

LAND POLICY:
ITS IMPORTANCE AND EMERGING LESSONS
FROM
SOUTHERN AFRICA

BY

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1. Introduction

As with many other resources the supply of the land resource is fixed, whilst the demand for it has been gradually increasing over the years. As a result in most countries in Africa land can be classified as a scarce resource. As such, it is important that the distribution, ownership and use of land is very closely regulated. In addition to these supply and demand dynamics, land is an important resource in Southern Africa because the majority of economies in the region are based on agriculture. These factors account for the importance of land as an important resource. However, in addition to being an economic tool, land is also a political tool. Why is this?

The significance of land in the political sense has its origin in the advent of colonialism and the ensuing expropriation of land belonging to the local peoples. This expropriation, frequently legitimised by settler legislations, resulted in massively unequal land ownership in favour of the settler communities. These patterns of distribution became the basis of, once again, grossly unequal capital accumulation and dominance of the emerging economies by the settler communities at the expense of the local communities.

The inequalities established in this way have persisted in independent Southern Africa as has the disgruntlement caused by these inequalities. It is this reservoir of emotion that frequently finds political expression. The land issue finds additional political significance in the fact that repossession of expropriated lands was an important element of the liberation struggles of many of the states in Southern Africa. Hence the fact that the issue of the inequitable distribution of land remains unresolved, in essence, implies that the issue of liberation itself remains unresolved. Herein lies the significance of land as a political issue.

On the ground, the reality is often that population densities in the communal or rural areas are unsustainably high. This has often meant that landlessness has crept in as there are no more fields available for allocation to new families. In addition, years of relentless cultivation of originally poor soils will have resulted in serious degradation/erosion. The combined effect of such factors has been an unprecedented increase in the demand for land and along with it, a hike in

land related confrontations and disputes. For many years these disputes were confined those pieces of land that had been allocated to the local peoples for their use. However, in recent times, land hungry locals have tended to look beyond the boundaries of their communal lands to the more plentiful, more productive commercial, white owned lands as a solution to their landlessness.

The escalating intensity and frequency of land disputes has been a clear indication of the fact that the land issue is not going to go away and that it must be resolved. It is in response to the need to address the very complex land issue that land policy has emerged as an important social, economic and political factor in Southern Africa.

2. The Objectives of Land Policy

Land policy may be defined as a set of basic principles, guidelines and rationale upon which land legislation, together with the strategies and infrastructure for their implementation, can be developed.

A comprehensive national land policy is required in order to give reasonable *clarity*, consistency and *certainty* necessary to provide the *confidence* necessary for the promotion of economic development (Munro-Faure, 1997).

National land policies have in common, the overall objective of providing an enabling framework for the development and implementation of land related legislation in an integrated, harmonious manner. In addition to this overall, shared objective, the land policies of specific countries have more specific objectives. These vary, depending on the prevailing and historic circumstances, and therefore, the objectives of policy. Some examples are considered in Box 1.

Box 1: Specific Objectives of Land Policy Formulation

- Zimbabwe
 - to address historical/contemporary inequalities
 - to democratise access & control over land
 - to provide the guidelines for land reform processes
 - to provide for more optimal use of land

- In South Africa
 - to redress the injustices of apartheid
 - to foster national reconciliation & stability
 - to underpin economic growth
 - to improve household welfare & alleviate poverty

- Namibia:
 - to redress the problem of dispossession, discrimination, and inequitable distribution of land inherited from the colonial past

- Zambia:
 - to facilitate an efficient land delivery system
 - to provide & facilitate timely & accurate land information to institutions and the general public facilitate the process of physical planning
 - to ensure the implementation of development plans and good land management maintain identified tenure systems

3. The Impetate for Land Policy Reform

This paper has so far referred to the process of land policy formulation. It is true however, that the development of land policies usually constitutes *policy reform*, rather than *first time formulation*. This is because most countries in the region inherited groups of statutes effectively constituting land policies from colonial administration. Hence, in some ways it is more accurate to refer to processes of land policy reform.

