rights of individuals. Land could be leased and bequeathed but with strict conditions. The land could not be sold or exchanged or used as collateral, but improvements on the land could be sold. The 1997 land proclamation provided scope for further redistribution of the land to accommodate the landless. Indeed, in that year land was redistributed in some parts of the Amhara region.

In July 2005, Proclamation 456/2005 superseded Proclamation 89/97. Ownership of rural land continued to be vested in the Federal State, but a modest strengthening of holders’ rights was granted. The right of inter-generational tenure transfer was confirmed as well as the right to exchange land (to make small farm plots convenient for development) and to lease it (i.e. rent it out) but within strict limits. For the first time, provision was made for the registration and certification of land holdings. The 2005 law also requires landholders to use land sustainably and to protect it from erosion.

Bekure et al³¹ provide a useful summary of the land-related laws of the Regional States. Tigray issued its first land proclamation in 1997, Amhara in 2000, Oromiya in 2002 and

³⁰ Gebru Mersha and Mwangi wa Githinji, (2005) ‘Untying the Gordian Knot: The Question of Land Reform in Ethiopia’, *ISS/UNDP Land, Poverty and Public Action Policy Paper* No. 9, 15 October, Institute of Social Studies

³¹ Solomon Bekure, Abebe Mulatu, Gizachew Abebe and Michael Roth ‘Removing Limitations of Current Ethiopian Rural Land Policy and Land Administration’ Workshop on Land Policies & Legal Empowerment of the Poor, November 2-3, 2006, World Bank Washington D.C.

SNNP³² in 2004. These laws imposed conditions on both rental and inheritance. Small farmers were given the right to rent out their land for two to five years and, if ‘modern’ technology was used, for 15-20 years. A landholder is not allowed to rent out all of the holding and the lessee has to dwell in the area and engage only in farming. In Tigray, if a landholder rents out land and leaves the area for a period of two years or more, the land use rights are revoked and reallocated to landless applicants. Tigray and SNNP regions allow dependants to inherit land only if they live in the local rural locality. Small farmers are not allowed to mortgage their land but commercial farmers are allowed to do so.

Because individuals rather than households have use rights, women are said not to be excluded. Bekure et al report that in Tigray, Oromiya and SNNP, land certificates of married couples record the names of the husband and the wife, giving equal rights to the wife. Where polygamy is more common, only the names of the husband and the first wife are recorded on the land certificate. Female children are not prevented from inheriting their parents’ land rights.

However, other recent research shows that women are disadvantaged by unequal gender relations, if not by the law.³³ Under the patrilocal system, wives are expected to join the husbands’ family, where they are denied access to both family land and land allocated by the local Kebele (Peasants’ Association). This point is also made in a case study by ActionAid Ethiopia prepared for ICARRD in Brazil, in March 2006.³⁴ The paper also reminds us that in rural Ethiopia, as elsewhere, in addition to the formal, *de jure* land access mechanisms prescribed by the state, informal means of access to land survive. These include: intra-family transfers and land transactions, land access through community membership, and resettlement and squatter settlement.

Pastoral regions

Helland³⁵ points out that there is no legislation to protect the land and water rights of pastoralists. The vast pastoral areas of Afar Region and Somali Region fall under the land-related federal laws designed primarily for arable agriculture in the highlands. Gomes³⁶ finds that pastoralists in Somali Regional State face growing competition for water and pastures in a context of decreased rangeland access, as a result of the provision of perennial water points by governmental and aid agencies, which has led to enclosure of the range. Customary land and water rights in the pastoral areas are generally ignored.

³² Southern Nations, Nationalities, and People’s Region

³³ Patricia Howard and Erin Smith, ‘Leaving two thirds out of development: Female headed households and common property resources in the highlands of Tigray, Ethiopia’, Livelihood Support Programme FAO, 2006 at: <ftp://ftp.fao.org/docrep/fao/009/ah624e/ah624e00.pdf>

³⁴ ActionAid Ethiopia, ‘Policies and Practices for Securing and Improving Access to and Control over Land in Ethiopia’, Outcome Report and the Proceedings of the Thematic Dialogue held on 17 January 2006 Addis Ababa; a process and a contribution leading to ICARRD.

³⁵ Johan Helland, ‘Pastoral Land Tenure in Ethiopia’, Colloque international ‘Les frontières de la question foncière; At the frontier of land issues’, Montpellier, 2006

³⁶ Nathalie Gomes, *Access to water, pastoral resource management and pastoralists’ livelihoods: Lessons learned from water development in selected areas of Eastern Africa (Kenya, Ethiopia, Somalia)*, internal draft paper, FAO Livelihood Support Programme, Nairobi: FAO and IFRA-Nairobi, 2005

Policy developments

Considering the lack of thought given to tenure security in Ethiopia's first poverty reduction strategy report³⁷ in 2002, the issue subsequently received a surprising amount of attention. Four Regional States have initiated a simplified form of land registration, the purpose of which seems to have been to replace doubt and contention with regard to people's landholdings and to inspire confidence and encourage investment. This was judged to be necessary in view of several factors: (a) recent memories of enforced land redistributions; (b) the 1994 Federal Constitution which guarantees land without payment to every adult who aspires to farm; and (c) few if any options for extending the arable area.

In an attempt to address the issue of tenure security and to control the expansion of arable farming onto common land (pasture, forests and watersheds), regional authorities commenced the inventory of land holdings and issued certificates to holders. The system was initially tried in Tigray in 1997. Amhara followed in 2003 and then Oromiya and SNNP. Different methods and processes used are briefly described by Bekure et al³⁸, who identified a number of problems:

- Parcels are not always given a unique ID number
- Only recording existing rights without anticipating future updating
- Errors due to inadequate adjudication by demarcation teams
- Land records are not being updated
- Records are not being safely stored for protection against fire, pest and climate
- Duplicate land records are not always being kept
- While good for accuracy, highly scientific land measurements are slow and expensive and therefore of limited usefulness.

Of particular interest is the information provided on the comparative costs of the various survey methods adopted and the conclusion that only the simplest participative approaches are viable from a cost point of view.

A series of IIED research reports³⁹ covering Tigray and Amhara provide useful socio-economic details as well as an insightful analysis of outcomes.

³⁷ FRDE, *Sustainable Development and Poverty Reduction Program*, Ministry of Finance and Economic Development (MOFED) July, 2002, Addis Ababa

³⁸ *ibid*

³⁹ Nazneen Kanji, Lorenzo Cotula, Thea Hilhorst and Wray Witten, 'Can land registration serve the poor and marginalised?' Research Report 1, *Securing Land Rights in Africa*, IIED London, November 2005 <http://www.iied.org/pubs/display.php?o=12518IIED>
 Mitiku Haile, Wray Witten, Kinfe Abraha, Sintayo Fissaha, Adana Kebede, Getahun Kassa & Getachew Reda, 'Land Registration in Tigray, Northern Ethiopia', Research Report 2, *Securing Land Rights in Africa*, IIED London, November 2005 <http://www.iied.org/pubs/display.php?o=12519IIED>
 Berhanu Adanu and Fayera Abdi, 'Land Registration in Amhara Region, Ethiopia', Research Report 3, *Securing Land Rights in Africa*, IIED London, November 2005 <http://www.iied.org/pubs/display.php?o=12520IIED>
 Askale Teklu, 'Land Registration and Womens' Land Rights in Amhara Region, Ethiopia', Research Report 4, *Securing Land Rights in Africa*, IIED London, November 2005 <http://www.iied.org/pubs/display.php?o=12521IIED>

The second generation PRSP, the PASDEP⁴⁰, which the national government is in the process of finalising, gives greater prominence to improving tenure security than SDPRP. According to the February 2007 draft of the policy matrix, in the period 2006-2010, thirteen million landholders are to be issued 'first level certificates' and a further one million landholders are to receive 'second level certificates'. Federal technical assistance is to be provided to the 'emerging regions' (probably Gambella, Beneshengul Gumuz) to study the feasibility of extending the registration process and to draft appropriate proclamations.

These developments are expected to be supported by an extension of the USAID-funded project entitled 'Ethiopia – Strengthening Land Tenure and Administration' (ELTAP), which began in July 2005, described by Bekure *et al.* The purpose of the project is to 'assist the government implement a sound land certification system that provides holders of land use rights in Ethiopia with robust and enforceable tenure security in land and related natural resources in the four regional states of Amhara, Oromiya, SNNP and Tigray'. The agencies implementing ELTAP are the Land Administration and Land Use Team of the Ministry of Agriculture and Rural Development (MOARD) and the land administration and land use agencies of the four focus regions. Institutional capacity at the federal level and in three of the regions (Tigray, Oromiya and SNNP) is reported as relatively weak compared with that prevailing in Amhara Region, which has benefited from Swedish development cooperation (i.e. Sida).

ELTAP organized a national conference on Rural Land Certification Procedures and Cadastral Surveying Methodologies in March 2006. The conference brought together participants from the four regional states' land administration and land use agencies, the federal government, the Ethiopian Mapping Authority (EMA), the Central Statistics Agency (CSA), The Ethiopian Environment Protection Agency (EPA), the Municipality of Addis Ababa, academia, independent research institutions, the private sector and international expertise.

International and NGO support⁴¹

Sida and USAID are providing development assistance to the government for the strengthening of land administration. FAO and GTZ are also contributing technical support. SOS-Sahel, ActionAid Ethiopia, Oxfam International and its members, CDRA through its Rural Development Forum, Sustainable Land Use Forum, International Civil Society Food Security Network, Ethiopian Economic Policy Research Institute, Addis Ababa University, Forum for Social Studies and other organizations have been working and/or have an interest in strengthening tenure security.

Issues to be addressed⁴²

- Calls for countrywide privatization of land do not take account of the political and economic history of Ethiopia, particularly how ethnic subjugation was linked to landlordism and control over land.

⁴⁰ Plan for Accelerated and Sustained Development to End Poverty

⁴¹ ActionAid Ethiopia, *ibid*

⁴² These draw on the sources quoted

- It is increasingly understood that a number of complementary reforms are needed in the rural economy as a prelude to any fundamental change in land tenure and that due account must be taken of local concerns and culture as well as different agricultural systems.⁴³
- Well publicised commitment by government authorities (e.g. as in Amhara Regional State) not to redistribute land might be as effective in creating confidence and stimulating production as land registration alone, which can be interpreted as a prelude to another redistribution.
- Land is being acquired by the authorities in terms of different federal and regional laws in the same localities depending on the agencies involved. Compensation is generally inadequate. There is a large gap between what the investors pay and what is paid out in compensation. When will the federal and regional authorities develop a harmonised legal code for land acquisition and fair compensation?
- Proclamation 456/2005 places many constraints on those renting out land and restrict the mobility of rural labour. Lifting and/or easing such restrictions would facilitate the rental market and convert landholdings into economic assets without necessarily undermining the state's radical title.
- Current federal and regional laws restrict the inheritance of rural land to family members who are resident in the respective area, while the country's succession laws do not put any such restriction on bequeathing property and rights.
- Much more needs to be done to improve land dispute resolution, particularly appeals relating to administrative decisions.
- At the local level, land administration is undertaken on an *ad hoc* basis by committees and unpaid committee members. At higher levels, there is lack of clear jurisdiction and coordination among the government organizations that have responsibility for different aspects of land administration and management. There is reluctance by the authorities to clarify institutional responsibilities and relationships and how resources should be allocated. In formulating policies and laws, due account must be taken of what is affordable.
- State land administration in the extensive pastoral areas of Ethiopia is based on laws devised for settled agricultural land. New policies and laws are needed which take account of the requirements of pastoral systems and protect customary rights of access to pastoral resources.

Kenya

Over the last century, the impact of colonialism on land administration in Kenya has been almost entirely negative. The Independence Constitution of 1963 provided a golden opportunity to perpetuate the theft of public land. When President Mwai Kibaki took the

⁴³ The phased approach recommended by Gebru Mersha and Mwangi wa Gĩthĩnji in 2005 (op. cit.) to prepare the ground for land tenure reform [namely (I) labor intensive public investment (II) a national campaign for literacy and education (III) Intensify and extend the use of animal draught power and other inputs in farming (IV) where possible consider the introduction of new commercial crops] is not inconsistent with PASDEP.

oath of office at the end of December 2002, it was hoped that his government would introduce long-awaited legal and institutional reforms. Topping the list was the rewriting of Kenya's outdated Constitution, rooting out corruption and reforming land administration. Sadly, these expectations generated by the 2002 elections remain unfulfilled. For most of the period 2004-6, the National Land Policy (NLP) process was overshadowed by a vigorous political contest over the clauses in the draft constitution that related to the powers of the State President in comparison with those of the Prime Minister. There has been some success with consensus building among land professionals, civil society members and government officials, but the task of generating the political momentum for the required legal and institutional changes to land administration and management remains.

The NLP process has been mostly funded by grants from DFID, Irish Aid, Sida and USAID through a basket funding mechanism chaired by UNHabitat. The funding period has now been extended until September 2009.⁴⁴ The donors have been instrumental in getting the parties around the table and oiling the wheels. Their involvement has not been without criticism. Accusations of unwarranted foreign interference have been made in the press, but have not been substantiated. Until Parliament has approved the NLP, work on the following will continue:

- Institutional transformation of the Ministry and the setting up of a National Land Commission;
- Land policy finalisation and preparation for implementation;
- Local mechanisms for sustainable land rights administration and management;
- Improvements to the land information management system;
- The implementation of the Ndungu Commission recommendations.

The remainder of this note lists important milestones and the principal documents pertaining to the NLP and the Constitution of Kenya Review Commission (CKRC).

Chronology of the Kenyan National Land Policy process

Date	Milestone	Comment
21-23 May 2002	National Civil Society Conference on Land Reform and the Land Question for the preparation of a submission to the Constitution of Kenya Review Commission, Kenya College of Communication Technology, Mbagathi.	Such were relations between civil society organisations and the Ministry of Lands and Settlement that the MoLS declined an invitation to attend the meeting. Report available from the Kenya Land Alliance klal@africaonline.co.ke
November 2002	'Report of the Commission of Inquiry into the Land Law System of Kenya on the Principles of a National Policy Framework, Constitutional Position of Land and the New Institutional Framework for Land Administration', Government Printer, Nairobi (The	The Commission was appointed by President Daniel Arap Moi, November 1999. In November 2002, it submitted its report. It was not released until March 2003. Part II, 'Principles of a National Land Policy Framework for Kenya', is of greatest interest and has been strongly reflected in three

⁴⁴ Lala Steyn, Prof Paul Syagga, Tommy Österberg and Ibrahim Mwathane 'Kenyan Implementation Framework for the Land Reform Support Programme (August 2006 – May 2009)', Kenyan Ministry of Lands and Development Partners Group on Land, 31 October 2006

	‘Njonjo Commission’)	subsequent drafts of the constitution.
April 2003	Address by Hon. Amos M. Kimunya, Minister of Lands and Settlement, Stakeholders Conference, School of Monetary Studies, 16 April 2003	The Minister promised to engage with civil society and professional bodies in the formulation of the National Land Policy, a promise which has been largely honoured.
June 2003	‘Kenya Economic Recovery Strategy for Wealth and Employment Creation – 2003-2007’ www.planning.go.ke/planning_files/ecnomicrorecovery2003-2007.htm	This committed the Government, within the first half of the FY 2003/04, to develop a clear time-bound action plan for implementing the recommendations of the Njonjo Commission (p. 42).
February 2004	First National Stakeholders’ Workshop, National Land Policy Formulation Process, 10-11 February 2004	This initial congregation of stakeholders later formed the bulk of the thematic group members debating issues of land policy.
March 2004	Concept Paper: National Land Policy Formulation Process, Ministry of Lands and Settlement.	This lists the participating state and non-state bodies, sets out the TORs of the committees and thematic groups, the Secretariat, etc., and schedules for the process over the period to June 2005 www.ardhi.go.ke/onflydocuments/nlp/Concept%20paper.pdf
March 2004	The Draft Constitution of Kenya 2004, adopted by the National Constitutional Conference 15 March 2004 (also known as the ‘Bomas’ or ‘Zero’ draft)	Most of the 629 delegates, including 3 cabinet ministers, went ahead and voted to trim presidential powers against the government’s wishes, proposing the creation of a prime minister’s post after the elections in 2007. Chapter 7 covers Land and Property and follows the land policy principles set out in the Njonjo Commission report.
April 2004	‘Summary of Land Policy Principles from the Report of the Njonjo Commission, Constitution of Kenya Review Commission and National Civil Society Conference on Land Reform and the Land Question’, National Land Policy Secretariat, April 2004	www.ardhi.go.ke/onflydocuments/nlp/Land%20policy%20principles.pdf
June 2004	Report of the ‘Commission of Inquiry into Illegal/Irregular Allocation of Public Land’, Government Printer, Nairobi, June 2004 (the ‘Ndungu Commission’)	The Commission was appointed by President Mwai Kibaki on 30 June 2003. Completed one year later, the release of the report by government was delayed until 10 December 2004. Although widely leaked in advance, its revelations of land theft were sensational. Although not available in electronic form, an informative review and analysis has been published by Roger Southall ‘The Ndungu Report: Land & Graft in Kenya’ http://www.oxfam.org.uk/resources/learning/landrights/downloads/ndungu_report_land_graft.rtf
October 2004	Inception Report, National Land Policy Formulation Process, Office of the Coordinator, National Land Policy	Contains the detailed programme of work and the procedures to be followed by the participants, which were agreed in the Inception

	Secretariat, Ardhi House	Workshop, held at the Kenya School of Monetary Studies in August 2004. www.ardhi.go.ke/onflydocuments/nlp/Inception%20report.pdf
August 2005	National Land Policy Issues and Recommendations Report, Kenya Ministry of Lands and Housing (National Land Policy Secretariat)	A general synopsis of land issues concurred upon by stakeholders, their genesis and proposals on how to deal with them. http://www.oxfam.org.uk/resources/learning/landrights/downloads/kenya_nlp_issues_recs_report.pdf
August 2005	Proposed New Constitution (PNC) of Kenya, Kenya Gazette Supplement, 2005. Republic of Kenya, Nairobi 22 August 2005	The PNC was rejected in a national referendum on 22 November 2005. Chapter 7, 'Land and Property' remained fundamentally the same as in the 'Bomas Draft', but the defeat was considered to be an expression of general dissatisfaction with the government and its handling of the CKRC process and unrelated to the NLP, it was a major setback as the NLP was built on the new constitutional principles.
June 2006	Draft National Land Policy, National Land Policy Secretariat, Ministry of Lands, Nairobi	www.ardhi.go.ke/onflydocuments/Draft%20NLP.pdf Approved in principle by Cabinet but not expected be tabled in Parliament as a Sessional Paper until after the elections.
April 2007	National Land Policy adopted by a National Delegate Symposium	The delegates mandated the Ministry to prepare a Sessional Paper for Parliament.

Lesotho

Land reform has ground to a halt in Lesotho. During 2006, the Minister of Local Government, who is responsible for land matters, called for further revision of the Land Bill that had been prepared in 2003 and already amended on her instructions in 2004 and 2005. She had two basic objections to the Bill.

First, it was intended to regularize the largely irregular tenure arrangements that currently prevail in urban and peri-urban areas after decades of inefficient and increasingly corrupt land administration. Although the Bill set out careful procedures for converting current allocations into formal, legal tenure, it did not offer a blanket amnesty. Nevertheless, the Minister, who has taken a hard but largely unsuccessful line on enforcing proper urban planning and containing unplanned urban expansion onto agricultural land, has seen these provisions of the Bill as an unacceptable defeat for the principles of orderly administration, offering forgiveness rather than punishment for the vast numbers of (generally law-abiding) urban people who had little choice but to go outside formal channels as they sought a place to build their houses and livelihoods.

Secondly, the Minister (and some of her advisers) could not see any advantage in the new structure of four types of lease that the Bill proposed. The primary, qualified, demarcated and registrable leases were designed to offer a logical, integrated structure under which all land holdings would have full legal status and security and citizens would be able to transfer to more conventionally defined and surveyed tenure, with simplified but inevitably more onerous bureaucratic requirements, as and when their circumstances

required it. Conversion of the vast majority of holdings to primary leases, in particular, was meant to overcome the unsatisfactory legal status of the 'allocation' under which such land is held in terms of the 1979 Land Act. As the commentary explaining the Bill pointed out, the allocation 'is not an interest in land which is known to any system of law which is or has ever been applicable in Lesotho; it was not defined in the Land Act and the law applicable to it was not made clear.'⁴⁵ The Minister was not convinced, and her advisers either shared her scepticism or were unable to explain the advantages of the proposed system of leases. Instead, she ordered that the primary and qualified leases, as well as the references to regularising urban tenure, should be deleted from the Bill. These revisions would seriously damage the internal cohesion of the new law, which would then require a more comprehensive overhaul than the Attorney General's chambers seem willing or able to contemplate.

