

LAND POLICIES IN EAST AFRICA : IS THERE WAY AND GOODWILL FOR IMPLEMENTATION?

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By

**Ibrahim Mwathane, Land Development and Governance Institute (LDGI),
Nairobi, Kenya**

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SUMMARY

This paper discusses land policies in the four East African Community countries of Tanzania, Uganda, Rwanda and Kenya within the context of the *Framework and Guidelines on Land Policy in Africa* and the associated *African Union Declaration on Land Issues and Challenges in Africa*. It highlights the importance of land and natural resources to development in the region and the continent and also highlights the main features of the land policies of the four EAC Member States.

It notes the status of land policy development in each of the countries and discusses the limitations to implementation within the limited regional infrastructure such as technical and institutional capacity, budgetary support and political goodwill. The paper makes practical recommendations on how to effectively progress the implementation of land policies in the region through appropriate research and regional collaboration by Universities, other centers of excellence, public, civil society and private sector institutions by harnessing regional goodwill and the platform provided by the East African Community.

1. INTRODUCTION

This paper discusses land policies in East Africa within the context of the *Framework and Guidelines on land policy in Africa*¹ which was the product of a continental Land Policy Initiative (LPI) driven by the tripartite consortium of the African Union Commission (AUC), the United Nations Economic Commission for Africa (UNECA) and the African Development Bank (AfDB). This Framework and Guidelines, the result of a comprehensive and consultative continental process which kicked off in March 2006 and concluded in July 2009, was launched for implementation by African Union Member States in Lilongwe, Malawi, in October 2010.

An African Union *Declaration on Land Issues and Challenges in Africa*² endorsed by Heads of States and Government in July 2009 provides necessary political authority and commitment for implementation of the Framework by the African Union Commission, Member States and Regional Economic Communities within their respective jurisdictions.

The discussion is limited to work on land policy development and implementation within the four Nations of the East African Community (EAC) namely Rwanda, Uganda, Tanzania and Kenya since efforts to obtain similar information on Burundi, the fifth Member Country of EAC (see map below), did not bear fruit. Much of the discussion is based on a general study of land policy development within the four jurisdictions based on material from the continental land policy process, web review, peer discussions, e-correspondence and the writer's practical experience and involvement in the continental initiative and Kenya's land policy development process. A much more detailed discussion of processes in each of the jurisdictions would require much more time and resources than was available and necessary for this conference. It is however hoped that the recommendations from this discussion will stimulate interest for detailed research and practical partnerships for implementation within the Region.

¹ Framework and Guidelines on Land Policy in Africa, *AU-AfDB-ECA Consortium*, Addis Ababa, Ethiopia, September 2010

² Declaration on Land Issues and Challenges in Africa, *African Union*, Sirte, Libya, July 2009



The EAC Countries³

2. LAND AS A BASIC AND FINITE RESOURCE

Worldwide, land is man's most valuable resource and the foundation of all human activities. It supports our very basic and critical needs of food, shelter and business. Unfortunately, it is limited and finite. This leads to competition for it. The manner in which it is allocated, accessed and managed has direct implications on the environmental, social-cultural, economic and political aspects Nations. This is true for Africa too. Indeed, for Africa where economies heavily rely on agriculture, livestock production, tourism and the exploitation of natural resources, land and its management takes center stage. And any meaningful trade between Africa and the global community takes place around land the aforementioned land based activities.

³Source:http://www.google.com/imgres?imgurl=http://www.computers4africa.org/relationships/images/east_africa.gif&imgrefurl=http://www.computers4africa.org/impact/estafrica.htm&usq=__6FeZlXy-1k7vRKreOLpX4RPkijM=&h=625&w=938&sz=42&hl=en&start=8&zoom=1&tbnid=J0X803mTGy64KM:&tbnh=99&tbnw=148&ei=l-mOTumhEsPTTrQiv5sSgAQ&prev=/search%3Fq%3D%2Bafrica%26um%3D1%26hl%3Den%26client%3Dfirefox-a%26sa%3DN%26rls%3Dorg.mozilla:en-US:official%26channel%3Ds%26biw%3D1280%26bih%3D579%26tbn%3Disch&um=1&itbs=1

There is therefore great need for the careful reflection and vision on the future management of this vital but finite resource within the continent. Scholars, policy makers and land professionals in the Eastern Africa Region and the continent entrusted with the training, administration and management of the resource must keep informed by this reality. They must ensure that curricula, policies and programmes put in place are responsive to the realities and emerging challenges within their jurisdictions.

3. GENESIS OF THE LAND QUESTION AROUND AFRICA

3.1 Customary Structures and colonial governments

Early in history, land was deemed abundant around Africa. Communities lived in harmony, only occasionally fighting over their territorial claims. But they had their traditional methods of marking out their territory and respected the rights of neighbouring communities. They had their own leadership structures that administered land rights among their members for purposes of activities such as construction of shelter, farming, grazing, hunting and gathering. Where disputes arose, these were resolved by panels of elders.

But colonial governments later introduced formal land ownership and administration regimes in most African countries. In many countries, this led to the appropriation of land by the state and the application of land laws and regulations supervised by state structures and agents. Subsequently, customary structures were undermined and largely discontinued in colonial States. Land disputes were determined through new state prescribed institutions and procedures.