The impetate or the drivers of policy formulation or reform have tended to vary from country to country. However, Okoth-Ogendo (1998), recognises the following main drivers:

Box 2: Drivers for Land Policy Reform

- **Political drivers:**

- -the need to ensure equity
- the need to correct historic wrongs
- - the need for governments to fulfil nationalist promises made during the liberation struggle phase

Political drivers have been key in Zimbabwe, South Africa & Namibia

- **Economic drivers:**

- the need to achieve rapid agricultural through improved policies as well as the through the provision of land
- the need to make the agricultural sector more viable by increasing the producer base
- the need to make the farming sector more viable
- tend to promote the individualisation of title as being fundamental to individual responsibility
- mostly promoted by western donor agencies

Economic drivers have played an important role in South Africa & Mozambique

- **Social & Cultural drivers:**

- the need to conserve & reconstruct indigenous institutions
- the consolidation of social and cultural practices on land

Economic drivers have been important in highlighting the need for policy reform in Swaziland and Lesotho

One may add one more category to these:

- **Environmental protection & sustainability drivers:**

- the need to monitor patterns of land use
- provision for environmental considerations in land use
- the need to harmonise conflicting agricultural, forest and recreational land use patterns

This category has been particularly significant in Lesotho and Swaziland.

4. The Importance of Land Policy

The report of the Malawi Presidential Commission of Inquiry on Land policy reform, (1999) points out that, “Public decisions can and often are made and implemented without explicit policy. This happens routinely in the area of legislation where it is often assumed that the issues at stake are clear and solutions to them readily available. The vast amount of legislations in most countries of the world are outcomes of this approach. In recent times, however, it has come to be accepted that legislating in important areas of political economic life requires policy development before laws are written. Land as the fundamental basis for social production and reproduction belongs to this category”. In Southern Africa, South Africa has followed this path, whilst policy researchers in Zimbabwe, and Malawi have advised their governments to do the same.

In Southern Africa, as in other parts of the world, the land issue tends to be a multifaceted and complex one. “The land issue” tends to incorporate the issues of land tenure, land redistribution, land use and land planning. Whilst each one of these issues might have a dynamic of its own and differing levels of urgency, these factors are interrelated and thus affect each other. Hence, in order for the cohesive development of national issues relating to land, a cohesive land policy that fosters complementarity and consistency between the respective factors is necessary.

In many countries, such as Zimbabwe, Zambia and Malawi, sectoral land use policies (e.g. forestry, agriculture, housing and environment) have been developed in the absence of a basic land policy. Sectoral policies, whilst very relevant to their specific sectors, tend to be developed by specific line ministries and as such, tend to be limited in their focus. There have several consequences resulting. These include:

- the absence of basic, agreed criteria for rationalising the competing needs for land from the different sectors
- the absence of guidelines for ensuring the efficient use of available land resources.

The end results have been:

- increasingly significant land use conflicts between sectors
- inefficiency and bureaucracy resulting from the duplication of activities by multiple government institutions
- intensifying 'turf ' conflicts between institutions.

Table 1 considers the status of each of the countries of Southern Africa with respect to the presence or absence of a comprehensive land policy.

Table 1: Land Policy Status of Southern African States

Country	Policy	Status
Botswana	None	Agricultural Policy of 1991 addresses some of the issues
Lesotho	None	The need for a national policy has been observed by different studies and reports within and outside government
Malawi	None	The most important outcome of the recent Presidential Commission of Inquiry on Land Policy Reform was the need for a land policy.
Mozambique	Nat. Land Policy, 1995	Policy led to Land Act, 1997. Currently considering proposals to develop strategies for implementation.
Namibia	Nat. Land Policy, 1998	Recently finalised, implementation now beginning
South Africa	White Paper on South African Land Policy, 1997	Under implementation.
Swaziland	Draft National Land Policy 1999	Yet to be finalised.
Zambia	Draft National Land Policy, 1999	Still being formulated. Land Act in 1995 preceded the land policy.
Zimbabwe	Draft Nat. Land Policy, 1999	Presently awaiting approval by cabinet.

(Source: Alden Wily with Mbaya, 2000)

5. Principles of a Good Land Policy

5.1 Directing the process of Change

As already mentioned, any one country, the land sector is varied and complex. Hence, a good land policy essentially conveys the guiding vision along the lines of which development should proceed. In Southern Africa as in other parts of the world (perhaps even more so in Southern Africa), the land issue is very political in nature. This is unavoidable considering the historical context. In addition, it is true that the land issue remains largely unresolved. As a result, there is, and continues to be, the opportunity for discontent about landlessness and land inequality to explode into social upheaval and revolution. For this reason, a land policy designed for a country with a history of expropriation and inequitable land distribution must be proactive in outlining an orderly process of addressing this inequity.