The Land Bill was drafted with reference to the Local Government Act of 1997, which established new local authorities with responsibility, *inter alia*, for land allocation and administration. The first Community Councils and District Councils were finally elected under this Act in 2005. Because of the delays outlined above, these new bodies have since been trained in the administration of land under the 1979 Act. Meanwhile, Parliament was dissolved in November 2006 to prepare for a general election that was held on 17 February 2007. The Land Bill had still not been presented to the legislature. The ruling party won the February election, and the incumbent Minister of Local Government has been reappointed. It remains to be seen whether the Land Bill will eventually resurface in any recognisable form. In the meantime, the new local authorities do what they can under the 1979 law, and the governance of land in peri-urban and urban areas remains a matter of serious concern.

Malawi

By 2005, the momentum of Malawi's land reform process had slowed down. The required financial and human resources have not been forthcoming due to budgetary constraints and to the questions which have been raised about the political and technical viability of the proposed reforms.⁴⁶ The situation has favoured those who benefit from the confused administrative arrangements at the interface between statutory and customary tenure in the peri-urban areas and are reluctant to relinquish their control over land allocation.

The Presidential Commission of Inquiry into Land Policy Reform was commissioned in 1995. The Malawi National Land Policy (MNLP)⁴⁷ was approved by Cabinet in January 2002. Among other things, it aimed to improve tenure security by clarifying and strengthening customary land rights and by formalising the role of traditional authorities in the administration of customary land, which covers some 70 per cent of the country.

⁴⁵ Patrick McAuslan 'Clause by clause commentary on the Draft Land Bill for a Land Act' (unpublished) 2003

⁴⁶ A useful review of the land policy reform process in Malawi has been conducted by a team from NorAgric. See Stein Holden, Randi Kaarhus and Rodney Lunduka, 'Land and Policy Reform: The Role of Land Markets and Women's Land Rights in Malawi' Noragric Report No. 36, Noragric, Norwegian University of Life Sciences (UMB) October 2006

⁴⁷ <http://www.oxfam.org.uk/resources/learning/landrights/downloads/malnlp.htm>

The MNLP also aimed to bring about a more equitable distribution of land by resettling people from crowded to less densely settled areas. For this purpose, land (i.e. privately held estates) was to be purchased from willing buyers for people needing land, and support was to be provided for resettlement. Other objectives were: to extend land use planning to all urban and rural areas; establish a modern land register; enhance community management of natural resources; and capacity development in land surveying and land management.

With regard to the first objective, the land policy recommended the survey and recording of each 'traditional land management area' and its protection against arbitrary conversion to public or private land with the loss of rights by the local community. The policy also envisaged that customary landholders (entire communities, families or individuals) would register their holdings as private 'customary estates' in ways that would preserve the advantages of customary ownership while providing security of tenure. The property rights contained in a customary estate would be private usufructuary rights in perpetuity. Once registered, the title could be leased or used as security for a mortgage. How this land titling was to be realised in legal and practical terms was by no means clear. In order to clarify this issue and others, the Special Law Commission on Land Law Reform was empanelled at the beginning of 2003 with a mandate to review and revise existing land legislation to facilitate the implementation of the MNLP, explore the codification of customary land and define the roles of traditional leaders and local government in land administration and management.

In June 2004, the first edition of this land review noted that the Special Law Commission was about to report to the Minister of Justice and the National Assembly. However, over 18 months later the Commission's report was still awaited. There was growing resistance from traditional authorities to the proposal to privatize customary land and register it in the name of individuals. At the end of 2005, the Special Law Commission embarked on a series of regional and national workshops to discuss its proposals with stakeholders. The Minister of Justice was scheduled to table a codified legislative framework of property rights in the legislature and Cabinet in February 2006, but in mid 2007 there is still no sign of it. The responsibility for the administration of customary land is strongly contested, especially in the peri-urban area of Lilongwe where land for residential, business and commercial purposes is in great demand. For example, in February 2007, Chief Maliri of Lilongwe accused Lands Officers of issuing leases and deeds for the same land parcel to several people, causing conflicts between buyers and sellers of land.⁴⁸ In turn, chiefs are accused of demanding 'thanks' (*chothokoza*) from those allocated land and making themselves landlords in the guise of tradition.⁴⁹ It is now reported that the government aims to table amendments to existing land laws, rather than introduce a whole new legal code. Civil society is reported to be pressing for more comprehensive reforms.⁵⁰ This is in line with MNLP which explicitly recognizes that 'a new, comprehensive land law will be necessary to give legal effect to the policy guidelines' (p.

⁴⁸ Lilongwe February, 10 February 2007 Malawi News Agency, www.malawi.gov.mw

⁴⁹ Pauline Peters, WP 141: 'Challenges in Land Tenure and Land Reform in Africa: An Anthropological Perspective', Centre for International Development, Harvard University, March 2007

⁵⁰ Civil Society spokesperson at African Regional Seminar on Land and Resource Rights, Norwegian People's Aid, Johannesburg, 20-22 November 2006.

17 MNLP). At the beginning of May 2007, the long-awaited Land Bill had still not been tabled in Parliament.

Some elements of the land redistribution programme are going ahead, despite the withdrawal of some donors⁵¹ from active support, but at slower rate and smaller scale than anticipated in the plan. The first beneficiary groups of the Community Based Rural Land Development Project⁵², funded under a grant from the World Bank, are being resettled. Some people have been moved from Thyolo District to Mangochi. The European Union capacity building project continues to support training and staffing of the line ministry.

Mozambique

Changing policy directions

There have been a number of developments since the last review, in the practical implementation of the Land Law and at the policy level.

Since the earlier review, there has not been a lot of change in the public sector commitment to protect legally recognized customarily acquired land use rights (DUATs). The public sector focus is still mainly on fast tracking new private investor land requests, processing these within the period of 90 days that was made an administrative benchmark by the Minister of Agriculture in late 2001. Nearly all community land rights delimitation work is still carried out by NGOs, with bilateral support varying in scale and consistency from province to province. Since the 2003 CTC report⁵³, which identified around 180 communities with delimitations carried out, it is likely that the total number is now around 250 (based on anecdotal evidence). There is still a marked time lag between the delimitation of the land of communities on the ground and the recording of the location and boundaries of the land in the official land registers and the issuance of certificates.

Development aid for the Community Land Initiative

Donors have been concerned with this situation and to address the problem the Land Fund model proposed in the CTC report has been put into effect by DFID, with support from four other donors (the Netherlands, Ireland, Sweden and Switzerland). The fund – now called the ‘Community Land Initiative’ (ITC) is a GBP 6 million project over five years, to be implemented from mid 2007 on a trial basis in three provinces (Gaza, Manica and Cabo Delgado). It will fund community delimitations, land registration, land use planning and micro project activity, and legal support to communities.

The US Millennium Challenge Corporation (MCC) is also funding a US\$40 million dollar programme over five years, focusing on land issues. This includes substantial

⁵¹ Danida terminated its development assistance in January 2002, following concerns over corruption and political intolerance. DFID has concentrated on funding Malawi's MDGs;

⁵² Total Project Cost \$29.78 million, April 2004-June 2009, see <http://go.worldbank.org/4ASNF0WDG0>⁵³ CTC Consulting, *Appraisal of the Potential for a Community Land Registration, Negotiation and Planning Support Programme in Mozambique*, Consultancy Report for DFID, April 2003

material support to the upgrading of the national land administration, but also a proposal to create a complementary fund to run alongside the ITC in the four northern provinces (Zambezia, Nampula, Cabo Delgado and Niassa). This is not yet operational however.

On the ground it is also apparent that the consistent work, by NGOs and by their bilateral and multilateral (principally FAO) supporters, is resulting in *de facto* formalization of land rights through a range of actions which are not directly related to land administration and management procedures *per se*. For example, a recent paper⁵⁴ highlights the impact of community-investor partnerships and the importance of linking land tenure reform with concrete initiatives that will raise community awareness of their rights and how they might be used in practice. In other words, while the public administration still fails to address all aspects of the Land Law, notably the community dimension, many communities are getting on with new projects that take for granted that their tenure is secure.

Challenges to the 1997 Land Law

Meanwhile, there are signs that the 1997 Land Law itself is facing some level of revision or perhaps even a complete change. The Mozambican private sector organization (CTA) continues to advocate more transparency and easier transactability of DUATs (falling short of calling for the full privatization of land), while the government has created a small working group within the National Directorate for Land and Forests to examine the Land Law with a view to possible changes at some point in the future. Unlike the earlier Land Law process, this group appears to be limited to Ministry of Agriculture staff and is working *in camera* for the moment. The National Director indicates that once ideas are clear, other sectors and civil society will be consulted. While to some extent recognizing other interests, this approach falls short of the participatory exercise of the mid 1990s that has given the 1997 law such huge popular (and inter-sectoral) legitimacy.

Other important policy initiatives are the finalization and approval of a new Rural Development Strategy (in which the land question does *not* appear as a key element), and the development of new indicators by government for measuring progress towards poverty alleviation objectives and Millennium Development Goals. In spite of pressure from civil society and donors to include proper impact indicators for Land Law implementation (such as the number of communities with Certificates and the area involved), the new matrix still only includes the indicator 'number of requests processed in 90 days'. This essentially administrative performance indicator is related to a single and very narrow area of Land Law implementation.

Initiatives to entrench the 1997 Land Law

The correct and constructive implementation of the Land Law (and other natural resource laws) is a focus of other programmes outside mainstream land administration. Since mid-2005, an important exercise in civic education and legal support is being carried out with FAO and Netherlands assistance at the Centre for Juridical and Judicial Training (CFJJ)

⁵⁴ Simon Norfolk and Christopher Tanner, *Improving Tenure Security for the Rural Poor - Mozambique Country Case Study*, LEP Working Paper 5. FAO regional technical workshop for sub-Saharan Africa on legal empowerment of the poor (LEP), Nakuru, Kenya, October 2006

of the Ministry of Justice. The programme trains NGO and some public sector staff as paralegals to promote the correct and practical use of land and other laws. They are also trained in the basics of using judicial and extra-judicial methods to defend rights against third parties including state agencies. Synergies with the new ITC and MCC funds are evident, as communities become more aware of the role of legal support in consultations with the State and investors, and as they exercise their rights to delimit and formalize their DUATs and negotiate with outsiders over access to local resources.

This programme also extends an earlier successful training of judges and prosecutors in these laws, to embrace district level administrative, judicial and police actors in seminars on basic Constitutional rights, the use of land and other rights to promote equitable development, and the role of each 'sector' in conflict resolution and the rule of law.

Challenges ahead

With the economy growing at around 7 percent per year and investor demand for land and natural resources still surging, it is evident that the issues at the heart of the 1997 Land Law represent either an opportunity for an historic social contract between communities and incoming capital (with the State as mediator and facilitator) to maximize social advancement and equity, or a time-wasting and expensive obstacle to investment and structural reform of the agrarian economy.

This struggle between opposing developmental views was inevitable once the 1997 law emerged from the Assembly into the countryside. In this context, the quote that ends the Mozambican section of the previous edition of this review still stands: 'Land debates can be seen as a proxy for development debates in Mozambique⁵⁵, as they are linked to debates about credit and investment, smallholder or large-scale commercial agriculture, government's role in development and issues relating to smallholder protections and power'.⁵⁶

It will be interesting, however, to see how the new Minister of Agriculture (since early March 2007) moves ahead, given a Presidential mandate to get Mozambique's unused land into production. He is reputed to favour large-scale agricultural enterprises (once state sector, now private). It is not yet clear what the implications will be for the land rights of communities and small farmers, or how such a vision is feeding into the internal discussions of the Land Law.

The new, nominally independent funds could also have a dramatic impact on local level capacity – read power – to exercise existing rights and establish stronger positions ahead of the emerging policy debate. Initiatives such as the CFJJ-FAO programme also take on great significance in this context, including proposals to convene a series of roundtables and a National Conference in October 2007 to commemorate 10 years of the 1997 law and open up discussion of how to move forward to a wider audience.

⁵⁵ Joseph Hanlon, *The Land Debate in Mozambique: will Foreign Investors, the Urban Elite, Advanced Peasants or Family Farmers Drive Rural Development?* (Pretoria: Oxfam GB in Southern Africa, 2002). <http://www.oxfam.org.uk/resources/learning/landrights/downloads/debatmoz.pdf>

⁵⁶ Nazneen Kanji, Lorenzo Cotula, Thea Hilhorst, Camilla Toulmin and Wray Witten, 'Can Land Registration Serve Poor and Marginalised Groups?' Summary Report, Securing Land Rights in Africa, IIED London, November 2005

Namibia

Agriculturally usable land in Namibia is subdivided into the commercial farming area (approximately 36.2 million ha) on freehold land and the so-called Communal Areas on state land (approximately 33.5 million ha).

Challenges of communal land administration

Communal land generally has better rainfall and is more fertile and accommodates most of the population, but many of the communities lack a clear understanding of the provisions of the Communal Land Reform Act 5 of 2002 (CLRA). Holders of rights to the use of the land are required to register details by March 2009. The date has already been extended from the initial deadline of 2006 because the public needed more information about why and how these rights have to be registered.

Land allocations by Traditional Authorities before the CLRA came into effect have not been geographically described, surveyed, registered or mapped. The CLRA requires that all customary rights be defined and registered and that land registration certificates be issued for each piece of land allocated. The Deeds Registry Act is being examined for possible amendments that would secure such rights.

The law does not cover every issue that might arise in the course of the work done by Communal Land Boards, particularly in respect of land allocation and dispute resolution, which normally delay the work of such Boards.⁵⁷ Land Boards are there to enhance the role of Traditional Authorities, but the latter require facilities to record information and keep it safe. Lack of resources (human and financial) often hampers the effective execution of their work. Land Board members are often unable to attend meetings because of a lack of transport.⁵⁸

Fragmentation and lack of coordination between different line ministries result in poor implementation of land reform and agricultural policy in communal areas. Closer collaboration of the MLR, the Ministry of Environment and Tourism (MET) and Ministry of Agriculture, Water and Forestry (MAWF) with respect to joint land use projects should be encouraged. For example, scope exists for community-based natural resource management (CBNRM) to be expanded beyond wildlife and water and applied to land as a natural resource.⁵⁹

Resettlement constraints

Statistics for 2006 indicate that the Government has managed to acquire 201 commercial farms, comprising 1,288,238 ha, on which it has resettled a total of 1,561 families since

⁵⁷ Mr Vehaka M Tjimune, Former Member, Permanent Technical Team, Executive Director, Namibia National Farmers Union, Proceedings of the Legal Assistance Centre/Institute of Public Policy Research Consultative Workshop: Perceptions on Land Reform held on 21-22 November 2006 at the NamPower Convention Centre, Windhoek.

⁵⁸ Discussion with Kavango and Kunene Land Board members, December 2006

⁵⁹ Colin Nott from Integrated Rural Development and Nature Conservation (IRDNC), Proceedings of the Legal Assistance Centre/Institute of Public Policy Research Consultative Workshop: Perceptions on Land Reform held on 21-22 November 2006 at the NamPower Convention Centre, Windhoek.

Independence 16 years ago.⁶⁰ This excludes direct farm acquisition by black farmers through the affirmative action loan scheme (AALS), which was initiated in 1992, shortly after independence. It provides loans on preferential terms via the state-owned AgriBank.⁶¹

The Ministry of Land and Resettlement (MLR) argues that the market-driven 'willing seller – willing buyer' (WSWB) process of land acquisition for resettlement has been very slow because the seller decides when to sell, i.e. when market conditions are favourable and the price of land is right. Further, the MLR complains that most farms that are offered are not in good condition or unsuitable (e.g. dilapidated infrastructure, too mountainous and/ or in desert/arid area, bush-encroached). The Ministry says that WSWB creates problems in meeting its targets. However, sellers are not always to blame for the slow process of land acquisition. Prospective sellers often complain that the Government is 'dragging its feet' on accepting offers or issuing waivers.⁶²

Since compulsory acquisition for land redistribution was introduced in 2004, a total of 18 farm businesses have been issued with letters of intent to expropriate by the Government, but only three have been acquired through this mechanism by the end of 2006. Expropriation is slow because of the drawn-out legal process involved.

No commercial farms have been forthcoming in the small area suitable for crop production.⁶³ The bulk of the commercial area consists of ranches for cattle and/or small stock. Unfortunately, the subdivision of ranches has not been a success. The costs of settling families with small herds and flocks on individual farms, with reasonable standards of social and economic infrastructure, are very high. In addition to the economic consequences of sub-division, there are likely to be far-reaching negative environmental effects. Small herds and flocks are difficult to manage as commercial units on fenced farms in dry areas.⁶⁴

Many more people seek resettlement than is possible on the land purchased for the purpose. For example, in the case of a recently expropriated farm (Ongombo West), each of the five units made available on the farm had thousands of applicants. A major problem is that many applicants lack the necessary skills and/ or starting-up capital.

⁶⁰ Dr Nashilongo Shivute, Under Secretary for Land Reform and Resettlement, Proceedings of the Legal Assistance Centre/Institute of Public Policy Research Consultative Workshop: Perceptions on Land Reform held on 21-22 November 2006 at the NamPower Convention Centre, Windhoek. NB: In 1991, the commercial sector comprised some 4200 farm businesses on 6292 farms under a freehold system of individual land ownership ('Current Land Tenure System in the Communal Districts of Namibia, 1991' Paper submitted to National Conference on Land Reform and the Land Question, Windhoek, June 1991 by the Dept. of Agriculture and Rural Development, Ministry of Agriculture, Water and Rural Development).

⁶¹ The previous edition of this review reported that the area of land acquired under the AALS amounted to four times the amount of land acquired by government directly for resettlement

⁶² The Agricultural (Commercial) Land Reform Act 6 of 1995 makes provision for the compulsory acquisition of agricultural land for purposes of land reform. The Act requires a prospective seller to offer the land to the Government before offering it to anybody else. If the state declines to buy the land concerned, it must issue the prospective seller with a certificate of waiver in respect of the land on offer. Only then can a seller enter into a valid contract of sale with a third party, such as prospective Affirmative Action Loan Scheme farmers.

⁶³ According to a Ministry of Lands and Resettlement spokesperson

⁶⁴ Martin Adams, *Breaking Ground: Development Aid for Land Reform* ODI London 2000

Currently, the MLR and financial institutions are revising leasehold contracts. The documents previously drawn up were not negotiable by creditors in the event of default. Matters of inheritance are also to be included in the lease agreements. The MLR is in the process of tightening up the selection criteria for beneficiaries.⁶⁵ Selection criteria are being developed to assist Resettlement Committees in all regions of the country in selecting suitable candidates.

Report of the Permanent Technical Team on Land Reform⁶⁶

The findings of the Permanent Technical Team on Land Reform (PTT) were released in August 2006. The PTT was established by the government and inaugurated in August 2003 and supported by the government and donor agencies – the GTZ, USAID via the Namibia Nature Foundation (NNF), and DFID. The objectives of the PTT were to take stock of actions to date and formulation strategic options and an indicative action plan for land reform. The PTT report proposes that government should raise targets from 9.5 ha to 15 million ha by 2020 (or 41% of freehold land). In order to achieve this goal, the PTT team suggests:

- The streamlining of the process of acquisition;
- Use of expropriation where appropriate and acquiring land in well located blocks and clusters to facilitate post-settlement support and marketing;
- Retaining the skills of farmers who were otherwise leaving the land;
- Strengthening of the affirmative action loan scheme (AALS);
- Determine total land demand needs in terms of quantity and quality of land required – matching specific need (development of communal area land also important);
- Broaden stakeholder collaboration and inputs to land reform through regular; and structured consultations (negotiated land reform).

Land reform should be a sector-wide programme and the PTT recommends the establishment of the following:

- A permanent Cabinet Committee on Land and Social Issues (including all line ministries) to coordinate sectoral responses to land reform at policy (and budget) level.
- A Technical Committee on Land and Social Issues (Permanent Secretary level) to develop and oversee implementation of sectoral strategies in support of land reform.
- A Technical Coordination Team within the MLR to coordinate the implementation of the Action Plan(s), including initiatives by non-State actors.
- Outsource non-core functions (e.g. training of resettlement beneficiaries and newly emerging farmers)

⁶⁵ During a MLR workshop in May 2006, the Minister admitted that the list of potential resettlement beneficiaries had to be reviewed, as some people appeared on it more than once because they applied repeatedly.