Dispossession and displacement of whole communities from their communal land became common, politically influenced land allocation became common along with the settling of indigenous communities on unproductive land to give way to the new settlers. Institutions of government held sway over most land matters. Urbanization and the introduction of a cash economy gave rise to competitive land markets and the marginalization of some people in the urban areas who moved into informal settlements. These developments shaped the beginning of the largely unresolved land question in East Africa and in many other African countries.

3.2 Post-Independence Governments

Unfortunately, on assumption of power, post-independence governments in Africa did not quite put the land question into proper context. Most maintained the laws, procedures, structures and institutions inherited from the colonial regimes intact, only in some cases replacing some of the colonial settler owners with African landlords who continued to enjoy the rights and privileges earlier enjoyed by the departed. Effectively therefore, land remained either in the hands of the former colonial masters or merely changed hands to the new ruling African elites. Many indigenous people earlier dispossessed of their land therefore remained landless even after independence. To obtain land, they had to go through the state. This bred a culture of selective land allocation for political support by those in power.

3.3 Inefficiency and Corruption

With time, state structures and agents entrusted to administer land became ineffective, inefficient and quite corrupt. Erosion, environmental pollution and degradation of land continued. Uncontrolled developments and slums within urban areas developed. The cost and speed of land transactions in most countries slowed down investments.

Irregular allocation of communal and public land like forests and land reserved for public utilities became common in some countries. In this regard, the situation in Kenya is graphically captured in a Kenya Land Alliance Report⁴ which in part observed that: *“The illegal and irregular allocation of public land as chronicled in the Ndungu Report amount to a rip-off that dwarfs the Goldenberg and Anglo-Leasing scandals. Our analysis in this first issue in the series covers Karura, Ngong Road and Kaptagich forests and suggests a loss of Ksh 18.4 billion. The Ndungu Report covers ten other forests as well as other public land, ranging from road reserves to cemeteries to public toilets and even State House land. As we cover these in future issues of the series, the cumulative loss will certainly be astounding. Land grabbing in Kenya has its genesis in pre-independence Kenya when a small group of white settlers were allocated 20 percent of Kenya’s landmass consisting of the best agricultural land”*

On corruption in service delivery in Kenya, a practicing lawyer observed:- *“Most of the documents we handle, as advocates are urgent and for clients. The officers know that most of the lawyers’ documents are urgent and that time is of essence. The officers use this reason to delay the documents so that they solicit bribes from advocates. Unfortunately, most advocates pay bribes to these officers. This makes matters more difficult for others who do not succumb to this practice. The integrity of these learned friends has clearly been badly eroded and they have been caught in this culture of bribery. Our investigations revealed that officers in the Lands Office obtain more bribes from lawyers than from any other group of people they serve. My learned friends must stop this practice if the war on corruption is to be won”*⁵

From peer discussions, one gathers that the situation on this matter is just as bad in many other African countries. There are numerous tales of citizens unfairly dispossessed of their land, grabbed public land and corruption in land offices at national and local levels.

4 CLAMOUR FOR LAND REFORMS

The above led to concern by many in government, training institutions, civil society, religious organizations and development agencies. Indeed, in many African countries, this state of affairs became an easy entry point for opposition politics. Governments therefore began to pay greater attention to the discontent over land. As we approached the end of the 20th century, a number of countries in the West, East and Southern parts of Africa began to revisit their land regimes. Some chose to do this through a review of their constitutions, some by comprehensively enacting or reviewing their existing land policies

⁴ UNJUST ENRICHMENT The Making of Land Grabbing Millionaires, *Living Large Series Vol. 2, 2006, Kenya National Commission on Human Rights & Kenya Land Alliance*, Page 1.

⁵ CORRUPTION IN AFRICA The Kenyan Experience, page 56, *Peter N Anassi, 2004*

while others chose a combination of both. These country activities slowly attracted policy attention at continental level, hence informing the commencement of the continental land policy initiative mentioned above.

5 THE FRAMEWORK AND GUIDELINES FOR LAND POLICY IN AFRICA (F & G): KEY HIGHLIGHTS

The F & G was developed through Consultative Workshops and Expert Group Meetings at continental level. It also drew inputs from Regional Workshops from the Southern, Eastern, Western, Central and Northern regions of Africa. It contextualizes the land question in Africa from its geographical/ecological, political, economic, social-cultural and demographic contexts. It details the need to situate land centrally within national development processes and discusses the challenges associated with land policy development and implementation around the continent. The F&G provides a guide on the necessary steps for the successful formulation and implementation of policies. It also discusses the need to monitor and periodically review the implementation of land policies and the associated challenges. The matrix below gives some of the key highlights carried in the F&G.

Key highlights of the Framework and Guidelines on Land Policy in Africa

No	Content	Highlights
1	Contextualization	• Geographical/Ecological • Political • Economic • Social-cultural • Demographic
2	Situating Land in National Development Processes	• Centrality to development • Mainstream in Poverty Reduction Programmes • Make Agriculture engine of growth • Manage land for other sectoral uses • Protection of natural resources and ecosystems • Develop effective administration systems
3	Challenges to Land Policy development	• Low levels of stakeholder involvement • Sectoral (as opposed to cross-sectoral) focus to policy development • Inadequate budgetary allocations • Inadequate human and institutional capacity
4	Appropriate strategies for Land Policy development	• Clarify stakeholder roles • Recognize role of indigenous institutions • Consult with land using public • Engage with civil society organizations • Launch of LP development process • Build Capacity for LP development • Ensure availability of human & financial resources • Ensure effective communication (print, radio, tv, other) • Provide anchorage for further LP development in land-

