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NATURAL RESOURCES AND CONFLICT MANAGEMENT : THE CASE OF LAND

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In collaboration with
Land Policy Initiative
(LPI)

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List of Acronyms

CAPRI	Collective Action and Property Rights
DRC	Democratic Republic of the Congo
EIA	Environmental; Impact Assessment
ESAF	Environmental Security Assessment Framework
FAO	United Nations Food and Agricultural Organisation
GOB	Government of Burundi
GOE	Government of Ethiopia
GOK	Government of Kenya
GOM	Government of Madagascar
GOR	Government of Rwanda
GOT	Government of Tanzania
GOU	Government of Uganda
ICRAF	World Agroforestry Centre
IDP	Internally Displaced Persons
ILC	International Land coalition
IPCC	Intergovernmental Panel on Climate Change
IRIN	Humanitarian News and Analysis I (UN Office for the Coordination of Humanitarian affairs)
LRRRC (HAKIARDHI)	Land Rights Resource and Research Centre (Tanzania)
REDD	Reducing Emission from Deforestation and Forest Degradation
SPILL	Strategic Plan for implementation of Land Laws (Tanzania)
UNCCD	UN Convention to Combat Desertification
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
WBG	World Bank Group

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EXECUTIVE SUMMARY

1. Background information and Rationale

1.1 Introduction

Africa in general and Eastern Africa in particular is the scene of many disputes related to land and natural resources. This is partly a result of the increasing demand on these resources as a result of population growth, but also is a result of the continued depletion of these resources in both quantity and quality due to degradation, overuse and over-harvesting, governance deficits, and external factors such as climate change and commercial pressure.

This paper, commissioned by ECA Sub-regional Office (SRO) is prepared to inform the Ad-Hoc Expert Group Meeting (AEGM) on “Natural resource management and conflict: the case of land”, to be held in the margins of the inter-governmental Committee of Experts (ICE) on 14-15 February 2012 in Dar es Salaam, Tanzania.

The main objective of this paper is to provide (a) a presentation of the diversity of land related conflicts in Eastern Africa, (b) an analysis of underlying causes of conflicts and experiences in conflict resolution and (c), lessons learnt and best practices from the policy and legal responses and links with enhancement of land governance in the region.

The paper is addressed to experts from Eastern African countries, Regional Economic Communities (RECs) and Intergovernmental Organizations (IGOs), representatives of the private sector and involved institutions, to further review and deliberate on the land conflicts in the region. The participants will have an opportunity to further exchange experiences and good practices in land dispute management and land governance. The meeting will be an opportunity to raise awareness and to disseminate good practices related to land conflict management. The outcome of the AEGM is to be envisaged as a contribution to the effective implementation of the Declaration on Land issues and challenges, adopted in July 2011 by the AU summit of African Heads of state and Government.

1.2 Contextualization of Natural Resources and Land Related Conflicts in Eastern Africa

The Eastern African Region covered by SRO-EA is made up of 13 countries namely: Burundi, the Comoros, Djibouti, Democratic Republic of the Congo (DRC), Eritrea, Ethiopia, Kenya, Madagascar, Rwanda, Seychelles, Somalia, Tanzania, and Uganda (Figure 1). It is a diverse region including island countries, large and small countries and countries with abundant natural resources as well as countries threatened by desertification. A good number of these countries are also suffering from current or recent political strife.

Figure 1 Map of Africa showing countries



Land is a primary asset for survival and development in the Region. It is the major source of income and livelihoods for most rural people. The rural population in all the countries is high, with more than 80 per cent of the people living in rural areas in Eritrea, Ethiopia, Rwanda and Uganda and more than 60 per cent in Kenya, Somalia and Tanzania. However, in Djibouti only 16.3 per cent of the population lives in the rural areas. Land also provides diverse functions in support of ecosystem processes. In the region, Uganda has the highest proportion of potentially arable land at 70.8 per cent while Somalia has 3.8 per cent. Potential arable land is almost non-existent in Djibouti because of the extremely arid conditions in the country. More than one-third of the land area is covered by permanent pasture as pastoralism is the dominant land use. In most of the countries in the region, except the Island States, pastoralism is a major activity in rural areas. DRC on the other hand has extensive forests and woodland resources. The Island States are faced with critical environmental problems resulting from land degradation, soil pollution and the effects of global warming and coastal erosion.

Land is not only a source for livelihoods. It also carries spiritual values and is a valuable economic asset. The increasing population in the light of dwindling land resources and environmental stress in a situation of land governance deficits has led to numerous land conflicts: between societies, between communities and the state; between communities and investors in all the countries in the region. Mismanagement of

land resources is resulting in loss of economic potential, and is jeopardizing peace and security, a sine qua non condition for sustainable development. It is for that reason that there is increasing concern that land and land related resources need to be well-managed for the benefit of the peoples of the region.

1.3 Land Policy Initiative, APRM Mechanism and UN Convention to Combat Desertification

In the framework of enhancing the management of land and land related conflicts, a number of initiatives covering the Region need to be considered, as they aim at making the social, economic and political life in Africa more people oriented, more participatory, more transparent and aim at minimizing resource degradation while utilizing resources sustainably for the benefit of the majority and therefore leading to peace and security. Key ones and relevant to land conflicts are the Land Policy Initiative (LPI), the African peer review mechanism (APRM) and the UN Convention to Combat Desertification (UNCCD).

1.3.1 The Land Policy Initiative (LPI)

In recognition of the central role of land in African development, the African Union Commission (AUC), the UN Economic Commission for Africa (ECA) and the African Development Bank (AfDB), under the overall leadership of the AUC, launched a joint land policy initiative in 2006, with a view to developing a Framework and Guidelines on land policy in Africa (F&G).

The F&G was developed from 2006 to 2009, through a highly participatory and inclusive process, led by the AU Regional Economic Communities. The process culminated in April 2009 in the endorsement of the F&G by the AU joint conference of Ministers in charge of Agriculture, Land and Livestock and further more, in the adoption of a “Declaration on land issues and challenges in Africa” by the 13th ordinary session of the Assembly of African Heads of State and Government. The Declaration on land called for the effective use of the F&G to inform national and regional land policy processes while committing to give specific attention to strengthening security of land tenure for African women. RECs were invited to facilitate experience sharing and lesson learning and to appropriately capture and address issues of land within their respective programmes. The implementation phase of the Declaration on land and effective use of F&G was launched in Lilongwe, Malawi, on 28 October 2010. The F&G has been widely distributed throughout the African continent and efforts are presently ongoing in order to build the capacity of African countries to develop, implement and monitor and evaluation their respective land policy.

1.3.2 The African Peer Review Mechanism

The **African Peer Review Mechanism (APRM)** is a mutually agreed instrument established in 2003 by the African Union in the framework of the implementation of the New partnership for African Development (NEPAD). It is voluntarily acceded to by the African Union (AU) member states in order to self-monitoring all aspects of their governance and socio-economic development, including conflicts. The objective of the APRM is to foster the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated regional and continental

integration. The thematic intervention areas of the APRM are : i) democracy and political governance; ii) economic governance; iii) cooperate governance and; socio-economic governance.

1.3.3 The United Nations Convention to Combat Desertification

The United Nations Convention to Combat Desertification (UNCCD) is an international instrument to combat desertification and mitigate the effects of drought through national action programs that incorporate long-term strategies supported by international cooperation and partnership arrangements. The Convention, the only instrument stemming from a direct recommendation of the Rio Conference's Agenda 21, was adopted in Paris on 17 June 1994 and entered into force in December 1996. It is the first and only internationally legally binding framework set up to address the problem of desertification. The Convention is based on the principles of participation, partnership and decentralization - the backbone of Good Governance and Sustainable Development. It now has 194 country Parties to the Convention, making it truly global in reach.

2. Key Features of Land Related Conflicts and their root causes

A good number of conflicts in the Region have their roots in land disputes between communities themselves, between communities and the state, between communities and investors, although sometimes these may appear to be ethnic, religious or tribal conflicts. This section highlights geophysical data on land and political and socio-economic data in the region, kinds of tenure that exist, triggers and types of conflicts, the concept of environmental security and country case studies.

2.1 Geophysical key data on land in Eastern African Countries

The countries in the region have varying ecological contexts ranging from “green” Madagascar and forested DRC where the terrain varies from tropical rainforests to mountainous terraces, plateaus, savannas, dense grasslands, and mountains, to “desert” Djibouti and Somalia. Even within the same country the geographical context can differ, as is the case in Kenya with a semi-arid north and a lush and green central belt. Table 1 summarizes the land area for each country showing the population density culture in the national economy and other data related to land use. It is virtually impossible to find data on the % of economically active population employed on the land and particularly in the agriculture sector. The missing data would allowed to draw a more precise picture of socio-economic impacts of key land uses and underlying root causes of related conflicts. The collection of such data is recommended for a more thorough analysis of the topic.

Table 1: Some characteristics of land resources in the countries of Eastern African

Country	Land area (km ²)*	Population		% rural: urban	Land Use*	% GDP composition**
		Density (people/sk m)**	Ranking in the world**			
Burundi	26,000	323.3	38	89:11	Agriculture is the predominant land use	Agriculture: 35% Industry: 20% Services: 45% (2005)
Comoros	2,230	354.2	26	72:28	Agriculture is the predominant land use	Agriculture: 46% Industry: 12% Services: 42% (2009)
Democratic Republic of the Congo (DRC)	2,344,860	29.1	192	64:36	Forests cover 68% of land area (World Development Indicators 2010) Mining	Agriculture: 43% Industry: 24% Services: 33% (2009)
Djibouti	23,300	37.3	171	24:76	Rural population depends on transhumance pastoralism Arable land almost non-existent	Agriculture: 4% Industry: 17% Services: 80% (2005)
Eritrea	124,320	50.2	151	78:22	Pastoralism is the predominant land use (grazing land: 56.3%) crop land 3.6%; woody vegetation 5.9% and barren land 34.1%	Agriculture: 15% Industry : 22% Services : 63% (2009)
Ethiopia	1,101,000	82.8	114	83:17	Expansive rangelands : 56% of land area 42.3% of the land area in the arid zones is devoted to pastoralism	Agriculture: 48% Industry: 14% Services: 38% (2010)
Kenya	582,646	69.9	131	82:18	20% of the land area: medium to high potential agricultural land; the rest of the land is mainly arid or semi-arid. 10%: Forests, woodlands, national reserves and	Agriculture: 19% Industry: 14% Services: 67% (2010)

Country	Land area (km ²)*	Population		% rural: urban	Land Use*	% GDP composition**
		Density (people/sk m)**	Ranking in the world**			
					game parks.	
Madagascar	587,041	33.7	177	69:31	Importance of intensive rice cultivation, but land used primarily for pastoralism	Agriculture : 29% Industry: 16% Services : 55.% (2009)
Rwanda	26,338	405.3	24	81:19	Agriculture is predominant land use Marshlands/wetlands cover 6% of land area	Agriculture: 34% Industry: 14% Services: 52% (2009)
Seychelles	444	191.2	60	44:56	Environment protection & tourism : 60.3% Human settlements : 11.7%	Agriculture: 2% Industry: 19% Services: 79% (2009)
Somalia	637,677	14.6		62:38	Pastoralism is the predominant land use	Agriculture: 60.2% Industry: 7.4% Services: 32.5% (CIA World Factbook Website)
Tanzania	945,087	49.4	153	73:27	Mixed land uses Crop cultivation, Grazing Land: 38.0% Protected areas and wildlife Forests and woodlands	Agriculture: 28% Industry: 25% Services: 47% (2010)
Uganda	241,500	166	67	85:15	Mixed land uses Crop cultivation, Grazing Land: 38.0% Protected areas and wildlife Forests and woodlands	Agriculture: 24% Industry: 25% Services: 50% (2010)

Sources: *Country Report **Africa Development Indicators 2011 (data for 2009)

Table 2 shows that Burundi, Comoros, Rwanda and Uganda have substantial arable land. Djibouti has virtually no arable land. With the ever increasing population and population densities, pressure on available arable land is immense leading to conflicts and to the encroachment onto other land uses/communities (eg. forests).

Table 2: Arable land as percentage of total land area, Eastern African countries

Country	Total area, '000 km ²	Arable land as % of total area
Burundi	26	35
Comoros	2.23	43
Djibouti	23	0.1
DRC	2,345	3.0
Eritrea	94	6.8
Ethiopia	1,101	13.9
Kenya	569	9.5
Madagascar	587	5.1
Rwanda	26.3	52.7
Seychelles	.444	2.2
Somalia	627	1.6
Tanzania	945	11.3
Uganda	241.5	33

Source: *World Development Indicators (2009)*

Irrigation: There is little information on irrigation for agricultural production. The World Development indicators show that 0.5%, and 2.2% of total agricultural land in Ethiopia and Madagascar respectively is irrigated. There is no data for the balance of 11 countries suggesting that there is very little use of irrigation in agriculture.

Fertilizer use is on the low side in Eastern Africa as is shown in Table 4. Kenya and Seychelles top the list in fertilizer use in the region but even in these countries, fertilizer use is low when compared for example to Egypt where fertilizer consumption (i.e . kilogram per hectare of arable land) is 723.6. Low use of fertilizer may mean low productivity which can translate into conflicts.

Table 3: Fertilizer consumption

Country	Fertilizer consumption (100 grams per ha of arable land)
Burundi	2.2
Comoros	na
DRC	0.9
Djibouti	na
Eritrea	0.0

Country	Fertilizer consumption (100 grams per ha of arable land)
Ethiopia	7.7
Kenya	33.3
Madagascar	4.3
Rwanda	8.3
Seychelles	29.0
Somalia	na
Tanzania	5.9
Uganda	3.4

Source: *Africa Development Indicators 2011 (2008 data)*

Land degradation has been worsening in Africa in general but in the East African Region in particular. In part, this has been due to poor land management but on the other hand the increasing population pressure on land and natural resources has also contributed to land degradation and desertification. Land degradation comes in many forms including loss of fertility, loss of top soils, loss of forest cover, soil erosion, soil salinisation, creeping desertification, and so on. These forms can be found individually or in combination. Land degradation is a serious problem as can be gauged from Table 5.

The total area in eastern Africa suffering from severe to very severe degradation is about 14 percent (FAOSTAT 2005). Burundi and Rwanda face a serious threat of land degradation, where about 76 and 71 percent of the respective country's total area encounters very severe degradation problems (FAOSTAT 2005). They are followed by Eritrea, Uganda, Kenya and Ethiopia, where areas with severe to very severe degradation constitute about 63, 53, 30 and 26 percent respectively of total land area (FAOSTAT 2005). In Djibouti, wind erosion is the principal form of erosion but is mainly viewed as "natural" due to the absence of agricultural land (FAOSTAT/AGL 2003).

Table 4: Land Degradation in some countries in Eastern Africa

Country	Total area ('000 km ²)	Severe		Very Severe	
		Area (%)	('000 km ²)	Area (%)	('000 km ²)
Burundi	26	0	0	76	0
Djibouti	23	0	0	0	0
Eritrea	94	55	51.7	8	4.136
Ethiopia	1,101	8	88.08	20	17.616
Kenya	569	19	108.11	11	11.8921
Rwanda	25	0	0	71	0
Somalia	627	0	0	15	0
Uganda	200	41	82	12	9.84
Total	2,665		329.89		43.4841
Total (severe-very severe)	373.3741	14.01			

Source FAOSTAT (2005) in *African Environmental Outlook 2, 2006*

The pressures and driving forces that are attributable to land degradation are similar across the countries of the sub-region. Typical proximate causes include over-cultivation, over-grazing and deforestation. The process of soil degradation is affected by poverty, population dynamics, insecure tenure, weak institutional support (e.g. extension, credit, etc.), political instability and factors related to physical land attributes such as topography, soil and rainfall conditions. Topography is an important consideration, as many countries are mountainous. In order of magnitude, Rwanda, Burundi and Ethiopia encounter the highest potential erosion risk due to steep topography.

Many countries in Africa are losing a significant quantity of their soils to various forms of degradations. There are areas losing over 50 tones of soil per hectare per year which is the equivalent of roughly to a loss of 20 billion tones of Nitrogen, 2 billion tones of Phosphorus and 41 billion tones of potassium per year. Among the countries in Eastern Africa facing serious erosion are Ethiopia and Somalia.

Countries in the region are suffering serious deforestation. In the DRC where 59% of the total land area is forested, and where the country has the second largest expanse of tropical forest in the world (after the Amazon basin), the Congo basin is a global as well as a national resource. The estimated rate of deforestation is 0.2-0.3% with 400,000-500,000 hectares of closed forest lost per year (FAO 2005, USAID 2010). In Tanzania where 44% of the land area is forest, the rate of deforestation is estimated to be between 130,000-500,000 ha per annum (Government of Tanzania 1998). Burundi has the highest rate of deforestation in Africa, having lost 5.2 per cent of its forest cover annually between 2000 and 2005 (FAO 2005).

