

A Comparative Study to Land Policy in 9 Countries in Africa and Asia.

**Paul VAN DER MOLEN (the Netherlands), Eugene H. SILAYO (Tanzania), and
Arbind M. TULADHAR (the Netherlands)**

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SUMMARY

Systems of Land Administration are not an end in themselves. The design and development of those systems find their rationale and justification in the broader framework of land policy and land management. The way governments intend to deal with the land issue in their society, determines the requirements to the institutional and operational set up of land administration systems. This paper aims at identifying how current land policy documents of 9 countries are composed, which issues they address and to which extent they pay attention to the impact of the land policy on land administration systems.

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INTRODUCTION

'Land Policy consists of the whole complex of legal and socio economic prescriptions that dictate how the land and the benefits from the land are to be allocated', so say the Land Administration Guidelines of the UN/ECE/Working Party on Land Administration (page 47). We take this definition as a good one, as it recognizes that the land issue comprises both social, economical and legal measures, to allocate benefits, not only in the sense of access to land as such, but also access to land related benefits. A land policy might be a policy at various levels of government, in our view also including the 'land policy' of traditional authorities (also called 'existing institutions') in customary areas. It refers also to the 'allocation' question: will access to land and land –related benefits only be allocated to the powerful elites, the political interests, the 'rich'? Or also to the poor, both in urban and rural areas, only to large-holders, or also to small-holders, only to international companies, or also to the local middle and small size firms, only to the members of a certain ethnic group, to the State, the President or to all citizens? This makes the land issue a highly political issue, as allocation comprises choices about the distribution of scarce resources. One might even say that there is an *ideological* aspect. Choices are different when taken in a capitalistic, socialistic or communist political environment.

'Land Policy is the rules governing access to and the distribution of the benefits from one of the economy's main assets'.

This is another definition, as can be read on World Bank Policy Research Report 'Land Policies for Growth and Poverty Reduction' (page 178) (Deininger, 2003)

The last public announcement by the World Bank on land issues, was in 1975 (the *Land Reform Policy Paper*, in www.oicrf.org). This paper however dedicated little attention to the importance of land rights for the empowerment of the poor and improving local governance, private sector outside agriculture, gender and equity aspects, and the good use of rural and urban lands (Deininger, page xlv-xlv)

Compared with the definition of 'land policy' from the Land Administration Guidelines, we might say that both are similar.

Why is a land policy needed? Because:

- Land is a key-assets for the rural and urban poor
- Land provides a foundation for economic activity and the functioning of market- and non-market institutions (empowers households and government)
- Allocation of land and it's benefits influence economic growth and poverty eradication

- Control of land is a major source of political and economic power, so empowers the poor
- Systematic distortions of land and ethnicity leads to conflict and violence, so avoids social unrest
- Existence of multiple market-imperfections, so interventions necessary

We refer here to (Deininger, 2003, pages xvii-xxi and 178-190).

Important is, that research shows that property rights and proper land use play an important role to enhance economic growth and poverty eradication, but that this does not come spontaneously, because there are multiple market imperfections. For example: in the land market not everyone has the same chances to accessing land, the market is imperfect. With other words: the government should intervene in how society develops, through the formulation of a set of market- and non-market interventions in such a way that the higher objectives are met. Research shows (Deininger, 2003, page xix) that such interventions also may be poorly designed, resulting in a situation worse than before. So designing a land policy is a critical and careful process (Deininger, 2003, page 183-184).

The importance of land policy is that is expected to improve 4 goals:

- Economic growth: investments, credit, productivity
- Poverty eradication: subsistence farming, market surplus, status
- Governance: basis democracy, decentralization, no conflicts, accountability
- Environmental Sustainability: effective land use, inclusion externalities, state land management

Economic growth is increased because secure property rights invite households to invest, open options for cheaper credit, and make them less vulnerable in case of shocks. Also a better land distribution promotes productivity, and the functioning of households in factor markets (that are the markets for land, labor and capital and/or energy, materials and services). Secure land rights also makes it possible that owners rent the land out, so that they can enjoy non-agricultural employment (Deininger, 2003, page xix).