⁶⁶ All the information on the PTT recommendations obtained from Mr Vehaka M Tjimune, Former Member, Permanent Technical Team and the Permanent Technical Team on Land Reform report, published by the Ministry of Lands and Resettlement

- As a matter of urgency, provide capacity in all Directorates and Divisions within the MLR through in-service and professional training, secondment and recruitment.

Recent research

Four important research papers were published on Namibia during 2006. Two looked at the issue of farm workers. Cons Karamata of the Labour Resource and Research Institute (LRRI) examined their living and working conditions and the impact of the 2003 minimum wage legislation. His study concluded that labour relations are far better on black-owned than on white-owned commercial farms, where a master-servant mentality still persists and many workers are in debt to the farm shops.⁶⁷

A second study, by the Legal Assistance Centre (LAC), examined the rationale behind farm worker evictions and their effects on farm worker communities in a country where there is currently no legislation protecting tenure rights.⁶⁸

Another LAC study, *Our land they took*, looked at the sensitive issue of the land rights of the San, the poorest and most marginalised minority group in Namibia, with little access to existing political and economic institutions. They have been dispossessed of most of their ancestral lands and on lands which they still occupy there are major issues of resource overuse, degradation, illegal grazing, unclear legal status and ongoing threats of dispossession. The report argues the need for prompt government action to prevent political and legal chaos.⁶⁹

Finally, Willem Odendaal of the Namibian Economic Policy Research Unit (NEPRU) looks at nationwide current key land policy and agrarian issues and at the impact of land and agrarian reform. He argues that the resettlement programme has failed with not a single project sustainable after 5 years. He concludes by stressing the need for clear criteria for expropriation of commercial farmland and for farm workers to be a priority target in land reform projects.⁷⁰

⁶⁷ Labour Resource and Research Institute (Cons Karamata), *Farm Workers in Namibia: Living and Working Conditions*, Windhoek, August 2006
http://www.oxfam.org.uk/resources/learning/landrights/downloads/namibia_farm_workers_report2006.pdf

⁶⁸ Legal Assistance Centre, Namibia (Land, Environment and Development Project), *Determination of the Feasibility of Conducting an Assessment of the Impact of Farm Worker Evictions on Farm Worker Livelihoods in Namibia*, Windhoek, June 2006

http://www.oxfam.org.uk/resources/learning/landrights/downloads/feasibility_study_%20of_evictions.pdf

⁶⁹ Legal Assistance Centre, Namibia (Land, Environment and Development Project), *'Our land they took': San land rights under threat in Namibia*, Windhoek, December 2006

http://www.oxfam.org.uk/resources/learning/landrights/downloads/san_land_rights_under_threat_in_namibia.pdf

⁷⁰ Namibian Economic Policy Research Unit (NEPRU Working Paper 111, Willem Odendaal) *The SADC Land and Agrarian Reform Initiative: The case of Namibia*, Windhoek, December 2006
http://www.oxfam.org.uk/resources/learning/landrights/downloads/namibia_land_and_agrarian_reform_nw111.pdf

Rwanda

Rwanda's Land Policy was approved by Cabinet in February 2004 and the Organic Land Law was signed in July 2005. The new land law provides land rights for individuals (currently almost all land is owned by the State), and it also provides guidance regarding land management and use. Essentially, the law aims to facilitate several objectives of the national land policy, including the regrouping of people into new settlements, land consolidation, and master planning.

In an attempt to deal with these objectives, the Government of Rwanda (GOR) plans to register all land parcels according to a parallel land administration system, which would allow for land held under customary tenure to be recorded on locally held land records and for commercial properties leased out by the state to be registered on a national cadastre.

DFID Land Reform Project

The United Kingdom is Rwanda's largest development partner, providing both financial and technical assistance to both government and civil society. In view of the cooperative land reform endeavour, the GOR has made the general commitment to '... continue the promotion of national unity, justice and reconciliation.' In addition, the GOR has made the more specific commitment to develop and implement a land reform strategy that is based on the principles enshrined within the Constitution and that is based on a wide consensus.

A number of land tenure specialists have recommended that the proposed land reform initiatives be selectively piloted on a participatory and voluntary basis and thereafter carefully evaluated before any attempt is made to implement the initiatives nationally. The DFID-funded land reform project has been designed according to this recommendation; nonetheless, these and other specialists continue to express concern that some GOR officials may not acknowledge the importance of refining the land policy and legislative framework in consideration of the knowledge that is gained through pilot implementation.

In view of the considerable planning and mass participation that is involved in implementing land reforms of this magnitude, DFID has suggested that caution and lengthy project timelines are required. As DFID technical advisers have commented,

'Donors have been wary of engaging on land issues in Rwanda due to their particularly high political sensitivity: it is clearly a place where donor practices may be critical to the future security of millions of people, given intense land pressures and limited non-agricultural opportunities. DFID, however, has taken the lead in supporting the Rwandan Land Ministry to build implementation capacity, persuading the Ministry to take things slowly in order to get them right.'⁷¹

⁷¹ Elizabeth Daley and Mary Hopley, *Land: Changing Contexts, Changing Relationships, Changing Rights*, commissioned paper for the Urban-Rural Change Team, DFID Policy Division, 2005
http://www.oxfam.org.uk/resources/learning/landrights/downloads/land_changing_contexts_relationships_rights.rtf

USAID is also providing technical support to MINITERE for the development of the legal framework, e.g. advice and assistance with legislation on land acquisition and compensation.

In late 2005, several DFID Technical Advisers provided by HTSPE embarked on a two-year 'road map'/pilot project that aimed to plan for the longer term implementation (over ten years) of the new land policy and land law.

Murambi Stakeholder Workshop

At about the mid-point of this project, in October 2006, the national land reform process was discussed at a two-day MINITERE/DFID workshop that was held in Murambi, Rwanda. More than 175 delegates attended the workshop: representatives of NGOs, donors, and other interested groups attended the first day; district officials attended the second day; and government officials attended on both days.

Among the topics discussed at the workshop were the following: the 'road map' to land reform; the national land policy; the implementation of the land law; the results of the field consultations; land use planning; governance structures and capacity building for land reform implementation; the role of donors and land sector stakeholder groups, and the proposed trial work to be undertaken within four districts in 2007.

Concerning the 'road map,' three central objectives of the reform process were enumerated: developing an effective implementation plan that would be supported by trial interventions; developing the capacity of MINITERE and support institutions; and establishing mechanisms for donor support. In addition, several problematic issues were identified, including the identification of land categories on the ground, the effect of the law on existing written law and on customary law and practice, the possible impacts of the law on land rights of various population groups, the possible implications of the law for environmental planning, and the 'workability' and 'acceptability' of the law (also secondary laws and decrees) on the ground. Finally, several safeguards that should be applied in the reform process were identified, including the necessity that the laws be fair and meet the needs of special groups and that the drafters of the law be neutral and not have conflicting interests.

As concerns the field consultations, several objectives of the consultations were enumerated: establishing baseline information about existing land tenure practices and tenure security; gaining a detailed understanding of current land-related problems and concerns; learning more about existing documentation and methods of land registration; and establishing location and methodology for trial interventions. The DFID consultant who presented the findings of the field consultations stated that people expressed strong demand for formal written documentation of land ownership, that people believed that formalization of land rights would substantially reduce land disputes, and that people had great confidence in the land law and its capacity for protecting their land rights through land registration. At the same time, the consultant stated that people were concerned about the possibility of corruption during land registration and about land expropriation. As a result of the field consultations, the consultant recommended that land in Rwanda should be formally and systematically registered.

All delegates at the workshop were afforded the opportunity to participate in small group discussions which separately addressed the tasks of trial interventions, the protection of vulnerable people's rights, the protection of informal settlers' rights, and the process of land registration. Although the findings of the groups were presented in summary form to the entire group, many delegates expressed regret that time did not allow for discussion.

Trial interventions

The Rwanda Land Reform Project conducted the first participatory trial registration of land holdings in Biguhu Cell in Karongi District in April-May 2007. During the period the project with local farmers demarcated and adjudicated over 2,900 rural land parcels for over 350 households. Further trial registrations are underway in Musanze District (June 2007) and are to follow in Kirehe District and Gasabo, the last mentioned is part of the peri-urban area of Kigali.⁷²

Somalia⁷³

Conflict in the Horn of Africa is escalating as power struggles within Somalia are exacerbated by military support that Ethiopia and Eritrea give to the opposing parties. A further proxy war is emerging between the US and Al Qaeda in Somalia.

Thousands fled from Mogadishu in early 2006 as a warlord coalition fought unsuccessfully to repel the Islamic Courts from taking the city. By November, most of the south and central areas of Somalia were in the hands of the Islamic Courts and for a brief period calm returned to the battered Capital. However, fierce fighting between the Islamic Courts and the Transitional Federal Government (TFG), supported by the Ethiopian army, broke out in December 2006. During the early part of 2007, the Islamic Courts were defeated and the Ethiopian force entered Mogadishu. Damage to homes and property in Mogadishu was on an unprecedented scale. Fighting continued in the south-west of the country. In early June 2007, the TFG was subject to attack from suicide bombers in their HQ in Baidoa, located in the inter-riverine area of the Juba and Shebelle.

⁷² 'National Land Reform Programme Newsletter', Issue 2, May 2007. The NLRP Newsletter is available from Thierry Hoza Ngoga at HTSPE, MINITERE, Kigali lr_phase1@yahoo.com

⁷³ Nathalie Gomes, 'Access to water, pastoral resource management and pastoralists' livelihoods: Lessons learned from water development in selected areas of Eastern Africa (Kenya, Ethiopia and Somalia), internal draft paper, FAO Livelihood Support Programme, Nairobi: FAO and IFRA-Nairobi, 2005; Oxfam International, 'Oxfam assessment: deaths from dehydration as Somalis exist on a twentieth of minimum water ration', Oxfam press release, 16 February 2006; Oxfam International, 'Latest Situation Report – October 2006' <http://www.oxfam.org.nz/whatwedo.asp?s1=What%20we%20do&s2=Emergencies&s3=Food%20crisis%20in%20East%20Africa&s4=Latest%20Situation%20Report>; Michele Nori: EC Marie-Curie-funded Milking Drylands research initiative, 2006; Michael Roth: 'Somalia Land Policies and Tenure Impacts: The Case of the Lower Shebelle', in Thomas Bassett and Donald Crummey (eds.), Land in African Agrarian Systems, USA: University of Wisconsin Press, 1993; Martin Adams, Jeremy Berkoff and Elizabeth Daley, 'Land-Water Interactions: Opportunities and Threats to Water Entitlements of the Poor in Africa for Productive Use' Thematic Paper, UNDP Human Development Report, 2006. http://hdr.undp.org/hdr2006/pdfs/background-docs/Thematic_Papers/Adams%20Martin%20et%20al.pdf

The self-declared Somaliland Republic, probably the only part of the country where there is anything approaching the rule of law or a justice system consistent with international standards, continued to demand international recognition. Its unresolved border dispute with neighbouring Puntland remains a cause of tension.

Droughts and floods

Somalia has been plagued with uncertain rainfall for most of the last decade: a flood emergency in late 1997 – affecting up to one million people and causing the destruction of irrigation canals and river embankments, losses of pumps and of livestock and crops, including many banana plantations which were important sources of seasonal work – was followed by a prolonged period of poor rains. As drought conditions in southern Somalia have intensified, food insecurity has been compounded by the continuing civil strife. Oxfam International reported in February 2006 that hundreds of thousands of people were now at immediate risk of water shortage in southern Somalia, with some pastoralist families existing on only one twentieth of the recommended minimum daily water supply; the UN estimated that some 1.7 million Somalis were affected by the worst drought of the decade. The most recent Oxfam situation report for the sub-region in October 2006 indicated that the main rains (*Gu*) had a mixed outcome but enabled pastoral communities to access water and improved the availability of grazing. Nonetheless, the massive livestock losses in 2006 will mean that the recovery of herds and flocks, and livelihoods, will be slow.

Residual impact of international development aid on land and water tenure

There are few if any development aid programmes still operating in the rural areas of Somalia. For the pastoralists this is perhaps a mixed blessing. For decades, large internationally-funded water development schemes on the River Juba and the Shebelle were promoted as the foundation for improving living conditions. Yet they also had negative effects for the environment; the inequity and political manipulation associated with them also contributed to Somalia's continuing civil strife.

Along the southern rivers, where conditions are suitable for some sedentary agriculture, past water investments funded by the World Bank aimed to develop large-scale irrigated intensive agricultural systems. However, these dispossessed both small-scale crop farmers and pastoralists of critical livelihood assets. Previously, farmers co-operated seasonally with local pastoralists – livestock were allowed to access crop residues and other forage resources, and this helped to clear and enrich the farmers' land. The large-scale farming schemes interrupted this relationship, leading to conflict between the two groups. The Agricultural Land Law of 1975, which nationalised all land, also gave the state responsibility for maintaining rivers and canals (taking it away from customary institutions). Since 1991, the chaos of civil war has resulted in a suspension of maintenance work and hence major problems for irrigated agriculture.

In the areas of Somalia dominated by pastoral production systems, past water development schemes in the form of borehole development more directly reshaped seasonal land use patterns, increasing overall livestock population density and shifting herd composition from more drought-resistant animals such as camels and small ruminants towards less drought-resistant but more-marketable cattle. Herds – and

livelihoods – therefore became more profitable, but also more vulnerable to droughts and market dynamics; at the same time the increasing number of boreholes reduced pastoralists' former reliance on their relationships with the farmers of the southern riverine areas.

The nature of pastoralists' water rights also changed fundamentally with past schemes: on Somali ranges the only public goods, open to all herders and herds, were natural water sources (streams or natural springs), yet water investments by government, international donors and NGOs were also treated as public goods (based on false assumptions about the nature of pastoral water and land rights and entitlements). Grazing areas that had traditionally been associated with the specific pastoralist group who had control of the local man-made water source then became openly accessible to all herders, creating tensions between groups and between them and the agencies responsible for the particular schemes. Pastoral water development schemes have been targeted in Somalia's civil war, frequently by local people wishing to discourage incursion by outsiders.

South Africa

Over the past five years, there has been rising pressure on the South African state to abandon its market-based approach to the redistribution of land, for more direct state intervention in the acquisition of land and for a wider agrarian reform to address rural poverty and inequality. The National Land Summit in July 2005 saw convergence among major players, except white farmer organisations, on rejecting the 'willing buyer, willing seller' principle underpinning policy.⁷⁴ It is unclear however what will replace this approach – and what the real significance is of the rhetorical agreement to reject it. During 2006, South Africa's land reform process continued slowly alongside a number of initiatives to revise policy and develop new policy. This policy activity has been pursued through a number of parallel and fragmented initiatives, without clear political leadership and without broad participation by civil society groups. It is unclear whether, or how, these policy processes might cohere, as this review of major developments from the start of 2006 to early 2007 shows.

Post-Summit processes

At least four parallel processes have been underway following the National Land Summit in July to August 2005, where there was widespread agreement on the need to undertake a major overhaul of land policy and agricultural policies. As a direct outcome of the Summit, a multi-stakeholder National Steering Committee (NSC) was convened, with three task teams to make proposals in the areas of legislation, policy and implementation, respectively. This was to be coordinated by the national government departments tasked with agriculture and land affairs, but before the end of 2006, shortly after they had been convened, these had effectively ceased to exist. A ministerial review of the 'willing buyer, willing seller' policy was announced by President Mbeki in his State of the Nation speech in February 2006,⁷⁵ but over a year later it was unclear whether or not this had

⁷⁴ Ruth Hall, 'The Shifting Terrain of Land Reform in South Africa: The National Land Summit, July 2005' in *Review of African Political Economy*. No 106: pp 621-627, 2005

⁷⁵ Thabo Mbeki, 'State of the Nation Address by the President of South Africa'. Joint Sitting of Parliament, Cape Town, 3 February 2006.

started, and if so, whether any public engagement would be possible. In late 2006, government published a large tender to seek a consulting company to re-write the White Paper on Land Policy – i.e. to revise all areas of land policy. Meanwhile, new directions for policy were taken forward in the Presidential Working Group on Agriculture, where the President meets with leaders of the agricultural industry, including the major unions representing white and black commercial farmers – Agri South Africa (AgriSA) and the National African Farmers' Union (NAFU). Here, leaders discussed the need for overarching policy on agrarian reform, confirmed the Agricultural Black Economic Empowerment (AgriBEE) charter, and adopted a BEE scorecard adapted for the agricultural industry.

Wider political context

The appointment of a new Minister of Agriculture and Land Affairs, Lulu Xingwana, came as part of a wider cabinet reshuffle in May 2006, when the previous incumbent, Thoko Didiza, was appointed Minister of Public Works.⁷⁶ Xingwana had previously held the position of Deputy Minister of Mineral and Energy Affairs.⁷⁷ With a reputation for taking a hardline in dealing with big business in the mining sector, she was widely expected to be unpopular with white farmers, and to push a more radical agenda than her predecessor.⁷⁸ These expectations have not been realised. Despite some public spats between the new Minister and white agricultural unions, AgriSA and the ultra-conservative Transvaal Agricultural Union (TAU) over abuse of farm workers, the Minister has built close relations with the major agricultural unions representing white and black commercial farmers as well as with key commercial financial institutions investing in agriculture.

In 2006, the National Land Committee (NLC), the national network of land NGOs, finally disbanded, after the closure of its national office in 2005. This weakened national coordination of land rights groups, which already face a challenging donor environment. Nevertheless, former members of the NLC network, and other independent movements of rural people, have continued to cooperate in a more *ad hoc* manner around certain issues. An example is the national farm dweller campaign launched in KwaZulu-Natal in December 2006 and due to continue throughout 2007. At the National Land Summit in 2005, the umbrella forum bringing together such groups was the Alliance of Land and Agrarian Reform Movements (ALARM). Since then, it has held a few national meetings and is led by a national steering committee but it is only in the Western Cape that it has developed a programme of action and continues to meet and organise.

Farm dwellers

The findings of a national evictions survey conducted by Nkuzi Development Association and Social Surveys in 2005 received high profile attention from government and the media – specifically the finding that nearly a million farm dwellers were evicted

⁷⁶ *Mail & Guardian*. 2006. 'Mbeki reshuffles Cabinet following Sigcau's death'. Mail & Guardian online reporter and Sapa. Johannesburg, South Africa. 22 May.

⁷⁷ Barry Sergeant, 'Unpopular mines minister moved sideways' in *Mineweb*. www.mineweb.co.za 22 May 2006.

⁷⁸ Yolandi Groenewald, 'The farmers and the fire-eater' in *Mail & Guardian*. 27 May 2006.

between 1994 and 2003.⁷⁹ This exceeds the number of people acquiring land rights through land reform, a finding which sharply drew into focus the inadequacy of a weak land reform process alongside the systemic restructuring of the agricultural sector which deepens unemployment, landlessness and rural impoverishment.

Despite these challenging findings, and the attention they received, no new legal or policy approaches to securing the rights of farm dwellers, or providing them with land of their own, have been proposed. As in previous years, in 2006 and into 2007 there have been mounting calls from civil society groups for the scrapping of the inadequate law regulating tenure rights on farms – the Extension of Security of Tenure Act 62 of 1997 – and its replacement with stronger legislation to protect farm workers and dwellers from eviction from their homes. In addition, there is a need for policy to address the wider land and livelihood needs of farm dwellers.

Certain incidents of gross human rights violations on farms also drew attention of the public and of government to the ongoing inequalities in the untransformed commercial farming sector. Waves of actual and threatened evictions in certain regions have prompted growth of a number of small and localised movements of people to resist removals, such as the Jonkershoek Crisis Committee outside Stellenbosch, and the Plaaswerkers Aksie Groep Teen Uitsettings (PAGTU) in Rawsonville. These tenuous conditions and the patent inadequacy of present strategies either to end abuse or to stem the tide of evictions were highlighted again recently in a report of the South African Human Rights Commission to the National Council of Provinces (NCOP) in February 2007, which again drew attention to the Nkuzi study and attracted substantial media coverage.

While tenure rights for farm dwellers have not received the attention of lawmakers, in December 2006 government published a bill to amend another law protecting the tenure rights of occupiers (particularly in urban areas), the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE). This amendment bill proposes to weaken the statutory rights of occupiers and exclude from its ambit those who occupied land in terms of an agreement. This legislation explicitly excludes farm dwellers.