		related sectors and sub-sectors (agric, wildlife, livestock, energy, minerals, water, forestry, human settlements)
5	Impediments to Land Policy implementation	• Failure to agree on implementation strategies • Lack of capacity to manage change • Defects in policy development (poor initial research, lack of sufficient public participation) • Lack of baseline data • Inadequate implementation infrastructure (capacity, financial resources and institutional arrangements)
6	Necessary steps for effective Land Policy implementation	• Design an implementation strategy • Prepare an action plan • Mobilize political support • Ensure continuous public engagement through decentralized structures • Legislate land policy components • Domesticate relevant regional and international commitments • Respond to new challenges through review and revision • Assess impact through M&E
7	Tracking Land Policy development and implementation	• Develop tracking system/mechanism • Identify and address challenges • Develop and apply tracking principles • Obtain feedback

6 COMPLIMENTARY CONTINENTAL INITIATIVES

6.1 Land Information Management Systems

The successful implementation of land policies goes hand in hand with good management of land information. As Mwathane notes: “No land policy can be effectively implemented without good land information management. Any such attempt would be replete with duplication efforts in the collection, updating and storage of land information and hence compromise the very principles enshrined in land policies”⁶.

In order to guide decision makers, researchers and other specialists dealing with land issues in Africa on the role of information management in formulating and implementing land policies, the UNECA developed a publication entitled “*Land Management Information Systems in the Knowledge Economy*”⁷ in 2007. The publication does draw from the *Issues Paper*⁸ that informed the F&G. This publication discusses pertinent concerns such as the kind of land rights prevalent in Africa and the low levels of e-

⁶ Africa Draws Guidelines for Land Information, Ibrahim Mwathane, *The East African*, Page 15, January 1-7, 2007

⁷ **Land Management Information Systems in the Knowledge Economy**, Discussion and Guiding Principles for Africa, *Economic Commission for Africa*, Addis Ababa, Ethiopia, December 2007

⁸ Land Policy in Africa: A Framework of Action to Secure Land Rights, Enhance Productivity and Secure Livelihoods: Issues Paper, *AUC-ECA-AfDB Consortium*, March 2006

readiness in many parts of the continent due to unavailable or insufficient e-infrastructure. It points out the need to bear Africa's limitations in the design of systems intended for use in Africa and also provides guiding principles for information management within Africa's context. It provides good reference for information managers and land policy implementers within Africa.

6.2 AUC-UNECA-AfDB-UN-Habitat Initiative on Land Policy Indicators

The implementation of land policies calls for suitable indicators to measure intended impacts. Such indicators will help in assessing aspects like improved tenure security, equity in distribution, access to services, access to information or speed and cost of transactions. Indicators can help to gauge whether the application of policy principles helps to bridge gaps in gender parity in land ownership, improved land productivity, environmental conservation, access to justice or in monitoring levels of corruption in service delivery.

There is work-in-progress in this regard which started in 2007⁹ after the continental land policy initiative kicked off. It is hoped that this work, an initiative of the consortium of AUC-UNECA-AfDB and UN-Habitat, will be successfully completed in order to provide African countries with suitable indicators to track implementation. Standard measurement indicators can be used to peer review the comparative performance of the land sectors in African countries.

There is however need for individual African countries to explore possibilities of developing indicators suitable to their unique jurisdictions at country level.

6.3 The Land Policy Initiative (LPI) Community of Practice (CoP)

There is work-in-progress by the Land Policy Initiative (LPI) to establish a Community of Practice (CoP) for land experts within Africa. The envisaged LPI CoP should bring together the diversity of African land policy process experts who are bound together by a common interest to ensure the development, implementation and monitoring of land policies in Africa. It will help land experts to share knowledge and seek answers to conventional land sector challenges within their respective jurisdictions. It will also help them to bond and benefit from the competencies of the wide network of experts participating in LPI. The LPI CoP will help to grow knowledge in land policy development for the continent. The COP will be a powerful tool for empowering land experts to share views and experiences as well as to lobby for the formulation and effective implementation and monitoring of land policies within their countries.

Experts in Eastern Africa would benefit processes in their respective jurisdictions by enlisting in the LPI CoP. Details on how to enlist will be availed by the LPI secretariat once administrative and coordination arrangements have been finalized. Continuous information on this matter can be tracked through the LPI website¹⁰.

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⁹ Land Policy Indicators: Concept Paper, *AUC-ECA-AfDB in conjunction with GLTN, UN-Habitat*, May 2007

¹⁰ www.uneca.org/fssdd/lpi/

7.1 General Features

The four EAC countries under discussion Tanzania, Uganda, Rwanda and Kenya had embarked on their land policy development processes before the continental process commenced in March 2006. Experts from these countries were therefore able to greatly inform discussions during the continental process using relative experiences from their respective country processes.

7.1.1 Tanzania

Tanzania obtained its land policy in 1995¹¹ and proceeded to enact a Land Act and a Village Land Act by 1999. A Resettlement Policy Framework¹² was developed in 2003.

7.1.2 Uganda

Uganda embedded some key land reform provisions in its new 1995 constitution. Later in 2001, Uganda embarked on a more comprehensive land policy formulation process. Uganda's national land policy formulation process is currently in its last stages. This discussion has had to borrow from its final draft¹³ land policy.