Poverty eradication is increased because households can make more productive use of their land, allowing then to be less dependent of wage labor. Furthermore households can produce for their own subsistence and may be some surplus to sell, as 'owner' enjoy a better social status, invest, have access to financial markets. This counts especially for women (Deininger, 2003, page xx)

Governance can be improved because households might get a 'voice', they don't live outside the law, and it creates the basis for participatory local development, with more accountability of local officials (Deininger, 2003, page xxi)

Effective land use is encouraged when the government can take measures to bring land to higher productivity through better land markets, fair distribution of land where markets are not able to address, providing incentives for land use that brings social welfare and includes externalities (Deininger, 2003, page xxxviii).

The body of research leads to the assumption that a good land policy says something about:

- Increase property rights and legal security
- Market interventions for both sales- and rental markets

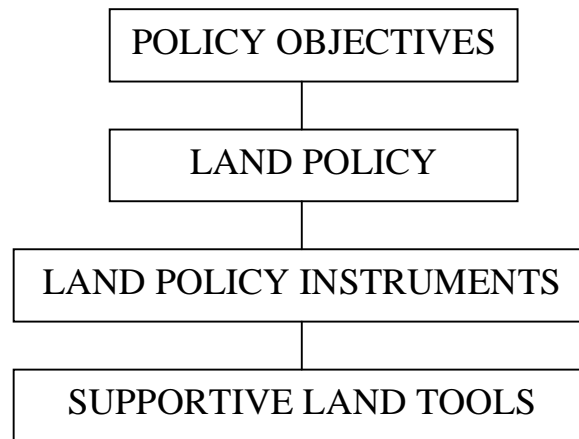
- Reduction transaction costs in the land market
- Reducing the scope of bureaucratic interventions
- Improving the climate for private investments
- Strengthening existing (local) institutions
- Ensure effective land use and bringing in line with social needs
- Help landless people through land redistribution

An important goal is improving the security of property rights, while respecting various types of rights and the institutions that manage the land. Building upon existing institutions is even more recommendable as central government often fails to govern. Apart from the land sales market, equity appears to benefit more from rental markets. Governments play a critical role in creating a sound market. Research shows that the contribution of a government in the sense of providing secure tenure, low transaction costs, eliminate credit market imperfections of offers safety nets for foreclosure is already a big step forward. Private investments are encouraged by secure tenure (see also the World Bank Doing Business Reports)

A better distribution of land ownership promotes better use and better productivity and might bring households in the formal economy (Deininger, 2003, page 186-189)

A land policy addresses issues of land tenure security, markets and land use, which cannot be dealt with in isolation. A successful implementation depends also from other policies, such as of the factor markets, the way the public administration works, political power balances, macroeconomic structural measures. Therefore land policy interventions have a long term nature, although short time interventions might also be necessary (see box 4.8 Deininger, 2003, page 180). Strengthening local government requires sufficient local capacity (Deininger, 2003, pages 179-190). Therefore:

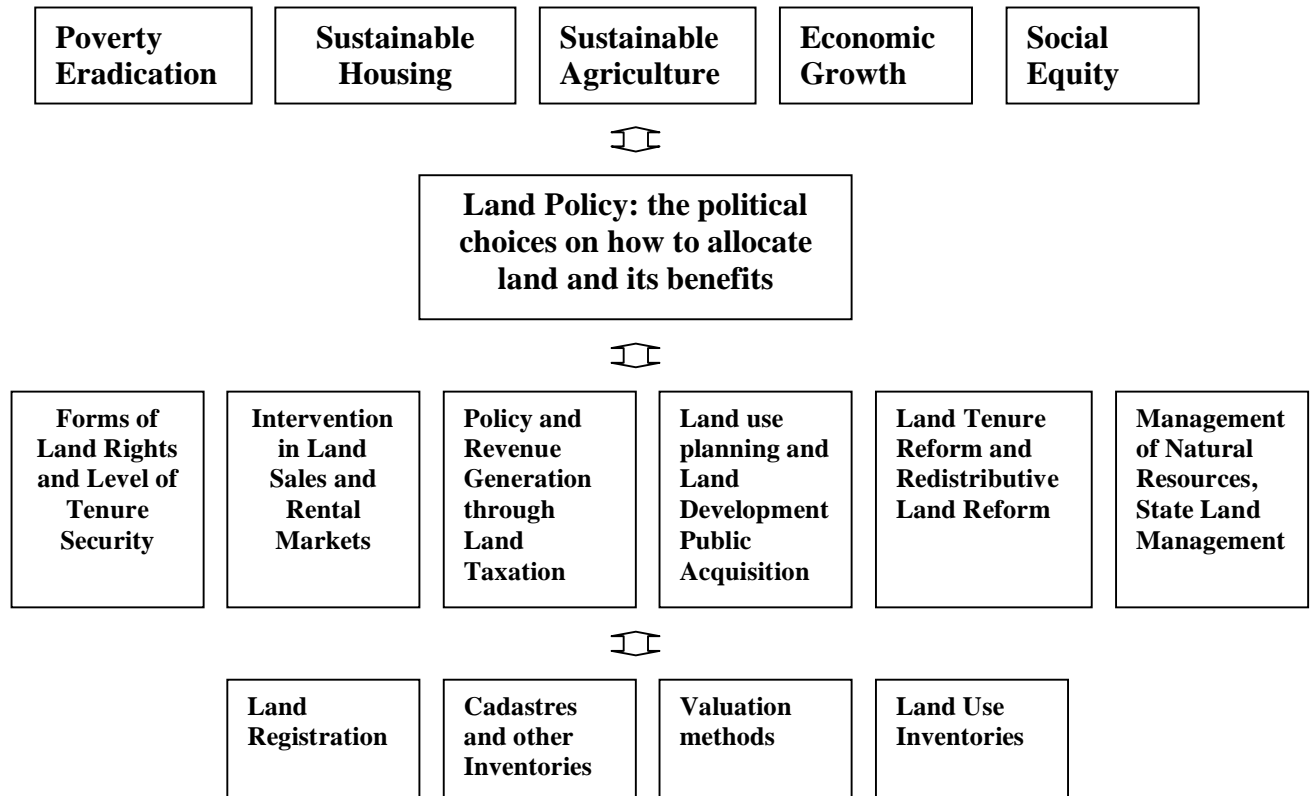
- Integration in broader development policy, because relation with other factor markets and regulatory frameworks
- Both short term improvements and structural adjustments, because of short term reduction of chronic poverty and long term growth
- Based on policy dialogue, because land is a highly political issue (cooperation from powerful vested interests)
- Backed by local capacity, because of warranting implementation
- No patent recipes



The book '*Land Tenure in Development Cooperation*' (GTZ, 1998, page 163) introduces the word 'instruments for land administration', which indicates the implementation measures to realize the fundamental objectives of land administration. Using this concept, we try to visualize the relation between the earlier mentioned elements in the diagram above.

The diagram is our visualization of the relationship between land policy and land administration. Political objectives such as economic growth, poverty reduction, sustainable housing and agriculture, social equity and fairness, protection of vulnerable groups in society, require a policy of the government how to deal with the allocation of access to land and land related benefits. The land policy, being a highly political document, requires intervention measures of a more technical nature (although technical measures also might be very political). In our understanding such measures concern the application of property right regimes, the extent to which a government wants to secure those rights, access to credit markets, the regulations of the land sales and rental market, the measures to enhance sound land use planning, land reform, land taxation and management to manage natural resources. We call these interventions 'land policy instruments'. To apply the land policy instruments, one needs tools, such as land registration, cadastre, other land information systems, land use classifications, valuation techniques. The definition of land administration, as 'the process of determining, recording and disseminating information on ownership, use and value of land, when implementing land management policies' (see Land Administration Guidelines UN, 1996 page 91) comprises the relationship between tools and policies very well. (see also Van der Molen & Lemmen, 2004)

Elaborating this diagram with the broader approach of (Deininger, GTZ, and outcomes of various global UN conferences), the diagram would then read as follows.



CRITERIA FOR LAND POLICIES

Based on chapter 1, we conclude that the contours of the ideal land policy document become visible. Such policy should identify the higher objectives of national policy and the role of access to land in these various domains in the first place. Then the government must take a political and ideological stance and tailor its general principles of good governance and rule of law in order to define a policy how it wants the allocation of land resources and the benefits from the land to contribute to the realization of the higher policy objectives. Referring to (Deininger, 2003) the land issue can not be assessed in isolation, so the government must take a broad view here, and include other factor markets (labor, credit, energy) and their related effects towards and from the land issue.