5.2 A Permanent Agenda

The fact that the land issue is unavoidably political in nature has meant that land related sentiments could be manipulated for political gain. Hence, a good land policy adopts a long-term perspective that is responsive to prevailing needs, yet consistent.

5.3 Upholding Good Governance

A good land policy should also uphold good governance. Good governance may be said to incorporate democratic rules, rule of law and law enforcement, participation and transparency. Good governance has a significant role to play in controlling power so as to avoid land-related corruption, land concentration and land-grabbing.

In the last few years, there has been an increasing awareness of the centrality of good governance practice to the resolution of prevailing land problems. An important component of good governance is the observance of the process of consultation with civil society and with the public in general as part of the policy formulation process. For this reason, a progressive policy should include the requirement for government dialogue with these various sectors.

6. Important Elements of a Land Policy

A good land policy must;

- identify the objectives of the policy process
- identify policy issues to be addressed
- Develop the framework of the policy

In overall terms, the framework for land policy needs to be considered with respect to areas where policies relevant to land will be important. These policies include the political, economic, fiscal, physical and social policies.

- outline key programmes required to effect the intended outcomes
- give outline of administrative arrangements required for the implementation of the policy
- consider legal framework required for the facilitation of implementation
- consider institutional arrangements necessary
- account for resolutions of international conventions and summits

Elements of the land policies of South Africa, Namibia and the draft policy of Zambia are considered in Boxes 3, 4 and 5 respectively.

Box 3: Elements of Land Policy: South Africa

1.	Policy <ul style="list-style-type: none">- goals, vision and elements of the land reform programme
2.	Land Policy Issues <ul style="list-style-type: none">- Identification and discussion of the key issues to be addressed e.g. land market issues, institutional, environmental, restitution issues etc.
3.	Land Reform Programmes <ul style="list-style-type: none">- Explanation of the land reform programmes
4.	Land Dev, Management, & Admin <ul style="list-style-type: none">- Identification of issues and policy positions on each issue
5.	Land Dev, Management, & Admin <ul style="list-style-type: none">- Identification of issues and policy positions on each issue
6.	Institutional Arrangements <ul style="list-style-type: none">- Principles, roles and information needs

(Department of Land Affairs, 1998)

Box 4: Elements of Land Policy: Namibia

1. Introduction
 - Overview of prevailing land situation
2. Fundamental Principles
 - Equity, focus on the poor, rights of women
3. Urban Land – (policy)
 - Tenure, management, use, taxation etc.
4. Rural Land - (policy)
 - Tenure, land boards, restitution, redistribution, excessive holding, enclosure, use planning
5. General Considerations
 - Ministerial responsibilities, consultation & local involvement
6. Implementation
 - Key legislation required

(Republic of Namibia, 1998)

Box 5: Elements of Land Policy: Zambia

1. Introduction
 - Historical background
2. Existing Legal Framework
 - Statutes governing land
3. Existing Institutional Framework
 - Key institutions to land delivery
4. Policy objective
 - Objectives, the rationale and strategies for implementation of policy components
5. Resource Mobilisation
 - Objectives, the rationale and strategies for the mobilisation of human, financial and material resources
6. Plan of Action
 - Scheduling of future activities

(Republic of Zambia, 1998)

7. The Policy Development Process

In keeping with the centrality of the State to land issues, the making of new laws and policies in Southern Africa has historically been the domain of governments. However, there is a gradual recognition of the need for public consultation as part of a progressive process. Despite this recognition, the process of consultation has generally been found to be inadequate by civil society institutions. Consultation is either lacking altogether, partial (being introduced only at certain stages of the process), or hurried and, or belated. In addition, governments have had a poor track record with regards to the implementation.

Okoth-Ogendo, (1998) groups land policy reform processes in the region into the following categories:

- **‘desk-top processes’**

In the past, governments have tended to respond to the need for policy reform by embarking on customary, run of the mill processes. Such processes have generally been designed “to anticipate or pre-empt relatively foreseeable consequences before issues around land develop into unmanageable crises.” The processes are generally tightly controlled and managed by top government officials and have largely been ineffective at producing the concrete strategies needed to resolve prevailing problems.