7.1.3 Rwanda

Rwanda obtained its national land policy in 2004¹⁴ and proceeded to draft its organic land law in 2005. Rwanda has made good progress in implementing some components of its land policy. Rwanda prepared a Strategic Road Map for Land Tenure Reform in 2008¹⁵. A land sub-sector strategic plan for the period 2009/10-2013/2014¹⁶ was subsequently prepared to guide the attainment of the strategic objectives for the sub-sector.

7.1.4 Kenya

Kenya commenced its land policy formulation process in February 2004. This process concluded in December 2009 when Parliament endorsed the sessional paper No 3 of 2009 on the National Land Policy¹⁷. About a year later, Kenya proceeded to embed a comprehensive chapter on "Land and Environment" in its new constitution¹⁸ promulgated in August 2010. The national land policy provisions greatly influenced the constitutional provisions in the "Land and Environment" chapter.

¹¹ **National Land Policy**, *The Ministry of Lands and Human Settlements, Dar es salaam, Tanzania*, 2nd Edition 1997

¹² Resettlement Policy Framework, *Ministry of Agriculture and Food Security, The United Republic of Tanzania*, February 2003

¹³ The National Land Policy, *Ministry of Lands, Housing and Urban Development, Kampala, Uganda*, Final Draft November 2010

¹⁴ National Land Policy, *Ministry of Lands, Environment, Water and Mines, Kigali, Rwanda*, February 2004

¹⁵ Strategic Road Map for Land Tenure Reform, *Ministry of Lands, Environment, Housing and Urban Development*, March 2008

¹⁶ Land Sub-Sector Strategic Plan 2009/10-2013/14, *Ministry of Environment and Lands, Kigali, Rwanda*, July 2010

¹⁷ Sessional Paper No 3 of 2009 on The National Land Policy, *Ministry of Lands, Nairobi, Kenya*, 2009

¹⁸ Constitution of Kenya, *Republic of Kenya, Nairobi, Kenya*, August 2010

Kenya is currently engaged in the process of preparing enabling legislation to support the implementation of the land policy and the “Land and Environment” chapter of the constitution. Some of the legislation is expected to be enacted by the end of February 2012. The constitution provides that the rest of the legislation to support land reforms be put in place within five years from the date of promulgation. A comprehensive implementation strategy and subsequent programmes are yet to be developed.

The table below provides some key features for the land policy documents/processes within the four countries.

General features: Land Policies in Tanzania, Uganda, Rwanda and Kenya

Features	Tanzania	Uganda	Rwanda	Kenya
Date of policy	1995	Final Draft: Nov 2010	2004	2009
Key developments	- Land Act (1999) - Village Land Act (1999) 2003: Resettlement Policy Framework	1995: Key provisions in constitution 1995	2005: Organic Land Law 2008: Strategic Road Map for Land Sector Reform 2010: Land sub-sector strategic plan	2010: Comprehensive Land & Environment Chapter in new constitution - Key legislation to be developed within 5 years
Key Content	- Evolution of land tenure - Land tenure & admin - Surveys and Mapping - Urban and Rural Land Use Planning - Land management - Institutional Framework	- Historical question context/land - Land tenure - Land administration - Land registries in land admin - Land transactions - Use and management of urban land - Use and management of rural land - Role of cadastral plans & maps in land management - Plans & master plans in land planning and management - Mapping in land management - Legal and Institutional framework	- Land question - Const & Legal framework - Land tenure framework - Land rights & admin framework - Land use and land management framework - Regional and International framework - Implementation framework	- Context of land question - Constitutional Issues - Land Tenure Issues - Land Admin Issues - Issues calling for Special Intervention - Institutional framework - Implementation Framework
Cross-border resources/issues	×		×	×

7.2 Common Features

One deduces that the land policies of the four countries have some common key features. Each begins by contextualizing its land question and providing some historical background. This is important since it helps to identify the key land issues within a country to be addressed within the policy framework. The policies also provide vision and mission statements, the objective, land policy principles, guiding values and a methodology. The key issues in all the policies are land tenure, land management, land administration, urban and rural planning, institutional framework and an implementation framework. All these relate well with concerns identified in the F&G.

It is instructive to note that participants in the Eastern Africa Regional Consultative Workshop¹⁹ of the continental land policy initiative held in Kigali, Rwanda in 2008 identified the four issues below as the Regions priorities:-

1. Land tenure security
2. Land Administration
3. Land rights for women
4. Land degradation

This resonates closely with the issues identified in the matrix above, with the land rights for women given strong emphasis (see below) in each of the policies while land degradation is discussed in “Land Use”. The Eastern Africa Region also identified the need to ensure harmonization between land policies and other related sectoral policies, such as those on: Agriculture, Population, Resettlement, Housing, Environment, Mining, Water, and Investment among others.

The Eastern Africa Region workshop was also informed that East African countries have taken differing approaches and strategies in their land policy formulation and implementation processes, noting that post independence land policies have been largely influenced by the legacy of colonial land policies, the development path chosen in the post-colonial period and also the role of donor agencies. This informs some of the features unique to each country.

In addition, all the four policy documents:-

1. *Acknowledge the need for a participatory process and adequate stakeholder involvement*: This is emphasized in the F&G. This benefits land policy processes with public buy in and support and makes it easier to obtain political approval and implement policies.
2. *Underscore the need to reform institutional structures*: The F&G notes that the orientation of most of the land administration agencies often stands as a major obstacle to change and

¹⁹ Land Policy in Africa: Eastern Africa AUC-ECA-AfDB Regional Assessment, *AUC-ECA-AfDB Consortium*, 2010

innovation due to their operational conservatism and inflexibility. Most resist change and also lack the technological know-how required to manage contemporary land reform programmes. They are also usually deeply implicated in patronage and corruption. One hopes that the land commissions proposed in response to this administrative challenge will provide an opportunity for much more open, efficient and accountable land administration.