Then the government has to formulate how such political and ideological set of choices should be implemented in practice. Firstly, related to the diagram above, it must become clear what forms of land rights the government recognizes, and the level of land tenure security it wants to provide to its citizens. Secondly, the contribution of the land sales and rental markets to the higher policy objectives definitely require state interventions in the market as market imperfections will not move access to land automatically to socially desirable outcomes. Thirdly, the role of land taxation should be made explicit in a land policy, as land taxation will not only provide funds to local government bodies which is important in the era of decentralization, but also might be used in a interventional way to influence desirable land use. Fourthly, the use of land should contribute to the realization of the higher political objectives, through land use planning, implementation (development) and maintenance (monitoring). The rationale for the government to do so, is the role of the state in the provision of public goods, thus without rivalry of exclusion, which cannot be expected from owners who normally optimize their personal interests of the benefits of land. When land distribution is skew, or socially wrong, the government must formulate a land reform policy, which can have different form, amongst them land tenure reforms, redistributive reforms, privatization and restitution. Sixthly, good care of the environment (especially land and water) depends on land management, both from private owners for private, common and customary properties, as from the state for its own lands. Finally, the land policy must also make clear, which tools should be mobilized and put in place to make a smooth and socially acceptable implementation into a reality: which land administration system is most suitable (with components registration, cadastre, other land inventories, valuation, and land use inventories).

For a land policy documents, the above means, ideally:

Chapter 1: Objectives at state level and an analysis regarding the role of land

Chapter 2: Political and ideological choices on allocation

Chapter 3: Regulations for land tenure and security

Chapter 4: Interventions in land sales and rental markets

Chapter 5: Fiscal measures on land taxation and strategic use,

Chapter 6: Mechanisms for land use planning, implementation and maintenance

Chapter 7: Methods of land reform in its variety

Chapter 8: Regulations for management for natural resource (incl. state land management)

Chapter 9: Requirements to land administration systems

Following the diagram above, these chapters must be interrelated. Ideally, the land policy document should provide links between the highest political goals, and the way how a tool like the land administration system is expected to operate, which is easy to see thinking about for example equity aspects of ethnicity and gender, and appreciation of traditional land tenure and land management practices. Referring to institutional economics, both institutional and operational issues are at stake.

1. COMPARATIVE STUDY

The comparative research is performed by Eugene H. Silayo, when acting as a senior visiting scientist at ITC in 2007 (study available in www.oicrf.org). The choice of the 9 countries is determined by the availability of the National Land Policy documents on the web. When implementing the research, other countries did not publish their documents so openly. No selection was made, by consequence.

3.1 Objectives

The first section of a National Land Policy (NLP) ideally would deal with an analysis of the existing objectives of the government, the role of land in achieving these objectives, an analysis how the government might deal with the land issue with respect to the political objectives, and the way forward. The research reveals that almost all NLP documents pay attention to this aspect.

Objectives	Rwanda	Namibia	Kenya	Malawi	Swaziland	Tanzania	Zambia	Uganda	Cambodia
Problem Statement	√	√	√	√	√	√	√	√	√
Vision of Policy			√			√			
Mission of Policy			√			√			
Objectives of Policy	√	√	√	√	√	√	√	√	√
Process			√	√		√		√	√
Authority	√	√	√	√	√	√	√	√	√

All NLP's address the problems that are faced by the particular countries. None of the countries had any form of land policy that gave comprehensive guidance in issues like land tenure, administration, management of resources, land markets, disputes. Population growth, pressure on land resources, migrant population, informal settlements, lack of tenure security, food insecurity appear to have been shared by the countries. In addition, colonial history, bad state land management, the impact of HIV/Aids, return of internally displaced persons and refugees, increasing landlessness, market liberalization, land grabbing, are all to a different extent urging for the development of a NLP. However, the way forward (the 'vision') is defined only in very abstract terms in the NLP-documents. With the exception of *Kenya* and *Tanzania*, most countries have not explicitly formulated the vision of their NLP. Interpretation of the texts results in -for example- 'a guide towards efficient, sustainable and

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equitable use of land for prosperity and posterity of the country' (*Kenya*), 'harmonization of land management and land administration' (*Rwanda*), or 'national commitment to redress the social and injustices inherited from the colonial past' (*Namibia*). The mission of the NLP's also remain abstract, such as 'promotion of secure land tenure system that encourages the optimal use of land resources and facilitation of broad-based social and economic development that sustains ecological balance of the environment' (*Tanzania*), 'to ensure tenure security and equitable access to land for social harmony' (*Malawi*), or 'to develop a short-term guide to drafting legislation, designing programs of action, carrying out policy-oriented research and pilot programs consolidating institutional arrangements regarding land' (*Cambodia*).