Communal land rights

The Communal Land Rights Act 11 of 2004 (CLRA) is the key instrument to reform tenure in the communal areas of the former homelands – approximately 13% of the land area of South Africa, but home to about 30% of the population and the areas where poverty is most deeply entrenched. The key choice made in the Communal Land Rights Act is to extend ownership to rural communities and use ‘traditional councils’ to administer the land and represent the ‘community’ as owner. Within areas of communally owned land it proposes the establishment of a register of ‘new order rights’ vesting in individuals. Controversially, this law does not provide statutory protection for existing land rights, but rather adopts a land titling approach in which the culmination of an

⁷⁹ Marc Wegerif, Bev Russel and Irma Grundling. *Still Searching for Security: The Reality of Farm Worker Evictions in South Africa*. Johannesburg: Social Surveys & Polokwane: Nkuzi Development Association, 2006. http://www.nkuzi.org.za/docs/Evictions_Survey.pdf

application and investigation process would be the transfer of private ownership of communal land.

Where they exist, traditional councils established under the Traditional Leadership and Governance Framework Act (TLGFA) of 2003 ‘may’ exercise the powers and functions of land administration committees⁸⁰. There are competing interpretations of this provision. In one view, it allows for choice on the part of rights holders as to which local body will perform land administration functions, but another view holds that the word ‘may’ is permissive only, enabling a traditional council to exercise the powers of a land administration committee, rather than creating a choice for rights holders. The Act does not explicitly provide for choice, for example by setting out procedures and oversight mechanisms, which suggests that the latter interpretation is correct.

Implementation of the CLRA has not progressed and it appears that the political impetus evident before it was promulgated has now dissipated. In no communities have rights enquiries and land transfers yet been effected. In both the 2006/07 and 2007/08 financial years, the National Treasury has allocated less than 5% of the estimated annual cost of implementing the Act. The main move towards starting to implement has been a partnership between the Department of Land Affairs (DLA) and the University of KwaZulu-Natal’s surveying department to develop course modules to train community land clerks to register communal land rights in terms of the CLRA.

Meanwhile, the Legal Resources Centre and a private law firm, Webber Wentzel Bowens, representing four client communities, have initiated a constitutional challenge of the Act in the Transvaal Division of the High Court, filing paper in April 2006. The litigants claim that the law is unconstitutional in that it grants unwarranted and unchecked discretionary powers to the Minister of Agriculture and Land Affairs, fails to secure the right of women living in communal areas to gender equality and, by allowing unelected traditional leaders to constitute the majority membership of Land Allocation Committees, fails to provide for democratic governance. Government was given leave by the court to submit its answering papers by 31 March 2007, and the applicants then had two months to reply. The court is thus likely to first consider the case in June 2007.

Restitution

Historical claims to land are still being dealt with through the land restitution programme. A total of 73,433 claims are now settled. Remarkably, this is exactly 10,000 more than the number lodged in 1998 (63,455). This is largely due to existing claims by communities being split up into individual households. Most of the urban claims have now been settled – a total of 64,707, as of the end of 2006. Of these, approximately three-

⁸⁰ Section 21 (2) of the CLRA states that: ‘If a community has a recognised traditional council, the powers and duties of the land administration committee of such community may be exercised and performed by such council’. The TLGFA allows existing Tribal Authorities to be deemed traditional councils if they ‘transform’ themselves within one year, after which time 40 percent of members must be elected and 30 percent must be women.

quarters were compensated with cash payments for forced removals, while about a quarter have involved restoration of the land they lost, or provision of alternative land.⁸¹

By contrast, claims in the rural areas have proceeded much more slowly. Most of these involve large numbers of people laying claim to large areas of agricultural land, and are expected to be complex, costly and potentially conflictual. Unlike urban claims, claimants of agricultural land have insisted on returning to their land and this means government must either buy it from its existing owners or, if they are unwilling to sell at the price offered, expropriate it. After several aborted attempts to expropriate land over the past five years, where notices were served and then retracted, government expropriated a farm under claim in the Northern Cape in January 2007.⁸² This has been widely recognised as the first farm to have been expropriated in the interests of land reform⁸³ and signals government's willingness to confront landowners' interests in cases where these stall restitution. There is no indication, however, that these measures will be used to advance the redistribution of land other than in cases of historical claims. For now, it is not clear either whether expropriation will be widely used, or whether it will bring down the cost of either land restitution or land redistribution, since government has not decided to use its constitutional powers to pay below-market compensation.

The Commission has not been able to estimate how many claims are left, which of these are urban and rural, and the likely market price of the land involved. The most recent budget allocates R7 billion to restitution over the coming three years. If past performance is anything to go by, this is highly unlikely to be enough to resolve the claims – and in any case is unlikely to be spent, unless urgent attention is given to the Commission's lack of capacity. Many of the claims already settled have not been implemented – in the sense that land has not yet been bought or paid for – and so future budgets will also have to cater for claims settled over the past years.

Despite the urgent need to resolve restitution claims, more than a billion rand of the 2006/07 budget allocation to restitution was unspent and, as a result, there was no increase in this year's budget. Instead, the allocation declined marginally, from R3.369 billion to R3.327 billion. The underspending is the result of the process of settling the rural claims proving to be complex and slow. The failure is largely due to weak institutional capacity; there is an urgent need to invest in capacity to implement. This casts further doubt on reaching the deadline set by President Mbeki for the completion of the restitution process by 2008 and brings into question the intended closure of the Commission, also in 2008. Which institution/s will be responsible for settling outstanding claims, buying land, paying compensation, implementing settlement agreements, and planning for human settlements and for production is now the subject of a consulting project for the Commission being undertaken by the Sustainable Development Consortium.

⁸¹ Commission on the Restitution of Land Rights. 2007. Statistics on Settled Restitution Claims: Cumulative Statistics: 1995 – 31 December 2006. Excel spreadsheet. Pretoria: CRLR.

⁸² Ruth Hall, 2007. 'The Unfinished Business of Land Reform' in *Mail & Guardian*. 23 February.

⁸³ A farm was expropriated for restitution purposes on only one previous occasion, at Farmerfield outside Grahamstown, in the late 1990s. However, this was by agreement with the owner.

While in the past the Commission on Restitution of Land Rights (CRLR) has been able to spend the bulk of its budget paying cash compensation to claimants, its priority now will be to attend to the rural claims where there is a stronger demand to return to the land. Here, its focus is on buying land and investing in new settlements and production on the land. The immediate priority being pursued by the Commission is to push through a large number of rural claims on prime commercial farmland in Limpopo and Mpumalanga provinces through strategic partnerships with private sector consortia, in terms of which the farms will continue to operate commercially under the management control of private companies, in which claimants will receive shares. Most of these agreements are being concluded with just a few partners, such as South African Farm Management (SAFM), who are extending control over substantial agricultural areas. Where such arrangements are in place, research has shown that claimants receive few tangible benefits, often not receiving dividends, as profits are reinvested, and have no access to land for their own use. However, no systematic monitoring is in place.

Constitutional Court Rules in Favour of Popela Claimants in South Africa

The Constitutional Court on 6 June 2007 ruled that the families known as the community of Popela are entitled to restitution in terms of the Restitution of Land Rights Act (case CCT69/06). This is the most significant Constitutional Court judgement yet given on land claims in South Africa and has particular relevance for claims based on Labour Tenancy rights lost and has wider implications for the way in which the Restitution of Land Rights Act should be interpreted.

This judgement overturns earlier decisions of the Land Claims Court and the Supreme Court of Appeal both of which found against the claimants. This is the biggest confirmation yet that the Land Claims Court has been making a far too narrow reading of the Restitution of Land Rights Act and not taking into full account the purpose of the Act and the Constitution and also not taking properly into account the context of racial oppression and land dispossession that took place in South Africa.

This is an important victory for the Popela claimants and for Nkuzi Development Association that has worked in support of the Popela community for more than ten years. It is a victory tinged with sadness that this had to take so long, that this kind of directive on interpretation of the Restitution of Land Rights Act did not come ten years ago, and for the members of the Popela community who have died while waiting for justice to be done. The full judgement can be found at:

<http://www.constitutionalcourt.org.za/uhtbin/hyperion-image/J-CCT69-06>

Information provided by Marc Wegerif, Campaigns and Advocacy Officer, Oxfam GB, South Africa.

Redistribution

The most recent available information is that 3.3 million hectares has been transferred through all aspects of land reform, as of September 2006.⁸⁴ This figure includes state land disposal. The overall policy approach in redistribution remains one of market-based land

⁸⁴ Mduduzi Shabane, 'Department of Land Affairs: Presentation to NEDLAC'. Powerpoint presentation. Deputy Director-General. 24 August 2006.

reform, where successful applicants are awarded government grants to subsidise land purchase and, although bureaucratically mediated, is reliant on landowners to make land available for sale. Thus, the approach combines elements of both market and state-led approaches, in some instances combining the ‘worst of both’.⁸⁵

A proactive land acquisition strategy (PLAS), approved May 2006, is now being implemented, though unevenly as it is being interpreted and used in different ways. This implementation framework gives far-reaching discretionary powers to DLA officials to purchase land directly, rather than disburse grants to enable beneficiaries to purchase it. The PLAS has retained the market-based approach, but empowered government officials to buy land, and to lease this state land to ‘beneficiaries’, with an option to purchase it after three to five years. Government officials determine which land should be acquired, whether it should be transferred or leased, and if so, to whom and on what terms. This will require a ‘double transfer’; acquired properties become state land and, it is envisaged, will ultimately be transferred again to beneficiaries once they are identified and the terms of the transfer agreed.⁸⁶

It is doubtful whether, by itself, this can resolve any of the key problems besetting the existing redistribution programme. Key problems that remain are: which land should be bought, and who is this land being bought for? A fundamental missing link is any methodology to engage in participatory ways with rural people – a participatory needs assessment methodology. In the absence of this, it may merely provide landowners with a ready and uncritical market for unwanted land.

Meanwhile, both government and civil society groups are, separately, exploring further the idea of area-based planning for land reform, which would take the needs of local landless people as its starting point, and then explore possibilities for addressing these – through ‘the market’ or through state intervention.⁸⁷ DLA has contracted private consultants to develop new policy on this, building on another consultant-driven process, the Business Process Re-engineering (BPR) conducted by the consulting firm KPMG, which attempted to redesign project cycles. The new policy direction has not yet been publicly announced or debated. Although disjointed from wider questions of where land reform needs to go, the area-based approach has the potential to resolve the murky issue of the role of municipalities in land reform, and may effectively become the ‘land’ sector plan for the local integrated development plans (IDPs). However, it remains to be seen whether these emerging ideas will find political support.

Various policies have been under review for some years. A review of policy on municipal commonage, done in 2005, had not been released by early 2007. Policy on farm worker equity schemes – in which farm workers use land reform grants to become shareholders in the farm where they work – was due to be reviewed in 2005 but no report has yet been

⁸⁵ Edward Lahiff, *State, Market or Worst of Both? Experimenting with Market-based Land Reform in South Africa*. Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape (Occasional paper series, No 30, 2007).

http://www.oxfam.org.uk/resources/learning/landrights/downloads/plaas_op30_mblr_lahiff.pdf

⁸⁶ Department of Land Affairs, *Proactive Land Acquisition Strategy*. Pretoria: DLA. April 2006.

⁸⁷ Ministry of Agriculture and Land Affairs, ‘Key Messages for the Minister’s Media Briefing’. Cape Town: MALA. Unpublished document. 7 September, 2006.

released. Restricting foreign ownership of land has been debated and a ministerial committee of enquiry released its report in 2005, but no further action has yet been taken. Instead, it appears that national government may develop policy towards an agricultural land tax (already provided for in the Property Rates Act, but subject to the discretion of municipalities), and to promote subdivision of agricultural landholdings. Although the Subdivision of Agricultural Land Act Repeal Act 64 of 1998 was passed nearly a decade ago, it has not yet been put into operation, as it has not been signed into law by the President. In addition, by late 2006, government had commissioned a number of small studies into a range of policy options including, on the one hand, the feasibility and merit of placing a ceiling on farm sizes, and on the other, stipulating a minimum viable farm size.

In 2007, the budget for land reform (to fund both land redistribution and tenure reform) was nearly doubled, from R907 million to R1.696 billion, though more of the increased allocation was earmarked for spending on consultants and contracted service providers and ‘communications’ than to the urgent needs to build capable institutions and to have available capital budgets. The budgets for restitution and land reform as a whole now comprise 0.8% of the national budget of R534 billion.

Agricultural support

The budget allocation to agriculture is also cause for concern. There is increased funding to provide agricultural support to land reform beneficiaries, but this is still very small and patently inadequate. This funding comes largely in the form of small discretionary and application-based grants under the Comprehensive Agricultural Support Programme (CASP). Despite its name, the programme is not comprehensive; it emphasises infrastructure provision rather than training, extension services or implements, and is available to only a small proportion of land reform projects. National funding for it stands at R415 million in the 2007/08 financial year.

The other form of financial support to new farmers and smallholders is the Micro Finance Institutions of South Africa (MAFISA) – the micro-credit programme targeting disadvantaged farmers – which was started in 2005 and is being administered through the state-owned Land Bank. Initially presented as the reincarnation of the Agricultural Credit Board (ACB), which had bailed out indebted white farmers in the past by providing heavily subsidised credit and writing off bad debt, MAFISA is something quite different: a small fund which is intended to be self-sustaining.

In early 2007, both the CASP and the Integrated Sustainable Rural Development Programme (ISRDP) were under review – by the National Department of Agriculture (NDA) and the Department of Provincial and Local Government (DPLG), respectively. It is unclear, then, how the findings of these reviews will relate to one another, and how whatever shifts in approach will relate to land reform policy, which itself may see some changes in the near future.

Three important additions to the land reform literature of South Africa

A number of the chapters in an excellent recent collection by Ntsebeza and Hall touch on redistribution and also reflect on how the land question should be framed in South Africa, analyse existing land policy and its results, and propose alternatives and future directions,

informed by the hindsight of over a decade of experience. Lungisile Ntsebeza and Ruth Hall (eds), *The Land Question in South Africa: The Challenge of Transformation and Redistribution* (Cape Town, HSRC Press, 2007).⁸⁸

In another valuable HSRC publication, *Going for broke: The fate of farm workers in arid South Africa* (Cape Town, HSRC Press, 2007),⁸⁹ Doreen Atkinson takes the farm labour issue beyond the ideologically contested ground of land ownership to consider the current and future livelihoods of South African farm workers. She argues that the question of farm workers needs to be understood as part of a broader spectrum of economic and social questions. Where should farm workers live? Should rural-urban migration be encouraged? What kind of job prospects can be fostered? How can their participation in the rural and peri-urban economy be promoted? Do farm workers need land, or jobs, or municipal services and who should provide support to this neglected segment of society? Both books are available as free downloads on the HSRC Press website.

Finally, Ben Cousins⁹⁰ analyzes debates over tenure reform policy in post-apartheid South Africa, with a particular focus on the controversial Communal Land Rights Act of 2004. He suggests that alternative approaches to that embodied in the Communal Land Rights Act are required. The most appropriate approach is to make socially legitimate occupation and use rights, as they are currently held and practiced, the basis for both their recognition in law and for the design of institutional frameworks for administering land.

Sudan

Sudan is the largest country in Africa, but about a half of the national territory consists of arid sandy or rocky wasteland. To the north of Khartoum, settlement is confined to the narrow banks of the Nile and the Atbara. The country's two great assets are the Nile river system and its oil reserves. South of Khartoum, the Blue and White Nile flow through the fertile alluvial plains of east-central Sudan which were first exploited for irrigated cotton production for the Lancashire mills during the British colonial period. The land was held in terms of an introduced system of land tenure that nullified customary rights. The oilfields of south-central Sudan, were discovered in the mid 1970s, but have been tapped only relatively recently, mostly because of the civil war between the 'north' and the 'south' which has been waged for two thirds of the period since Independence in 1956.

Following the Comprehensive Peace Agreement (CPA) signed in 2005, Sudan has had the fastest growing economy in Africa, but only a small minority of the population are benefiting from this new found wealth. The majority continues to subsist upon a variety of crop and livestock production systems on land which is used and occupied in terms of various customary tenure arrangements.

Issues over land and scarce water supplies are often at the root of increased inter-ethnic conflict in Sudan. As has been recognized by FAO, addressing the land problems of

⁸⁸ http://www.hsrcpress.ac.za/full_title_info.asp?id=2181

⁸⁹ http://www.hsrcpress.ac.za/full_title_info.asp?id=2191

⁹⁰ Ben Cousins, 'More Than Socially Embedded: The Distinctive Character of 'Communal Tenure' Regimes in South Africa and its Implications for Land Policy' *Journal of Agrarian Change* 7 (3), 281–315 July 2007.

Sudan is of fundamental importance.⁹¹ However, there are limits to what can be achieved in terms of reformed land policy and legislation. The most recent review in this series raised the question as to whether the source of the conflict in Darfur was dwindling natural resources, or the breakdown of orderly government. This is probably not a fruitful argument to pursue, but the reality is that land conflict in Sudan is growing. In the absence of negotiation and resolution, and in the presence of modern arms and ammunition, Land disputes are a recipe for disaster. If there is a root cause of the conflict in Darfur, it must be poverty and lack of economic development. As has been pointed out by Jeffrey Sachs:

‘Until we face up to the underlying reality that at the core, Darfur is a hungry, water-stressed, impoverished area that needs *economic development as its real hope for finding long-term peace*.....Until we face the development challenge and make clear that we're ready to help on the development challenge, I'm afraid we are not going to have real resolution to this crisis.’⁹²

There are, nevertheless, some underlying defects in Sudan's current land policy and laws which have inflamed conflict. This is recognized in the CPA's concern for the establishment of land commissions to find solutions to long-running disputes.⁹³ Patrick McAuslan⁹⁴ observes that the British introduced to the Sudan more or less the same system of land tenure as they applied in most African dependencies. A difference was that provision for land adjudication and titling was provided for by the Title to Land Ordinance of 1899. The procedures and practices which were developed under that Ordinance were, ‘after more than twenty-five years of intensive practical experience, finally enshrined in Part II of the Land Settlement and Registration Ordinance 1925’.⁹⁵ It is now the Registration Act and is still in use. This Ordinance gave legal backing to the standard colonial legal principles that if the Registration Officer is satisfied that the rights existing in or over land do not amount to full ownership, the land should be registered as Government land. All waste, forest and unoccupied land is deemed to be the property of the Government unless permanently occupied. This is, of course, nonsensical when applied to customary systems of land use in a semi-arid climate involving intermittent cultivation and seasonal occupancy by nomadic and semi-nomadic stock keepers and/or cultivators.

This law provided the legal backing for the very rapid development of large scale mechanised farming within Sudan especially in the South Kordofan and Blue Nile areas of the North in the 1970s. Douglas Johnson explains how disruptive it has been.

⁹¹ Jeffrey Hatcher, Land Tenure Consultant, FAO Sudan Land Programme, 16 May 2007 (Power Point Presentation)

⁹² Jeffrey Sachs ‘US Sanctions won't help Darfur’ 30 May 2007
<http://news.bbc.co.uk/1/hi/world/africa/6704203.stm>

⁹³ The CPA provides for the creation of a National Land Commission, as well as for a Land Commission in the Southern Sudan and each of the Transitional States. The Darfur Peace Agreement (DPA) also provided for the creation of a land commission which has not come into effect because of the continuing conflict.

⁹⁴ Patrick McAuslan, ‘High Theory Low Practice: Where's the Social Justice? *Human Rights and Global Justice Conference*, 29-31 March 2006, University of Warwick

⁹⁵ S. Rowton Simpson (1978) *Land Law and Registration*, Cambridge University Press, Cambridge (pp 197-8)

‘The 1970s were supposed to see the growth of agro-industry in the Sudan through increased investment in mechanised farming...’

‘Investment in mechanised farming by civil servants and merchants in northern Sudan had had a long history and has been part of the struggle for control of the levers of government by the various nationalist parties. One of the new developments of the 1970s was the activity of Islamic banks and their heavy investment in rain-fed mechanised schemes especially in the western Sudan. The banks and the schemes they have financed contributed to the growing economic power of the National Islamic Front (NIF).