Although, according to FAO, land degradation is largely man-made, irregular natural events such as droughts and climate change exacerbate the situation. The drought that has hit the horn of Africa and northern Kenya has had a dramatic effect on the speed of land degradation and desertification. The drought has also exacerbated conflicts among pastoralists in the region (IRIN February 2009, April 2010, December 2011).

Global warming and climate change are affecting the region as the glaciers on mountains such as Kilimanjaro (Tanzania), Kenya (Kenya) and Rwenzori (Uganda) meltdown leading to changed natural water bodies behaviour. Recurrent droughts and flooding which are attributed to climate change are causing famine, displacement and migration of population and land degradation.

In general, the continued land degradation leads to low productivity, poverty, potential famine and creates a climate for land conflict and, many times, leads to actual conflict.

2.2 Existing land tenure systems and their evolution

2.2.1 Legal Pluralism

All countries in the Eastern Africa with the exception of Ethiopia have a history of West European Colonial domination which has left an imprint on the land tenure systems in the countries.

Most of the countries in the region have juristic or diffuse plural legal systems governing land. This is called legal pluralism. Juristic legal pluralism is common in colonial and post-colonial Africa where state law is the ultimate authority and dominates other plural legal orders. It arises in situations where the official legal system recognizes several other legal orders and sets out to determine which norms of these legal orders will apply. Besides, there are also de facto legal pluralistic systems. Thus, the official legal system provides an operating environment for the plural legal orders. For example, the constitutions of countries in the region provide for the operation of religious and customary laws thus availing juristic legal pluralism. The region is characterized by the coexistence of multiple sets of rules and laws. One finds in a country different legal systems, institutions and enforcement mechanisms that control how different people access, control and transfer land for agricultural and other livelihood functions.

Consequently, there are coexisting multiple sources of property rights broadly categorized as customary and modern tenure where statutory legal structure and customary practices interface. The so-called modern system was largely inherited from the colonial era and used to weaken customary systems by incorporating formal systems that do not recognize the multiple values of land and the multiplicity of interests. It is usually based on written laws, acts of centralized or decentralized government agencies and judicial decisions. Customary tenure practices are flexible and based on local practices and norms and are managed by local/traditional rulers or councils of elders. The dynamic nature of customary tenure systems is a challenge to processes of codification of norms and is normally availed through oral narratives.

The pluralism of authority over land can allow people to choose the legal framework that provides them with the best claim to land, a process known as “forum shopping”. It may increase uncertainty and confusion when people pursue different ways to legitimize claims to the same parcel of land. In addition, the presence of diverse tenure concepts or laws may create ambiguity and fuel conflicts.

Customary tenure practices are prevalent in most countries in Eastern Africa. The mechanisms these practices provide for dispute resolution at local levels are more accessible than the modern ones. Not surprisingly, they are perceived as pro-poor. There is a resurgence of interest in traditional/local land administration institutions in the region as decentralization of land management becomes institutionalized. The disadvantages of customary tenure practices include their discrimination against women. The Comoros, however, has a long tradition of women owning/inheriting land.

According to the Organic Land Law, Land in Rwanda is categorized into two: Individual land and Public land. The later is subdivided into two categories: the state land in public domain and the state land in private domain. State land in public domain includes national land reserves for environment conservation; land over which administration building are erected, state roads, land containing lakes, rivers, stream and springs. State land in private domain include swamps that may be productive in terms of agriculture, vacant land with no owner, land purchased by the State, donation, land acquired through

expropriation and land occupied by state owned forests. Land in Rwanda is predominantly individual land.

Population pressures and inheritance practices have resulted in increasing fragmentation of land parcels. Government is concerned that land fragmentation is inefficient and leaves households with holdings that are too small to support them. Parcel sizes nationwide currently vary from 0.06 ha in Northern Province to 0.025 in Western Province to 0.7- 1.0 ha in Eastern Province. Households routinely hold more than one parcel giving an average total land holding of 0.75 ha or more scattered over five or six land parcels. It is however most certain that people will continue to access land through customary processes of inheritance and exchange.

Similarly, in Kenya the process of land tenure reform perpetuated a dual system of economic relationships consisting of an export enclave controlled by a small number of European settlers and a subsistence periphery operated by a large number of African peasantry. The duality was manifest in systems of land tenure based on principles of English property law and on a largely neglected regime of customary property law; a structure of land distribution characterized by large holdings of high potential land contrasting with highly degraded and fragmented small holdings; an autonomous and producer controlled legal and administrative structure for the management of the European sector, as opposed to a coercive control structure for the African areas; and a policy environment designed to facilitate the development of the European sector of the economy by under-developing its African counterpart (Njonjo Report 2003).

After independence most countries in the region formulated land policies and laws, and instituted tenure reforms to deal with this colonial/historical legacy. Post-independence Kenya introduced a unified system of property rights based on the imported European model through programmes of land registration and titling which remains incomplete and problematic. In Tanzania, tenure insecurity was exacerbated by the *ujamaa* collective “villagization” process that reorganized rural landholdings and settlements in large parts of the country and sought to extinguish the authority of customary authorities and institutions.

There is a general trend to give a place to customary rights or other informal classes of landholding in state law. This has arisen with recognition that 20th century efforts to subordinate or convert customary tenure have broadly failed and many of the tenets of European regimes are inappropriate to customary tenure in Africa (due to multiple values of land and the multiplicity of rights and interests in one piece of land). There is also growing recognition of plural/group/communal rights—that families, clans and groups can legally hold land in common. This has laid to rest the debate as to how far informal or customary rights can be entered into statutory law and property regimes which at once are highly individualized in their approach and have traditionally denoted the owner as a single person. These innovations are evident in Tanzania (with a village title and a family title enshrined in the land law). In summary, different countries in the region have adopted pluralistic approaches providing, for example, for full legal customary land rights or incorporating customary institutions into statutory legal procedures (such as dispute resolution).

In some countries of the region (Somalia, Somaliland and Puntland the Comoros), land and property relations are governed by three different sets of legal regimes: Western law, customary law and *Sharia*/Islamic law. These legal regimes have been a source of confusion when operating alongside other types of tenures. Forum shopping has taken place depending on the interests of the powerful personalities with interests in land.

The Ugandan land law makes provision for two or more persons, groups, associations, clans and communities, as “legal persons” or “entities” to hold and register land. Whilst certification remains deeply rooted within national strategies for improving land security throughout the region, it is no longer necessary for the purpose of individualization. Previously recording, registration, and the issue of titles were inseparable from the individualization of the ownership of that land. There is also a general recognition in the region that indigenous tenure systems need support and a legislative framework for their evolution. In the following paragraphs, a summary is given of the land tenure systems in the various countries as well as the status of land policy development

2.2.2 Burundi

Burundi was under German administration from the end of 19th century to the First World War. Then it was occupied by the Belgians until independence in 1962. Given its historical and socio-economic context, Burundi is facing delicate land issues. There have been a lot of land disputes since independence.

The 1986 Land Code and the customary tenure system provide parallel structures for governing access to land. Burundi recognizes both statutory and customary tenure. The formal law, the 1986 Land Code as amended, recognizes state and private land. State land includes land classified as public land (e.g., rivers, lakes) and private state land, which includes all state land not classified as public, including vacant land, forests, land expropriated for public use, and land purchased by the state. Under the law, all land that is not occupied is considered state land. Temporary rights of occupation are available on land classified as private state land (GOB Land Code 1986). Under customary law, land in Burundi is generally held individually, rather than by lineage.

After the conclusion of the civil war, the Arusha Agreement on Peace and Reconciliation in Burundi called for the revision of the 1986 Land Code to resolve unspecified land management problems. In 2008 the GOB adopted a National Land Policy Letter, which identifies four government priorities: (1) amendment of land legislation and modernization of land administration services; (2) restructuring and modernization of administrative bodies responsible for land management; (3) decentralization of land administration; and (4) inventory of state lands. Subsequently the Land Code was revised but the Draft was withdrawn from Parliament in 2010 without a vote. It was however, later on adopted in 2011. There is a Five-Year Action Plan to Implement the Land Code.

A major challenge is dealing with returning refugees and IDPs. There are many land disputes and conflicts. The government recognizes that peace can only be achieved through clarification of individual land rights.

2.2.3 The Comoros

This country was a French colony for 130 years until 1975. There are three tenure and property rights systems: French colonial law, Traditional Comorian law and Islamic law. This is translated into four basic categories: untitled land, titled land state domain and village reserves

There is no National Land Policy. Political instability has made it difficult to put in place a national land policy or to bring about land reforms. The main focus has been on conservation and protection of biodiversity and the environment. Developing the national land policy and land tenure legislation and institutions are a major challenge for the Comoros

2.2.4 Democratic Republic of the Congo

DRC is a former Belgian Colony which got independence in 1960. The colonial legacy introduced private land ownership. What was considered to be vacant land became state property while land occupied by native populations continued to be governed by customary laws.

At Independence four categories of land holdings existed: state-owned lands, lands owned by individuals and companies, concessions, and lands occupied by indigenous populations covered by customary law. The independence governments later declared all land to be state land with individual land rights derived from either concessions by the state or indigenous customary law.

The 1973 General Property Law, as subsequently amended provides for state ownership of all land subject to the rights of use granted under state concessions. The law permits customary law to govern use-rights to unallocated land in rural areas.

The DRC is a country of many conflicts over land resources. In March 2011, various stakeholders in the mining sector signed a code of conduct designed to reduce fraud and increase transparency (IRIN March 2011). Work is ongoing to strategise on the development of a National Land Policy, with support of UN-Habitat.

2.2.5 Djibouti

Djibouti is the former French colony known as the Territory of the Afars and Issas, which got independence in 1977. The country has largely retained the French civil law after independence.

Land and resources outside of the city are regulated according to customary systems. Within the city, land titles are honored. Land outside the urban areas is not titled. Because the country has virtually no arable land and little agriculture, there is not an extensively developed body of law on land tenure or natural resources. Land and resources are regulated and managed according to traditional tenure systems. The country largely retained the French civil law system at independence.

Most of the population is urbanized living in large informal settlements but there is a large group who are nomadic pastoralists.

Whilst there are many general issues of land tenure, land titling and cadastral processes requiring reform in Djibouti, the key issue affecting tens of thousands of poor people is security of tenure in both informal dwellings and formal dwellings without any tenure rights and risking evictions.

For the moment, there is little activity on the National Land policy formulation front.

2.2.6 Eritrea

Eritrea developed three types of land tenure systems – the village ownership system (“*diesa*”) – communal land holding system mainly dominant in central high land Trigrina speaking zone of Eritrea which comprises 65% of the population and 16% of the land and extended family ownership system (“*rusti/tslmi*”) which is a private land holding system. State ownership system (“*dominale*”) was created by the Italian colonizers. The Italian colonial statutes abrogated indigenous customary tenure in some parts of Eritrea

In terms of land tenure, the *Land Reform Proclamation No. 58/1994* introduced a new and uniform land tenure system throughout the country. The state/government owns all land in Eritrea and the people have only user rights.

There is no National Land Policy; however the 1997 Constitution contains fundamental land policy principles and statements. Under the Land Tenure Proclamation of 1994, all land became the property of the state would grant land rights to all Eritrean adult children (both male & female) depending on their place of residence and main occupation. However formal regulations and institutional arrangements for the new system have not been established.

The 1997 Constitution in Article 8 sub-article 3, gives an explicit mandate to the Government to put efforts on the sustainable development, utilization, management of land, water air and other natural resources in a balance and sustainable manner and ensuring participation of the people in the safeguarding the environment. The Constitution, therefore lays a viable foundation for a National Development Policy based on the principles of sustainability and the maintenance of biodiversity.

The Agriculture Sector Policy aims to promote equal opportunities, market liberalization and support services to the private sector, especially of small holders and small to medium scale commercial farmers. The Macro-Policy Document, 1994 outlined the background for Eritrea’s national economic growth strategy and pursue the guiding principles of human centered, efficient, sustainable and equitable development. The Macro-Policy Document also contains clear consideration of environmental protection including references to biodiversity conservation.

The new Macro Policy document assured that proper decentralization should assist in spurring economic and social development and further facilitate proper protection and preservation of the natural resources. As a result of this, the structure of local government was revised under Proclamation No. 86/1996-this proclamation intends to gradually decentralize powers and encourages regional economic development.

The National Environmental Management Plan for Eritrea, 1995 provides the basic policy for action in the environmental sector and lays out a strategy for action on conservation activities. The preparation of the National Biodiversity Strategy and Action Plan (NBSAP) is a continuation of the Government's efforts in biodiversity conservation and sustainable use. Both of these are providing a framework which includes land management in the absence of a National Land Policy.

2.2.7 Ethiopia

The country's geographical, ethnic and cultural diversity and its historical background produced highly differential forms of land utilization and ownership. The most recognized tenure types were "rist"/kinship, private, church, and state holding systems. Land tenure policy in Ethiopia has undergone major changes in the last five decades.

All land is now vested by law in the government and people of Ethiopia. However, people have land use rights that are transferable through inheritance, gifting, divorce and rent. Investors can also lease land from government for commercial farming. Increasingly broad discretion is granted to regional governments to regulate and administer use-rights and several have issued decrees or passed laws that vary in the degree to which they allow broad rental rights. The current land tenure system of State control over rural arable land resembles the *rist* system and the system during the Derg, with the exception that the communal *rist* system is replaced by State peasant associations. In pastoral and agro-pastoral areas of the country the customary land tenure system is recognized.

While there is no specific programme to formulate a National Land policy, many land policy principles are enshrined in the 1995 Constitution. The land policy is integral to the laws that have been passed in the current decade including the: Urban Lands Lease Proclamation No. 272/2002; Federal Rural Land Administration and Land Use Proclamation No. 456/2005; and the Federal Rural Land Expropriation Proclamation No. 455/2005. Property rights have been a continuing source of controversy in Ethiopia.

In recent years, the government has undertaken two programs to expand productive land use: resettlement and long-term leasing to investors. The resettlement initiative was launched in 2004 through administrative decisions taken by regional governments and was intended to encourage farm families from the crowded highlands of Amhara and Tigray regions to move into the lowlands along the Sudan border to reduce their food insecurity and to improve livelihoods. The more recent initiative to make "unused" land available on long-term leases to foreign investors has been controversial.

2.2.8 Kenya

Kenya is a former British colony which gained independence in 1963. The current evolution of land tenure and administration bears the stamp of the colonial past.

Kenya launched a National Land Policy formulation process in 2004. Also land issues were addressed by the 2004 Constitutional Review. Until the adoption of the National Land Policy in late 2009, the land tenure legal framework in Kenya included: 1) Government Lands—all un-alienated land including protected areas and reserves; 2) Trust Lands—land held by County Councils on behalf of the residents mainly in the arid and semi-arid areas; and 3) Private Land—individual and collective land holdings such as group ranches. Kenya has had a multitude of overlapping and conflicting cross-sectoral laws and policies related to land and natural resources. The statutory laws failed to recognize customary land rights, and there was violation of both statutory and customary land laws on Trust and Government Lands.

Customary land and resource rights were eliminated in reserves with no compensation. On Trust Lands, customary land administration was weak, while existing dispute resolution systems were often ineffective in resolving conflicts over land, pasture, and water. Similar problems of weak governance have threatened the integrity of group ranches. These factors contributed to tenure insecurity and the rising conflicts over land and resources.

In December 2009, the Government of Kenya adopted a National Land Policy (NLP) with the purpose of resolving the many land tenure problems in the country. In August 2010, Kenya then adopted a new Constitution that incorporates many aspects of the NLP. The NLP and the new Constitution usher in fundamental changes to the existing categories of property from government, trust, and private land to public, community, and private land, respectively. Public lands are heretofore administered by a National Land Commission (to be established) and its decentralized entities. A new harmonized Land Act will be developed, customary law codified, and the remaining customary holdings converted to community land managed by residents.

For private lands, the NLP emphasizes equity and secure access over freehold. It mandates land restitution or resettlement on new land as compensation for those dispossessed due to historical injustices. The NLP and the Constitution provide an important opportunity to address land-related injustices and governance problems, but they also raise concerns regarding continued corruption in land management and escalation of conflict due to weakening private property rights. The Government of Kenya, with donor assistance, has established the Land Reform Transformation Unit (LRTU) to implement the Land Reform Support Program (LRSP) to help refine and implement the NLP. As part of these efforts, the LRTU is supporting the development of new consolidated legislation, piloting a new land administration and management system, and raising public awareness on new laws and policies.

2.2.9 Madagascar

Madagascar was a French Colony from 1897 until it got independence in 1960. It thus has a French legacy. In terms of land tenure, Madagascar has a pluralistic legal environment governing land. The country has a formal land tenure system that recognizes individual freehold tenure under formal law

and a community-based customary land tenure system. The systems are governed by national-level, formal law and community-based rules that regulate access and use.