- **‘the appointment of expert panels of inquiry and task forces**

A frequent response of governments to the need for comprehensive land policy has been that of appointing expert panels of inquiry and task forces to prepare preliminary working documents. This response has often been used at short notice to manage or in response to impending political stresses. Sadly, panels of inquiry have been characterised by a poor record with respect to the implementation of resulting recommendations.

- **commissions of inquiry**

The third type of response has been that of broadly based, independent commissions of inquiry adopting participatory processes. Previously rare, the

region has seen commissions becoming more frequent. Unfortunately once again, commissions have been characterised by governments rejecting or failing to adopt the findings on either political or economic grounds.

The following commissions of inquiry have been appointed (adapted from Palmer and Toulmin, 2000).

Zimbabwe:	1986, 1994
Mozambique:	1990- 1995
Malawi:	1996-1999
Lesotho:	1986, 1999-to date

- Fourth, there can be a combination of a bureaucratic approach with public discourse, with documents being drawn up for the explicit purpose of stimulating discussion (South Africa, Ethiopia). This works best ‘when there is substantial political capital [in the form of enhanced legitimacy] to be reaped from swift but popular action.’ Most countries in fact, now convinced that land policy reform is ‘fundamental to the sustainable management of development, have used a mixed bag of mechanisms and procedures to push this forward.’

Some specific process may be considered. The example of Mozambique relates to the development of the Land Law, not a policy as such. However, the case of the formulation of the land law in Mozambique is considered have incorporated one of the most genuine processes of consultation seen to date in the land sector of Southern Africa.

In 1996 the Draft Land Law was circulated to 200 institutions and working teams sent to all ten provinces to hold seminars and train persons who in turn promoted discussion in the districts. A Technical Secretariat produced a Working Document which was delivered to a land conference in later that year. The conference was attended by 226 participants from civil society. Comments from that conference were tabled to Cabinet and Parliament. This was followed by a Public Session, the outcomes of which were considered by two Parliamentary Commissions.

In 1997, Regulations expanding on the Land Law were drafted. The draft Regulations were discussed in 9 of 10 provinces and in open sessions with 55 NGOs. Thereafter, the Land Law was updated and enacted. Once the Law had come into effect, the civil society initiative initiated by the need for consultations became the Land Campaign. Involving over 200 organisations, the aim of the Land Campaign was to educate grassroots people on the new law and their rights under the law.

In the case of Malawi, the process was initiated by the Ministry of Lands and Valuation conducting a review of all legislation affecting land policy in 1996. In the same year, the Presidential Commission of Inquiry on Land Policy, was appointed. The Commission was broadly constituted in its membership, its procedures appeared fully participatory and the Commission worked independently of government.

A preliminary Report of the Commission was released in April 1998 after extensive consultation: 205 public hearings in all regions, districts, tribal areas and major urban centres of the country. This was subject to public consultation at provincial as well as a national forum. The final report of the Commission was presented in November 1999.

Hence, it can be seen that to date, the policy formulation process in Malawi has incorporated a significant level of public consultation. The output of the commission is presently under government consideration. The intended course hereon would be include the following:

- Preparation of a Green paper based on recommendations eventually accepted and circulate for public discussion.
- Preparation of a Cabinet White Paper for discussion by Parliament.
- Preparation of a draft basic law based on the White Paper followed by its presentation to the public for discussion

This course of action would be highly commendable and would constitute what would appear to be a truly participatory, rather than a merely consultative process.

The case of Namibia illustrates a process that incorporated significant public consultation, but was flawed in other ways. The National Land Conference of 1991 involved a high level of consultation, bringing together a broad base of stakeholders. This was followed by the People's Land Conference of 1994, so called because it was initiated by NGOs. It focussed more on issues affecting communal areas. The draft Agricultural Land Reform Bill which followed was somewhat rushed and did not see the level of public debate seen in the two previous fora.

In contrast to the Agricultural Land Reform Bill, the National Land Policy drafted in 1995 was circulated to NGOs for comment and other sectors consulted for their input. This same momentum was used by NGOs to hold workshops and other consultations throughout the country on the Draft Communal Land Bill.

This culminated in the Consultative Conference on Communal Land Administration in 1997. The public opinion accumulated from these campaigns was instrumental in bringing the sentiments of the people into the Land Policy which was finalised in 1998, particularly with respect to issues relating to the Draft Communal Land Bill.