3. *Provide for modern land information management methods:* As noted in 6.1 above, good land information management is a prerequisite for effective implementation of land policies. It is therefore good to note that each of the countries commits to the establishment of a modern computer based land information management system through their policies. The F&G identifies the establishment of computerized land information systems in Member States as necessary for faster and more efficient service delivery.
4. *Pronounce the need to strengthen the land rights of women:* The Framework observes that “throughout Africa, agricultural production and preservation of land resources is primarily the responsibility of women and children. Unfortunately, gender discrimination in access to land resources, particularly in rural Africa, is a serious problem”. In stating commitment to non-discrimination of gender in the access to land and during inheritance, land policies in the region introduce a shift from most of the cultural practices of the past.

It is expected that effective implementation of this commitment will greatly boost land productivity given that women account for the higher percentage of the regions agricultural production. Achieving this principle within the region will however call for a lot of hard work. Good use of a combination of female and male champions and effective public education and awareness programmes at local level will need to be put in place to turn slowly turn around attitudes.

5. *Provide for the planning and upgrading of informal/unplanned urban settlements:* The policies commit to take measures to prevent further slum development, facilitate the carrying out of informal commercial activities in a planned manner and upgrade such settlements for better livelihoods. Given the proliferation of informal settlements in most urban centers in the region, these policy commitments provide a basis for mitigating action to stem further unplanned growth. This will however be a daunting task given the resources required and limitations of available land in most of the affected centers.
6. *Provide for the development of an appropriate implementation framework:* The F&G provides that implementation should entail the systematic identification and execution of all steps necessary for the attainment of the goals and prescription set out in the land policy. This involves translating the policy into a programme of land reform designed to deliver the intended services and benefits to land users and sectors that depend on the land system for value addition.

Critical steps in this regard include the design of realistic and achievable implementation strategies, preparation of appropriate action plans and mobilization of adequate political support. It was noted that Rwanda has made substantial efforts to convert its policy into implementable strategies and action plans. It was not possible to establish the extent of Tanzania's efforts in this regard. Though Kenya provides for the development of an implementation framework in the Sessional Paper on the national land policy, this has yet to be done.

7.3 Lack of regional convergence and call for regional platforms

Quite notably, of the countries studied, only Uganda's draft land policy provides for the management of cross-border access to pastoral resources and cross-border population movements. Uganda's draft policy also has provisions to guide the management of inter-state border disputes and conflicts.

Lack of similar statements by other EAC country policies and the lack of efforts to converge regional policies illustrate the non-appreciation of the importance of a common approach to the management of cross-border issues and cross-border natural resources within the region. Yet this is key to the management of international boundaries, cross-border resources and trade. It's important in the management of issues such as conservation, communication infrastructure, tourism and agriculture which are affected by cross-border land use. Appropriate management of these issues could boost or undermine political stability between States.

This omission requires urgent attention during the review of these regional policies. It is important to note that the African Union Declaration on Land Issues and Challenges in Africa clearly "invites Regional Economic Communities to:-

1. Convene periodic regional platforms to facilitate experience sharing, lessons learnt and dissemination of best practices in land policy formulation, implementation and monitoring based on member states experiences;
2. Appropriately capture and address issues of land policies within their respective common agricultural framework"

7.4 African Union call to implement and review policies

In the July 2009 African Union Declaration based on the F&G, Member States are "urged to:-

1. Review their land sectors with a view to developing comprehensive policies which take into account their peculiar needs;

2. Build adequate human, financial, technical capacities to support land policy development and implementation;
3. Take note of the steps outlined in the Framework and Guidelines on Land Policy in Africa for their land policy development and implementation strategies.”

The above illustrate the responsibility the African Union places on the Member States and the Regional Economic Community in Eastern Africa in regard to the development and implementation of land policies.

8 KEY LIMITATIONS TO IMPLEMENTATION OF LAND POLICIES WITHIN THE REGION

The full impact of the implementation of land policies is usually medium to long term. However, scholars and policy managers will need to appreciate that land policies are not just mere statements of intent. They are meant for application within the prevailing environment in Eastern Africa in order to promote social-economic and political development in the region and in the individual Member States. This is important to bear during land policy formulation, preparation for implementation and during implementation. In doing so, one is able to put into practical context each of the pertinent policy proposals.

Provisions to enhance security of tenure, institutional reform, efficient administration and management, planning and upgrading of informal settlements must be thoroughly interrogated for practical relevance within local contexts. This is even more necessary for provisions like interventions to stop the excessive subdivision of land parcels, equity in land distribution, conversion of tenure terms, elimination of gender discrimination, alternative dispute resolution, environmental conservation, taxation of idle land and the resolution of historical injustices among others which require popular public support while in some cases running counter to traditional norms or private interests.

The threatened constituencies in each of the cases hardly sit to reflect on the broader benefits the reforms portend for all but invariably move to ring fence and protect their individual or group interests. Not well handled therefore, the implementation of some of these provisions could quite easily evoke social, political or institutional opposition.