In 1989, the government made an effort to bring all land under the individual land tenure system. In an effort to prevent encroachment of protected areas, the 1989 Environmental Action Plan (EAP) mandated the replacement of the community-based tenure system with a formal land tenure system under which all land would be titled in the name of individuals. The program was suspended due to costs and the difficulty of reconciling incompatible formal and customary tenure systems.

In 2004, the Government of Madagascar launched its National Land Program. A 2005 Letter for Land Policy focused on four tasks: (1) restructuring and modernizing land ownership and topographical records; (2) improving decentralized land management by creating Land Management Offices at the *commune* (sub-district) level authorized to issue and manage land certificates according to locally established procedures; (3) updating the legislation to incorporate the principles of decentralized administration and to formalize local landholdings; and (4) establishing a national land tenure training program to build local capacity. A Land Observatory was charged with monitoring.

Following the Letter for Land Policy, Madagascar passed a new land law in 2005, Law No. 2005-019 which classified land as state or private; delineated land tenure types; and provided procedures for land registration. The law specifically recognized the rights of individuals and groups to unregistered land, which had previously been considered state land. The following year, the government passed Law No. 2006-031 which allows individuals and groups asserting rights to untitled land to obtain certificates recognizing their rights from the local land administration office. The 2006 law does not extend to grazing land (ROM Land Law 2005; ROM Law No. 2006-031).

Under customary law, land in Madagascar is perceived as the land of the ancestors (*tanindrazana*). Although land may become individualized, many believe that land must be titled or recorded in some fashion before an individual can claim perpetual ownership rights to the plot.

Beginning in 2004, Madagascar developed and began implementing its National Land Programme. Four axes for land reform are being developed that is: (i) Restructuring and modernization of the land administration system; (ii) Decentralization of the land administration system; (iii) Review and amendment of the legal framework; (iv) Development of a national training and capacity building programme and (v) the Madagascar Land Observatory (<http://www.observatoire-foncier.mg/>).

2.2.10 Rwanda

Rwanda was under Germany from 1894 to 1916; and then under Belgium (1916-1962). Independence was obtained in 1962. The Germans recognized the King's authority over land. The Belgians introduced the written law in tandem with the existing customary practices.

All vacant land was declared state owned land. Land registration was introduced for only land owned by colonialist; while land occupied by native continued to follow customary laws. The colonial regime introduced the system of grouped settlements called “*paysannat*” in some rural areas.

The change in administration from kingdom to the republic changed the whole customary system of land administration; traditional land administrators were abolished. There has consequently, been a clash between statutory and customary tenants.

Land in Rwanda is vested in the state by law. Mineral resources and other natural resources found in the soil are also vested in this state. Legally almost all land is owned by the state, and private land is largely restricted to registered concessions. However, most rural land is in effect held by small farmers under customary systems of land tenure. Customary land ownership is legally recognized under the land law.

The new laws define the following tenure systems:- freehold (for residential, commercial and industrial land); long term leasehold of 99 years for former individual and customary lands; leasehold of 20 years for marshlands (private state lands); leasehold of 49 years for private state lands dedicated to agriculture, tourism, forestry. Before these new systems, 90% of the land was held under customary arrangements.

The ongoing land tenure reform is replacing the customary tenure arrangements through land tenure regularization and systematic land registration

Rwanda has a National Land Policy (NLP) which was adopted in 2004. The NLP has two main objectives: to register all land ownership in the country and to rationalize land use. The NLP provides for the unification of land tenure under customary practice and formal written law and for the formalization of customary land rights as long-term leaseholds.

Implementation of the NLP started with the enactment Land Law in 2005. The Roadmap for systematic implementation of the land law is now in place.

The Rwanda National Land Use and Development Master Plan, completed in early 2011 proposes comprehensive guidelines and a conceptual framework for Integrated District Development Planning. Up to date District Development Plans must be prepared for each of the 30 Districts in Rwanda by 2012. A key tool in the preparation and maintenance of these plans is the use of Geographic Information Systems (GIS) and Land Use Planning techniques by professionals based at the District level.

At present, the official record with respect to land tenure (i.e. existing written or formally recorded, which covers less than one percent of all land holders) in Rwanda does not reflect the true situation on the ground. For those with unwritten or informal rights (i.e. those who have acquired land through means which were not legally valid prior to the coming into force of the Organic Land Law) there has been no systematic and standardized national land registration or titling system to validate and secure their rights to land. Rwanda has embarked in a very extensive land tenure regularization exercise aimed

to address this situation through a transparent public record of landholdings that will progressively become more authoritative and up to date.

2.2.11 Seychelles

Seychelles was a British Colony till 1975. The land tenure is based on the British system. A number of areas are declared as government state land or as “public domain”, that is belonging to the state for the enjoyment of the general public. These include river banks, wetlands, beaches and the ocean.

Seychelles consists of 115 islands, some composed of granite and others of coral rocks. Most of the population lives in three of the granite islands (Mahé, Praslin and La Dique), where, because of the steep topography, only a small percentage of flat land is available near the coast. This scarcity of coastal land for building purposes has already led to the reclamation of over 600 hectares of land along the east coast of Mahé.

Seychelles does not have a National Land Policy. Instead, concentration has been on preserving the country's fragile environment. Key programmes, strategies and legislation are: Seychelles Development Strategy 2017 which covers land management, environment, agriculture strategy and housing strategy, among others; Town and Country Planning Act, 1972 (currently being reviewed); Environment Protection Act, 1994; Environment Management Plan of Seychelles (2000-2010); and the National Land Use Plan, 1992.

2.2.12 Somalia

Somalia was ruled by the Italians on one part and the British on the other part during the colonial era. Land was confiscated by the colonial authorities and ruled under a western tenure regime, in which individual titling was a norm. The customary tenure laws were wiped away and the Somalis lost their ancestral rights. The Constitution states that land belongs to the state.

In 1969, the Government adopted the socialist system where land was nationalized and redistributed; customary laws were totally ignored. Currently a plural system operates: the pre-1991 statutory law (secular), the Islamic/*sharia* laws and the Somali customary law (popularly known as *Xeer*)

There is no National Land Policy, mainly due to political instability and absence of a unified government

2.2.13 Tanzania

Freeholds and leaseholds granted under Germany rule. Rest of land declared crown land under British rule. Dual tenure system: statutory as well as customary tenure are in place. The Radical title is vested in the President as trustee for the people. After independence, all freeholds converted into 99 leaseholds and leaseholds converted into rights of occupancy. The Land Acts, 1999 give 3 categories of land: general land, village land and reserved land. Customary right of occupancy titles are given out of village land. 70% is village land; 2% 'general' land and 28% forests and national parks

The National Land Policy was passed in 1995 after the 1991 Presidential Commission of Enquiry. The Policy formulation process was inclusive and participatory involving all stakeholders, identified as local governments, land users and donors. Implementation followed with the Land Act, 1999 and the Village Land Act, 1999. Strategic Plan for the Implementation of the Land Laws was developed in 2005. The two land laws aim to secure existing rights based on long-standing occupation/use; promote equitable distribution promote efficient administration and sustainable development; fair compensation and facilitate market in land.

2.2.14 Uganda

The British colonial government reached land settlements with three kingdoms of Buganda, Ankole and Tororo in 1900-1901 whereby part of the land was allocated to the respective kings, chiefs and notables in quasi-freeholds (*mailo* in Buganda and native freeholds in the other two kingdoms). The rest of the land in the three kingdoms and the rest of the country was declared crown land. Those occupying crown land practiced customary tenure up to the time of independence. The colonial legacy gave rise to the phenomenon of multiple and conflicting rights on one and the same piece of land (registered land) which has bedeviled Uganda up to today.

The radical title of land in Uganda is vested in the citizens of Uganda by the 1995 Constitution. However critical natural resources are vested in the Government in trust and for the common good of all citizens of Uganda.

According to the 1995 Constitution and the 1998 Land Act, land is managed under four basic land tenure regimes: customary, *mailo*, freehold, and leasehold. These regimes confer different land rights to the owners and therefore have different implications on security of tenure. A fifth tenure system applies to public lands.

The most common tenure system in Uganda is customary tenure, which the Land Act recognizes as governed by customs, rules, and regulations of the community (GOU 1998). In this system, landholders do not have a formal title to the land they use, although Article 237(4a) of the 1995 Uganda Constitution stipulates that all Ugandan citizens owning land under customary tenure may acquire certificates of ownership in a manner prescribed by Parliament. More than 80 percent of the land in Uganda is held under unregistered customary tenure. Despite the lack of registration, customary tenure is recognized by the state (Article 237(1) of the 1995 Constitution of Uganda). Most of the land (around 85%) is under customary tenure.

Mailo tenure was established in 1900 by the British colonial government to reward colonial agents who advanced British interests with large estates of land, mailo tenure is a quasi-freehold tenure system found in the Central region and parts of central Western Uganda. Mailo ownership rights are well recognized by the state (Article 237(1) of the 1995 Constitution of Uganda). An important feature of mailo systems is that much of the land is used under a kibanja tenancy system (peasant tenancy), which may or may not be documented with kibanja certificates. Tenants do not hold full ownership rights; they must pay rent to the mailo owner (Busuulu and Envujjo law of 1927) and face some restrictions on what

they can do on the land. However, reforms under the Land Act Amendment (Uganda, Ministry of Lands, Housing and Urban Development 2010) have strengthened tenants’ rights by limiting the rent they must pay to a nominal amount and have made it more difficult for mailo owners to evict the tenants. The kibanja tenants have rights indefinitely.

Freehold tenure is a system whereby owners of the land have a deed to their land that allows them to hold the registered land indefinitely. Landowners are given complete rights to use, sell, lease, transfer, subdivide, mortgage, and bequeath the land as they see fit, so long as it is done in a manner consistent with the laws of Uganda. These rights are well respected by the state. However, freehold interests in land are not widespread; they were formerly established and limited to a small category of individuals—kings, notables, and chiefs; large-scale agricultural estate developers; and some special interest groups such as the Protestant and Catholic churches.

In the leasehold tenure system, the owner of the land grants the tenant exclusive use of the land, usually for a specific period of time. Land may also be leased from the state to individuals for typical lease periods of 5, 45, or 99 years. In return, the tenant usually pays an annual rent or service under specified terms and conditions. Leaseholders may or may not hold formal contracts with the owner. Leaseholders are not required to be Ugandan citizens; the other forms of tenure are, however, available only to Ugandan citizens.

In addition to the four main tenure categories above, public tenure applies to lands that are designated for public use. This includes not only land for public buildings and roads but also all designated wetlands, even if these fall within otherwise designated customary or mailo lands. These lands have restrictions on use, such as prohibitions against cultivation and other uses of wetlands. (Bomuhangi, *et al*, 2011).

Uganda is in the process of developing a comprehensive National Land Policy. The 1995 Constitution contains many fundamental land policy principles and statements.

2.3 Interface between land uses and their relation to conflicts

We have noted in Table 1 above the proportion of various land uses in the countries of the Region. Data from the World Bank Development Indicators shows the extent of Forests and Agricultural land as a percentage of the total country area (Table 5).

Table 5: Forests & Agricultural land as a percentage of total land

Country	Forests as % of land area	Agricultural land as % of land area
Burundi	6.7	83.7
Comoros	1.6	83.3
Congo, Dem Rep	68.0	9.9
Djibouti	0.3	73.4

Country	Forests as % of land area	Agricultural land as % of land area
Eritrea	15.2	75.2
Ethiopia	12.3	35.0
Kenya	6.1	48.1
Madagascar	21.6	70.2
Rwanda	17.6	81.1
Seychelles	89.1	6.5
Somalia	10.8	70.2
Tanzania	37.2	40.1
Uganda	15.0	69.9

Source: World Development Indicators (2010)

Agriculture is a major land use and many rural household derive their livelihood from agriculture, which is also a large contributor to national GDP in many countries.

Another major land use is pastoralism. Pastoral land use is key to the development of the Eastern Africa region. In Kenya, 60 per cent of the national livestock herd is owned and managed by pastoralists; livestock accounts for at least 42 per cent of agricultural and 10 per cent of the total GDP.

Ethiopia is also one of the largest livestock producers in Africa. Livestock accounts for nearly 10% of GDP and 30% of the employment of the agricultural labor force. Permanent pastures comprise 63% of agricultural land. Despite the importance of livestock and pasture for the agricultural sector, the claims of pastoralists to land and pasture, particularly in the South, are poorly recognized or upheld by Federal, regional, or state authorities. Conflicting claims on grazing resources have reportedly been a contributing factor to some violent clashes. In some arid lowland areas, government authorities are said to have undermined pastoralist livelihoods by expropriating land used by pastoralists as dry season grazing areas for agricultural projects (USAID 2011)

In Somalia, 98 per cent of the country is made up of rangelands. Here options for crop production are limited. 61 million hectares (610,000 km²) of Tanzania's land mass is classified as rangeland, meaning that it is managed according to some kind of pastoralist or agro-pastoralist regime. There are approximately 17 million cattle in Tanzania (the third highest population in Africa south of the Sahara), 12.5 million goats and 3.6 million sheep. 98 per cent of the national herd, or approximately 16.7 million cattle, are in the hands of pastoralists and agro-pastoralists (Kipuri and Sørensen, 2008).

Pastoral land rights and resources are significant issues and a number of pastoralist groups remain highly mobile across the region, moving from the north of East Africa into Sudan, Somalia and Ethiopia; and from Kenya to Tanzania. This calls for the formulation of regional and national dry land/rangelands policies.

Eastern Africa is endowed with diverse **land based natural resources**, which contribute directly or indirectly to the socio-economic well-being of the people. These resources include: wildlife, forests, water, minerals, marine products, and the land itself. Other resources include biodiversity, cultural heritage, palaeontology, archaeology, and indigenous knowledge. Kenya has at least 8,000 known plant species. Over 16 per cent of the total land area in Uganda is covered by fresh water bodies. The country is endowed with extensive wetlands, with 13 per cent of the land in classified as swamps. Figures for forest coverage differ but according to the government, forests cover 4.9 million hectares (24% of Uganda land). About 30% of forest land is protected areas and parks, and 70% is on private land (USAID 2010). Within Africa, Eastern Africa has the highest number of endemic species of mammals, birds, reptiles and amphibians (Toulmin and Quan, 2000; Alden Wily and Mbaya, 2001). Western Indian Ocean countries are some of the hotspots of biodiversity.

Eastern Africa has rather limited forest and woodland cover amounting to approximately 13 per cent of the total land area (UNEP, 2006). Tanzania is the most forested country with about 43.9 per cent (33.5 million ha) of its land classified as forests and woodlands, followed by Kenya with about 30 per cent of its land area under forest. Djibouti has the least forest cover with about 6,000 ha or only 0.3 per cent of the land area under forests (FAO, 2005a). It is estimated that the change in forest cover in Eastern Africa is 0.51 per cent per year. At the current deforestation rates, and if sustainable forest management practices are not promptly adopted, most forests and woodlands may disappear by 2020 (FAO, 2003).

The DRC on the other hand is distinguished by the diversity and scale of its natural resources, including 2.2 million square kilometers of land, an area roughly equivalent to the territory of Western Europe. More than half of the country's land is forest, constituting the second-largest contiguous area of tropical forest in the world and the habitat for animals and plants found nowhere else. If harnessed for hydroelectricity, the DRC's water resources could supply the energy needs of southern Africa. The country also has abundant mineral deposits, including cobalt, copper, diamonds, and gold (USAID,2011). In fact the estimated wealth of DRC is about US\$ 24 trillion equivalent to the GDP of Europe and US combined. There many conflicts over DRC's natural resources including minerals and forests with many of the forest companies being involved in many conflicts with local communities or local governments.

Nature based tourism is a major resource earner for countries in the region including the Island States. Table 7 shows the contribution of tourism in terms of total contribution to GDP and employment as forecasted for 2011.

Table 6 Contribution of tourism to total GDP and employment

Country	GDP total contribution (%)	Employment, total contribution (%)
Burundi	4.6	4.0
Comoros	4.6	4.0
Djibouti	-	-
DRC	2.0	1.6
Eritrea	-	-

Ethiopia	10.7	9.8
Kenya	11.4	9.9
Madagascar	14.3	12.1
Rwanda	7.8	6.8
Seychelles	57.8	56.4
Somalia	-	-
Tanzania	12.9	11.2
Uganda	7.8	6.6

Source: World Travel and Tourism Council 2011

For Seychelles, tourism is very important but also for a number of countries where contribution to total GDP is 10% or more. Conflicts have been recorded between local communities including pastoralists and investors in the tourism industry in Kenya and Tanzania.