It was thus unprecedented when the Government hurriedly passed the Communal Land Bill which failed to address some significant concerns emanating out of the process of consultation. Hence, whilst a satisfactory consultation had taken place, the process remained flawed by virtue of the centralised decision making. An important lesson must be learned from the Namibian situation (and, in fact, from the numerous Commissions that have not been followed up). This is that in spite of the importance of public consultation, good policy process is not merely about consultation. The other factors mentioned previously, such as decentralisation and accountability, must simultaneously accompany public consultation.

In the case of Zimbabwe, the early 1980s saw the newly independent government implementing the first phase of the land resettlement programme. Although the programme fell short of the intended target figures, real successes were realised in other ways (see Kinsey, 1999). Unfortunately, the following decade was characterised by near negligible land distribution. The resulting land hunger has contributed to the present day land invasions. The question must be asked whether the presence of a land policy establishing the principles, programmes, infrastructure *and* the urgency of land reform and resettlement, and simultaneously making provision for the resources required for the implementation of land distribution to scale, would have resulted in the present day situation being averted.

Nonetheless, the policy formulation began in 1998. To date, the Zimbabwe process has been characterised by limited public consultation. It has, however, involved urban-based NGOs. There was no public participation during and up to the completion of the Draft National Land Policy Framework Paper in 1998. Thereafter, 'public' consultation was in the form of a single 'national' stakeholder workshop. Theoretically, the policy framework document had been available for circulation prior to the Workshop, giving stakeholders the opportunity to debate the draft policy. In reality, most participants at the Stakeholder Workshop encountered the document for the first time at the Workshop and were thus unable to critique it meaningfully. Neither government nor civil society attempted to mobilise public interest in participating in the process.

Milestone in the policy formulation processes of Mozambique, Malawi, Namibia and Zimbabwe are summarised in Boxes 6, 7, 8 and 9.

Box 6: Milestones in the policy process – the Case of Mozambique

1990-1995 :	Commission of Lands, Ministry of Agric.
1995:	National Lands Policy
1996:	Draft Land Law,
1996 :	Conference, public session, parliamentary commissions review,
1997:	Land Act,
1997:	Regulations drafted by four working groups,
1998:	Draft Regulations to the Land Act,
1998:	Regulations enacted
1998-1999	Land Campaign to disseminate law

Box 7: Milestones in the policy process – the Case of Malawi

1996:	Review of legislation affecting land policy Presidential Commission of Inquiry
1998:	Commission's Preliminary Report Discussion/consultation on Report
1999:	Commission's Final Report

To be followed by:

- public discussion: Report & Govt..response
- Green paper
- White Paper
- draft basic Land Law
- draft Law to Parliament
- review of land legislation
- promulgation and implementation

Box 8: Milestones in the policy process – the Case of Namibia

1991:	National Conference on Land Reform
1994:	The People's Land Conference
1995:	Draft National Land Policy
1995:	Draft Communal Land Bill
1997:	Consultative Conference on Communal Land Admin.
1997:	White Paper on national Land Policy
1998:	National Land Policy
1999:	Communal Land Reform Act

Box 8: Milestones in the policy process – the Case of Zimbabwe

1980	First phase of Resettlement Prog.
1994:	Land Tenure Commission
1998:	Donors Conference
1998:	Draft National Policy
1999:	National Stakeholders' Workshop

8. Policy Implementation

8.1 *Land Policy Instruments*

Southern Africa has a relatively short track record with respect to the implementation of comprehensive land policy processes. Perhaps the most developed process, that of South Africa, is only about 5 years old. A clearer picture emerges when one considers the implementation experiences relating to land laws as well. Experiences to date have been characterised by difficulties.

Zimmerman, 1998, points to the importance of identifying the necessary instruments for reaching the objectives of the new land policy. These instruments must then be developed and, if necessary, adapted to local

conditions. In addition, the optimal mix of combinations of instruments that are affordable, efficient and effective must be identified.

The most significant instruments include:

- Instruments for the certainty of law

This involves addressing the all too familiar situation of multiple, contradictory and inconsistent legal requirements on land to bring about harmony in the statutes governing access to, control and use of land.

It also involves the closure of existing legal loopholes, making access to land-related information easier and creating transparency.