The establishment of these schemes has hastened a process of social and economic dislocation. Customary rights in land for either small-holding farmers or pastoralists in Kordofan and elsewhere have been eroded by the legal backing given to the schemes by the Sudanese courts. Those who can no longer work the land on their own have been brought into a large wage-earning agricultural work force.’⁹⁶

Sudan Transitional States

The Comprehensive Peace Agreement of 2005,⁹⁷ which ended the second civil war between northern and southern Sudan, necessitates a referendum in the Southern Sudan in 2011 to determine whether the South is to become independent. The former front-line states of Southern Kordofan and Blue Nile will remain in the north, despite their substantial African populations.⁹⁸ In recognition of this anomaly the two Regional States have been allocated a special status in which northern and southern groups⁹⁹ form a decentralised administration, albeit with a majority of northern representatives in the respective parliaments.

The agreement also provides for each of the states to establish a State Land Commission (SLC). Land was an issue which the parties were unable to resolve during the peace negotiations. However, they did accept that: a) land administration and management should be a concurrent competence of the Government of National Unity (GNU), Government of Southern Sudan (GoSS) and Regional States; b) land laws should be amended and developed to incorporate customary rules; and c) the National Land Commission (NLC) would arbitrate over claims to land, including claims against governments. Accordingly, Article 186(3) of the Interim National Constitution (INC) of 2005, which gives effect to the treaty, provides that:

⁹⁶ McAuslan op. cit. quoting Douglas H. Johnson (2004) *The Root Causes of Sudan's Civil Wars*, Updated 2nd impression (James Currey, Oxford) (page 49).

⁹⁷ The land-related elements of the Comprehensive Peace Agreement (CPA) of January 2005, which is made up of several Agreements and Protocols, are set out in the first edition of this Review (August 2004). http://www.oxfam.org.uk/resources/learning/landrights/downloads/independent_review_land_issues_2004_5_vol_2_number_2_eastern_africa_dec_2005_final.pdf

⁹⁸ The boundary between north and south Sudan recognised by the treaty is that prevailing at Sudan's independence in 1956.

⁹⁹ The distinction between northern and southern groups is generally based on racial and religious criteria: between those commonly speaking Arabic and those speaking African languages; and between those who follow Islam and those who don't.

‘All levels of government shall institute a process to progressively develop and amend the relevant laws to incorporate customary laws, practices, local heritage and international trends and practices.’

In addition to exercising all the powers of the NLC at the State level, the Protocol on the Resolution of Conflict in South Kordofan and Blue Nile¹⁰⁰ requires the State Land Commissions to ‘review existing land leases and contracts and examine the criteria for the present land allocations and recommend to the State authority the introduction of such necessary changes, including restitution of land rights or compensation.’ As McAuslan emphasises, the Land Commissions of the Regional States are especially empowered to engage in processes of land restitution, i.e. to deal with claims arising out of past injustices in the allocation of land.¹⁰¹

Implementation issues

In moving from ‘high theory’ to implementation, the challenges have proved formidable. Land rights were fiercely contested in the decades before the most recent phase of the civil war (i.e. 1983-2005). The Regional States of South Kordofan and Blue Nile are located in the Sudan savanna belt, to the west and east of the White Nile respectively. Traditionally, this part of the savanna has been traversed by the annual migration of the mostly Arabic-speaking Baggara - northwards ahead of the summer rains to the semi-desert and southwards in the dry winter season deep into the savanna on the border with Southern Sudan in search of grazing and water for their cattle. The latter movement has resulted in tension with sedentary African groups (e.g. the Nuba in South Kordofan and the Ingessana in Blue Nile) over damage to crops and disputes with southern pastoralists (the Nuer and Dinka) over access to dry-season grazing and water resources.

In the 1960s and 1970s, traditional livelihood systems were pushed aside by extensive mechanised crop production schemes (MCPS) in South Kordofan, as well as by irrigation schemes in Blue Nile Regional State.¹⁰² In both states, vast areas of fertile land were allocated to outsiders by successive governments in terms of land laws which stemmed from colonial times and nullified the long-established customary land rights of local people.¹⁰³ Villagers were forced to surrender land which they had long used for hoe cultivation, grazing, hunting and gathering, etc. Seasonal migration routes used by the Baggara were blocked by the large schemes.¹⁰⁴ The rapid expansion of mechanised farming in the 1970s coincided with the abolition of the Native Administration. Age-old

¹⁰⁰ The Protocol on the Resolution of Conflict in Southern Kordofan/Nuba Mountains and Blue Nile States, 26 May 2004

¹⁰¹ Patrick McAuslan, ‘High Theory Low Practice: Where’s the Social Justice? *Human Rights and Global Justice Conference*, 29-31 March 2006, University of Warwick

¹⁰² Ian Simpson and Morag Simpson, ‘Systems of agricultural production in central Sudan and Khartoum Province’, in *The Agriculture of the Sudan* ed. G. M. Craig, Oxford Science Publications, OUP 1991

¹⁰³ Registration Act 1925, Unregistered Land Act 1970 and the Civil Transactions Act 1984

¹⁰⁴ Abdel Ghaffar M. Ahmed ‘The Rufa’a al-Hoj Economy’ in *Essays in Sudan Ethnography*, eds. Ian Cunnison and Wendy James, Hurst, London 1972; Abdel Ghaffar M. Ahmed, ‘Nomadic competition in the Funj area’, *Sudan Notes and Records*, 54, 1973; Martin Adams, ‘The Baggara problem: attempts at modern change in Southern Darfur and Southern Kordofan’ *Development and Change*, 13, 2, 259-289, 1982; Salah Shazali and Abdel Ghaffar M. Ahmed, ‘Pastoral land tenure and agricultural expansion: Sudan and the Horn of Africa’, *IIED Drylands Issues*, E85, 1999

responsibility for inter-tribal dispute resolution was taken from traditional leaders and placed in the hands of office-bound officials. Thus the growing incidence of unresolved, land-related conflicts preceded the discovery of oil in the 1970s and the resumption of the civil war in 1983, after which land conflicts were exacerbated by two decades of armed conflict, by the increasing incidence of drought, the degradation of natural resources and the administrative vacuum. The Nuba suffered terribly in the brutal war waged by the Sudan government and the militias.

The first edition in this series¹⁰⁵ concluded that the Comprehensive Peace Agreement (CPA) and related protocols had not provided an adequate foundation for resolving land-related issues separated the parties to the agreement. Indeed they had placed insurmountable hurdles in the path. For example, by making land a concurrent competency of each level of government, any significant change at regional state level to national law would depend on agreement by the GNU. According to Liz Alden Wily, writing in March 2006, the promise in the CPA and subsequent INC to provide better legal protection for customary land rights has been downgraded in the Regional States.¹⁰⁶ Thus it would seem that much of the effort which has gone into the participatory recording of communal land rights under the pilot phase of the Customary Land Tenure Program (see below) could be wasted.

McAuslan¹⁰⁷ observes that, despite featuring prominently in the CPA and the INC, the fundamental issues of Islam, oil and land, the major driving forces behind the second civil war, are by no means resolved and could give rise to a renewal of hostilities in the two states. He describes how, in the recent drafting of the constitutions of the Regional States, the southern delegations were persuaded to drop their land proposals and to accept those drafted by the majority northerners, whose clauses did not go even as far as the CPA protocols in the recognition of customary tenure or the role of the State Land Commissions in restitution. He argues that it is now vital that the pending legislation governing the two State Land Commissions strongly challenge the official position on customary law and tenure. Article 186(3) INC, quoted above, provides the legal justification for the re-introduction of customary law and tenure into the legal system. Article 12 of Chapter II INC¹⁰⁸ on social justice provides the ideological basis for a legal framework which is now part of 'international trends and practices'¹⁰⁹.

He argues that, instead of a piecemeal amendment of national land laws of colonial origin and doubtful legality, a new approach to customary tenure is needed which the SLCs and the Court must consider when dealing with restitution claims. It must be recognised that international law no longer accepts the colonial stratagem that was applied all over Africa, Asia and America, that seizing land was permissible from indigenous communities on the grounds that they did not really own the land as they did not use or occupy it continuously. McAuslan recognises that there is little prospect of such a law

¹⁰⁵ *op. cit.* page 20

¹⁰⁶ Liz Alden Wily, 'Land Rights Reform and Governance in Africa', Nairobi UNDP, March 2006 www.undp.org/drylands/docs/publications/Land_Rights_Reform_and_Governance_in_Africa.pdf

¹⁰⁷ *op. cit.*

¹⁰⁸ (1) The State shall develop policies and strategies to ensure social justice among all people of the Sudan, through ensuring means of livelihood and opportunities of employment.

¹⁰⁹ See 2.5 Agreement on Wealth Sharing During the Pre-Interim and Interim Period, 7 January 2004

being adopted by state legislatures which have majorities of National Congress Party members or being promulgated by the GNU for the same reason. He asks whether the effort currently being made to strengthen the customary land rights of rural people is worthwhile. He concludes:

‘It would then be a very great mistake to assume that the Sudanese individually as people or collectively as both a total community or as many communities within the geographical boundaries of the Sudan do not have the capabilities to understand the present injustices of their country and to work together towards new arrangements which will have a foundation in social justice. Any contribution to that goal, however small, and even if it is doing no more than chipping away at the edges of injustice in a currently unpropitious social and legal climate seems worth while.’¹¹⁰

Development assistance for land tenure reform in the Transitional States

The **Customary Land Tenure Program (CLTP)** (2006-2009), funded by USAID, and executed by ARD, aims to ensure that customary rights to land and resources are protected and formalized.

‘Under the pilot project in 2005 and 2006, the program demonstrated the feasibility of neighbouring communities reaching agreements on land boundaries that included seasonal access rights for nomadic pastoralists where appropriate. CLTP is continuing sensitization and community-based negotiation on agreed customary boundaries and access rights, while at the same time establishing the institutional mechanisms for legal recognition, registration, and administration of land holdings.’¹¹¹

Until recently the administration of the CLTP was based in Nairobi. It has now relocated to Khartoum. The logistic challenges of the program are particularly daunting. Blue Nile and South Kordofan are not contiguous and their respective capitals, Ed Damazin and Kadugli, are some 1000 km apart by road. Together they cover an area of some 12 000 sq km, Blue Nile State being about half the area of South Kordofan State. Added to the logistic problems are the complexities of institutional politics within the states and with the central government, especially in matters relating to land rights. Further, the current state of bilateral relations between Khartoum and Washington over trade sanctions and Darfur probably add to the difficulties of the CLTP.

FAO is providing technical support to the GNU, GoSS, and the National Constitutional Review Commission. FAO sponsored a workshop ‘Towards a National Land Commission Act’ 27-28 February 2007 in Khartoum.¹¹² In the context of the SLCs of the Transitional States, the following recommendations of the workshop on the content of the proposed National Land Commission Act are of interest:

¹¹⁰ McAuslan, page 35, op. cit.

¹¹¹ For more information on CLTP see the relevant page on the ARD website www.ardinc.com

¹¹² A report on the event is contained in *FAO News Sudan*, FAO Newsletter Sudan, April 2007 available on line or from FAO-SD@fao.org

- The Act should clarify that the relationships between the NLC and Regional and State Land Commissions as well as any other State-level institutions dealing with land on the basis of the CPA and the Interim National Constitution;
- The Act should clarify the practical allocation of the shared competences over land among the different levels of land commissions;
- The Act should task the NLC with proposing revisions of policies and laws to all levels of Government on land use and rights in land;
- The Act should particularly promote at all levels the ascertainment and recognition of customary laws;
- The Act should seek to form the arbitration role of the NLC on disputes that may impact peace and social harmony, such as disputes between groups.

Southern Sudan

All Sudanese land laws since 1906 were intended to apply to all Sudan. In practice however, the Khartoum government has never been able to impose its will on Southern Sudan where different communities continue to apply their customary land laws despite the legislation emanating from Khartoum. During the peace negotiations, land was the main point of contention between the two parties when negotiating a protocol on the sharing of oil and non-oil wealth. For the people of Southern Sudan, land is at the heart of their struggle. The settlement of the land question is perceived to be critical for the attainment of a lasting peace. Under the Comprehensive Peace Agreement (CPA) of January 2005, land and natural resource questions are provided for under the Wealth Sharing Protocol and the subsequent Interim National Constitution (INC) and the Interim Constitution of Southern Sudan (ICSS), promulgated respectively by the Government of National Unity (GNU) in Khartoum and by the Government of Southern Sudan (GOSS) in Juba.

However, some ambiguities and seemingly contradictory articles in the CPA and the two interim constitutions have hampered and delayed the implementation of the CPA in general and the enactment of land laws in particular. For example, Chapter 2 of the wealth sharing agreement of the CPA, which deals with land issues, states the following:

‘2.1 Without prejudice to the position of the Parties with respect to ownership of land and subterranean natural resources, including in Southern Sudan, this Agreement is not intended to address the ownership of those resources. The Parties agree to establish a process to resolve this issue’.

‘2.4 Rights in land owned by the Government of Sudan shall be exercised through the appropriate or designated levels of Government.

2.5 The Parties agree that a process be instituted to progressively develop and amend the relevant laws to incorporate customary laws and practices, local heritage and international trends and practices.’¹¹³

¹¹³ Ownership of Land and Natural Resources, Chapter 2, Framework Agreement on Wealth Sharing During the Pre-Interim and Interim Period between the Government of the Sudan (GOS) and the Sudan

If one of the parties is neither interested nor willing to start the process, the other party cannot go ahead because it is declared that the INC of the GNU shall be the supreme law of the land and that the ICSS, and State Constitutions and all laws shall comply with it.¹¹⁴

‘The CPA – wealth sharing protocol – acknowledges that the two parties disagree about land ownership, but records what they do agree on. Sharia-based laws were rejected in the peace negotiations [by the South], along with all old land acts including the Unregistered Land Act, which would place all community land in the control of the state. Women’s property and inheritance are protected only in the ICSS, not the INC. It is not clear how rights of different levels of government, communities and individuals, are defined in land held by government, or traditionally held by communities. Individual title is not legally protected in the current situation. Community land challenges now are: identifying communities and demarcation of community land. Customary land practices need to be researched and defined.’¹¹⁵

One of the achievements of the GOSS in the land sector in 2006 has been the establishment of the Southern Sudan Land Commission as per the CPA and the ICSS. More detailed terms of reference for the Commission’s work were to have been finalized by end of 2006.

Studies relating to property rights and the development of a national land policy that started in 2003/4 by international NGOs and UN agencies continued through 2006. FAO, UNHCR and the Norwegian Refugee Council (NRC) have jointly been carrying out studies and consultations at various levels to support the repatriation process of refugees and IDPs, focusing their attention on securing the property rights for these groups including secure access to land and natural resources.

A more comprehensive, policy-oriented study on customary land tenure systems in southern Sudan has been undertaken jointly by the Norwegian People’s Aid (NPA) and the Secretariat of Agriculture and Animal Resources (SAAR) of the SPLM in 2004-2005. The official report of this study was presented at a national workshop held in Juba in August 2006. This workshop brought together GOSS ministers, regional state governors and their ministers, the Southern Sudan Land Commission, international NGOs, UN agencies, civil society representatives and international and regional land policy experts.

Several key issues were raised during the 2-day workshop, which was chaired by H. E. Dr. Riek Machar, the Vice President of the GOSS and the Minister of Housing, Lands, and Public Utilities. The most important issues raised were as follows:

- Some state governors/ministers complained about the reluctance of rural communities to allow urban development and expansion; rural communities equally complained

People’s Liberation Movement/Sudan People’s Liberation Army (SPLM/A) 7 January, 2004
<http://www.soatsudan.org/reports/Wealth%20sharing.pdf>

¹¹⁴ Supremacy of the Interim National Constitution, Chapter 1, Part 1, Interim National Constitution of the Republic of the Sudan, 2005 (page 3)

¹¹⁵ Justice Deng Biong and Robert Benjamin Lowki: ‘Challenges of Land Policy Development in Southern Sudan’, Report on the Second African Regional Seminar on Land and Resource Rights, Norwegian People’s Aid, Johannesburg, South Africa, 20-22 November, 2006

about urban encroachment into rural areas and lack of consultation from the government side when they needed land, creating tension between the two groups.

- Most rural communities in the Southern Sudan are not aware of their land rights enshrined in the CPA and the ICSS, as a result they still believe that land belongs to the community and they expect the SPLM (which has 70% of the seats in the Government of Southern Sudan/GOSS) to honour its promises of ‘land belongs to the community’.
- The on-going, informal discussions and debates among different groups suggest that there are now two positions on land ownership: a) Public/state ownership (favoured by several GOSS ministers; state governors/ministers and some local government officials) and b) communal ownership (largely favoured by rural communities, traditional authorities, and legal and land tenure experts of Southern Sudan origin). There is little discussion on whether private ownership could apply.

During this workshop it was also evident that there was an urgent need to put in place arrangements to reduce resource-based conflicts. Contrary to the expectations of many rural people, such conflicts are on the rise after the CPA formally ended the war between the SPLM and the Government of Sudan. Many believe that now the war is over and they have a government of their own in the South, they should focus on the reconstruction of their livelihoods with improved access to health, education, infrastructure, rural-urban marketing, and other public utilities. However, tensions and localized fighting between neighbouring ethnic groups for reasons associated with control over grazing land, water, and territorial sovereignty have become widespread. Different states seem to have chosen different methods to contain and reduce such tribal fighting: while some states have launched disarmament, others are contemplating reduction of the livestock population.

Such resource-based tribal conflicts were once mediated and resolved by traditional leaders. However, these no longer enjoy sufficient respect and authority, partly because the state at local government level (i.e. the police, courts and civil administrators) has subsumed some of the roles of traditional leaders, and partly because of land grabbing by elite groups, especially the army – a law unto itself. The recently drafted ICSS formally recognizes traditional authority and the integration of customary laws.¹¹⁶ It has to be seen how the government will restore the authority of customary institutions in the resolution of resource-based conflicts.

Swaziland

As mentioned in the December 2005 Review, King Mswati III ratified Swaziland's Constitution. However, it did not come into legal effect until February 2006. Important land-related provisions include section 211, which states as follows:

1. From the date of commencement of this Constitution, all land (including concessions) in Swaziland, save privately held title-deed land, shall continue to vest in the King in trust for the Swazi Nation as it vested on the 12th April, 1973.

¹¹⁶ see part II, chapter 2, article 174 of the ICSS

2. Save as may be required by the exigencies of any particular situation, a citizen of Swaziland, without regard to gender, shall have equal access to land for normal domestic purposes.
3. A person shall not be deprived of land without due process of law and where a person is deprived, that person shall be entitled to prompt and adequate compensation for any improvement on that land or loss consequent upon that deprivation unless otherwise provided by law.
4. Subject to subclause (5), all agreements the effect of which is to vest ownership in land in Swaziland in a non-citizen or a company the majority of whose shareholders are not citizens shall be of no force and effect unless that agreement was made prior to the commencement of this Constitution.
5. A provision of this chapter may not be used to undermine or frustrate an existing or new legitimate business undertaking of which land is a significant factor or base.

The next clause established a Land Management Board to regulate ‘any right or interest in land whether urban or rural or vesting in iNgwenyama in Trust for the Swazi Nation.’

In contrast to the intentions directly expressed in the draft National Land Policy, there are concerns that the above disempowers the chiefs, putting all power in the hands of the King via the Land Management Board. If correct, this could have dramatic affects upon Swaziland’s social structure – which is already under great challenges from the HIV/AIDS pandemic. It also has significant ramifications in other ongoing contexts, such as the disposal of state land. Perhaps as a result of these difficulties, the Board was not formed within the time limit specified by the Constitution.

Another problem is the effect of clause 211(1): it will continue to be illegal to mortgage etc land on Swazi National Land, except as exempted by 211(5). This means that the Ministry of Housing’s formerly approved initiative to allow 99 year leases for peoples’ houses on SNL is unconstitutional.

The development of the Constitution was the reason given for the delay in the development of the draft National Land Policy. Now that the constitutional development process has been completed, the way should be open again.

Tanzania

Both the previous reviews reported on slow progress in the implementation of the 1999 land legislation. However, a number of different initiatives are in progress.