While Eastern Africa contains some of the World's oldest and richest protected areas such as the Tsavo, Queen Elizabeth and Serengeti national parks, a large number of protected areas are under threat from land use change, urbanization and population increase and encroachment. The intersection between land management, land tenure and environmental protection has become a higher priority as the implications of land tenure, land use control and the distribution of protected areas became more widely apparent. Increasing competition between different land uses due to population growth, commercialization and inadequate or ineffective regulatory policies is generating intensified conflict over land use in many areas. In the Eastern African region, land use change has resulted in deforestation, loss of natural resources and loss of livelihoods for indigenous populations, as land previously available as habitat has been converted to other land uses.

The demographic changes, especially the changing age structure of the population, increasing urbanization and overall population growth have fuelled environmental change and natural resource degradation as land is opened up for agricultural, settlement and infrastructural development; and also has led to over-consumption of natural resources such as forests for fuel (charcoal, firewood) and water. Another cause of land degradation is the proliferation of extractive activities such as logging and mining (UNEP, 2006).

Shared ecosystems in the region such as lakes, river basins and forest ecosystems have implications for land rights. For instance, the management of the Mara–Serengeti ecosystem raises the need for land use plans that cover both Kenya and Tanzania. Similarly, the Virunga Volcanoes comprising parc National des Virunga in the Democratic Republic of Congo; parc National des Volcans in Rwanda and Mgahinga Gorilla National Park in Uganda (which is the home of about half of the mountain gorillas in Africa) necessitates cooperative arrangements for land management. Activities in Kenya are said to contribute to the drying up of Lake Jipe in Tanzania. The United Nations Development Programme–Global Environment Facility–Food and Agriculture Organization of the United Nations (UNDP–GEF–FAO) conservation project initiative entitled: “Reducing biodiversity loss at cross border sites in East Africa” and covering four areas of cross-border closed forest ecosystems (Karamoja–Turkana; Rakai–Bukoba;

Monduli–Kajiado; and Same–Taita Taveta), is an example of the cross-border cooperation that is beneficial to regional member countries. However, poaching is threatening this bio-diversity especially in the form of large animals (rhinos, elephants leopards and others, as well as in rare plant species.

Increasing demand for food, fuel and wood as the population surges is putting unprecedented and unsustainable demand on the region's remaining forests. This massive potential leap in deforestation could contribute to global warming. More deforestation means more conflict, more carbon emissions, more climate change, more poverty and less prosperity for all. Unless agricultural productivity rises sharply, new land (read forests) will have to be cultivated to meet food and bio-fuel demand. The implications for policy are severe.

The key natural resources in Eastern Africa include large lakes such as Lake Victoria and long rivers such as the Kagera-Nile; extensive wetlands, high mountain ranges (some facing loss of their glaciers as a result of environmental degradation and global warming); minerals and fossil oil; extensive forests (which, however, are rapidly disappearing); long coastlines; rangelands; and national parks. All the countries in the region are experiencing high levels of natural resources degradation.

Countries in the region have trans-boundary resources and porous borders. The River Nile Basin, for example, covers Burundi, DRC, Egypt, Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda. Lake Victoria, the largest lake in Africa, is shared by three countries and by those in the Nile Basin. Pastoralists practice international transhumance, moving their animals from one part of the country to the other and from one country to the other. Activities in one country, such as irrigation can affect the resources in another country.

Eastern Africa has a substantial desert land mass making the UNCCD very relevant to land management and rights. The effects of global warming are already affecting the region, resulting in droughts, floods, unpredictable weather and rising sea levels (especially important for the Island States).

There is renewed interest by foreigners to exploit natural resources in the region, particularly high-value minerals and oil. There also appears to be a scramble for land in the Region by both national and international land seekers for commercial agriculture.

3.0 Land Conflicts in the Region

3.1 Areas of Land Conflicts

The East African Region is an area of constant conflicts over land and natural resources. Conflicts have concerned access to, and control of:

- Arable land
- Range (pastoral) land
- Water
- Forests
- Minerals

With increasing population there is immense competition for arable land which moreover is losing its fertility and therefore becoming less productive. The use of fertilizers is low. Though immense, the potential of irrigation is underutilized.

More than one third of the land in the Eastern African Region is covered by permanent pasture as the dominant land use is livestock grazing. But increasing livestock and degraded pastures and water sources, coupled with recurring droughts and encroachment on pastoral lands, has resulted in constant conflicts between various groups, fighting over access to pastures, water, and land for agriculture

To some extent the conflict between the Maasai (Lota) and the Wasonjo (Batemi) in northern Tanzania is caused by the diminishing pastoral land in neighbouring Kenya. This has forced the Maasai to move south across the border, in the land of the Wasonjo who are sedentary. Moreover, historically, the Maasai have believed that all pasture in the world is theirs. This has led to constant communal conflicts, particularly in the light of dwindling areas for pastoralism and water sources. Mediation teams have not succeeded to solve the problem (*Sunday News* 8 May 2005, p. 4). Recently, in December 2011 fighting between members of the Turkana and Somali communities over grazing land led to death and displacement of thousands of people with no solution in sight to end this fighting which has escalated since October 2010 (IRIN, December 2011).

Almost everywhere in the region, from Ethiopia to Tanzania, pastoralists are losing what they consider to be their traditional grazing lands, to sedentary farming and national reserves. Many governments seems to be of the view that transhumance pastoralism is backwards and would like communities practicing it to change their way of life and settle in one place (Kipuri and Sørensen 2008). Conflicts between pastoralists and farmers are galore in the region.

Forests are under intense pressure for harvesting timber and this means dwindling forest cover with serious consequences for the environment and water sources. Encroaching on forests always brings communities in clash with the state. Minority ethnic groups who depend on forests and range lands for their livelihood activities such as the Endorois, Ogiek, Maasai, Turkana and Samburu of Kenya; the Batwa, Basongora, Iteso, Karimojong and Tepeth of Uganda; and, the Anyuak, Dinka, Jie, Kachipo, Murle

and Nuerof Jonglei State South Sudan find that their habitat is getting smaller and smaller and they are being marginalized.

3.2 Triggers of Land Conflicts

Land and conflict are closely linked, as land is a highly desired resource by communities and individuals. In Eastern Africa land, in combination with inequitable access to resources, resource degradation and demographic pressures, has been a key driver in violent conflict. A further problem is the mismatch between customary/tradition land tenure systems, which are undergoing changes related to modernization and globalization, and state systems based on imported models. Lack of appropriate policy and weak land institutions and conflict resolution mechanisms contribute to the continued existence into the region.

Triggers of land conflicts in the Region include the following:

- Increased pressure on land and natural resources both human and animal population
- Drought
- Floods and land slides
- Global Warming and Climate change
- Land and natural resources degradation
- Demarcation/reservation of land for national parks, game reserves, conservation
- Vague understanding/definition in existing laws of traditional rights of access to land and natural resources;
- Poor land governance systems
- Harvesting of natural resources: timber, minerals, water (eg for irrigation)
- Armed conflict and political instability
- Commercial Pressure of land including large scale land acquisition

3.2.1 Demographic Pressure

Looking at the mid-year data for the Eastern African countries, population is increasing in all countries as can be gauged from Table 6 comparing the populations of 2009 and 2011. Eastern Africa had close to 306,700,000 people in 2009. This had grown to 337,200,000 in 2011. This leads to ever growing pressure to existing land resources.

Table 7: Population growth in the East African Region 2009-2011

SNo	Country	2009 (million)*	2011 (million)**
1.	Burundi	8.3	10.2
2.	Comoros	0.7	0.8
3.	Djibouti	0.9	0.9
4.	DRC	64.0	67.8

SNo	Country	2009 (million)*	2011 (million)**
5.	Eritrea	5.1	5.9
6.	Ethiopia	82.8	87.1
7.	Kenya	31.9	41.6
8.	Madagascar	19.5	21.3
9.	Rwanda	9.9	10.9
10.	Seychelles	0.1	0.1
11.	Somalia	9.1	9.9
12.	Tanzania	43.7	46.2
13.	Uganda	30.7	34.5
	Total	306.7	337.2

Source: *Africa Development Indicators 2011 & **Population Reference Bureau 2012

Projections show a continued increase in population by 2050 (see for example UNFPA, State of World population 2011 (demographic, social and economic indicators at: <http://www.unfpa.org/webdav/site/global/shared/documents/publications/2011/EN-SWOP2011-FINAL.pdf>).

Likewise the number of cattle, goats, sheep, camels etc has increased several fold. According to the Tanzanian Draft National Livestock Policy 2005 there are over 17 million cattle in Tanzania, the third highest population in Africa South of the Sahara, 12.5 million goats and 3.6 million sheep. The increase in both humans and livestock means a great stress on land resources, leading to constant conflicts. The transhumant system based on mobility associated with poor land use planning systems also leads to increasing conflicts.

3.2.2. Drought, Floods and Landslides

The Region in general but particularly the Horn of Africa, as well as Northern Kenya has been experiencing severe drought which has been exacerbated by poverty and conflict. It hit at least four countries in 2011 - Djibouti, Ethiopia, Kenya and Somalia - displacing hundreds of thousands of people. The drought was especially hard in Somalia with the UN declaring famine in some regions of south central Somalia. Thousands of people were forced to flee to neighbouring Kenya. In Kenya, the drought had a largely overlooked knock-on effect on food prices in poor urban areas and led to an escalation of conflict in some pastoralist areas. In Ethiopia, serious food shortages were experienced in Oromiya, Somali and Tigray Regions. A cash transfer programme was launched in September to help reach some of the most vulnerable people in Tigray, one of Ethiopia's most food insecure regions. Djibouti too was hit hard by the drought and faced serious food and water shortages. As the magnitude of the drought crisis gained international attention, familiar laments emerged about the failure to heed warnings issued months earlier and learn from previous famines by building resilience to inevitable weather shocks (IRIN December 2011). Recurrent droughts in the south of Madagascar have left people there facing chronic hunger and a high rate of malnutrition.

In April 2010, hundreds of people and at least 7000 hectares of newly sown crops were destroyed by crops after a river burst its banks in Somalia's Middle Shebelle Region. Recent landslides in Northern Uganda have killed hundreds and displaced many others. Droughts, floods and landslides force people to move to other areas, leading to inevitable conflicts with those that are found there.

3.2.3 Global Warming and Climate Change

Africa is one of the most vulnerable regions in the world to climate change (IPCC, 2007). Today, climate change is one of the biggest environmental challenges the world in general and the East African Region in particular, faces. It has potential catastrophic effects on a global scale. Recent global, regional and local events, including destructive cyclones and hurricanes, flooding and unpredictable rainfall patterns are signs that urgent action is required to address the causes of global warming. Climate change will have impacts on humans, animals and plants ((Okeowo 2007; Ast (2009); USAID (2011a, USAID 2011b); WBG (2010) <http://issues.tigweb.org/climate>; www.climatehotmap.org). As far as humans are concerned, climate change is expected to result into the following:

Biodiversity loss: Biodiversity is an important resource for African peoples. Uses are consumptive (food, fiber, fuel, shelter, medicine, wildlife trade) and non-consumptive (ecosystem services and the economically important tourism industry). Given the heavy dependence on natural resources in Africa, many communities are vulnerable to the biodiversity loss that could result from climate change. The impact of climate change on humans will also be compounded by climate change-induced alterations of agriculture, water supply and disease.

Agriculture: Most of Africa, including the East African Region, relies on rain-fed agriculture. As a result, it is highly vulnerable to changes in climate variability, seasonal shifts, and precipitation patterns. Any amount of warming will result in increased water stress. Roughly 70 percent of the population lives by farming, and 40 percent of all exports are agricultural products (FAOSTAT 2004). One-third of the income in Africa is generated by agriculture. Crop production and livestock husbandry account for about half of household income. The poorest members of society are those who are most dependent on agriculture for jobs and income.

Impacts on glaciers and water supply: The gradual yet dramatic disappearance of glaciers on Mount Kilimanjaro is a result of global warming (IPCC 2007). An estimated 82 percent of the icecap that crowned the mountain when it was first thoroughly surveyed in 1912 is now gone.

According to recent projections, if recession continues at the present rate, the majority of the glaciers on Mount Kilimanjaro could vanish in the next 15 years. The snow and glaciers of Mount Kilimanjaro act as a water tower, and several rivers are drying out in the warm season due to the loss of this frozen reservoir. Other glaciers in Africa (Rwenzori in Uganda and Mount Kenya) are also under similar threat. Indeed that of the Rwenzori is already gone completely.

Disease: Climate change has critical health implications. Changes in rainfall will affect the presence and absence of vector- and water-borne pathogens (IPCC 2007). For example, it can be expected that small changes in temperature and precipitation will boost the population of disease-carrying mosquitoes and result in increased malaria epidemics. Increased flooding could facilitate the breeding of these malaria carriers in formerly arid areas

These problems will be exacerbated by the inability of many communities to cope with increased disease. In many African urban settlements, population expansion has outpaced the capacity of municipal authorities to provide civic works for sanitation and other health delivery services. If settlement conglomerations such as those envisaged for West Africa and the eastern seaboard of South Africa develop, vulnerable populations will cover entire regions, not just isolated areas.

Human migration: Semi-arid areas of the Sahel, the Kalahari, and the Karoo historically have supported nomadic societies that migrate in response to annual and seasonal rainfall variations. Nomadic pastoral systems are intrinsically able to adapt to fluctuating and extreme climates —provided they have sufficient scope for movement and other necessary elements in the system remain in place. However, the prolonged drying trend in the Sahel since the 1970s has demonstrated the vulnerability of such groups to climate change: they cannot simply move their axis of migration when the wetter end already is densely occupied and permanent water points fail at the drier end. The result has been widespread loss of human life and livestock, and substantial changes to the social system. This also leads to social tensions and conflicts

3.2.4 Land and natural resources degradation

Land and natural resources degradation has been referred to above and is extensive in Eastern Africa.

The causes of land degradation include: over-cultivation, overgrazing and deforestation; soil degradation; poverty; population dynamics; insecure tenure; weak and inappropriate land management systems; institutional support; political instability; and physical land attributes such as topography, soil and rainfall conditions. Topography is an important consideration, as many countries are mountainous. Ethiopia and Rwanda encounter the highest potential erosion risk due to steep topography. The areas with the most severe land degradation are also those with the highest population density such as the central and northern highlands of Eritrea and Rwanda.

3.2.5 Demarcation/reservation of land for national parks, game reserves, conservation and public uses

Countries in the Region have created or inherited (from colonial administrations) areas reserved for national parks and game reserves, conservation and environmental protection. This has been a major source of conflict and marginalization of societies which have used the land now reserved, for centuries and consider it their own. The case of Tanzania is instructive.

Around 30% of Tanzania's land is devoted to conservation that is national parks, game reserves, forest reserves and environmentally sensitive areas (Tanzania 2008). In some cases the boundaries between these reserved areas and villages is not clear. In others there is encroachment on such lands. Yet in other cases, there is the perceived need to expand the area under reservation. This was the case with the Ruaha National Park whose boundaries were extended in 2008. In the same year pastoralists were removed from the Ihefu Valley as a measure to conserve important water sources

Many times decisions about conservation do not take into consideration, the needs and requirements of communities that may be living in, or adjacent to areas required for conservation such as pastoralists and these has been a source of later conflicts. A good example is the Ngorongoro Conservation area from which the original occupiers, the Maasai, who for centuries had lived in the area without causing much environmental damage, were evicted. Of late the government has sounded alarm that there were too many people in the Ngorongoro Conservation area: some 65,000 people compared to just 8000 fifty years ago. An earlier order to remove all settlers in this area has been revised and will now exclude native Maasai pastoralist¹. There is a major problem on how to realise the aims of conservation and to protect peoples rights. One approach that is being implemented is to encourage Community-based resource management approaches. This is being done with respect to Forest Resources. A sustainable approach would e to reconcile environmental objectives with the need to enhance livelihoods of the people.

Another example of conflict between indigenous communities and public agencies is cited from the Minority Rights group International (2011), (BOX 1).

Box 1: Community in conflict with state/corporate interests: Olkaria Maasai, Lake Naivasha, Kenya

Inside Hell's Gate National Park, near Lake Naivasha, the Olkaria Maasai are confronting land acquisition and natural resource development by the Kenyan government and a parastatal energy company, KenGen. KenGen began operating in the Hell's Gate area in 1982 and the national park was established in 1984. The national park and the geothermal energy development affects multiple Maasai settlements, including some 20,000 people. The Maasai are also in conflict with the neighboring Kikuyu community over ownership of parts of the land. Lack of consultation and community participation have been causes of conflict.