- Instruments For Land Administration

The instruments are those that make provision for:

- land registration and cadastre
- land adjudication
- land markets
- lease regulations,
- land valuation
- land banking

- Fiscal Instruments

These instruments include regulations pertaining to

- land taxation ; taxes on land value; levies,
- taxes and fees on transactions
- incentives

- Instruments For Rural Development And Land Tenure Agrarian

- Instruments For Urban Management

9. Outcomes of a Good Land Policy

The land sector in Southern Africa as in most parts of Africa, is characterised by inequitability (along gender, racial and class lines), non-sustainable use and

poor development. Hence a good policy designed to address this situation will aim to bring about the following results:

- **Governance**

- increased decentralization in land management processes
- legal and institutional structures to resolve land disputes finally and expeditiously
- transparency in all procedures in land matters
- direct participation of land owners, land users in the decision-making process for all land-related issues
- enhanced accountability and responsiveness of governmental institutions
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- **People and the economy**

- Facilitated access to land resources
In order to accomplish this, the land policy must facilitate the move away from centralised government practices, discourage the maintenance of privileges in excessive land ownership and challenge gender inequity.
- accelerated economic growth with greater equity and self-reliance
- the coexistence of multiple land tenure systems including traditional systems (no system is superior to the other)
- comprehensive legal and institutional framework for all land matters

10. Relevance of a National Land Policy: the case of Uganda

What are some of the specific ways in which **Uganda** could benefit from having a comprehensive land policy? One may consider the example of the Land Act. A recent paper on Land Reform in Uganda (Rugadya, 1999) discusses the challenges and constraints to the implementation of the Act. To what extent can a comprehensive national land policy be a solution to each of the challenges?

- *Institutional capacity and administration*

By articulating the commitment to decentralisation, national land policy would minimise the threat of central government taking center stage, or of local governments and other local institutions not being empowered enough to participate meaningfully in the implementation of the Act. There are, however, other factors that have a strong bearing on the decentralisation process, such as administrative capacity and financial resources.

- *Public awareness on the Act*

A national land policy articulating clear implementation guidelines would push the implementation of the Act further up on the relevant Ministry's agenda. One of the outcomes of this, would be greater commitment to the public awareness campaign.

- *An unwieldy institutional framework*

Perhaps retrospectively, the existence of a land policy, with guidelines on the relevant institutional framework might have prevented the present situation. Regardless, a national land policy remains relevant to the resolution of the problem.

- *The absence of a comprehensive national land policy*

- *Acceptance of the new law*

A national land policy against which the Act could be measured for authenticity and relevance would be extremely significant in reducing the suspicion, apathy and rejection noted to date.

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- *Political pressure*

The paper discussed the prevailing political pressure for implementation and pointed to the fact that this might result in somewhat hasty actions. A national land policy with guidelines on the elements of an implementation strategy would mitigate against this eventuality.

- *Absence of strategic plan*

A national land policy would probably not go into the details of the implementation strategies of relevant pieces of legislation. However, the guiding and operational guidelines contained in the national land policy would establish the requirement of a viable strategic plan for implementation.

- *Inadequate institutional co-ordination*

A good national land policy would outline the institutional arrangements necessary for implementation. The relative responsibilities of the component structures would also be indicated. (The operational principles underlying the proposed arrangements should be well articulated that subsequent structure obey the underlying these foundational principles).

- *Inconsistent related laws*

As already mentioned earlier, a comprehensive land policy would seek the harmonisation of legislations as one of its objectives.

- *Capacity in local governments*

This is recognised as a serious challenge. Clearly, significant capacity enhancement is required in order for the requirements of the Act to be met. A national land policy that recognises the existing constraints to the implementation of proposed land reform programmes *as well as* how these are to be addressed, would probably result in more commitment being applied to capacity building efforts. Once again, there are, however, other significant factors influencing the capacity of local governments

- *Poor inter-sectoral planning and consultations*

Once again, a good land policy would give guidelines on how the main sub-sectors within the land sector would relate to each other, as well as how the land sector would relate to other sectors.

Table 2 summarises the considerations outlined above.