SPILL

The Ministry of Land’s ‘Strategic Plan for the Implementation of the Land Laws’ (SPILL) was finished in April 2005, and sets out a broad framework for implementation.¹¹⁷ Odgaard raises concerns regarding the plan, including its ‘modernising’ vision: ‘It is clearly reflected in SPILL that the Government of Tanzania (GOT) is committed to modernise the agricultural sector in Tanzania and make land an important commercial asset in relation to that. The traditional practices of farmers and

¹¹⁷ The SPILL document is available from the government’s web page <http://www.ardhi.go.tz/projects/spill.php>. However, little information is provided as to the progress.

pastoralists have to be changed and they have to learn to practice modern agriculture and/or animal husbandry'. It suggests a 'national village resettlement scheme' for those deemed 'economically landless'.¹¹⁸

Rural land registration

In rural areas, the Ministry of Lands and various donors have been involved in training and establishing land registers at both village and district level – although few are yet in place.

Kironde's account of the considerable efforts made in first pilot area, Mbozi district, throws some light on the level of financial/technical resources, capacity and commitment required in order to issue Village Land Certificates and Customary Certificates of Rights of Occupancy (CCROs) to individuals throughout the country: A team from the Ministry's Village Land Act Implementation Task Force spent four weeks in the district holding seminars, training and talking to villagers. Sensitisation began with the administration at District, Ward and Village levels, finally reaching the village assembly. Following sensitization meetings, neighbouring villages demarcated their own village boundaries. Land surveyors were called in to record the agreed demarcated boundaries, a cadastral survey plan was prepared and approved, and the Commissioner for Lands issued Village Land Certificates. The survey of the boundaries of farms for individuals in the village was done by photo interpretation, and information collected in the field was transferred into a computer database, with surveyed parcels each given a number, which, in the database, linked the parcel with the name/s of the occupier/s. A model village land registry was constructed and equipped in Halungu village, Mbozi District. Applications for CCROs are compiled by the village council and presented to the village assembly for consideration. CCROs for successful applicants are prepared incorporating a deed plan based on information from the database. 'The application of computer technology played an important role in making Mbozi pilot project a success.'¹¹⁹

In addition, a number of NGOs have been conducting training for paralegals, ward councils, village land councils and villagers, awareness-raising through media campaigns, and spreading information in Kiswahili, both on the legislation in general and on women's land rights in particular. However, there is some concern that it is difficult to obtain sufficient and long-term funding for such efforts.

Urban land registration

In urban areas, several land-related programmes are currently underway.

In 2004, the Ministry of Lands with the support of the World Bank started a large-scale project in Dar es Salaam to regularise urban informal land holding. The project aims to establish a comprehensive urban land property register with information on individual land parcels in the unplanned settlements, combined with measures to enable property

¹¹⁸ 'Land Rights and Land Conflicts in Tanzania: A case study, R Odgaard, DIIS/Copenhagen 2006: pp 21-24.

¹¹⁹ 'Making property rights work for the poor in Tanzania', J M L Kironde 2006, section 5.1. Paper prepared for the High Level Commission on Legal Empowerment of the Poor national consultation in Dar es Salaam 29-30 Nov 2006, discussed below. Included in the conference proceedings Part 2, available from http://legalempowerment.undp.org/what/east_africa.html

owners to apply for and to collect two-year Residential Licences (RL).¹²⁰ The issuing of RL was formally launched in May 2005. 'As of November 2005 about 220,131 properties had been mapped (identified) and their details taken and by August, 2006, 52,000 applications for residential licences had been received, and 38,000 licences had been issued (collected).'¹²¹ The relatively low number of RL having been applied for suggests a lack of interest among those eligible. Possible explanations include: the short-term character of the licences; local government branches using the occasion to collect other taxes and fees when people come to pick up the licences; wealthier landlords not wanting their properties (and the related incomes) documented; and generally a lack of visible advantages for rights-holders. As regards gendered effects of the licences, data from Kinondoni Municipality Sept 2006 suggests that 65% of the licences were issued in the name of men, 30% in the name of women, and 5% in the names of both men and women, or family members.¹²²

While the residential licences programme focuses on existing owners in unplanned settlements, the so-called 20,000 plots programme aims to increase the number of surveyed plots available for future residential accommodation. The programme started in 2002 and by May 2006 a reported 30,655 plots had been surveyed, mainly on the outskirts of the city. While women were to be given priority in allocation of plots, the government statistics show a slight male dominance, with 45.5% male owners, 32% female, 4.5% joint owners, and 18% corporate owners.¹²³ The programme has met criticism, both for not providing sufficient compensation to the previous users of the land, and for benefiting mainly the well-off due to high costs.¹²⁴ However, similar programmes are now planned for other cities.

Mkurabita (the 'Property and Business Formalisation Programme', with Hernando de Soto's Institute for Liberty and Democracy commissioned as expertise), was launched in autumn 2004. It is now in its second phase, called 'Reform Design'.¹²⁵

Apart from a few pilot projects, the outcomes of Mkurabita remain somehow vague: while the need to harmonise its efforts with other government programmes is recognised, the relationship to e.g. SPILL remains unclear; and while the Norwegian Government has funded the first two stages, further funding (for what is referred to as the 'implementation phase') appears uncertain.

Nevertheless, Mkurabita has strongly influenced the official language for debating land rights: the debate is increasingly being framed in terms of 'making dead capital come alive', and emphasising the importance of formalisation as a basis for accessing credit. Mkurabita has also provided a focal point for both civil society and international engagement with land questions in Tanzania. Following a mid-term evaluation which pointed out lack of consultation, transparency and local ownership of the programme, the

¹²⁰ Government information on the project: <http://www.ardhi.go.tz/projects/usp.php>

¹²¹ Kironde 2006: section 5.2

¹²² Kironde 2006: section 2.4

¹²³ Government information on this project: <http://www.ardhi.go.tz/projects/20000.php>

¹²⁴ A phenomenon known as 'down-raiding' in South Africa

¹²⁵ The autumn 2005 report from the first, 'diagnosis' phase, is available online: http://www.tanzania.go.tz/mkurabita/mkurabita_report_index.html (accessed April 12 2007)

Norwegian embassy entered into a strategic alliance with the Norwegian People's Aid (NPA) to promote civic engagement with Mkurabita.¹²⁶ In addition to arranging workshops etc, a 'plain language guide' to Mkurabita was written, providing an outline of the main ideas and closer discussion of certain key topics.¹²⁷

On 29-30 Nov 2006, the international Commission for Legal Empowerment of the Poor (CLEP¹²⁸) convened a national consultation conference on legal empowerment of the poor in Tanzania, with Mkurabita as 'leading partner' and organiser. Preceding the conference, four thematic papers were commissioned from local 'technical experts', and focus group discussions were arranged on the same four themes: Property rights; Access to justice and rule of law; Labour rights; and Entrepreneurship. In addition, NGOs conducted local consultations on the same themes.

Chachage provides a critical report of the process leading up to the conference, raising issues of representation and participation, among others.¹²⁹ The authors of the thematic papers, working under time constraints, relied on reviews of literature, rather than gathering information from relevant actors. The representation was not well balanced: women were underrepresented, as were CSOs and practitioners dealing with peasants/agriculture. Among the academics, the Faculty of Law in Dar was overrepresented – 'there was a conspicuous absence of academics from the institute of development studies and other social science departments who are primarily involved in the studies of poverty'. However, he found that Mkurabita 'was open to suggestions from CSOs and willing to extend additional invitations to key overlooked interest groups/CSOs.' While the representatives of the Masai were vocal, the voice of women was relatively silent, and concerns of the disabled and youth were hardly discussed. In addition, 'there is a need to interrogate the conventional assumption that these experts of poverty are relatively well-equipped to articulate the voice of the poor in a national consultation process than the poor themselves.'¹³⁰

¹²⁶ This happened during the spring 2006. NPA and its partner Policy Forum had already organised two seminars (in 2005) to promote interaction between civil society and the programme, and a Land Task Force was being established as an umbrella for several organisations. However, while pastoralist organisations were vocal actors, other groups, e.g. women's NGOs, were less active at this stage.

¹²⁷ 'Poor people's wealth', written by HakiKazi Catalyst (Feb 2007). To be available from www.hakikazi.org

¹²⁸ CLEP was launched in autumn 2005, with a 3-year mandate. Hernando de Soto is one of two chairs. According to the September 2005 concept paper, the objective is to provide a 'tool kit' for policy makers, reducing poverty through addressing informal sector (including but not limited to land) and focusing on the rule of law. The official website, which provides proceedings from the Tanzania consultation and the four thematic papers, is <http://legalempowerment.undp.org/> (accessed 12 April 2007)

¹²⁹ 'Prospects and Pitfalls of Legal Empowerment of the Poor in Tanzania: Some Key Observations', C Chachage (2007). The report was commissioned by NPA Tanzania, and is available at http://otto.idium.no/landrightswatch.net/filestore/CLEPsNationalConsTZ_hebe_170107.doc (accessed 12 April 2007)

¹³⁰ Chachage 2007: pp 2-7

The following land-related concerns emerging in the conference report provide a rough guide to the current debates and concerns in Tanzania.¹³¹

On the role of formal property rights

The Working Group agreed that if the poor were empowered they would be able to enjoy a wide range of benefits particularly guaranteed security of ownership, easy transfer or disposal of property including motivation to innovation and production. However, existence of property rights may not automatically lead to legal empowerment because formalization is cumbersome and expensive for the poor. Possession of a title does not necessarily lead to access to loans. Registration of formalized property under specific names, may disempower other eligible members especially women and children. Informality sometimes has advantages e.g. not paying taxes. From the point of view of the poor, formalization may disempower them.¹³²

On barriers to ‘creating an inclusive enabling system of rights that addresses the interest of the poor and marginalized’:

- Procedures for acquiring land titles are found to be very cumbersome, costly, very inconsistent and marred by corruption. Lack of knowledge/ awareness about land rights and the appropriate legal procedures of acquiring land titles. Centralization of application for land titles in only four regional/zonal offices: the majority of the poor cannot afford the cost of travelling. The poor questioned the procedures and requirements they have to fulfil in order to access loans such as a TIN, a bank account, a title and /or a well-established business. Surveyed plots are very expensive, so it is difficult for the poor to acquire them.
- Women’s access to property/land rights is severely limited, as they are routinely denied the right to inherit land, house and other property on the death of their husbands or fathers.
- Pastoralists are particularly concerned that they have been evicted in the past from communal grazing areas without being given alternative areas.

On ways to create ‘an inclusive enabling system of rights’: in addition to a list of more technical suggestions made at the conference, the following points emerged in local consultations arranged by NGOs:

- In Tanzania, property rights should encompass pastoralists, fishermen, and hunters who have no permanent settlement and own land communally.
- Land should not be seen merely as a ‘property’ but land, which represents security for them and their families.

¹³¹ The following points are extracted from the conference proceedings (part 1: pp 36-39). The proceedings are available from http://legalempowerment.undp.org/what/east_africa.html . The report also refers to key issues from the local consultations arranged by the NGOs.

¹³² Odgaard further highlights ‘the dynamic interplay between different normative orders and the ability of customary rules and norms to adapt to changing circumstances, in some cases, as we have seen, for the good and in other cases for the bad. They also illustrate how some groups manage to manipulate rules from different normative orders depending on access to power and bargaining power.’ Odgaard 2006: p 33

- The process of issuing land titles should be initiated and processed by the village community and not from above. The process should be open and transparent and the importance of capacity building at that level was emphasized.
- The poor want a law that will ensure that their properties are recognized as collateral for accessing loans whereas the pastoralists want their livestock to be regarded as collateral.
- Pastoralists suggest that the government reviews the laws in order to appreciate and recognise the economic value of the pastoralist system of land use and strengthen the rights of livestock keepers to sustainable use of rangelands.
- The Government should enforce security of land by making sure that communal ownership of land is legally recognised and protected and there should be limitations on the private ownership of land.¹³³
- Land laws should give priority to local people (wazawa) in issuing land ownership titles. The poor are concerned about large tracts of land being leased to investors or rich Tanzanians for long periods.¹³⁴
- Many participants were under the impression that land titles will automatically guarantee access to loans: this has to be addressed carefully by the Government/Mkurabita. This is particularly pertinent because people's expectations about the power of land titles to secure loans are very high. However, evidence indicates that responsible lenders will use other criteria, apart from land titles, to judge the creditworthiness of a loan applicant and will in any case be reluctant to accept low-value pieces of land as collateral.

Finally, as the above concerns show a certain rural bias, two additional, mainly urban, problems deserve mention. Urban expansion can cause insecurity for people living in peri-urban areas.¹³⁵ And despite the fact that the majority of the inhabitants in cities are tenants rather than landlords/owners, the potential impact of current formalisation programmes on the situation of tenants receives little, if any, attention.

Uganda

Background

Since colonial times, most land in Uganda was legally owned by the Crown or by the State. Although the population continued to 'own' their own land under their customary rules, the State did not formally recognise this ownership, which meant that land could be

¹³³ Odgaard calls for attention to the wide-spread practices of renting and borrowing land in rural areas. Odgaard 2006: p 37

¹³⁴ Shivji has voiced related concerns: 'It is virtually impossible to survey and demarcate and issue titles to millions of smallholders; even if that were done, no commercial Bank would offer loans to smallholders. What it does mean though is to register large chunks of village land as a preparation for alienation.' ('Lawyers in neo-liberalism', Valedictory lecture by IG Shivji, July 2006. Available at: http://www.oxfam.org.uk/resources/learning/landrights/africa_east.htm). In its newsletter of Nov 2006, NGO Legal and Human Rights Centre strongly criticises an offer to an Arab Firm to buy a piece of land that host an indigenous community known as Hadzabe in Northern Tanzania, seeing it a violation of human rights, as well as of The Village Land Act of 1999. The community was not involved in the early stage of negotiation that resulted in the sale of their land, even though the village is registered according to the law. (Newsletter available at http://www.humanrights.or.tz/pdf/Newsletter_nov_2006.pdf)

¹³⁵ Kironde 2006: section 4.4

lost at any time. Some land was held under freehold titles given by the British, which continued to be recognised. Large grants of land were given to the 'native' ruling class as freehold titles called 'mailo'. This ignored the customary ownership claims of those actually living on the land, by mistakenly equating the property rights of the local rulers (i.e. rights to administer land) with those of the English lords under the feudal and post-feudal systems (i.e. all rights to land as personal property). The conflicts which this created between the customary land owners and those given legal ownership continues to this day.

The new Constitution in 1995 transformed the legal context for land rights by privatising land ownership. The legislation which followed in 1998 gave full legal recognition to 'customary ownership', and also to the customary legal systems by which those ownership claims were made. Customary owners of the 'mailo' land, now called 'lawful and *bona fide* occupants', were also given rights of security of occupancy – which applies to those who had been occupying the land 'in good faith' prior to the Constitution. The Act also gave extremely good protection to women's rights, adding to the inheritance rights which widows already enjoyed – sexual discrimination in any customary land law was banned and, crucially, no man could sell family land without his wife's written consent.

Despite recognition of customary ownership, the underlying assumption has always remained that freehold title is a 'modern' and superior land tenure system which gives better security to owners and promotes economic development by enabling a land market to develop, and giving people collateral they can use for loans to invest in land. The 1998 Land Act therefore spelt out how customary ownership can be converted into freehold, but with no recognition at all that the concept of ownership and the rights and duties which it entailed were not the same in the two systems. The Act also prescribed a new system of decentralised land administration, and for the resolution of land disputes by lower level courts, with a District Land Tribunal at a higher level created for the purpose.

DFID provided project funds for the preparation and implementation of the Land Act and related work. In 2001, DFID announced that future funding would be through general budget support.

The 2003/4 Newsletter opened on an optimistic note. Since the commencement of the Poverty Eradication Action Plan (PEAP) revision process, 'a breath of new life' was reported as sweeping through the land sector in Uganda. Secure access to rural land was recognised to be critical for the eradication of poverty and a major budgetary provision for the implementation of the Land Act was anticipated. The review recognised the need for a major exercise in public information and institutional change in order to bring the law into effect, but warned that five years after the promulgation of the law, few people were familiar with it.

The more detailed **Independent Review of Land Issues 2004/5** was less optimistic about the progress. A particular concern was the impact of the war in Acholi on the land rights of people moved into camps. There was evidence that the land they vacated was being grabbed by the army and the State, as well as being encroached upon by neighbours. The war was disenfranchising the Acholi people of their land. The Review warned that the people's ability to secure their land on their return would have implications for the future

peace and stability of the North and the country. In this context, the implementation of the clauses in the Land Act relating to the recognition of customary land rights was vital and should take place in advance of any process of registration.

Countrywide, the Review was seriously concerned about the inadequate budgetary allocation for land administration. District Councils claimed that they had no funds for implementing the Land Act. (A major part of Government funds for the land sector were allocated to a process of 'systematic demarcation' in preparation for issuing freehold titles. There were no funds at all allocated to supporting the institutions of customary tenure that were responsible for administering the vast majority of land in the country.) Officials and land committee members remained ignorant of the legislation for which they were responsible. The Review referred to the ongoing National Land Policy formulation process.

Current status

Recent developments have been both positive and negative with regard to land rights.

The peace process in the North: The government and Lord's Resistance Army rebels first embarked on negotiations in July 2006, and these are still continuing, though with some uncertainty. Since they began, security has improved after two decades of appalling conflict during which almost the entire rural population (over one million people) were forced into 'camps'. Freedom of movement has now improved. In the less affected areas, some of the displaced have now moved home (whether voluntarily or not): in the more affected region of 'Acholiland', some of the hundreds of thousands of displaced people have moved to smaller settlements closer to their homes. As a result, people's access to farm land has improved, and some are able to access their own land to farm, if not yet to settle. Nevertheless, there are still more than a million people living in camps for fear that the peace talks will fail and attacks on civilians by the LRA will resume. Once the peace talks succeed, the rebuilding of the north is expected to take years.

There are also some worrying signs around the land issue which has become highly politicised. Some large 'investors' are eyeing large tracts of fertile land in Acholi, although it is generally believed that all the land in the region is already privately owned. (Most is owned by families under customary tenure, with the rest owned by the State, either gazetted for national parks or restricted hunting areas, or given out to individuals under leases before the current Act recognised the previous ownership of the land.) If companies or well-connected individuals do indeed take over land before the displaced have been able to return to all of their own land, tension will be inevitable and conflict may well follow. The current government policy on land in the north¹³⁶ speaks strongly of the need to prevent land conflicts and to ensure the protection of land rights, but it contains elements which are worrying. The displaced will be 'encouraged to settle in nucleated settlements in the rural areas which will be planned and serviced...[rather] than going back to live in scattered settlements that makes service provision too costly'. There is talk of the 'transformation of IDP camps' into 'sustainable growth centres', and the collectivisation of agriculture. These collectives will 'be facilitated to lease land' and to

¹³⁶ Ministry of Land, Housing and Urban development: *Position Paper on Service Delivery on National Peace, Recovery and Development Plan for Northern Uganda 2006-9*.

‘employ the displaced persons and pay them monthly wages’. Almost 100% of the IDPs simply want to return home. If they are told that they are to remain off their land in camps, farming land which is not theirs under ‘lease’ (but from whom?) or to become landless labourers for others, whilst at the same time they see their land being ‘given away’ to companies, then conflict is certain. It is hard to gauge whether the current policy document is simply based on ignorance, or whether it is more sinister.

The Draft National Land Policy: In January 2007, the Ministry of Lands released the Third Working Draft of the National Land Policy, a consultative document and a prelude to two further drafts and a national land conference.¹³⁷ The process and the formulation seem businesslike and learn lessons from past negative experience in the region and in Uganda in particular.¹³⁸ There has been a consultative process involving NGOs and other ‘stakeholders’. However, consultation has inevitably been restricted to the usual ‘elites’: the ‘ordinary people’, who are the main stakeholders in their land, have not really been included. Very few among them even know that a land policy is being developed, much less what it involves.

The policy appears very positive so far. It is quite radical in recognizing and working with indigenous tenure systems, and in stressing the importance of equity and rights protection. It has also highlighted many critical policy issues such as the failure to resolve the question of ‘mailo’ land, and the problems related to land and urbanization. Two more drafts are expected, with continued discussion of those drafts with various government agencies and regional and national groups, discussion at a National Land Conference and presentation of the Draft to the Cabinet. It also proposes that measures be put in place to ensure:

- the establishment of a monitoring and evaluation system of the implementation of the national land policy;
- that national land policy is reviewed at least every five years;
- mainstream land policy values and principles are integrated into Uganda’s political discourse;
- the entire land sector reform package generates growth and wealth creates for the people of Uganda; and
- the above strategies are institutionalized.