In 2009, the Olkaria Maasai in Maiella won a court decision recognizing their traditional claim to the land they occupy on the border of Hell's Gate. But, the court ordered that the land be individually allotted, between Kikuyu and Maasai families, instead of being held in common by the Maasai community as has traditionally been done. Efforts by the local government and the courts to proceed with the allotment have met with conflict, protests, and ultimately violence that resulted in the deaths of over 100 people. According to community leaders, several members of the community have been "bought out" and wish to proceed with the allotment so that they can sell their allotted portion

¹ *Guardian*, 17th July 2009, p. 5

to corporate interests that wish to build an additional generating station. In April 2011, a surveyor brought in to carry out demarcation as part of the allotment process was killed by community members. The community has also staged protests against the allotment process. These incidents have resulted in the local government stationing a rapid response unit of the Kenya police in a tented camp on a hill overlooking the community.

The community now lives in the shadow of a constant police presence as a result of their resistance to the allotment. In June 2011, police raided the community and used teargas to disperse community members. In fact, when the authors of this report were interviewing community members, all sitting in circles on the grass, police armed with rifles came down off the hillside to investigate the meetings.

3.2.6 Vague understanding/definition of traditional rights of access to land and natural resources

Countries in the Region are characterized by legal pluralism when it comes to access, ownership and administration of land and natural resources, and therefore defining the rights in them.

Consequently, there are coexisting multiple sources of property rights broadly categorized as customary and modern tenure where statutory legal structure and customary practices interface. Some countries apply Islamic law in addressing land tenure issues. The modern system was largely inherited from the colonial era and used to weaken customary systems by incorporating formal systems that do not recognize the multiple values of land and the multiplicity of interests. It is usually based on written laws, acts of centralized or decentralized government agencies and judicial decisions. Customary tenure practices are flexible and based on local practices and norms and are managed by local/traditional rulers or councils of elders. The dynamic nature of customary tenure systems as well as their diversity, is a challenge to processes of codification of norms and is normally availed through oral narratives.

Land and resource rights systems are inherently complex in Africa. Incomplete understanding, ignorance or disregard for complexities on the ground are the root cause of failed policy prescriptions and conflict around land.

In practice, there is a belief anchored in the colonial history, that modern, imported notions of land rights are superior to the endogenous principles and approaches. Thus there is a tendency to with the traditional systems away or to marginalise them when defining land rights and setting up administrative frameworks. The result is usually conflicts between the state and those who enjoy customary-based land rights. On the other hand, the traditional institutional system is not brought in the mainstream of land administration thus leading to a multiplicity of authorities. This can lead to conflict between different communities as they define their land rights differently. A case study involving the Iteso and Karamajong of Uganda is illustrative (Box 2).

Box 2: Inter-ethnic Conflict on Traditionally Held Lands: Iteso, Katakwi Region, Uganda

Iteso, meaning people of Teso, are an agro-pastoralist community that resides in eastern Uganda. Iteso are spread across a large territory in Uganda, comprising multiple districts. In the Katakwi district on the border of the Karamoja region, however, Iteso feel that they are a targeted minority and are losing access to their traditional lands.

As the result of a border dispute between the Iteso of Katakwi and the Karamajong of Moroto that is more than a century old, the two communities have lived under constant threat of conflict. The Karamajong, who are a pastoralist cattle-keeping community, regularly move into Teso territory in order to find grazing land and water. Because the rain that falls in the mountains near Moroto runs off quickly and drains into the wetlands in Teso, the Karamajong are known to say that they are following “their” water into Teso. Pastoralists in Karamoja have repeatedly made requests to the government for development of more water access points, either through valley dams or boreholes, but there has been little improvement in this regard.

Recently, Karamajong have also been settling in what Iteso consider to be their territory based on a colonial era map – Karamajong see the border differently. The border conflict has led to Karamajong raids into Teso territory, during which there are killings and property destruction. Iteso in turn have burned down Karamajong settlements in Katakwi that they believed to be illegal. This type of traditional territorial conflict creates an escalating cycle of violence. Multiple efforts have been made to address the Teso/Karamoja border conflict including use of local government arbitration, negotiations between elders and government officials from the regions, community based conflict mitigation programming, and even appeals to President Museveni himself. Despite these efforts, the border conflict continues to create negative repercussion for both communities. Appropriate alternative dispute resolution mechanisms need to be developed and used for such cases.

Source: Minority Right Group International Report December 2011

Traditional land rights are usually ignored when defining national parks and game reserves, forest reserves, conservation areas and when defining land suitable for commercial investment.

3.2.7 Poor land governance systems

The F&G developed by the AUC- ECA- AfDB joint Land Policy Initiative defines land governance as “the political and administrative structures and processes through which decisions concerning access to and use of land resources are made and implemented including the manner in which general oversight on the performance of the land sector is managed’. FAO (2007) has outlined the aspects of good and weak land governance systems. These aspects can be found in guiding values in the process of the formulation of the Kenyan Land policy which was designed to be: Consultative; Participatory; Interactive; Inclusive; Consensus-based; Timely and professional; Transparent; Gender sensitive; Innovative; and, Cost effective (Government of Kenya, 2009).

Most countries in Eastern Africa have deficits in good land governance including capacity in appropriately addressing issues related to legal pluralism, land tenure insecurity, state sovereignty over land, poor conflict resolution mechanisms, gender and inter and intra-generational inequality, centralization of land administrations, non-transparency and non-accountability particularly when it comes to allocating large tracts of land and rights to exploit natural resources.

Many legal systems centralize control over land and natural resources in the hands of the State and undermine or fail to legally recognize the land rights of local landholders therefore paving way for what is lawful but unjust large-scale allocation of land. New national land policies in Kenya and Uganda have the potential to improve good land governance but these policies are either still under development or are poorly implemented. The LPI in promoting use of the F&G is a valid tool to inform land policy formulation

3.2.9 Armed conflict and political instability

The region is characterized by political instability. The Greater Horn of Africa has been the site of conflict for many years.

Somalia has not had a stable government since the early 1990s. The Comoros has suffered political instability for decades, culminating into the recent action by AU to forcibly remove the self-proclaimed ruler of Anjouan. Ethiopia is suffering from the effects of instability in neighbouring Somalia and in its mainly Somali Ogaden Region. The countries in the Great Lakes Region (Burundi, Rwanda and Uganda) have also experienced armed conflicts, political instability and genocide (in the case of Rwanda in 1994). The political instability and armed conflicts in the region have adversely affected land and natural resources.

The DRC is the scene of many internal conflicts sometimes involving neighbouring countries; the basis of which is the fight over the country's vast natural resource.

The region does not fare well on the Political Instability Index which shows the level of threat posed to governments by social protest (Table 9). The index scores are derived by combining measures of economic distress and underlying vulnerability to unrest. The index covers the period 2009/10.

Table 8 Political Instability Index for Easter African Countries 2009/2010

Country	Rating	Index Score	Changes since 2007
Burundi	High Risk	6.9	Risk increased
Comoros	Nor rated	Not rated	
Djibouti	Not rated	Not rated	
DRC	Very High Risk	8.2	Risk increased
Eritrea	High Risk	6.7	Risk increased
Ethiopia	Moderate Risk	5.1	Risk increased

Kenya	Very High Risk	7.5	Risk increased
Madagascar	High Risk	7.1	Risk increased
Rwanda	Moderate Risk	4.9	Risk increased
Seychelles	Moderate Risk	4.1	Risk has declined
Somalia	Not rated	Not rated	
Tanzania	High Risk	5.9	Risk increased
Uganda	High Risk	6.5	Risk increased

Source: Economist Intelligence Unit at <http://viewwire.eiu.com>

None of the countries is in the low risk category. Moreover, for most countries, risk has increased from 2007.

The region hosts one of the largest refugee populations in the world owing to internecine strife and crises of citizenship and constitutionalism. The presence of refugees puts enormous pressure on already limited resources in the receiving countries. Refugees affect the environment as groups of people are concentrated in one area increasing demand for land, water and firewood. This has been experienced in north-western Tanzania and northern Kenya.

The region, due mainly to armed conflicts, has a large number of internally displaced persons (IDPs). The countries with large numbers of IDPs include Eritrea, Ethiopia, Somalia, Sudan (close to 4.4 million IDPs), DRC (1.6 million IDPs) and Uganda (was about 1.7 million IDPs now reduced to about 1.2 million). Restitution, compensation and resettlement are major land policy issues in many countries, particularly in Burundi, Eritrea, Ethiopia, Rwanda, Somalia, and Uganda.

Political instability leads to conflicts over land resources and the generation of refugees creates a current problem of dealing with these unfortunate people but it creates a post-conflict problem of handling returning refugees, who may find that the land they used to call their own has long been taken over by others. This is a big problem in Rwanda and Burundi.

3.2.8 Commercial Pressure of land including large scale land acquisition: myths and realities

There is growing pressure for acquiring large land tracts in the Region for commercial purposes. Land deals are being implemented in Ethiopia, Uganda, Tanzania, Rwanda and Burundi. Key actors involved in large-scale land acquisition which are foreign as well as domestic investors include:

- Companies with interest in bio-fuel production particularly in Tanzania and Rwanda
- Companies with interest in commercial timber and carbon trade
- Companies with interest in the tourism sector i.e. game ranching, excursion areas, hunting blocks, and campsites; beaches.
- Companies with interest in agriculture i.e. crop cultivation, salt extraction, and horticulture mainly for export purposes.

- Government leaders, local elites and international companies, and influential people grabbing land for speculation purposes.

A number of common issues have been identified in the East African Region as follows:

- First, there are loopholes in customary laws, national land policies legislation and institutions that are exploited to facilitate large-scale land acquisition;
- Second, rural communities lack knowledge and empowerment to deal with land-scale land acquisition; and ,
- Third, the government plays a significant role in facilitating large-scale land acquisition, mainly through the principle of State ownership over land.

Rural people are losing their land including access to water, pastures and other natural resources, in deals that are almost always done in secret. The power imbalances are extreme; peasants generally having little practical legal recourse while investors have thousands of bilateral investment treaties to fall back on (Palmer, 2011).

A recently published report on land grabbing (Oxfam 2011) dismissed four myths about large-scale land deals

One is that new land projects focus on marginal areas. Although governments claim that what they give to investors is marginal land, in fact these go for the best land that there is; land with access to water resources, fertile soils, good infrastructure, and proximity to markets to facilitate the profitability and viability of their ventures. The large-scale projects tend to be located where most people live. It is not usually empty, unused, marginal land in poor regions. A recent case in point the Oxfam report stating that New Forest Company forcibly evicted 22 000 people to make way for forest plantations in Uganda (see also: Anseeuw, *et al.*, 2011).

But even if it could be argued that such land was unused, this need not be the case since it is usually land held in common by communities who use it for grazing, collecting natural products, or is land left fallow for a number of years or which is important for the ecosystem, or is land at least claimed by communities as their legitimate heritage.

The second myth is that projects will bring about food and energy security for the countries providing the land. Oxfam's research in Ethiopia, Ghana, Mali, Mozambique, Senegal and Tanzania revealed that the majority of agriculture-based land deals in Africa are for export commodities including bio-fuels and cut flowers. Unrestricted export clauses in contracts, together with small-scale food producers losing their key productive asset, may well worsen rather than improve food security. Investors' short time scales may tempt them into unsustainable cultivation practices. The situation is made worse when peasants reduce local food production to work on these new projects, or are required to abandon their

traditional crops or lands (Anseeuw, *et al.*, 2011).² It is also reported that an important portion of lands allocated to investors are not effectively developed. There are also so called investors who get huge tracks of lands for speculation purposes.

The third myth is that projects create jobs and can do something to alleviate poverty. Analysis of contracts shows that employment generation requirements are absent, or investors are given a free hand to import labour or use heavy machinery. Jobs appear to be few, short lived, seasonal and low paid. It was reported for example that an investor from the UK who had taken over some 9000 hectares in Kisarawe District, Coast Region Tanzania, had, after 2 years, abandoned the project and laid off 750 workers. A study by HAKIARDHI (2011) found that the investor had failed to make good the promises given including: employing 5000 villagers; improving social services and infrastructure; and compensating hundreds of villagers for their land (*Source: the Guardian Tanzania 17th October 2011*).

The fourth myth is that projects will bring in tax revenue. Host governments tend to forfeit benefits by offering tax incentives in the race for investment finance. Even if the host government had not forfeited benefits through tax incentives, it often lacks the capacity or political will to regulate and monitor the investment, enforce the terms of the contract or collect taxes. (see also, Anseeuw, *et al.*, 2011).

We can add a fifth myth, that investors are involved in land grabbing. In reality however, most land allocations do not violate any national legal systems. Most large-scale land leases are of state land, which is administered by government according to statute including the right to lease it to tenants. Where customary rights are ignored, this is a function of land legislation not recognizing customary use rights, rather than outright illegal allocations or acquisitions. Moreover in a number of cases involving small and medium-size land parcels, acquisition is through private treaties. Therefore, need to highlight the urgency for African countries to acknowledge the legitimacy and secure customary-based land rights as provided for the F&G.

The main focus of attention has been on the acquisition of land for agricultural production for food or agro-fuels. But the rush for the world's farmland is one component of a wider convergence of investment-related opportunities on land and natural resources that is attracting interest in agricultural, forest, mineral-rich and tourism-related lands.

It is moreover, important to note that allocation of land for investment may legitimize extraction of other renewable and non-renewable natural resources, especially water, whose significant value may not be taken into consideration in investment agreements. Thus besides the land-grab, there is also a water-grab.

3.2.9 Drivers of large-scale land acquisition

Drivers of land acquisition are to be found on both the demand side and the supply side.

² See also, *Sunday News Tanzania*, January 1 2012, p.8, article titled: "Farmers' Land Must be Protected".

On the supply side, Governments are the major land acquirers in the region being facilitated by the widespread principle of state sovereignty over land in many countries. This is because land acquisition processes involve government officials who in most cases work in favor of the investor, using their influence to acquire land for investors. Also government institutions such as District Councils, investment centers and other private sector promotion institutions, supposedly working to alleviate poverty, have acquired land from the people claiming it to be for “public interest” and “development” even though the terms are vaguely defined in the law and in practice.

Identified motives for land grabbing are:

- To use land as the means of attractive investors in a country and benefit from FDI positive effects such as transfer of technology and skills, increasing sources of revenue; improving rural infrastructure and livelihoods;
- Grabbing land for speculative purposes – government officials and influential people use their influence to acquire land so that they benefit when value appreciates or by selling it on to an investor. This was witnessed in Rwanda, Sudan and Tanzania;
- Using land as a political tool; in Kenya it was identified that politicians acquire land as a means of patronage and a mechanism to hold people to the same political system or party.

The above suggests that pressures for large-scale land allocations are both external and internal.

3.2.10 Demand and Supply side of Large-scale land acquisition

On the demand side, several global developments have triggered massive land grabbing in Africa.

Global food crisis, climate change, and increased demand for bio-fuels are some of the main triggers of land grabbing by multinational companies³. These are in some cases supported by their mother countries through political lobbying or financial assistance.

There has also been a change in the global regulatory system, which has removed legal barriers, making it easy for companies to invest in other regions. The US and EU financial institutions are possibly the most involved although Asian countries such as China and Saudi Arabia are also involved.

From an international perspective “land grabbing investment” is carried out in several ways as follows:

- Multinational companies – in the extractive industry, food retailers and bio-fuel companies. These are mostly from Europe, USA and Canada.

³ It is argued in Anseeuw, *et al.*, (2011) that in most cases land acquisition is realised through following a country’s laws and procedures usually with the assistance of the government. Land is not always acquired by multinational companies but also by local companies and local elites and politicians.

- Use of Investment funds – which would normally be invested in stock markets but have been getting less returns and have decided to invest in natural resources i.e. land, water resources, mining etc., for better profits.
- Use of sovereign wealth funds especially by China and Middle East countries. These funds are used to buy land for speculative and/or production purposes.
- National interests – in some countries government missions to foreign countries attract foreign investors through promising access to land and other natural resources e.g. Rwanda and Tanzania.

Large-scale land acquisition is focusing the region for a number of reasons including: cheap land, cheap labour, a belief that the Region is empty; weak institutions; corruption especially among those with powers to administer land; Insecure land rights; weak governance and low capacity; lack of co-ordination; lack of awareness of what is happening on the ground even by public sector institutions mandated to control land.

3.2.11: The Notion of Land Availability

Countries in the Region, sometimes motivated by a genuine wish to see national socio-economic development, claim that they have plenty of marginal or idle land that could be made available to outsider investors. The government of Mozambique stated that it had 36 million hectares of arable land that could be used for bio-fuels without threatening food security and food production. It also said that it had another 41 million hectares of marginal land suitable for jathropha. In Zambia, the government intimated of having over 30 million hectares of land “that is begging to be utilized. Ethiopia says pastoralists displaced by land grabbing can be settled almost anywhere else. Uganda claims to have 4.9 million acres of agricultural land that is sitting idle. Empirical studies however point to there being a myth about the availability of “empty”, “unused”, “idle”, “waste” or “marginal” land. In particular, local populations who use the land for non-arable uses such as pastoralism or hunting and gathering, or who use land as a common are liable to be ignored. Virtually, no large-scale land allocations can take place without displacing or affecting local populations (Taylor and Bending, 2009)

Therefore, many African governments are anxious to have investors come in and be facilitated to extensively acquire land usually in the form of long leases, especially in Ethiopia, Kenya, Mozambique and Tanzania.