Table 2: The Case of Uganda Land Act: Relevance of A National Land Policy:

Constraint Identified	Relevance		
	High	Moderate	Low
Institutional capacity & admin.		<input type="checkbox"/>	
Public awareness	<input type="checkbox"/>		
Institutional framework	<input type="checkbox"/>		
National acceptance of new law	<input type="checkbox"/>		
Political pressure	<input type="checkbox"/>		
Absence of strategic plan	<input type="checkbox"/>		
Poor institutional co-ordination	<input type="checkbox"/>		
Inconsistent related laws	<input type="checkbox"/>		
Capacity in local government		<input type="checkbox"/>	
Poor inter-sectoral planning	<input type="checkbox"/>		

11. Conclusion: Emerging Lessons

Certain lessons can be gleaned from the Southern African experience.

Concerning process

The process of land policy formulation must be viewed in the context of broader land reform process. Policy processes have recently been described as “long, with open and hidden struggles, and with much contestation” (Palmer, 2000). Experience has shown that it is those countries that adopt a *long term and holistic* approach to land reform that appear to have the most promising processes. Examples here include South Africa, and, more recently, Malawi.

Policy processes together with accompanying formulation of laws and other reform programmes have proved difficult to formulate and implement. Unfortunately this difficulty has been compounded by the fact that whilst dominating the realm of rhetoric, land policy reform and land reform in general have sadly turned out to occupy a relatively low *priority ranking* with

governments. As a result, insufficient reflection, planning and resources have frequently been allocated the processes.

The centrality of *good governance* to the policy process has emerged to take centre stage in the policy discourse. The main elements of good governance often demanded are public participation and decentralisation in decision making. Unfortunately power and decision making remain very centralised. In addition, central governments have been slow to accept the relinquishing of power. Hence, through a variety of mechanisms, participatory practice is generally prevented from influencing crucial decisions.

Capacity constraints remain significant, whilst policy formulation and implementation are demanding both financially as well as with respect to human resource and technical capability. Hence, capacity constraints remain as one of the most significant challenges to the implementation of land policies.

Concerning the players

Governments

Land, an emotional and highly political issue, has continued to be manipulated by politicians for political gain. The result has been an inconsistency in the emphasis and the commitment shown for land related issues.

Despite the recognition of the important role that NGOs have to play in the policy process and in land reform in general, governments have maintained centre stage with respect to land issues, frequently marginalising the participation of NGOs.

NGOs

Whilst land rights advocacy activity by NGOs has increased over the last few years, NGOs have tended to remain peripheral to the policy formulation and implementation processes, often due to inadequate capacity in this arena. Few NGOs active in the land sector actually participate meaningfully in the policy discourse. There is the need for NGOs to define their role beyond advocacy and to define their role in policy formulation and implementation. NGOs need to develop the capacity required for them to participate actively in the policy

formulation process alongside the perceived policy makers. They also need to develop the capacity for comparative analysis so that they can draw out and benefit from important lessons learnt by neighbouring countries.

Donors

Donors clearly have a role to play, in view of the capacity constraints outlined above. However, the role has, in some cases, been problematic. An example is the present stalemate position between the Zimbabwe and British governments regarding whether British aid should extend to financing the purchase of land for resettlement. The extent to which giving financial aid affords donors the right to dictate the direction of reforms (e.g. market vs. non-market based reforms) has also been a source of tension.

Concerning the outcomes

Formulation of land policy statements

The Southern African region has, in recent years, experienced a great deal of activity with respect to the formulation of national land policies. The processes leading up to the policies have occupied the full spectrum from the state dominated, top-down approach through to those that have incorporated genuine public participation.

Translation of policy statements into legislative programmes

The next stage in the process has tended to be the translation of these policies into legislative programmes. This process has varied greatly, often being made complex by the fact that various sectoral laws that tend to be contradictory have often precede the formulation of the comprehensive policy. The harmonisation of existing laws as well as the identification and closing of existing loopholes have emerged as significant challenges for both governments and civil society.

Implementation of policy reform programmes

To date, the policy reform processes of Southern Africa have relatively few experiences to share with respect to the implementation process. This is due to the age of these reform programmes. However, indications from the

experiences of South Africa and (less so) Namibia, are that implementation is problematic. The main challenges have been related to the lack of clear implementation strategies, capacity constraints and, to some extent, the waning of political will.

Whilst not two land policy process can be identical, Uganda can, at the very least benefit from drawing comparative analyses between its situation and those outlined in this documentation.

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