8.1 Lack of Political Goodwill

Politics determines the scale and pace of development in States. Politics drives programme priorities and the allocation of necessary budgetary resources. Land policies always present political antagonists with different opportunities hence provide an excellent platform for political contests. Look at for instance a simple proposal to settle the landless in an area. While one set of local leaders may drive and

support the project to ride on expected political support from the beneficiaries, another set of local leaders may be bankrolled to oppose the project by local parties interested in making a premium by either getting the government to allocate them such land if public or purchasing it if private for subdivision and sale at exaggerated prices to the local landless. The two sets of leaders work at cross-purposes and may subsequently delay or grossly undermine project success.

At national level, land policies are often mistakenly seen by the powerful landed elites and those with political and executive influence as attempts to realign power relations through land redistribution. This group never see the possibility that effective reforms could usher social and political stability, hence essentially cushioning their land rights and investments, never mind the small compromises required of them. In addition, provisions like the resolution of historical injustices or the repossession of grabbed public land, by their very nature, have the capacity to undo processes or wipe out gains earlier made through political patronage. Involved political actors will not sit and watch such processes effected without a fight. They therefore almost always oppose land reforms either overtly or subtly. Unfortunately, this group always packs sufficient political and financial influence to cause hiccups to land policy development processes. And sometimes, such opposing forces could be anchored outside government yet pose fundamental threats, making it even harder for government itself to humble them.

Policy managers and implementers must therefore devise effective ways of communicating to this constituency and sufficiently allay its fears. This can be done through private sessions, their group representatives and in political forums through those among them who are land policy champions. Such interventions should demonstrate the expected gains and also listen to genuine concerns of such actors in order to take them on board during the development of implementation programmes and activities.

It is also important for reform drivers to ensure that pertinent political caucuses and the relevant parliamentary committees are lobbied sufficiently ahead of approval of budgetary allocations and land reform bills presented for debate in parliament. Where political opposition presents some major challenge, reform drivers should seek support from popular civil society movements and from some of the development partners with good relations with the government of the day. Each of these groups has either direct or soft influence on the political and executive class.

Civil society movements play by rules quite different from those that govern policy and programme managers in government. They at times employ rules of engagement that quickly turn tables on politicians and are hence able to get faster results. Development partners with established track records within countries will usually be able to convey hard messages to top political leadership within easy boardroom environment. Land reform messages are hard. When and where well applied, these strategies, or a combination of them, will usually neuter obstacles placed to processes by the political class.

Political processes such as general elections also greatly influence land policy processes. The heat and anxiety usually associated with general has seen some land policy processes either slow down or even stall.

Political obstacles or the lack of political goodwill probably poses the single greatest threat to land policy development and implementation in East Africa. The EAC and Member States will need to remain conscious of this

8.2 Lack of or poor public education/awareness and stakeholder involvement

Often, public officers charged with driving land reforms lack a good appreciation of the need to coerce the public for support. Consequently, some of them will commit to this need on paper and verbally without going out of their way to truly reach out for widespread involvement and support. Others have limited resources to effectively put in place initiatives to reach out to the people.

In addition, there has often been lack of sufficient communication methods to ensure that the land user public and other land and related sectoral actors are brought on board. The F&G identifies this as one of the key threats to policy development and proposes the need to use mediums such as local radio, television, newspapers and newsletters during the development of land policies. It should be noted that insufficient public and stakeholder support could render outputs from land policy processes illegitimate and deny them the required public support during implementation.

It should however be appreciated that generally, the existing communication infrastructure in some parts of Eastern Africa greatly limits reaching out to land using citizens in some of the pastoral and agricultural zones not well served by road and ICT infrastructure, making the availability of newsletters, newspapers or even television and radio broadcasts difficult. Land policy messages have therefore tended to rotate within the reach of people around the urban areas and those in rural areas well served by local and national newspapers, television and radio. This is a limitation that reform drivers have to innovatively address within their respective circumstances to ensure some basic threshold of support to land policy processes.

8.3 Lack or failure to agree on appropriate Implementation Strategies and Plans

Implementation strategies/frameworks, programmes and plans are what breathe life into land policy documents. All these require consensus. The F&G observes that unfortunately, these plans are not presented for public debates or stakeholder consultations nor are they part of the drafts presented for cabinet or parliamentary endorsement. These are left to in-house operational guidelines after the completion of the policy development process. This could occasion unnecessary divergence during implementation. It would help if Ministries and/or Departments charged with implementation ensure sufficient public and stakeholder consultations during the preparation of implementation plans and programmes in order to obtain public and stakeholder consensus. This should be easy given that such Ministries and/or Departments have comprehensive databases of experts and stakeholders earlier involved in such processes.

Implementation strategies provide an opportunity to mainstream country-specific national development medium or long term plans, commitments in vision statements, existing poverty reduction programmes and other sectoral plans into a holistic and inclusive strategy. The strategy can subsequently be broken down into specific and sectoral and sub-sectoral programmes and plans for implementation at national and local levels by actors identified in the strategy itself.

The F&G provides that the “preparation of action plans involve realistic programming and sequencing, proper costing, accurate assessment of financial and technological needs, along with capacity building and mobilization of resources required for the short, medium and long term implementation of key components of the policy. Because programmes contemplated in land policies cannot be implemented *en bloc*, good practice demands that the implementation of certain aspects be preceded by piloting in order to test novel approaches and methodologies. Such piloting enables policy-makers to take lessons learnt on board before scaling up implementation programmes on a regional or national scale”²⁰.