A recently published Report (2009)⁴ on large-scale land acquisition based on data from five countries revealed the picture as shown in Table 9.

⁴ There are even more recent reports such as the one by ILC, Oxfam and others

Table 9: Land under investor claim: Approved Projects only (2004-2009)

Description	Ethiopia	Ghana	Madagascar	Mali	Sudan	Total
Total land area allocated (ha)	602,760	452,000	803,414	162,850	471,660	2,492,684
No. of projects approved (over 1000 ha)	157	3	6	7	11	184
Largest land allocation (ha)	150,000	400,000	452,500	100,000	109,200	
Total investment Commitments (US\$)	78,563,023	30,000,000	79,829,524	291,988,688	439,600,000	919,981,235

Source: Cotula, et al (2009)

In Tanzania, according to LRRRC (HAKIARDHI, 2008), at least 641,000 hectares had, by 2008, already been allocated to investors to engage in agro-fuel farming.

3.2.12: Conflicts related to large-scale land acquisitions

A good number of deals related to land allocations are done either behind the backs of rural communities or the communities are not given the true extent of the implications of the allocations (Palmer 2011). When communities wake up, it is usually too late to remedy the situation. Occasionally compensation could be paid but this is usually grossly inadequate. Promises are made about employment opportunities and the improvement of rural infrastructure but many times these do not materialize. Examples are to be found in the areas of Kahama, Buzwagi, Nzega and Tarime in Tanzania where investors in minerals extraction found themselves at logger heads with local communities.

In countries in the Region there have been moves to counter large-scale land acquisition. Moves have entailed:

- Open violent confrontations with investors as has been the case in Yaeda Chini and Babati in Tanzania
- Public protests such as in Uganda against the government's decision to incise part of the Mabira Forest and give the land to an investor
- Community organizing themselves and forming associations to fight for their land rights. For example, the Kenya Human Rights Organisation where coastal farmers whose land was grabbed organized themselves. In Tanzania, the Legal and Human Rights Centre and the Land Rights Resource and Research Centre have worked with land owners to claim their rights.
- Approaching NGOs for support and advice
- Taking advantages of existing processes to bring changes or proper definitions in land rights. In Kenya during the constitutional reform process, activists pushed for new and better land clauses.

3.3: Land and the Concept of Environmental Security

As a concept, Environmental Security refers to a condition in which a community, nation, or region through sound governance and sustainable utilization of its natural resources and environment, takes effective steps towards creating social, economic, and political stability and ensuring the welfare of its population.

Environmental stress and natural resource mismanagement can undermine social and political stability, impede economic development and generate conflict. However, environmental conflict—including land conflict—is never caused solely by environmental factors. Land conflict is always the result of a confluence of factors, which may include political, economic, social, and cultural factors of the sort mentioned above.

The concept of environmental security explicitly incorporates this insight as its point of departure and uses multidisciplinary analysis to: 1) seek to understand the full context within which land conflicts are taking place and 2) use this enhanced understanding to develop policy options and concrete steps to avert or mitigate conflict. Thus, when focusing on environmental problems like land degradation and deforestation, the concept of environmental security asks *how and why* these problems came into being. It focuses on the incentive structures of stakeholders and how their competing interests around land use may produce conflict. In many instances, land conflict is caused not by absolute scarcity but by perceptions of relative deprivation. Environmental security assessments (ESA) provide a tool for decision makers and other stakeholders to identify policy measures, changes in practices, and mechanisms for dialogue that can reduce the potential for conflict.

The impact of climate change on Eastern Africa's lands and landscapes presents a major challenge to the sub-region's environmental security and stability. In countries like Ethiopia, Kenya, and Uganda, drought frequency is increasing, compounding pressures on pastoralists and farmers alike. Coastal lands are becoming more vulnerable to sea level rise and storm surges. Even where changes in annual precipitation or average annual temperature are modest, marked changes in seasonal patterns and the growing intensity of severe weather events have the potential to bring about a drastic reduction in human security, raising new questions about livelihoods and land use under conditions of climate change. By incorporating the relevant political, economic, and social contexts, as well as a full range of stakeholder perspectives, environmental security assessment can help clarify future scenarios and identify climate adaptation options to achieve sustainable land use.

3.4: Country Case Studies

In this section we look at some cases of conflicts in the countries in the region and also present some reference to dispute resolution mechanisms put in place. The countries looked at are: Burundi, DRC, Kenya and Tanzania.

3.4.1 Burundi

Land disputes are common in Burundi and are often violent. Land rights, particularly access to land for certain groups, were a contributing factor to the ethnically based civil war. An estimated 90% of all court cases are related to land rights, and 60% of all crimes are linked to land. Disputes occur over claims of ownership and boundaries and are often within families and exacerbated by the waves of displacement and return that took place in response to periods of violent conflicts. Other common causes of disputes are: competing claims of inheritance (including by orphans); expropriation of land; polygamous marriages; and fraudulent land transactions.

Land-related disputes are brought before the customary institution (the *Bashingantahe*), the formal court system, or pursued informally with local authorities or NGOs. Disputes related to repatriation of refugees and internally displaced persons (IDPs) may also be resolved by the administrative body, the National Commission for Land and Other Properties (CNTB). A study in nine provinces found that over half of those people with land disputes who sought outside assistance to resolve their claims brought them to the *Bashingantah*.

The traditional *Bashingantahe* is an organized, village-level body of “wise men” (i.e., known for being true, just, and responsible) that resolves various types of disputes, including those related to land. Decisions of the *Bashingantahe* are not legally binding. Enforcement of such decisions is difficult, particularly when the decisions conflict with customary practice or where a ruling favors an orphan or widow. Traditionally a male-dominated institution, the *Bashingantahe* now includes at least a few women members with decision-making authority. Over years of conflict and political crises, the legitimacy of the *Bashingantahe* has deteriorated, and there is some evidence of problems with bias and corruption, but the system has survived.

Resolution of a land dispute within the formal court system is procedurally difficult and a lengthy process. At the lowest level, magistrates have little education and training. The courts have limited budgets, including no funds for field visits, and enforcement of judgments is uncertain. Corruption is an issue, in part due to low judicial salaries. Some members of society do not use the court system to pursue justice. (Source: USAID: *Burundi, Property Rights and Resource Governance 2010*).

A major problem facing Burundi is how to find land to resettle returning refugees some of whom have been away since the 1970s (and find that their land has long been taken by others), and some who were born in exile. Over 500,000 refugees have been repatriated since 2002, mainly from Tanzania. This issue also needs to be resolved in a regional perspective, through East African Community

The National Commission on land and other properties (CNTB) was set up in 2006 to assist returnees and other landless people, recover their land and other lost properties.

The government, in an attempt to cater for landless returnees, IDPs and other vulnerable people has embarked on building villages in some provinces each housing 250 families (Source: *IRIN, October 2008*)

3.4.2 DRC

Control over the DRC's land and natural resources has been a cause of and a means to perpetuate violent conflict. With the support of the Multi-Country Demobilization and Reintegration Program (MDRP) for the Great Lakes Region of Africa and the UN Peacekeeping Mission in the DRC, the DRC's Disarmament, Demobilization, Repatriation, Reintegration and Resettlement (DDRRR) program disarmed and demobilized thousands of ex-combatants since 2002. Armed clashes between groups continue however, especially in the eastern region; some observers suggest that the government and donors have lacked the coordinated policy, strategy and institutional arrangements necessary to attack the presence of armed combatants comprehensively and effectively for any meaningful period of time. Rebel groups have used natural resources and land access to fund conflict and have seized and distributed land to members. Smallholders and marginalized groups fleeing violence encroach on land used by others. Residents who return often find their land occupied. Disputes erupt as a result of widespread displacement during years of conflict, lack of known, enforceable principles governing land tenure, lack of land records, land-grabbing, and corruption in the exercise of land-allocation by local officials and traditional leaders

The DRC's formal court system has jurisdiction over land issues, but the system is in disarray. The courts lack financial resources, suffer interference from political and military leaders, and lack basic skills and training. Allegations of corruption and mismanagement are common. One reported cause of a violent conflict between the Hema and the Lendu ethnic groups in Ituri Province in northeastern DRC was alleged bribery of the judges adjudicating a land dispute.

Lack of confidence in the formal judicial system leads many to take claims to the police, military, or traditional dispute resolution systems. The authority of the customary system of dispute resolution has weakened in some areas where communities view traditional rulers as biased and self-interested. In addition, traditional forums are often unable to address the complexity of land issues in the post-conflict environment. *(Source: DRC: Property Rights and Resource Governance, USAID, 2011)*

DRC is also a locus of many IDPs and refugees. As of December 2010, there were a total of 1.6 million IDPs in the DRC. The majority (approx. 1.25 million) are found in North and South Kivu. The overwhelming majority of these IDPs resulted directly or indirectly from armed conflict in the region. Additional IDPs are present in Orientale Province, Equateur Province, and northern Katanga. According to the UN High Commissioner for Refugees (UNHCR), there are nearly 404,000 Congolese refugees hosted in the DRC's eight neighboring countries and in other areas. There are 123,000 refugees in the Republic of Congo as a result of interethnic conflict in November 2009 in Equateur. The DRC is currently host to an estimated 160,000 refugees from seven neighboring countries.

3.4.3 Kenya

Poor land governance has a long history in Kenya fueling frequent large-scale conflict. Irregular land allocations and ethnic favoritism in issuance of land grants and establishment of settlement schemes has heightened inequity, fractured the society along ethnic lines, and solidified mistrust of the government. Post-election violence in December 2007 and early 2008 are evidence of the deep-seated rivalries over access to land and natural resources. The rising scale and frequency of such conflicts will have important implications for political and economic stability in Kenya and for East Africa as a whole.

A number of conflicts in the country are fuelled by natural calamities especially drought. Clashes over water and pasture have significantly increased in the drought-affected pastoralist areas of north-eastern Kenya in the past three years. Water scarcity is forcing population movement well as conflicts. Insecurity has worsened the plight of pastoralist communities. Traditional conflict resolution mechanisms were failing to rein in warring communities as competition for resources has intensified. Drought and famine-related stress has also led to an increase in cattle rustling and banditry (IRIN February 2009)

In December 2011 fighting between communities over grazing land between members of the Somali and Turkana communities led to several deaths and the displacement of thousands. (IRIN, December 2011)

3.4.4 Madagascar

Land disputes in Madagascar can be divided into two broad categories: (1) conflicts between private persons over land ownership at the local level, often between or within families; and (2) conflicts between the state and private persons over ownership and control of land and local resources. Conflicts between the state and private persons are often the result of differences between formal law and customary practice and interpretation of these practices. In protected areas such as the Makira Forest, conflicts have arisen over the use of forestland for agriculture.

Communities usually have clearly defined land tenure rules and processes for resolving local conflicts between private persons. However, these local understandings of tenure rules are often at odds with the formal system regarding the acquisition and ownership of land. In areas where formal laws are applied, local community dispute resolutions systems lose their authority to resolve local conflicts, in some cases creating a vacuum in local dispute resolution.

Complex procedures and the need to travel to regional courts and seek legal advice can deter private persons from pursuing resolution to disputes with the state. Under the National Land Program's decentralized land certification program, approximately 3% of certification requests have been disputed. Roughly 20% of the disputes are resolved through mediation conducted by local authorities. If mediation is unavailable or unsuccessful, municipal authorities arbitrate the dispute with an option for appeal to

the court system if needed. (Source: *Madagascar: Property Rights and Resource Governance, USAID, 2011*)

3.4.5 Rwanda

Land disputes are common in Rwanda. The pressure on land, combined with limited non-agricultural livelihood options, was one of the factors that led to the 1994 genocide, which had been brewing between 1988-1993. The violence, which saw the loss of nearly a million lives and caused large groups of people to move in and out of the country and in and out of rural areas, put additional pressure on the land as multiple groups occupied and laid claim to the same land over time. In 2001, the government estimated that as much as 80% of the cases coming before prefect courts were land-related disputes.

The reintegration of demobilized soldiers, former prisoners, and old- and new-case returnees from neighboring countries have resulted in competing claims to land. However, the most common causes of land disputes currently relate to inheritance claims, boundary encroachment, claims arising from polygamous relationships, and land transactions. The overwhelming majority of disputes are occurring within extended families rather than between different social groups.

Most land disputes are initially handled through informal procedures using customary forums such as: the family council (a customary institution whose make-up changes depending on the issue in question); leaders of *the nyumba kumi* (a defunct administrative level for up to 10 households, whose leaders still retain some authority); *umudugudu* leaders (elected village-level leaders); and the cell executive committee.

After the genocide, Rwanda instituted a mandatory mediation process for all cases with a monetary value of less than RWF 3 million (about US \$5000). The jurisdiction of the mediators, known as *abunzi*, extends to civil cases relating to land rights and land-related inheritance disputes. Each cell has a group of 12 *abunzi*, 30% of whom must be women, and who hold the position for two years. Cases are heard by a panel of three *abunzi*, who are required to settle the dispute within 30 days. The decisions of the *abunzi* are enforced by local authorities, and parties can appeal to the court of first instance. The *abunzi* are not compensated, and receive little training on conflict resolution skills or the law. Nonetheless, some groups, such as women and marginalized groups, report a preference to have their claims heard by the *abunzi* as opposed to local authorities because they believe the *abunzi* are less biased. There is no requirement that parties present cases to the local authorities before proceeding before the *abunzi*.

The formal court system includes courts at the town, municipal, district and provincial levels. Appeals are heard by the High Court and Supreme Court. The *gacaca*, which are local adjudicatory bodies established by government to judge those who participated in the genocide, also have the power to address land issues. (Source: *Rwanda: Property Rights and Resource Governance, USAID, 2011*)

3.4.6 Uganda

Land conflicts are common throughout Uganda. Land cases are the most common disputes brought to local courts or legal assistance projects in many parts of the country. There is growing conflict between tenants and landlords. The 2007 Land (Amendment) Act is designed to protect tenants from illegal evictions. There is conflict over the use of public lands, especially lands in the protected estate. The government is increasingly eyeing such land for economic development purposes. Land-grabbing and land speculation are on the rise in some parts of the country, including in the oil regions in western Uganda. There is a reassertion of interest in land by some ethnic groups, initially through struggles for restoration of properties to traditional authorities deprived of them by previous governments as well as asserting local traditions. Traditional authorities have always sought to maintain their control over land and resources, and tribe and clan-based claims to land remain strong throughout Uganda, yet there are renewed and stronger claims being made in many areas.

During the conflict in northern Uganda, the government ordered civilians into camps. With improved security, these people have begun moving away from the camps. The traditional lands of many of these displaced peoples were occupied by others. These occupiers now claim the land. Many of the old boundaries have been lost or forgotten. Others are making fraudulent claims to land; landowners in these areas say they face a growing threat from attempts to grab land illegally. The Army, individual officers and soldiers as well as the institution, have been implicated in extensive land grabbing in the north. Conflict-resolution institutions are weak and dispute-resolution mechanisms are lacking. Traditional institutions resolve conflicts in many rural regions.

Unlike in the past pastoralists and tenure issues related to grazing are receiving growing attention. There have been conflicts over pasture and water access in central Uganda, as landowners have fenced their holdings, excluding herders who had access rights under customary agreements. Another area of chronic conflict involving nomadic and semi-sedentary herders is Karamoja where “36 percent of the area is designated game and forest preserves, and the remainder is a controlled hunting area” (MRG 2004). Expropriation by the state of customary grazing areas is a continuing point of contention and conflict with pastoralists’ communities. (*Source: Uganda: Property Rights and Resource Governance, USAID, 2010*)

4.0 Policy and Legal Responses

4.1 A multitude of conflicts

There are many conflicts over land and natural resources in the East African Region. The conflicts could be between communities within a country (or, sometimes between countries); between a community and the state; and between communities and investors.

A key ingredient to preventing and addressing these problems is community participation both in the formulation of the various land management frameworks, and in managing land resources.

The region as a whole is at different stages of formulating land policies with the resultant land laws, institutions, public awareness, capacity building and implementation programmes. From the countries which have gone through the process, or are currently doing so, a number of lessons can be drawn.

4.2 Lessons from recent practice

4.2.1 Sequencing the process is critical

All countries in the region have land problems and are characterized by a number of salient features such as legal pluralism, neglected customary tenure, vague tenures for the majority, unequal access to land between communities and on a gender basis, conflicts over land and natural resources, over-centralized and inefficient land administration regimes, lack of transparency and so on. In many countries land laws exist but these may not be commensurate with the current requirements.