Caution is needed not to be over-optimistic. The formal policy document is likely to be well received and may well prove to be a model for many other countries in Africa. The test will be in its implementation. Here there is little room for optimism, if the current trends in the land sector are any guide. Abuse of land rights by Government and its institutions, and their acquiescence in the abuse of land rights, are rampant. Their

¹³⁷ http://www.enteruganda.com/brochures/nationallandpolicydraft3jan_feb_versionforconsultation.doc

¹³⁸ The 1995 Constitution of Uganda provided that land legislation on certain matters had to be enacted not later than June 1998, which became the deadline for the passing of the Land Act. The legislation emerged in advance of any plan or budget for its implementation, which explains many of the problems which were subsequently encountered.

behaviour shows little respect for either the Constitution or Land Law, so there is no reason to believe that the Policy will have any more positive influence on practice.

Land prices have rocketed in recent years, particularly in the central area around the capital and the hunger for land has grown enormously. Landowners of 'mailo' land are evicting lawful occupants, publicly owned land is being grabbed by those with powerful connections and there are allegations that the State is using its rights to compulsorily acquire land 'in the public interest' to give land to private companies, without the due process of compensation. Meanwhile, at a local level the usual violations of land rights continue – widows being evicted from their land, husbands selling family land without the wife's consent, individuals taking over family land as their personal property to the detriment of others, and neighbours forcing anyone perceived as weak off their land.

The current problems of land administration and justice in Uganda can be said to derive from three main problems:

- The overall context in the country is one of an absence of rule of law, including the behaviour of the police and the various levels of courts. Problems of land justice are a part of a more general problem. Corruption is endemic, and this includes the land sector – a recent investigation found thousands of forged titles in the National Land Register.
- The civil service, particularly at the District level to which services have been decentralised, is plagued with inertia and lack of motivation – for all the usual reasons. Without a strong direction from the centre in setting up a new land administration, Districts simply cannot be expected to take up the challenge.
- This is compounded by a serious underfunding of District Government as a whole and the land sector in particular. Land administration is just one of the functions of cash-strapped district governments. The Land Act of 1998 decentralised land administration to various District and sub-county structures – District Land Boards, the District Land Office & Land Registry, the District Land Tribunal and the Sub-County Land Committee. The cost of creating this decentralised land administration system far exceeded the resources available, even after a reduction in the number and size of the prescribed institutions in the 2004 Amendment Act. In mid-2006, there were only 18 DLT circuits for almost 80 districts. Adding the inefficiency of the legal system, with continual adjournments as people fail to turn up, meant there were very few actual judgements and a large backlog of unheard land cases. Finally, towards the end of the year, further funding to the DLTs was simply stopped, and they were instructed to hand over their backlogs to the Chief Magistrates Courts (i.e. at District level) – but with no provision for expanding the capacity of these courts to cope with this added workload.

The absence of a functioning land administration and justice system, in a climate of corruption and use of naked power, is a recipe for disaster for land rights in the country. Expecting a new Policy to sort out this mess may be a hope too far.

Zambia

Land Administration and Policy

Zambia's land administration system faces many challenges including un-updated and gender blind statistics on land tenure (customary versus leasehold); unclear tenure guidelines on land acquisition; cumbersome procedures for acquiring state land; limited support for the implementation of laws governing land administration; contradictory land related policies and laws which result in coordination problems during implementation; outdated statistics regarding land tenure categories,¹³⁹ and public ignorance about these laws. These challenges persist partly because the process leading to the formulation of the Land Policy in 1993 and the Lands Act in 1995 was not participatory. There was very limited public consultation in the formulation of this law and the few who were consulted rejected it, arguing that the new law simply promoted displacement of the poor from their land in favour of the rich.¹⁴⁰

The Zambian Government through the Ministry of Lands started to review the Land Policy in 2002 with the intention of also reviewing land related laws. As part of this process, civil society, spearheaded by the Zambia Land Alliance (ZLA), partnered with the Ministry of Lands and carried out consultations countrywide in 2004 and 2005. But government delayed releasing the new draft Land Policy for public comment, citing the holding of presidential, parliamentary and local government elections during 2006 as a reason. Then, in early 2007, the Ministry was rocked by a series of scandals (see below). As this review goes to press, the Ministry has released a revised draft Land Administration and Management Policy and is scheduled to hold a national conference on 8 July to discuss it. Thereafter, it hopes to finalise the draft and start the process of reviewing land related laws in line with the new policy.

World Bank's Proposals on Land Policy

On 12 April 2006, Oxfam and Zambia Land Alliance organised a meeting in Lusaka following a request from the World Bank to brief civil society organisations on its proposals on land policy and management in Zambia. The World Bank researchers informed the meeting that they had consulted 12 Lusaka based institutions and came up with what they termed a 10-year 'Plan of Action for Strengthening Land Administration in Zambia' and presented it at this meeting. Some of the recommendations in the Action Plan were:¹⁴¹

- Review and harmonise land related laws including the national Constitution to resolve contradictions in the various pieces of legislation related to land;

¹³⁹ Regarding outdated statistics, the Ministry of Lands has made pronouncements in the media that they have been carrying out a land audit to determine how much land falls under leasehold and customary tenure respectively. It is however unclear how long it will take for the public to know the results of the audit.

¹⁴⁰ Hansungule, M. (2001). 'The 1995 Land Act: An Obstacle or Instrument of Development?' Paper prepared for National Land Alliance of Zambia, Lusaka.

¹⁴¹ See ZLA, World Bank Presentation of the Plan of Action for Strengthening Land Administration in Zambia - Summary of the Consultation Meeting with Civil Society, Meeting held at Oxfam, Lusaka, Zambia, 12 April 2006.

- The functions of institutions responsible for land use, resettlement and valuation should all be brought under the Ministry of Lands which would administer 100 percent of land in Zambia, including customary land which would be converted to leasehold tenure;
- Decentralise functions of the Lands Tribunal to community/ village level;
- Create planning authorities in all districts;
- Create District Lands Boards with representation of various government departments;
- Strengthen survey systems including provision of information and maps to the public;
- Increase land rates so that the land sector is self-financing;
- Sensitise the public to acquire documents for their land;
- Strengthen the Ministry of Lands' capacity to service the public;
- Promote Public-Private Partnerships (PPP).

ZLA circulated the minutes of this meeting to various stakeholders.¹⁴² The proposals provoked a lot of criticism from civil society organisations, traditional leaders, farmers, some investors and academics about the practicality of the World Bank's proposals in meaningfully addressing the challenges of land administration in Zambia.

The World Bank has since refused to release the Action Plan to the public, claiming that the document is the property of the Ministry of Lands. The Ministry said they rejected the proposal and would therefore not release the document to the public. But some of the World Bank's proposals were to resurface in another reform process (see below).

The Fifth National Development Plan

During 2006, the Government carried out consultations to formulate its Vision 2030¹⁴³ and the Fifth National Development Plan (FNDP) for 2006-10. The President launched both documents on 16 January 2007. The FNDP is the successor to the Poverty Reduction Strategy Paper (PRSP) of 2002-4. Regarding land management, there seems to be a positive indication by the Government in addressing land issues. For example, for the first time in decades, land has been included in the FNDP as a separate chapter. This came only during the National Conference which discussed the draft FNDP where concerned stakeholders including ZLA lobbied for a separate chapter. While this is a positive move, it should be noted that the chapter was written in a hurry and spearheaded by Ministry of Lands - unlike all other chapters in the document which underwent public consultations and constant redrafting.¹⁴⁴

¹⁴² On 7 January 2007 a leading private newspaper, *The Post*, published excerpts of the minutes with a front page headline 'World Bank Asks Government to Increase Land Rates' by Brighton Phiri.

¹⁴³ Republic of Zambia (2006). *Vision 2030: A prosperous Middle-Income Nation by 2030*, Lusaka.

¹⁴⁴ In preparing the other chapters of the FNDP, the Ministry of Finance and National Planning spearheaded nationwide consultations involving community, district and national stakeholders before holding the national conference in 2006.

This was also in line with President Mwanawasa's speech delivered to the new Parliament in October 2006.¹⁴⁵ His speech had a separate section on land in contrast to all previous speeches which had lumped land as a small component of Agriculture. The Government seemed at last to have realised the need to pay more attention to addressing land issues. Perhaps some of the World Bank's proposals on land administration could be seen through the FNDP and the President's speech in which he said:

‘my government is determined to have a Zambia in which there is equitable access to land and security of tenure for the sustainable socio-economic development of the people.

We will also create land banks to facilitate investment by all potential investors, both local and foreign. Within these land banks, among other investments, there shall be multi-facility economic zones, which will be strategically located for production of goods for both domestic and export markets.

In view of the fact that almost ninety percent of the total land area of our country is in customary areas, I wish to implore all our traditional rulers to release part of the land in their respective chiefdoms for investment. Our traditional rulers should also embrace the land resettlement programme by making available adequate land for the resettlement of those leaving employment, the youth and other groups in need of land for development.’¹⁴⁶

The land chapter in the FNDP contains this goal: ‘To have an efficient and effective land administration system that promotes security of tenure, equitable access and control of land for the sustainable socio-economic development of the people of Zambia.’¹⁴⁷ Some of the strategies identified to implement the FNDP are:

- Develop and implement land policy;
- Review land related legislation;
- Harmonisation of institutions dealing with land;
- Sensitising traditional rulers on the importance of releasing land for development;
- Promote creation of land banks for all potential investors;
- Strengthen provincial land offices and decentralise land registration to the provincial level;
- Facilitate affirmative action to empower less privileged Zambians such as persons with disabilities, women, and the rural community to access land;
- Promote cost effective means of collecting ground rent;
- Conduct a land audit.

¹⁴⁵ President Mwanawasa's Speech for the Official Opening of the First Session of the Tenth National Assembly, Lusaka, 27 October 2006

www.statehouse.gov.zm/index.php?option=com_content&task=view&id=218&Itemid=45

¹⁴⁶ Ibid.

¹⁴⁷ Ministry of Finance and National Planning (2006), *Fifth National Development Plan (FNDP) for 2006 to 2010*, 57.

There is a clear need to improve efficiency in the land delivery system and to promote productivity and tenure security. However, the key theme running through both the President's speech to Parliament and the land chapter in the FNDP which threatens tenure security of the majority poor is that of conversion of customary land to leasehold. This has been a controversial issue in the land discourse in Zambia since the enactment of the Lands Act of 1995. But the more challenging dimension of this controversy is the World Bank's insistence on placing functions of all land administration institutions under the Ministry of Lands.¹⁴⁸

This is linked to their recommendation for wholesale conversion of customary land to leasehold – that is, placing ALL land under leasehold tenure within the next ten years. This effectively implies getting rid of the customary land tenure system in Zambia. This proposal might explain why the FNDP is silent on how the nation should administer customary land in the next four years. Moreover, this belief is not based on accurate statistics as customary land now comprises far less than 90 percent of the country's land area. More and more land has been converted to leasehold tenure since independence in 1964 through the creation of state and commercial farms, mines, resettlement schemes, farm blocks and townships, etc.

Further, converting all land to leasehold would imply reducing the powers of traditional leaders to becoming mere land administrators on behalf of the President. Moreover, the Ministry of Lands does not have the capacity to efficiently administer the amount of land which is currently under its jurisdiction. Often it fails to monitor how district councils are administering land on its behalf. There are also long waiting lists of people waiting for titles, some for as long as ten years. This raises questions as to how the Ministry would be able to perform this function when given an even bigger responsibility. There is also absolutely no guarantee that this move would help reduce corruption in the Ministry, which has become a burning issue (see below).

Besides, during the countrywide land policy consultations, no one made such a proposal. Nearly all those consulted felt that the customary tenure system was still important for a country like Zambia where the majority of the people (65-80%) live in extreme poverty. These poor women and men could not afford to meet the costs of the proposed tenure system and the monetary costs that go with it, and would therefore be dispossessed of their land.

Constitutional Review

Following calls especially from civil society organisations for the need to review the national Constitution, in 2003 the Zambian Government set up the Mung'omba Constitutional Review Commission which consulted widely within and outside the country. The Zambia Land Alliance made a submission to the review process, which included: the demand that land must be a right to every Zambian citizen; that there was need for full participation of all adults in a village locality before any conversion to leasehold takes place; the need for adequate provisions on transparency and accountability in the administration of land; and the need to outlaw gender

¹⁴⁸ Ibid.

discrimination, especially in customary land administration. ZLA, like many other CSOs, also argued the need to adopt a constitution through a Constituent Assembly (CA).

The Commission released the draft constitution to the public during 2006 incorporating almost all of ZLA's submissions. Once the draft constitution is adopted, it may raise some hope for protection of the rights of the poor majority. The Government agreed with calls to adopt the Draft Constitution through a CA rather than Parliament although there are concerns as to what the composition of the CA might comprise. Another outstanding controversy concerns the road map to the end of the Constitutional Review process. The government maintains that the process would end in 2009 because of legal technicalities and limited funds to meet the costs of the CA. Most civil society members however believe that government is simply using an unrealistically high budget to buy time and have been calling for a much shorter time.

Review of Spatial Planning Legislation

In July 2004, Sida supported a study on spatial planning legislation in Zambia. The study identified two key pieces of legislation, the Town and Country Planning Act Cap. 283 (1962) and the Housing (Statutory Improvement Areas) Act Cap. (1974). It found that these laws were outdated and too complicated for the public to understand, were fragmented and sometimes contradictory, that there was lack of public participation in implementation of these laws and that political will was also lacking.¹⁴⁹ In November 2006, the Ministry of Local Government and Housing, with support from Sida, started the process of reviewing these laws. The Ministry intends to carry out countrywide consultations and enact a new law by the end of 2008. It is expected that the new law would enhance efficiency in, among other things, housing delivery.

Scandals in Ministry of Lands exposed

In the early months of 2007 a series of scandals rocked the Ministry of Lands. The Minister and her deputy were sacked and the Commissioner of Lands and a number of officials suspended, while the building itself was sealed off pending investigations. This happened amidst a welter of mutual recrimination. President Mwanawasa spoke of 'rampant corruption at the Ministry of Lands, which is now stinking' and 'all I can say is that there is no order among thieves.' In an interesting aside, he said that the sacked Minister 'illegally gave out 25,000 hectares in Mpika to a foreigner, contrary to his directive that any piece of land exceeding 1,000 hectares should not be given out without consulting him. He said he disapproved the allocation of the huge tract of land to a foreigner, but [the Minister] went ahead with the process of issuing title deeds.'¹⁵⁰ Zambia Land Alliance coordinator, Henry Machina, commended the President for taking measures to protect people's interests at the Ministry of Lands, adding that land was an important resource that needed to be administered in a transparent manner. The new Minister said that he would ensure that he addressed the President's task to clean the

¹⁴⁹ SSPA Sweden AB (2004), 'Revision of Spatial Planning and Related Legislation: Fact Finding Mission, Zambia', Stockholm.

¹⁵⁰ Republic of Zambia, State House, 'Why I fired Nyirongo – Levy', 2 March 2007
www.statehouse.gov.zm/index.php?option=com_content&task=view&id=246&Itemid=47

ministry without delay, adding that this was a challenge which he needed to respond to diligently and aggressively.

The Draft Land Policy

Zambia's draft Land Administration and Management Policy, but referred to throughout as the Draft Land Policy, is dated October 2006.¹⁵¹ It is a working draft rather than a formal policy document and carries this health warning: 'It should not be quoted and interpreted as the policy of the Government of Zambia or any other government ministry or department until it has been finally agreed and adopted.'

Its final sections on implementation, resource mobilisation and monitoring and evaluation cover barely half a page. There is a brief background section and a brief section on vision, rationale, guiding principles and objectives. The bulk of its 52 pages are devoted to 'situation analysis, challenges and policy measures'. These cover the following issues: (1) international and internal boundaries, (2) vestment and land tenure, (3) customary tenure, (4) leasehold tenure, (5) land administration, including land allocation and land registration, (6) the Land Development Fund, (7) institutional framework, (8) legal framework, (9) surveys, (10) geo-information, (11) land information, (12) land value and property markets, (13) tax and non tax revenue, (14) spatial planning, (15) dispute resolution, (16) private sector participation, (17) transparency and accountability, (18) cross-cutting issues, including decentralisation, gender, HIV/AIDS and other terminal diseases, persons with disabilities, youth, empowerment of citizens, environment and natural resources, tenure insecurity.

The Draft Land Policy contains many admirably frank admissions concerning an overall lack of human and institutional capacity, lack of information and of basic data, lack of transparency and accountability, outdated laws, policy confusion and even 'fraudulent behaviours' and 'deterioration of integrity among institutions dealing with land management and management.' In response to the listed challenges, including the wonderful 'lack of compliance by land users', it offers a series of policy measures, many of which are of a very general nature, are often banal and stand little serious chance of ever being implemented, e.g. 'establish a well functioning land delivery system'.

Interestingly, concerns are raised about the potential for political interference if land continues to be vested in the President. There are suggestions for setting maximum holding sizes linked to capability. There is a need to 'ensure that non-citizens and foreign companies are not allowed to acquire land through transfer or purchase of customary land', but government should 'introduce measures to encourage leasing of land by foreign investors and residents in line with the Citizenship Economic Empowerment Act.' Yet later land under customary tenure 'is not easily accessible for investment purposes' and hence there is need to 'carry out sensitisation campaigns in order to ensure that some of the idle customary land can be converted to leasehold to promote investment

¹⁵¹ Republic of Zambia, Draft Land Policy, October 2006

http://www.oxfam.org.uk/resources/learning/landrights/downloads/zambia_draft_land_policy_oct_2006.pdf

in various communities.’ 99 year leases are too long and should be replaced by a scale of 1-99 years ‘based on advice from Land Use Experts.’

There is a call to ‘ensure that land that remains underdeveloped and unutilised within the specified period is repossessed.’ This has been a serious concern in many parts of the country, especially around the Copperbelt.

On gender, the Draft Land Policy notes among the challenges the lack of an enabling environment, discriminatory inheritance rules and rights, lack of disaggregated data based on gender ‘which makes it difficult to plan’, lack of recognition of women’s labour in agriculture, inadequate participation of women in land administration, lack of advocacy and sensitisation to encourage women to own land.

Conclusion

Clearly Government has been reviewing a number of policies and laws at almost the same time. This may be an opportunity to harmonise contradictory provisions of policies and laws. The potential danger is that some of the World Bank proposals have for harming the majority of Zambians. It is hoped that the new constitution will be enacted soon so that some of the land related controversies might be ironed out. But even more important is that civil society and indeed other concerned key stakeholders need to play a major role in influencing the direction of these reforms in order to help protect the poor while enhancing their productivity.

Zimbabwe

Many of the themes discussed in previous reviews continued to dominate Zimbabwe’s controversial ‘Fast Track’ land reform programme¹⁵² throughout 2006 and into early 2007.

In a context of both a severely imploding economy, characterised by hyper inflation (reaching over 3,700% by May 2007), huge unemployment and mass emigration, and continuing and undisguised political in-fighting, as different factions within the ruling ZANU-PF party sought to position themselves for an imagined post-Mugabe era, the impact in terms of policy on land has been one of confusion and contradiction. This was coupled with an inability to offer effective support to the majority of new farmers on the former white-owned commercial farms. In September the authorities announced the ending of seed and imported fertiliser distribution, repayable after harvest, because of the rising costs. The net result has been plummeting productivity across all sectors of agriculture combined with collapsing infrastructure as new settlers failed to pay the levies needed for their upkeep to the Rural District Councils.

Tenure security

The question of tenure security loomed large throughout the year. Since 2001 the Government had said that it would ‘soon’ be offering 99-year leases to A2 (larger scale) farmers. The first of these, numbering 125, were finally ceremonially presented by

¹⁵² This review paints a generally negative picture. For a far more positive view, see Gregory Elich, ‘What the West Doesn’t Want to Know: Zimbabwe’s Fight for Justice’, Counterpunch, 7-8 May 2005. <http://www.counterpunch.org/elich05072005.html>

Mugabe on 9 November 2006. Recipients were said to include ‘a high court judge, a top state media journalist, retired army officers and a handful of whites regarded as supporters of the ruling party.’ Mugabe hailed this as ‘a critical milestone in the implementation and finalisation of the land reform programme. I can confidently state that for the farmer, the agreement offers the ultimate security of tenure.’ The leases could be registered with the Deeds Office, as had been the cases with title deeds, and so would, in theory, help farmers secure bank loans.¹⁵³

But as Zimbabwean land expert Sam Moyo pointed out, new farmers ‘lacked sufficient knowledge of how to apply for loans, while the banks lack the capacity to deal with the increased numbers of new farmers and apparently have scaled down on loaning out to farmers since the new farmers came on board.’¹⁵⁴ Under the terms of the 99 year leases, A2 farmers would be required to pay a lump sum deposit and annual rents for 25 years and levies to local authorities. No subletting would be allowed without the consent of government, which can repossess the land without compensation and without legal challenge. In addition, no farmer can sell five head of cattle without first offering one to government. ‘Security of tenure for (smaller scale) A1 farmers will be resolved through the issuance of usufruct permits’ Mugabe said, noting that these would be comparable to those in the Communal Areas. Conservancies, hunting safaris and game reserves would be governed by 25 year leases.