For the effective implementation of land policies in the region, public managers must ensure the preparation of good implementation strategies/frameworks and plans with good consensus. It is important to note that a rush into adhoc implementation without first developing such strategies and plans only increases the chances of incoherent hence ineffective application and failure.

8. 4 Capacity Constraints

The formulation and implementation of land policies requires the availability of necessary technical capacity. Much as such capacity can be procured from outside East Africa in some cases, sufficient numbers of local capacity to oversee the general implementation of land policies is necessary. This calls for a wide cross-section of specialists including; social scientists, economists, environmental impact experts, legal experts, agriculturalists, foresters, planners, surveyors, Geographic Information Systems (GIS)/Land Information Systems (LIS) experts and land economists among others.

Most of these experts are not available in sufficient numbers in the EAC countries. Kenya has for instance a fairly limited number of land professionals such as planning experts, GIS experts, qualified land surveyors and land economists who are critical for effective implementation. Furthermore, most of those available are concentrated in the capital city of Nairobi while the rest are thinly distributed in the Provincial Centers of Mombasa, Kisumu, Nakuru and Nyeri where they are assured of sufficient opportunities for professional earnings. Once Kenya puts into place its devolved structure in accordance with the new constitution, the 47 Counties established under the new Constitution will find themselves quite thin on such technical capacity. This will pose very limiting challenges to effective implementation.

This situation could be worse in other countries of the region where relevant training opportunities have not been as vast as those in Kenya.

For the effective formulation and successful implementation of land policies, local capacity must be trained. It is incumbent on land administration managers to identify and recommend officers who can be taken through appropriate local and/or overseas training to fill up existing local gaps at an early moment. As much as possible, training opportunities available in Africa-based centers of excellence which are cheaper should be utilized. In this regard, Eastern Africa is lucky to have a reasonable number of training centers in its Member States. To keep pace with the rapid technological changes, it may be a lot cheaper to consider occasionally inviting experts from outside our Region to train and transfer skills

²⁰Framework and Guidelines on Land Policy in Africa, *AU-AfDB-ECA Consortium*, Addis Ababa, Ethiopia, September 2010

through the Regional centers of training available rather than to continue taking individual officers to Europe, Asia and America.

Countries in the region will also need to undertake capacity assessment exercises ahead of or during implementation. Such assessments will be able to reveal capacity gaps within the public and private sectors and in civil society. The assessment should be able to also assess the range and costs of training opportunities available within the region, the continent and elsewhere outside Africa.

This study established that Kenya, in conjunction with the UN-Habitat, is already undertaking such an exercise in order to identify and seal capacity gaps for requisite policy implementation.

Universities, centers of excellence and training centers in the region should also take interest in upgrading their curricula to respond to regional needs for land policy development. In addition, such institutions should identify specialized areas for land policy and related research for attention in their research and higher degree programmes.

8.5 Institutional Attitude Change

Interactions in regional and international forums inform that one of the threats to implementation of land policies is in the minds of the administrative and technical personnel in the public and private sectors. It's a lot worse in the public sector.

The bulk of the existing senior staff in the public sector were trained when government institutions embraced a closed culture and processes were largely manual. Customers remained subservient even in the face of long delays and inefficiency in public offices. In today's circumstances, public officers are expected to demonstrate higher level of public accountability, involve their clients in decision making and remain very courteous. In some countries like Kenya, performance contracts and service charters, which require officers to account for their production in measurable terms per month, have been put in place. Further, the computerization of procedures and land records is in progress.

These changes are causing anxiety to many in the public sector who lived a different culture. And in cases where otherwise competent senior technical officers who are not computer literate begin to feel threatened and insubordinated by the younger and junior computer-savvy officers, processes are undermined and service delivery suffers. This compromises the very efficiency the computerization initiatives intended to promote. It is important to always bear in mind that these experienced officers provide useful institutional knowledge and memory for the new processes we wish to computerize. Innovative ways of turning them around without causing hierarchical anxiety and embarrassment must be sought and put in place if the implementation of land reform programmes is to be successfully driven in member states.

Good change management programmes sensitive to the unique institutional history and culture in every ministry or sector must be put in place. The programmes must not be driven by overzealous training managers eager to prove their skills without regard to the sensibilities of the old "gold" in such institutions. The training must be entrusted to a sensitive, accommodating and flexible team of

institutional experts who appreciate the need to achieve a turnaround of attitudes incrementally without making senior officers feel inadequate and out of place. They should also preferably understand the broad vision, objectives and basic operational procedures of such institutions to be able to address the key process issues.

8.5 Limitations in Budgetary Support

The funding of land reforms remains a limiting issue to implementation. Requirements such as computerization, the establishment of new land administration institutions, dispute resolution mechanisms and the devolution of offices to local levels require heavy funding. Much as there may be sincere national commitment to implementation, most countries may find it daunting to fund these processes from their national budgets. Kenya's proposed national land policy is for instance projected to cost approximately Kenya Shillings 9.6 billion over the first six year period of implementation. The treasury may be unwilling to prioritize the disbursement of such massive funds in the face of needs such as basic education, health services, communication infrastructure and famine relief. This may be so for all countries in the region.

This creates an unfortunate vicious cycle. It has been acknowledged that reforms in the land sector have a positive ripple effect through the other sectors yet the primary funds required to jumpstart the reforms remain unavailable due to strained national budgets. Therefore, development partners, who have ordinarily taken their support to specific development projects, will need to appreciate that the funding of reforms in the land sector should be prioritized since this improves the performance of other sectors of the economy. Development agencies are therefore urged to encourage governments to allow the injection of bilateral and multilateral funds into the land sector in order to realize the positive effects of land reforms in their countries in the long term.