When formulating National Land Policies and laws, or amending existing ones, nationwide deliberations should be held first on what should go into the NLP and subsequently into the laws. This seems to have worked well in Tanzania. In Uganda, however, a land law was passed without the policy. The current deliberations which will lead to National Land Policy can only mean that there will be need for a new land law or laws. Logical sequencing of the land reform process is therefore necessary, starting with national consultations, formulating a land policy and then the laws and institutions.

According to the Framework and Guidelines on Land Policy in Africa, the ideal sequence is as follows:

- Consultations and identification of salient problems and formulation of NLP.
- Formulation of land laws and rationalization of land-related legislation.
- Appraisal of institutional and financial/budgetary options.
- Rationalization of the institutional responsibilities for implementation of the NLP and laws.
- Dissemination of information to the public, training and capacity building.

Experience from Tanzania and Kenya shows that the process is long and arduous and will take several years to accomplish. Moreover implementation of the NLP and subsequent laws etc requires to be adequately sourced in terms of funds, human resources and institutions. Administrative capacity is

invariably the principal constraint to the implementation of land policy and law in most countries of the region, yet the resources required for the implementation rarely receive adequate attention.

For example, the Ministry of Lands in Tanzania calculated that the cost of village title registration, part of realising the Strategic Plan for Implementing Land Laws (SPILL) over a five year period (2000/2001-2004/2005) was Tshs 19.0 bn/= or Tshs 3.8bn/= p.a.. The approved allocation however, was only 1.01bn/= or an average of Tshs 3.8m/= p.a. representing just 5.3% of the expected cost of implementation (Mukandala, 2008). The picture is not different in other countries in the region.

While many countries in the region have recently adopted highly innovative and pro-poor land laws, lack of implementation has thwarted their potentially far-reaching impact on productivity, poverty reduction and governance (Augustinus and Deiniger, 2006).

Formulation and reform should not be limited to laws and institutions related to land, but also to many other policies, laws and institutions that have an impact on resources such as those related to water, forests, minerals, environment, infrastructure development, and human settlements.

The lesson here is that the formulation of National Land Policy should be comprehensive and go beyond the realm of land tenure issues. Account should be taken of other national macroeconomic policies that impinge on land and land use sectoral policies on agriculture, environment, forests, wetlands, wildlife, water, minerals and so on.

4.2.2. Land Registration and Titling

Many National Land Policies and land law documented in the region emphasize individualization of land rights, stressing titling and giving limited attention to holders of secondary rights (women, children, migrants, IDPs, pastoralists, hunters and gatherers and other minority groups). The rights of pastoralists have not been clarified and secured in law. Likewise, collective land rights such as family land rights as well as the commons, including forest, wetlands, grazing land and others have not been adequately addressed. Land adjudication and registration have been conceived in terms of individuals or villages, leaving out land uses that do not use land individually or as static communities.

Moreover, emphasis on individualization has been hinged on the belief that this will lead to higher productivity, enhance land markets and address issues of poverty alleviation, especially by allowing poor land owners to access credit markets. This assumes that poor people are eager to borrow and can handle credit. Many studies have pointed to this not being the case and to poor people not wanting to risk their property by using it as collateral for loans (Kaijage, 2005). This is a lesson to be remembered during the formulation of land policies, land laws and formalization of land rights. Studies from Eastern Africa suggest that people are more concerned with tenure security than with using land as collateral. (Payne, Durand-Lasserve and Rakodi, 2007).

There is growing consensus that, even in rural African contexts where individual titling of land may not be desirable or feasible and use of land as collateral for credit is at best a distant possibility, providing poor land owners or users with options to have their rights documented for example through land certification processes can yield significant benefits. These benefits, which arise largely from the ability to invoke formal mechanisms to protect land rights, include incentives for land-related investments, enhanced gender equality and bargaining power by women, improved governance, reduced conflict, potential, and lower transaction costs for productivity-enhancing land transfers through either rental or sale. Another benefit is land conflict prevention, as documentation might impact on land related claims and disputes. Documented land rights will also facilitate conflict resolution by the court.

4.2.3 Reliance on donor funding

The funding for the development and implementation of national land policies to a large extent comes from development partners. As a result, the input of development partners has also been significant. This has been the case with the Tanzanian and Ugandan land laws. Development partners have played an important role in the national land policy formulation processes in Kenya and Rwanda and they are assisting in the implementation of the national land policy, tenure reforms and land laws in Rwanda, Ethiopia and South Sudan. Implementation is also hinged on the availability of funds from development partners. This brings into question the ownership of these processes and their sustainability. Given that all the countries in the region have their own land problems, there is need to have home-grown solutions developed by local experts through highly consultative and participatory land policy dialogue processes.

Development partners have their own priorities depending on their mandates, normative approaches and inter-relations with the partner country. Some directly support advocacy civil society organizations (CSOs) that have been actively involved in NLP formulation and land tenure reform processes or that provide technical expertise and advocacy for the development of pro-poor land tools. The spectrum of development partners is not homogeneous and their areas of interests differ. However, generally their role is that of policy dialogue partners, facilitators of change and providers of expertise and capacity development (including technical and financial resources). The challenges revolve around harmonization, cooperation and coordination—harmonizing differing perspectives and interests and creating consensus on support priorities and policy dialogue directions.

Often times, as has been the case in Tanzania with regard to the rights of pastoralists, national governments feel that donor support for NGOs amounts to interference in a country's internal affairs. Care needs to be taken to harness the good efforts of NGOs but without creating an impression of interference.

4.2.4 Public consultations and the role of non-state actors

The F&G highlights the need to make adequate preparation for informed consultation with the land using public as well as on the need to adequately engage CSOs in the land policy development process.

There have been efforts in the region to engage non-state actors in formulating land policies and laws. This has involved public meetings and consultation with interested groups such as NGOs, the academia, chambers of commerce, community leaders, religious leaders, youth and women groups, professional bodies and others. This has been the case in Kenya, Rwanda, Tanzania and Uganda. The need for a participatory and consultative process cannot be overemphasized, as this ensures that provisions that benefit the common people are put into the policies. Public consultation and participation allows the different stakeholders to set the agenda of what is to be accomplished by the respective land policies instead of the governments setting the agenda.

Nevertheless, it needs to be realized that many of the rural communities may not have the necessary capacity to realize the implications of proposals presented in complicated jargon. They may attend the meetings yes, but they may not have an opportunity to get to the grips of what is being presented to them for approval.

However, the extent to which the views of the civil society are accepted differs. Even after the draft policies and laws have been widely discussed, it remains incumbent on officials to determine what will be taken for approval/enactment.

After the civil society has been consulted, implementation tends to exclude them on the grounds that this is government business. Given that the input of civil society is considered important, it should be involved in implementation to increase a sense of ownership, transparency and capacity building.

The lesson here is that the dialogue process seems to be restricted to the land policy formulation phase. Dialogue stops during land administration and policy implementation and the issues become government business. The role of civil society organizations as watchdogs of government commitment to reforms ought to be appreciated.

4.2.5 Urban and Peri-urban Land Issues

With the exception of Djibouti and the Island States, urbanization levels in the region are still low but growing rapidly. A good number of National Land Policies have concentrated on the rural areas, paying limited attention to urban and peri-urban areas where informal settlements are growing fast. There is also displacement of peri-urban land owners either by the market or through government planning schemes. These land owners need protection lest they become landless or sink into poverty. A lesson here is that National Land Policies need to be comprehensive and cover rural, peri-urban and urban areas comprehensively. All countries in Eastern Africa need to develop an urban development and management policy which will address the wider urban development issues and the urban–rural development issues. The Kenyan National Land Policy has comprehensive provisions for urban and peri-urban land problems (GoK, 2009)

4.2.6 Dispute Resolution Mechanisms

All National Land Policies need to take into consideration issues of land disputes and conflicts and address the question of dispute resolution mechanisms. The objective is that these should be fast efficient and just. Observations show that the mechanisms put in place are land tribunals (Tanzania and Uganda). They have complex litigation and adjudication procedures usually associated with ordinary courts. With the exception of Somalia, no specific recognition is given to indigenous mechanisms of dispute processing or customary law as a normative framework for processing disputes under customary land tenure. Many disputes cannot therefore be brought to the tribunal. Those submitted to the judge are piling up at the tribunals, remaining unresolved. Moreover, disputes beyond individuals or groups of individuals, such as a whole community against another community or a community against the government or a government backed stakeholder (such as a mining company), cannot be easily solved by tribunals. There is therefore the need to give support to traditional dispute resolution mechanisms. The following quotation from the Kenyan National Land Policy (2009:49) points in the right direction:

There is a need to ensure access to timely, efficient and affordable dispute resolution mechanisms. This will facilitate efficient land markets, tenure security and investment stability in the land sector. In order to facilitate effective, fair and efficient dispute resolution, the Government shall:

(a) Establish independent, accountable and democratic systems backed by law to adjudicate land disputes at all levels;

(b) Establish appropriate and inclusive institutions for dispute resolution and access to justice with clear operational procedures, and clear record keeping for making decisions on specific matters; and,

(c) Encourage and facilitate the use of Alternative Disputes Resolution (ADR) mechanisms such as negotiation, mediation and arbitration to facilitate speedy and cost effective access to justice.

The encouragement of the use of ADR mechanisms is an approach to be commended.

4.2.7 Importance of Local Conditions

Eastern Africa as a region has strong local differentiations and this affects: first, whether countries are able to focus their attention on the development of National Land Policies (this would be the case for countries in conflicts such as Somalia); and second, what to focus on. In the Island States, for example, the focus is more on environmental protection, tourism promotion and housing compared with countries on the mainland of Africa which focus on land tenure and management issues. The lesson here is that since the ultimate goal is to attain national development and fight poverty, countries can choose different paths and emphases.

4.3 Best Practices

Several best practices can be gleaned from the region. These can be considered under several thematic categories.

4.3.1 Sequencing of Policy Processes

The need to have a logical sequencing of the land reform process, starting with national consultations, formulating a land policy and then reforming the laws and institutions cannot be overemphasized. Tanzania offers the best example in sequencing the process. It has gone all the way from land policy development, through legislative reforms and institutional reforms to actual implementation of National Land Policy in form of the two land laws and the Strategic Plan for the Implementation of Land Laws (SPILL). Kenya is on course with the ideal sequence, albeit slowly. Uganda did it in reverse, with the land law being enacted before the formulation of National Land Policy. Nevertheless, the country is now in the process of formulating the land policy; the land law will have to be amended after the land policy has been approved.

4.3.2 Participation in the Reform Process

A wide spectrum of organizations ranging from government to private, civil society, NGOs and community based organizations is central to the evolution of National Land Policies, land laws and implementation of these policies and laws. These organizations provide a variety of services and functions, including setting the agenda, lobbying, policy analysis, technical land services, finance, marketing, community development activities and attending to the specific needs of members.

Public consultations and participation are critical to the processes and it is important to secure and engage the support of all stakeholders in the formulation, operationalization, monitoring and evaluation of the NLP implementation processes. The civil society, NGOs and land rights holders need to be involved in the process.

There was active public consultations and participation in Kenya and Tanzania throughout the formulation process. In Rwanda, the enthusiasm for public consultations and participation seem to have waned after the NLP was passed; civil society is currently seeking ways to participate and be involved in the implementation process. There is need to confer continuous legitimacy to the process of implementation.

4.3.3 Land certification

All countries in the region have instituted some initiatives to title and register land as a way of addressing poverty, increasing security of tenure, resolving conflicts, improving governance and equity and increasing land transparency. Despite the realization that there are benefits to land registration, countries have not been able to mount programmes that could lead to the achievement of such benefits on a sufficiently large scale to provide options for the majority poor.

Ethiopia, however, offers a good practice where, over a period of two to three years, the country registered the majority of rural lands in a rapid process at relatively low cost. In 1997 a federal proclamation (law) devolved responsibility for land policy to the regions. Under the programme, each

village elects a Land Use and Administration Committee that takes responsibility for public registration of plots in a field-based process with the presence of neighbours to increase transparency and reduce the scope for manipulation or error. Once results have been discussed in public, households receive a preliminary registration certificate identifying their holdings, to be followed by an official certificate with the holders' pictures and space for maps. The programme has registered 20 million plots for some 5.5 million households in a very short time. The cost for first time registration (including the certificate) is around \$1 per plot. Use of GPS to add spatial reference would cost around \$1.5 per plot. This provides an important benchmark for other African countries, and suggests that technical factors are not sufficient to explain the limited progress with implementing innovative new laws and reforms.

The evidence from Ethiopia suggests that large-scale and rapid delivery of land certificates in a participatory way is possible, without bias to favour the wealthy and to marginalize women. Positive assessment of the process by users, readiness to pay and replace lost certificates, high demand and willingness to pay modest sums for a spatial reference and their positive assessment of likely impacts suggest that the modalities of implementation responded to local needs. Most of the disputes were solved in the field and outcomes were not in favour of the wealthy or against women. This reinforced the initial evidence of positive investment and transfer effects.

The Ethiopia case also illustrates that given the massive scale and positive impact of first-time land registration, technical obstacles and resource constraints cannot explain the near-universal failure by African countries put the innovative aspects of recent legal reforms into practice. Instead, the main obstacle to documenting land rights of current occupiers on a massive scale seems to be political. With political commitment, documenting land rights on a massive scale and at a cost that is affordable under African circumstances is feasible and can have significant benefits even in the short term (See Klaus Deininger's paper at <http://www.isnie.org/assets/files/papers2007/deininger.pdf>)

The example of Ethiopia can be complemented by the case of Madagascar where from 2005 the government has resorted to the use of local systems of land management to mount a land registration process in rural areas. Before this, one had to travel 300 km to get a title; the process took 7 years. Local communities have a *Guichet Foncier* or communal land management office responsible for acknowledging private property rights by issuing a *Certificat Foncier*. The whole system is based on local management. As a result, the time taken to get a title has been reduced to 3 months, and the cost has come down from \$500 to \$24. The *Certificat Foncier* can be issued 12 times faster. The *Certificat* is to be introduced in urban areas with the support of the UN-HABITAT.

4.3.4 Coexistence between Agriculturalists and Pastoralists

One of the major problems in the region is reconciling the land needs of agriculturalists with those of pastoralists and other land users. Two issues need to be addressed. First, encroachment on traditional pastoralists' land and, second, pastoralists have been accused of driving their animals on to farmers' land causing extensive destruction. This has often led to clashes between the two groups resulting in the

loss of property and life. Conflicts are more frequent and severe during the dry season and during periods of prolonged drought.

However, lessons can be drawn from the experience of two communities—the *Kawahla* (farmers) and the *Gawamba* (herders)—in the village of Gereigikh in North Korfodan State (Sudan) who have learnt to coexist offers useful lessons. Farmers learn that when cattle graze on their fields, the animal droppings make good manure for crops, improving productivity. Farmers therefore allow the herders access to the fields at appropriate times. Now the two communities have developed a symbiotic relationship: they have relationships in the market place over the supply of manure and labour; and they buy products from each other. In times of drought the farmers sell water to herders. The herders supply farmers with dairy products, while the farmers supply them with agricultural produce.

The risk of a flare-up is always there, usually over animals grazing on cropland and sharing water points. However, the communities manage because the tribal system, where traditional leaders arbitrate conflicts is very strong in the area. Furthermore, transhumance routes, whereby herders can move their animals through farmers' areas to other parts of the country in search of pasture and water, are well recognized and protected. Countries in Eastern Africa may want to draw some lessons from this experience.

4.3.5 Decentralization of Land Management

Land management regimes in the region have traditionally been centralized. Reforms to realize decentralization have been undertaken with limited results. Tanzania, however, took the bold steps of formulating two land tenure laws, one for urban land and the other for rural land. Under the rural land law, customary practices are recognized provided they are not discriminatory against women. Village assemblies and village councils are given powers to manage rural land and to issue certificates of customary right of occupancy (CCRO). Although the Commissioner for Lands retains some powers, powers are decentralized to the villages. Uganda, under the 1998 Land Act, decentralized the land management function to the parish level. However, the implementation has been difficult due to inadequate financial resources and administrative capacity. Kenya's National Land Policy provides for decentralization land administration, while Madagascar offers some examples of good practice in decentralized land administration, capacity building and linkage of customary and statutory tenure.

4.3.6 Piloting

Land reform undertakings are expensive and may have unforeseen implementation and tenure results. As a result, many countries undertake piloting before rolling out the full-scale reform undertaking. Rwanda offers good examples in piloting land tenure regularization which is community based in both rural and urban areas. Moreover, Rwanda is piloting new surveying technologies. Piloting provides an opportunity for flexibility, innovation, learning by doing and then scaling up what works.