The white farmers

A great deal of confusion surrounded the question of whether, and if so on what terms, the country’s remaining white farmers would be allowed to continue to farm. Some analysts believe that this policy confusion was deliberate in order to keep them on tenterhooks; others viewed it as reflecting very different policy prescriptions linked to internal power struggles. Voices of relative moderation included Reserve Bank Governor, Gideon Gono, Minister of State for Special Affairs Responsible for Land, Land Reform and Resettlement, Flora Buka, and, occasionally, Vice-President Joyce Mujuru. They were regularly critical of:

- outbreaks of land invasions which continued in different parts of the country throughout the year;
- evictions of original land occupiers by new elite would-be owners, usually politicians or the military;
- the continuing phenomenon of multiple farm ownership, despite Mugabe’s avowed commitment to put an end to this;
- the frequent and often highly public conflicts between members of the ruling elite over ownership of choice individual farms;

¹⁵³ ‘Leases won’t ease agricultural woes – experts’, *The Zimbabwe Independent*, 17 November 2006. <http://www.thezimbabweindependent.com/viewinfo.cfm?id=9078&siteid=1&archive=1>

¹⁵⁴ IRIN, ‘No support for struggling new farmers’, 19 September 2006. <http://www.irinnews.org/report.aspx?reportid=61115>

- new ‘cellphone farmers’ who made no effort to farm, stole tractors on loan, or sold heavily subsidised fuel on the open market;
- ‘A5 farmers’ who hopped from farm to farm, stealing crops which others had grown;
- corruption, indiscipline and the looting of equipment by government officials, especially in the sugar industry in the Lowveld;
- the use of the army to attempt to increase production (Operation Majuta); this was largely confined to the south of the country and was seen as a political manoeuvre.

Gono in particular was concerned about keeping production going (‘productivity must return to the land’), even if that meant encouraging white farmers, and about investment (or more accurately its lack) in agriculture and the legal questions surrounding foreign-owned farms.

In August Mugabe called for an end to land invasions and warned new farmers to make use of their land, or government would take it back. He said ‘we now need to distinguish capable and committed farmers from holders of land who are mere chancers and should be made to seek opportunities elsewhere.’ (*Zim Online*, 15 August 2006).

The remaining white farming community was divided between the ‘moderate’ CFU (Commercial Farmers’ Union) and the ‘hardline’ JAG (Justice for Agriculture).¹⁵⁵ The CFU had in the recent past been closely aligned with the opposition Movement for Democratic Change (MDC) but now sought to rebuild bridges with ZANU-PF, declaring that the land reform programme and redistribution of land were ‘a necessary exercise’ (*Sunday News*, 9 April 2006) and offering to engage in reviving the economy through agriculture. They tended to represent white farmers who were still farming, who were said to number around 300, though only a handful of these, perhaps 40, could be said to be farming full-time. JAG, by contrast, representing those who had been driven off their farms, argued that cooperation was pointless and sought redress through the courts, both local and international. One of the dividing issues was whether to accept the low levels of compensation offered by government or to fight the loss of farms in the courts. Only a handful of, mostly elderly, white ex-farmers accepted compensation (206 in all since 2000, 37 during 2006, out of a total of some 4,000, received Zim\$441 billion, an average of Zim\$2.1 billion or £3,800 per farmer).

The CFU sought dialogue in particular with the hard line and hugely influential Didymus Mutasa, Minister for State Security, Lands, Land Reform and Resettlement, who was frequently in public disagreement with his government colleagues. In October, when more than 100 white farmers were served with eviction orders just before the summer

¹⁵⁵ For an impressive study of commercial farmers and land reform in Zimbabwe, see Angus Selby, *Commercial Farmers and the State: Interest Group Politics and Land Reform in Zimbabwe*, Ph.D. thesis, University of Oxford, August 2006, http://www.oxfam.org.uk/resources/learning/landrights/downloads/commercial_farmers_&_land_reform_in_zimbabwe.pdf

planting season, Mutasa said ‘we are taking over our farms. Who said land reform is over. We have just taken a little part of the land.’ The previous week Vice-President Joyce Mujuru had declared that ‘our land reform programme is now part of our history.’ (*Financial Gazette*, 19 October 2006).

The year ended with an announcement that the government would undertake yet another land audit, the 8th since 2000, in order, in the words of Minister of Local Government, Public Works and Urban Development, Ignatius Chombo, ‘to check on what is happening on the farms’ and ‘help to resolve a pile of outstanding disputes over land ownership.’¹⁵⁶ According to the *Financial Gazette* (20 December 2006), ‘since government began parcelling out land to its supporters in 2000, 6 527 farms with a total area of 12 million hectares had been acquired for resettlement. A total of 140 866 new farmers were resettled under the A1 resettlement model, while 14 500 more were allocated land under the A2 scheme.’ The most recent (June 2007) update on this audit came from a senior official in the ministry, speaking on condition of anonymity:

This audit was necessitated by many reports coming from all over the country that are generally in direct contradiction to the claims of success of the land reform programme. The major problem is the usual one of having the majority of people who got pieces of land simply doing nothing. There have also been reports of senior government officials going around the country booting out peasants who were given land and taking it over.¹⁵⁷

December also saw a government announcement of maximum sizes for commercial farms not yet listed for seizure, varying from 250 ha in rich, arable farming areas to 2,000 ha on poorer land used for cattle ranching. Farms exceeding these limits would be subdivided into smaller plots. (*The Zimbabwean*, 7 December 2006).

2006 ended with the implementation of the Gazetted Land (Consequential Provisions) Act, which repealed the Rural Land Occupiers (Protection from Eviction) Act, and said that no one could continue to hold or occupy gazetted land without authority from the government. In effect this obliged remaining white farmers to seek A2 status. The CFU responded that most of its members had applied for this, but that only 16 had been successful. (*Zimbabwe Standard*, 24 December 2006).

Trends in 2007

The early months of 2007 witnessed a continuation of many of the trends discussed above. Farm invasions continued, sometimes erratically, sometimes purposefully, as when the time came to harvest sugar in the lowveld. These often involved intimidation of farm workers, whose plight was occasionally raised; a joint committee ‘found that workers formerly employed by white farmers were reluctant to work for the new farmers, citing low wages and poor working conditions.’¹⁵⁸ Shortage of labour was also said to be

¹⁵⁶ ‘Government to undertake yet another land audit, the eighth’, *Financial Gazette*, 20 December 2006; ‘Harare undertaking another audit of agricultural land ownership’, VOA, 28 December 2006.

¹⁵⁷ ‘Another land audit underway’, *The Zimbabwean*, 7 June 2007

<http://www.thezimbabwean.co.uk/viewinfo.cfm?id=4672>

¹⁵⁸ ‘Apart from paltry wages, your committee was not happy with the generally appalling conditions of service for farm workers, especially as regards housing, employment contracts, late and non-payment,

affecting tobacco production. Another 226 white farmers were served with eviction orders in April. All this had negative effects on sugar, maize and winter wheat (with only 10% of the country's wheat needs planted). The Department of Agricultural Research and Extension Services (Arex) admitted that it was operating below capacity owing to a lack of resources 'and a massive exodus of trained officers.' It had more than 1,000 vacant posts for extension officers and needed more vehicles and up to 2,000 motor cycles to confront 'serious transport challenges' and provide 'critical services to farmers in remote areas'. But they had received 183 bicycles from the army. (*The Herald*, 16 April 2007).

In March, Gono announced that the government would be withdrawing support from larger scale A2 farmers in the future; 'next season we will wean off all A2 farmers, as they are now grown-ups.' He also declared that 'everyone who got land must produce. There are some people who have become professional land occupiers, vandalising equipment and moving from one farm to another.' (*The Herald*, 28 February 2007).

Reports circulated of a project to stimulate the production of half a million ox-drawn carts and ploughs for small-scale farmers, while a Chinese loan of \$25 million was to be used to acquire tractors and trucks. Gono proposed a somewhat class-based suggestion for their distribution:

He said the mechanisation programme would also see Members of Parliament, senators and chiefs, among other national leaders, getting an opportunity to own a tractor and farming implements in addition to ox-drawn implements for communal and resettled farmers. (*The Herald*, 29 May 2007).

Key recent publications

Kaori Izumi edited a volume of case studies on *The Land and Property Rights of Women and Orphans in the Context of HIV/AIDS*¹⁵⁹ based on material from Seke, Buhera, Chimanimani and Bulawayo Districts which highlights the vulnerability of widows to property rights violations. Problems associated with land tenure security and land administration systems posed serious challenges. 'Unclear land tenure, especially in newly resettled farms, affected widows and orphans in cases where the head of family had died. The ability to fully utilise the available land usually declined with the loss of

denial of lunch breaks and sick and compassionate leave,' the joint committee said in its report. Financial Gazette, 24 May 2007.

¹⁵⁹ Kaori Izumi (ed), *The Land and Property Rights of Women and Orphans in the Context of HIV/AIDS: Case Studies from Zimbabwe*. Cape Town, HSRC Press, 2006

http://www.oxfam.org.uk/resources/learning/landrights/downloads/ebook_land_&_property_rights_of_women_&_orphans_in_zimbabwe.pdf

Kaori Izumi also edited a regional collection on this theme, drawing on research, workshops and personal and organisational testimonies, and covering Eritrea, Kenya, Rwanda, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. This aimed to raise awareness of the heavy impact of HIV and AIDS on women's property rights and livelihoods and the active steps being taken by many grassroots organisations to respond to the crisis. Kaori Izumi (ed), *Reclaiming our Lives. HIV and AIDS, Women's Land and Property Rights, and Livelihoods in Southern and East Africa. Narratives and Responses*. Cape Town, HSRC Press, 2006

http://www.oxfam.org.uk/resources/learning/landrights/downloads/eBook_reclaiming_our_lives.pdf

husband, and this inability was, at times, used as a basis by relatives for land seizure both temporary and permanent.¹⁶⁰

2006 also saw the publication of Jocelyn Alexander's long anticipated book, *The Unsettled Land*, which places recent conflicts and controversies in a deeper historical perspective. Reflecting on the current situation, she writes that:

Authority over the land and the kaleidoscope of alliances that shaped access to land was far from stable, a reflection of the long history of contested claims within and between differently defined communities, and with and against the shifting demands of state and party. Policy was regularly made and unmade.¹⁶¹

This view is endorsed in another outstanding recent publication from James Currey, William Wolmer's *From Wilderness Vision to Farm Invasions*, a careful, nuanced study of contested visions over time of landscape and livelihoods in Zimbabwe's south-east lowveld. Wolmer argues that much of the farm invasions was chaotic, unplanned and opportunistic, as access to meat, fish and grazing land opened up in the short term, but:

'it tended to be the relatively wealthy, politically well-connected and least scrupulous who benefited most from this situation. Others feared that sooner or later the government would revert to technocratic type and exclude all but the politically connected and 'expert' farmers, as the symbolic occupations gave way to a formal land allocation process.'

He concludes that debates over restitution carry the potential danger in the lowveld of exacerbating ethnic politics and providing 'a rationale for the eviction of 'outsiders' alongside the return of ancestral land' – a point also strongly emphasised in a recent article by James Muzondidya;¹⁶² that in a context of economic collapse, labour migration, remittances and trans-border trade are often more important than access to land; and that financial supporters of a Great Limpopo Transfrontier Park (linking Zimbabwe, Mozambique and South Africa) are more concerned with 'facilitating animal than human

¹⁶⁰ Izumi, *Land and Property Rights*, x.

¹⁶¹ Jocelyn Alexander, *The Unsettled Land: State-making and the Politics of Land in Zimbabwe, 1893-2003*, (Oxford: James Currey, 2006), 189.

¹⁶² James Muzondidya, 'Jambanja: Ideological Ambiguities in the Politics of Land and Resource Ownership in Zimbabwe', *Journal of Southern African Studies*, **33**, 2, June 2007, 325-41. In which he argues that Zimbabwe's current restructuring of land and resource ownership has not only been violent and coercive, but also disorganised and divisive. In its call for radical land redistribution, the state has increasingly resorted to authoritarian nationalism, invoking identity politics. This has resulted in new conceptions about rights and power - conceptions that basically uphold racial and ethnic politics and the pre-eminence of majority over minority rights. The current processes have also rekindled important questions about citizenship, identity, nationhood, rights and entitlement in post-independence Africa. The resulting policy positions, and particularly the current emphasis on race and nativism, have not only supported contradictory perspectives on justice, rights, citizenship and nationality but have also structured the debate on these issues in very narrow and problematic terms. The historical processes unfolding in Zimbabwe have engendered feelings of exclusion and insecurity, especially among the subject minorities marginalised by the current processes.

trans-border migration' and with expanding colonial notions of pristine wildlife landscape further into the communal areas.¹⁶³

Concluding thoughts

Compiling this land review provokes a number of thoughts. Many countries in Eastern and Southern Africa are clearly struggling to implement laws and policies that they have formulated in recent years. There are many reasons for their difficulties, including over-ambition, lack of capacity, scarcity of financial resources, and the assumption that customary law can be swept away by the stroke of a pen, or women's land rights protected by another. Social reality at the local level is generally very different from what is imagined in the capital. One of our contributors, who must remain anonymous, wrote:

'Don't get too excited about any policies that come out of (the ministry). They are never designed to be implemented, just to look good - and they do, they do! The practice, of course, is another story.'

Political will to do the decent thing and implement reforms which might offend powerful vested interests is infrequent. There are examples recorded in the foregoing country reviews of sheer bloody mindedness, wickedness, corruption and neglect – by politicians, officials, army officers or business interests. The heavy reliance on western donors and NGOs and the frequency with which consultants are cited is no surprise. Many countries are engaged in ongoing policy debates or struggles about the very purpose of land reform and land policy and who should benefit. These debates and struggles will continue for years to come. Finality in these things is illusory. In this context it is worth recording these words from a recent study commissioned by the Danish Ministry of Foreign Affairs:

'Land issues are in fact not new in Africa. The land tenure situation has always been undergoing change in response to demographic and technological changes, wars, conquests and changes in governance. Moreover, land has been an object of policy intervention from colonial times to the present, and every spot of land in Africa has a history of changing land policies and different forms of land politics. Any new policy must therefore take previous policies and their effects into account in addition to the socio-economic conditions of land tenure they aim to alter.'¹⁶⁴

¹⁶³ William Wolmer. *From Wilderness Vision to Farm Invasions: Conservation and Development in Zimbabwe's Southeast Lowveld*, (Oxford: James Currey, 2007), 216-8.

¹⁶⁴ Christian Lund, Rie Odgaard & Espen Sjaastad, *Land Rights and Land Conflicts in Africa: A review of issues and experiences*. Report for the Danish Ministry of Foreign Affairs. Copenhagen, Danish Institute for International Studies, 2006, 3-4.
<http://www.diiis.dk/graphics/Events/2006/Lund%20Odgaard%20and%20Sjaastad.pdf>

It also seems fitting to draw upon the wisdom and experience of the law professor, Patrick McAuslan. In a magisterial and wide-ranging study on *Improving Tenure Security for the Poor in Africa*, McAuslan concludes:¹⁶⁵

‘It is not possible to argue that the rules of international trade created under the auspices of the WTO are likely to benefit the rural poor in Africa, either now or in the future. They could, however, benefit large-scale producers. A thriving land market with few controls, a system of registered titles, a land law recognizably Western in format and content, ranches, efficient dispute settlement mechanisms for commercial cases (including land sales and mortgages) – these are the very essence of an international market in land and are driving much international input into land systems in Africa.

..... (national) policy developments of the last few years are very much to be welcomed, whether they were adopted as a result of international pressure, a renewal of democracy or a greater national awareness of the need to develop truly national policies. The commitment to decentralization has been a major step forward in allowing the citizens to manage their own land affairs. The new approach to land registration – the involvement of the community and local institutions, local and simple registration systems – can help protect the tenure rights of the poor... States are also showing a greater willingness to tackle urban poverty by regularizing informal urban tenure and accepting or even developing modes of financing and the informal economy. There also are welcome signs that states are beginning to think about creating a national land law blending the best of customary and Western law. This establishment of a genuinely national land law can be both a shield and a sword against unregulated globalization. Progress, at least as regards law, can be shown with respect to women’s land and property rights although the Executive Director of UN-Habitat is right to point out that when it comes to implementation, women are too often left to fight their own battles.

There can be little doubt that the social level has both benefited from and been a major contributor to the new approach to land policies and land management. Major national NGOs now focus on land issues in many countries and are powerful factors in land reform. There can be little doubt that several NGOs in Uganda had very significant input in the land law reform process that culminated in the Land Act 1998 and have continued to have an impact on women’s land rights in the law. NGOs, both national and international, have played an important role in re-thinking policies and actions on pastoralism. NGOs based in informal settlements play a role in managing land and settling disputes.¹⁶⁶

¹⁶⁵ Patrick McAuslan, *Improving Tenure Security for the Poor in Africa*, Framework Paper for the FAO regional technical workshop for sub-Saharan Africa on legal empowerment of the poor, Nakuru, Kenya, October 2006. Rome, FAO, LEP Working Paper 1, 50-1.

<ftp://ext-ftp.fao.org/ag/data/agl/agl/Final/Africaframework.pdf>

¹⁶⁶ For a far more critical analysis of the role of NGOs more broadly, see Issa G. Shivji, *The Silences in the NGO Discourse: The Role and Future of NGOs in Africa*, Pambazuka Special Report 14, Oxford, Fahamu, 2006 http://www.pambazuka.org/en/publications/pz_sr_14.pdf Shivji memorably enquires ‘But how can you make poverty history without understanding the history of poverty?’

The social level is not just NGOs. It embraces the voice and the actions of the ordinary person. Decentralization has helped the rural poor find a voice and take action. What is significant, but little remarked upon, is that the action that the poor are prepared to take is to go to court to assert their rights and, in many cases, they succeed. This is one of the benefits of a more law-based land management process. The people learn that they have rights and they are prepared to assert them. This may not be comfortable for administrators, but it makes for a more transparent and honest process of land management. Also, at the social level, is the greater recognition and acceptance of the customary norms the rural poor live by which can be of benefit to the whole society.

There are two competing models of governance and development on offer in and for Africa with respect to land relations and policies designed to benefit the poor. One is to adopt the agenda of the international community and its IFIs and donors: make the land available for international investment and development via free and open land markets and homogenized national land laws and reap the benefits of globalization. Such an agenda downplays issues of security of tenure for the poor, decentralized land management and women's rights to land.

The other model is to develop national agendas to ensure that national considerations are at the forefront of land management. This is not meant to repel globalization for that would be impractical, but to give primacy of place to the land concerns of the poor, both women and men who are now the majority of land holders in all countries in Africa and are likely to be for considerable time to come. It is their land rights that need to be secured, their conflicts and disputes over land that need to be settled and not left to fester, and their productive use of land that need to be developed by appropriate forms and institutions of finance. In short, this amounts to a partnership between governments and their citizens for land management in Africa in the twenty-first century.'

In conclusion and in similar vein, in a challenging address in April 2007, Ben Cousins asked his audience what convincing rationales exist for land reform in the 21st century and for land policies and programmes that have poverty reduction as their key objective. He argued that the unequal structure of international agricultural trade regimes need to be made integral to all our thinking about agrarian reform and challenged us all in these words:

'the realities of a changing and urbanizing world require us to reconsider the economic justifications for land reform and to think through what this means for a pro-poor land agenda in struggles, advocacy and policies.

The challenge for proponents of land and agrarian reform is to 'imagine', think hard about, and work for plausible alternative scenarios for sustainable and sustaining rural and urban economies. There are important lessons from past formulations and experiences, but in many ways this is uncharted territory.'

¹⁶⁷ Ben Cousins, 'Land and agrarian reform in the 21st century: changing realities, changing arguments?'. Keynote address to International Land Coalition, Entebbe, Uganda, 24-27 April 2007.
http://www.oxfam.org.uk/resources/learning/landrights/downloads/land_agrarian_reform_in_c21.rtf