It helps to however mention that some aspects of implementation require little more than goodwill, policy and administrative arrangements to attain with minor or no budgetary requirements at all. Some of these include the preservation of wetlands and forests, equity in settlement and resettlement programmes and gender disaggregation in land records.

8.4 Lack of appropriate Monitoring and Evaluation

To communicate the need and scope for monitoring, it will help to quote the F&G which notes: "Effective tracking of land policy development and implementation is a complex though important process for African governments and their development partners. Its major objective is to enable governments perform a number of functions, namely

- (i) make timely re-adjustments to policy processes;
- (ii) take appropriate measures to ensure the effectiveness and efficiency of land policies;
- (iii) learn from past successes and failures;
- (iv) disseminate local good practices for use at the national level;

- (v) improve the quality of knowledge and building capacities for further monitoring and evaluation;
- (vi) secure and consolidate the participation and commitment of all stakeholders and development partners; and
- (vii) enable governments to manage emerging issues and other incidental developments in the land sector in an organic and systematic way²¹”

Countries in the region will need to devise their own mechanisms for evaluation. As mentioned earlier, they will also need to develop indicators suitable to their jurisdictions and circumstances to help them track progress.

In Kenya for instance, the Land Development and Governance Institute is committed to a continuous programme of tracking the implementation of Kenya’s land reforms through its score card initiative whose regular reports can be found in its website²². LDGI has also embarked on research to develop a standard score card index based on Kenya’s land policy principles to be applied within Kenya’s jurisdiction for use during its score card initiative in future.

9 RECOMMENDATIONS

Some of the recommendations arising from the discussion above include:

9.1 Need for continuous linkage to the continental initiative: States in Eastern Africa need to remain linked to the LPI continental process in order to fully benefit from the associated resources and initiatives. This includes participating in LPI events, enlisting with the CoP and participating in the development of measurement indicators.

9.2 Introduction of a Regional Desk and protocol to drive Land Policy Implementation: The EAC will require to provide leadership in escalating regional awareness and in the implementation of land policies in the region as urged through the African Union Declaration. To this effect, the EAC Secretariat will require to consider the introduction of a permanent desk to attend to related issues. This will help in the management of cross-border concerns and in the review of policies to develop necessary regional convergence. For better impact, EAC will need to mainstream pertinent land policy principles into its regional programmes. This should be preceded by the domestication of the F&G and country policies into its protocols by a team of experts.

9.3 Establishment of Institutional Collaboration: For the region to effectively manage cross-border issues and continuously share knowledge and lessons, training institutions, civil

²¹ Framework and Guidelines on Land Policy in Africa, *AU-AfDB-ECA Consortium*, Addis Ababa, Ethiopia, September 2010

²² www.ldgi.org

society and the private sector in the region should explore possibilities of developing inter-state or regional collaborations based on their priorities and interests in policy development and implementation

9.4 Need for Appropriate Training Curricula and Research: Universities, Training and Research Centers in the region should accordingly orient their curricula and undertake practical research to support further development and implementation of land policies in Eastern Africa. Research could respond to areas like:

- Review of country land policies
- Development of measurement indicators to support M & E
- Assessment of capacity gaps for the implementation of land policies in Eastern Africa
- Land policy reforms and escalating food prices
- The new scramble for Africa's land resources; the case for Eastern Africa
- Need for regional cooperation and the convergence of land policies
- The performance of the land sector in the Region in relation to MDG1 (poverty eradication), MDG2 (gender equality and empowerment of women) and MDG7 (environmental sustainability)
- The effects of devolution to land administration systems in Eastern Africa.
- The effects of violent conflicts to land tenure and food security in East Africa
- The influence of development partners in land policy development in East Africa.

9.5 Need to beware electoral cycles: Given the fact that governments in the region overtly or subtly use land as “carrot” prior or post general elections, land policy formulation and implementation is inevitably influenced by electoral cycles. It is therefore necessary for policy planners and programme managers to pay heed to this cycle in their respective jurisdictions and orient their plans and activities accordingly.

9.6 Document lessons: It helps to document lessons whether positive or negative. These help to inform others in similar phases or jurisdictions and avoid replication and use of resources in what doesn't work. Good documentation also informs thematic research. Experts in the region should therefore keep this in mind as they conduct pilots, undertake research and help in the formulation, implementation and review of land policies.

10 CONCLUSIONS

The region faces a major challenge in moving its land reform agenda. But with sufficient political and social-economic commitments, effective implementation can be incrementally achieved.

It is however imperative that the region continues to develop modern land information management systems and develop appropriate land policy indicators to track progress in implementation. This must

be buttressed by sufficient capacity building, political goodwill and the continuous provision of sufficient budgetary resources.

This will help the region to attain its food and shelter needs. It will promote gender equality and empowerment. It will also ensure a better distribution of wealth hence promote political and economic stability within the region.

The EAC is therefore encouraged to take greater interest in the successful implementation of land policies in its Member States. Importantly, a periodic follow up, preferably annual, could be inbuilt through its work plans to ensure a continuous attention to this matter by Member States. Regular monitoring and evaluation could be used to inform policy reviews and continued funding by governments and partners.

The region should also keep benchmarking and sharing lessons with the other regions of Africa whenever opportunity and resources allow.

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