4.3.7 Sustainable Natural Resource Management

Two decades ago Shinyanga and Tabora regions, a dry land area in western Tanzania, was labelled the “Desert of Tanzania”. Gradually and steadily, residents are reclaiming large parcels of land through the efforts of their communities, public sector agencies and development partners. They are rehabilitating once-thriving dry land ecosystems using science-based agro-forestry techniques.

In Shinyanga Region alone, scientists estimate that some 350,000 ha of land have been rehabilitated in two decades. Current estimates show that about 40 million hectares, or more than half of Tanzanian’s land, is highly degraded. Historians note that until the early part of the 20th Century, western Tanzania was home to a thriving woodland ecosystem that had a large diversity of flora and fauna and easily supported the livelihoods of its people. By the 1920s, however, things had begun to change.

Policies put in place by the Colonial Government—often with little knowledge of local conditions or an appreciation for the inherent fragility of the region’s natural resources—proved highly disruptive. With little foresight, the new policies encouraged the conversion of woodland areas to agriculture, a policy that severely taxed dry land soils and disrupted traditional land use systems. No one is quite sure why this was allowed to take place, as the result was virtually preordained, but one explanation is that the Colonial Government sought to eradicate the tsetse fly scourge that limited cattle rearing. In so doing, the government created conditions perfect for overgrazing, quickly overwhelming the carrying capacity of the land. Subsequent efforts by the World Bank and other agencies in the 1960s and 1970s to reforest the region failed to stem the loss of indigenous woodlands. This was mainly because the projects lacked scientific rigour and the understanding of local environments and cultures required for scaling up. Many observers believed that the region’s decline could not be reversed.

Happily, things have changed for the better. In 1988, researchers identified the main land use constraints in the agro-pastoralist region of western Tanzania as inadequate fodder, shortages of wood products, soil degradation, declining crop yields and insecure land tenure. Three years later, scientists from the World Agro-forestry Centre (ICRAF) joined agencies in the region that were working on projects to check environmental degradation. The Centre focused mainly on research to support the activities of *Hifadhi Ardhi Shinyanga* (HASHI; Land Conservation Programme in Shinyanga), an award-winning region-wide development programme (UN Equator Prize 2002) that effectively brought together science, extension, and financial services.

Working with various partners, scientists from ICRAF began by carrying out a survey that identified five agro-forestry technologies as key to reclaiming the degraded ecosystem. These techniques included rotation woodlots, improved fallow, fodder bank, domestication of traditional medicinal trees and fruit trees—all land management techniques that built on traditional knowledge. The research team identified a total of 56 tree species which were introduced on farms. This was followed by training various stakeholders, including extension workers, to disseminate the chosen agro-forestry technologies and encourage local communities to adopt them. To varying degrees, the efforts by HASHI and other

projects implemented by more than a dozen agencies proved effective in stabilizing large areas of land and gradually reversing the damage caused by years of misuse.

The biggest success of the HASHI project, observers say, was its use of *ngitili*, a traditional land use system in which large areas of land are set aside by communities and individuals to ensure that forage is available for draught animals at the end of the dry season. Community *ngitili* set aside usually cover about 50 ha, while those of individual farmers are far smaller. In the *ngitili* system, vegetation and trees are nurtured on fallow land during the five-month long rainy season. By mutual agreement in the community, animals are kept away from the *ngitili* so that fodder is available during drier months. In 2003, economists estimated that more than 800 villages were using different variations of *ngitili* systems. Subsequent studies showed that *ngitili* had had a substantial impact on local incomes, contributing up to \$500 to each household every year, a large sum in rural Tanzania. In addition, the practice greatly reduced women's labour, cutting the time spent on searching for fuel wood by over 80 per cent, and had a highly positive impact on biodiversity.

4.3.8 Gender-sensitive land policies and laws

Uganda offers some of the best practices as far as gender policies and laws are concerned. The Constitution and the Land Act provide for gender equality in land access and land ownership; affirmative action in favour of women; and two instruments declare illegal, all customary laws and practices that discriminate against women. In the matrimonial context, Ugandan land law has specific provisions protecting spouses from sale of jointly occupied land without the consent of the concerned spouses. Tanzania has provided for spousal co-ownership and consent in dealing with matrimonial property in land and marriage laws. The new land laws in Eritrea and Ethiopia support women's land rights as they provide that both men and women will receive equal land allocations in their own right, which they may farm together or individually as they prefer. The law in Eritrea and Tanzania provides for divorcees to retain a share of the land.

5.0 Use of Existing Policy Frameworks and Mechanisms at Continental Level

As pointed out earlier, given the importance of land in Africa, there are a number of Policy Frameworks and Mechanisms which can assist policy makers in addressing the numerous land problems in their countries.

5.1 The United Nations Convention to Combat Desertification (UNCCD)

The region has a substantial desert landmass making the UN Convention to Combat Desertification very relevant to land management and rights. The Convention recognizes that national governments play a critical role in combating desertification and mitigating the effects of drought and calls for improvement of the effectiveness and coordination of international cooperation to facilitate the implementation of national plans and priorities. Under article 4(2) of the Convention, parties undertake to promote cooperation among affected parties in the fields of environmental protection and the conservation of

land and water resources, as they relate to desertification and drought. Further, they undertake to strengthen sub-regional, regional and international cooperation in this regard. The Convention requires that parties prepare national action programmes to achieve the objective of the Convention, and requires that such programmes be closely inter-linked with other efforts to formulate national policies for sustainable development (Article 9(1)). Such programmes would include the re-settlement of communities where activities which threaten to cause desertification, are carried out and regulation of access and control of other natural resources, especially water and forests. This has a direct impact on land and other natural resource rights as it involves a re-definition of these rights through the national processes of legislation and implementation of other national policies aimed at the fulfilment of the obligations assumed under the Convention.

In compliance with the provision of the Convention the following countries in the region have formulated National Action Programmes which specify the respective roles of government, local communities and land users and the resources available and needed.

Table 10: UNCCD Submission of National Action Programmes, Eastern Africa

Country	Submission Date
Burundi	2005
Djibouti	2000
DRC	2004
Eritrea	2002
Ethiopia	2000
Kenya	2002
Madagascar	2001
Tanzania	2000
Uganda	2000

Source UNCCD 2005.

Under the Convention, national action programmes are required to identify the causes of desertification and practical measures to combat it and mitigate the effects of drought. These programmes must also:

- Specify the role of government, local communities and land users and identify available resources
- Incorporate long-term strategies
- Suggest preventive measures
- Allow for modifications in the face of changing circumstances
- Enhance national climatological, meteorological and hydrological capacities
- Promote policies to strengthen institutional frameworks for cooperation and co-ordination and facilitate access by local people to appropriate information and technology

- Provide for effective participation at local, national and regional levels, and,
- Require regular review and progress reports on implementation.

The convention also provides guidelines for: implementation and co-ordination of action programmes; information collection, analysis and exchange; research and development; technology transfer and development; capacity-building, education, and public awareness; mobilizing financial resources and establishing financial mechanisms.

5.2 The African Peer Review Mechanism (APRM)

The APRM is a voluntary mechanism open to any AU country. A country formally joins the APRM upon depositing the signed Memorandum of Understanding (MOU) of March 9, 2003 at the NEPAD Secretariat. As of mid-2011 31 countries had formally joined the APRM. These countries are; Algeria, Congo Republic, Ethiopia, Ghana, Kenya, Mozambique, Nigeria, Rwanda, South Africa and Uganda; Burkina Faso, Cameroon, Gabon, Mali, Senegal Mauritius (in 2003); Egypt, Benin, Angola, Lesotho, Malawi, Sierra Leone, and Tanzania (in 2004); Sudan and Zambia (in 2006); São Tomé and Príncipe, Djibouti (in January 2007); Mauritania, Togo (in 2008); Cape Verde (in 2009); and Liberia and Equatorial Guinea (in 2011). This means, at least 4 countries in the region are members of the APRM.

The APRM is based on a “self-assessment” questionnaire developed by the APR Secretariat. It is divided into four sections: democracy and political governance, economic governance and management, corporate governance and socio-economic development.

There are four types of review: Base review, carried out within 18 months of a country becoming a member of the APRM; Periodic review – every 2 to 4 years; Requested review – any country can request an additional review for its own reasons; and “Crisis” review. Signs of impending political or economic crisis could be a sufficient cause to institute a review. The first four countries to conduct these reviews are: Ghana, Kenya, Mauritius and Rwanda.

Land featured in the Review carried out for Kenya it has been problematic since independence with some societies feeling that there are historical injustices with relation to access and development of land. The constitution contains fundamental departures from the past. Putting public and trust land beyond the reach of greedy leaders, reducing foreign leases from 999 to 99 years, extending inheritance rights to daughters, and establishing a permanent Land Commission to enforce probity are among the signs of improved statutory framework.

The views from the field trips showed limited appreciation of these changes. In areas of pastoral Kenya such as Samburu and Isiolo, the problems of communal titles and the fate of trust lands were stated as matters of continued concern. At the Coast, the slow pace of registering titles for locals and the continued alienation of the limited land by rich investors remains a thorny issue.

Ethnic distrust and discomfort with settling IDPs in areas away from their ethnic neighbourhoods receives continuing animosity in many parts of the country. The case of Narok is particularly loudly protested. Large protest rallies have been held there recently in efforts to stop the government from settling IDPs from another community in a neighbourhood which is predominantly Maasai. Rumours of plans to similarly settle IDPs in Lamu were strongly condemned by local politicians before government declared that there had been no such plans. Unequal ownership and access to land remains a source of resentment and tension even in areas where such friction has traditionally been subdued like the case of Jodak land lords in Migori.

In areas like Kakamega, poverty has been exploited by rich non-locals who have ended up buying much land and converting erstwhile land owners into rural workers. The tension it has generated is said to be one of the reasons why ethnic violence flared up in parts of the county in the period after the last elections.

Respondents called for more civic education on the new constitutional provisions and land policy, and practical steps to show that the promise of dealing with land injustice is not limited to print but demonstrated by action. Government is also urged to model a viable policy of resolving the perennial conflict over land use between pastoralists and agricultural communities where they compete for land resources in places like Isiolo, Tana River and Laikipia. (Kituyi, 2011)

The APRM can therefore be a valuable tool in monitoring and evaluating progress in land policy formulation and implementation.

5.3 AU Framework and Guidelines on land policy in Africa

The AU Framework and Guidelines on Land Policy in Africa was approved and adopted by the Assembly of the Heads of State and Government in July 2009.

The Framework and Guidelines document is not supposed to dictate what the independent African governments should do but to give a framework which can assist the various governments in which they can prepare their national land policy frameworks. Chapter one provides the justification for, and process followed in developing the F&G. Chapter two describes the context which has defined the nature and characteristics of the land question in Africa in order to explain the reason why the land sector has not played its primary role in the development process. That role is examined in Chapter three. Chapter four sets out the key operational processes which African countries will need to follow in order to develop comprehensive policies that would enable the land sector to fully perform that role. Chapter Five analyses the difficulties likely to be met and conditions necessary for the effective implementation of such policies. Chapter six discusses the measures which African countries may wish to put in place to track progress in the development and implementation of those policies. The final Chapter is a concluding statement on how member countries of the AU might want to use the F&G.

The F&G are available for all those countries that have not developed their NLP but also for those that have developed them but need to be implemented and monitored and, if necessary revised. There are efforts to implement the declaration on land use of the F&G through: i) Awareness raising and advocacy; ii) capacity building; iii) networking and knowledge sharing and lesson learning.

5.4 Resolution and Prevention of land Related Conflicts

A number of approaches can be gleaned from best practices as well as the Framework and Guidelines on Land Policy in Africa on how to minimize or resolve land related conflicts. And they revolve around the following:

- Improving land governance including ensuring security for land owners/user including the proper recognition and definition of customary/traditional land tenure and management systems
- Identifying sign of potential conflicts and dealing them at an early stage before they get into full-scale disputes. Such functions should be integrated in the mandate of land observatories.
- Document and draw lessons from any conflicts that occur and take preventive measures so that they do not occur again
- Transparency and inclusion of all interested parties in land allocation etc deals, including those involving commercial investors in land
- Swift conflict resolution arrangements based on dialogue, alternative dispute resolution approaches and involving traditional land administration systems

6.0 Scenarios for Monitoring and Evaluation of Land Policy processes and land conflicts

The Framework and Guidelines for Land Policy in Africa, call for the institution of a tracking system, to monitor developments in land administration and management improvements in various countries.

6.1 Tracking principles

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

The third principle is to assess the extent to which the objectives of the land policy are achieved (for example objectives related to tenure security, equitable access to land, and reduction of conflicts). This

principle measures the gap between the objectives and the result obtained, and also seeks to give coherent explanation to the observed differences especially in regard to implementation.

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

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

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

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

6.2 Criteria for application of tracking principles

Application of tracking principles should conform to at least five criteria. First, the tracking process should be fully participatory. A sound tracking mechanism should be based on clear issues, questions, benchmarks, targets and indicators, developed through a systematic and participatory process. All relevant stakeholders should be involved from the initial stage of the process. Every effort should be made to achieve this even if the government is responsible for leading the process. Second, an effective tracking mechanism must be run on the basis of transparency, and good governance. Besides it should be iterative, and systematic with adequate mechanisms for communication and feedbacks. Third, proper tracking indicators should be adaptable to time, space and geographical specificities. Fourth, realistic benchmarks, including datelines, must be defined after a consultative process. Fifth and finally, it is important to set relevant measurement frequencies for different components of the tracking system. For example inputs and impacts indicators cannot be measured within the same timeframe. While input indicators can be measured annually, budgetary constraints permitting, the periodicity of assessment of impacts would depend on available information from research and similar sources. In particular, assessment of changes arising from land policy implementation, such as its effects on livelihoods, economic activities and sustainable natural resource management, would require much more time. Indeed such assessments are often long-term processes which require additional investments.

6.3 The Scorecard Framework

Following in the footsteps of the completion of the Framework and Guidelines on Land Policy in Africa, there was a scorecard initiative by RISD- ILC in Rwanda to assist countries in monitoring and tracking developments in land policy. This is a useful tool as is the APRM to give implementers bench marks on which to peg their goals; as well as a foundation to build upon. Countries in the Region will need to have their capacity built to operationalise the scorecard framework.

6.4 The Need for Feedback

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

7.0 Recommendations and Way Forward

African countries needed to make effective and productive, the F&G since it should assist them to realise the full potential of land as an asset, that will make access to and development of land as a tool for economic development, peace and security easy and equitable; that will ensure the sustainable development of land resources including environmental security; and that will ensure that conflicts over land resources are prevented or are swiftly and conclusively dealt with should they occur

The LPI that led to the development and adoption of such tools the Framework and Guidelines on Land Policy in Africa is timely given the situation of increasing conflicts over land resources, the environmental stress that African countries are suffering from, and the surging commercial interest in Africa's land and natural resources. The LPI may want to embark on developing specific programmes on land conflict management

Land policies should not be considered in isolation but should be seen as a pre-requisite for economic growth, sustainable human development and peace and security. African countries in general and those in Eastern Africa in particular, need to develop holistic and comprehensive land policies at national level. Such land policies should be based on clear understanding of critical issues and challenges which must be tackled. The policies need to be developed and implemented on the basis of an inclusive and participatory platform.

Land Policy implementation means the translation of the adopted policy into a programme of land reform. Moreover, African governments need to develop appropriate land administration systems including structures and institutions for land rights delivery and land governance. A key point to observe here is that these structures must be decentralized, where efficiency, transparency and accountability are cardinal ingredients.

The Framework and Guidelines on Land Policy in Africa is widely acknowledged on the continent as a valid and legitimate tool. Countries in the East African Region are at various levels of implementation. There are those like Tanzania who developed their land policies before the guidelines were in place. Such countries may need to review and re-evaluate their policies in the light of the guidelines. Kenya has just completed developing its national land policy, a process which was strenuous. Implementation must now be embarked upon. Uganda is in the process of developing a national land policy and stands to benefit immensely from the application of the Framework and Guidelines.

DRC, Djibouti, Seychelles, Comoro, Eritrea and Somalia are yet to develop their national land policies, much as their countries need a land policy framework urgently. These countries have a chance to realise the full potential of the Framework and Guidelines.

Rwanda, Ethiopia and Madagascar are implementing large scale land formalization programmes. Lessons can already be deduced from their experiences which could provide a feedback to the Framework and Guidelines, but, as these countries develop their land policies, they too stand to benefit from the application of the Framework and Guidelines.

Eastern Africa must take immediate steps to prevent recurring land conflicts and to stem continued environmental stress.

The LPI needs to take stock of what is going on in the various (Eastern) African countries on the land policy development front and intervene as appropriate to interest governments to apply the Framework and guidelines, as well as to submit to the monitoring mechanisms

The Framework and Guidelines need to be popularized through the holding of regional workshops, through academic and research institutions in the region and by informing national and regional parliamentarians.

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