The policy objectives for the countries differ in so far as they relate to different problems. They however overlap in areas relating to: promoting land tenure security, equitable access to land by all citizens without gender bias or discrimination, promoting investment on land and ensuring that land is put to most productive and sustainable use; improving land allocation and land market; ensuring accountability and transparency in the administration of land; land dispute adjudication and conflict resolution; protection of customary rights and the reduction of poverty.

The individual countries have the following country specific objectives: to set ceilings on land ownership in order to prevent/avoid land concentration/grabbing by a few, to streamline the institutional arrangements in land administration and also make them more transparent, to promote sound land information management, and to protect land resources from degradation for sustainable development (*Tanzania*); to promote governance and social justice, political accountability and democratic governance, to design and execute a paradigm shift from emphasis on land ownership to land development (*Uganda*); to undertake comprehensive reforms of the existing land tenure systems and give guidance to the necessary land reforms with a view to good management and rational use of national land resources, to avoid the splitting of plots and promote their consolidation in order to bring about economically viable production, to protect land resources from various effects of land degradation, to promote conservation and sustainable use of wetlands (*Rwanda*); to curb land encroachment, unapproved development, land speculation and racketeering, to set guidelines for establishing economically viable ceilings on land ownership so as to prevent extreme land concentration in a few hands or individuals and/or organizations and extreme fragmentation, to extend land use planning and strategies to all urban and rural areas, to provide formal and orderly arrangements for granting titles and delivering land services in modern and decentralized registration system that support local governments, to promote community participation and public awareness at all levels in order to ensure environmentally sustainable land use practices and good land stewardship, and to promote research and continuous education of the public on all aspects of the duties and obligations of land tenure (*Malawi*); to encourage rational and sustainable use of land, to encourage land ownership by Swazi citizens (*Swaziland*); to secure Zambia's territorial integrity by maintaining international boundaries at all times so as to control movements, encroachments and enhancing security of citizens, to establish and support institutional capacity at all levels for sustained improvements of land delivery

services, to promote research and discourse in all aspects of national geography, land economy, law and information studies, and to provide a comprehensive institutional and legal management framework for effective land administration and management (*Zambia*).

The majority of policies studied show that policy formulation processes included: comprehensive review of literature, followed consultative processes that were participatory, interactive and stakeholder consensus based (*Kenya, Tanzania, Uganda, Malawi and Cambodia*). The policies of *Kenya* and *Tanzania* had additional input of information from Presidential Commissions of Inquiry on Land Matters. The processes followed in *Rwanda, Swaziland and Zambia* are not stated.

3.2. Political Choices

Regarding the political choices, they are not very explicit in all NLP's. Text interpretation results in the next table.

Political Choices	Rwanda	Namibia	Kenya	Malawi	Swaziland	Tanzania	Zambia	Uganda	Cambodia
Access to Land	√	√	√	√	√	√	√	√	√
Access Gender	√	√	√	√	√	√	√	√	√
Access Non Citizens		√	√	√	√	√	√	√	
Access Vulnerable Groups		√	√	√	√		√	√	√
Access Investors		√	√	√		√	√	√	

Access to land

In the policies examined access to land may be achieved through:

- Allocation of land in urban or rural areas.
- Land adjudication.
- Land market operations, and/or
- Inheritance.
- Prescription (*Cambodia* 5 years, and *Rwanda* 10 years)
- Written law (*Cambodia and Rwanda*)

All policies clarify that governments shall take reasonable legislative and other measures to foster conditions which enable citizens to gain access to land on equitable basis, i.e. without discrimination, or denying anyone access to land on the basis of gender, ethnicity, or social and economic status. *Uganda* goes further to demand enforcement of the law requiring spousal consent for all transactions involving family or community land.

While *Kenya* advocates access to land through promotion of public auction, *Uganda* calls for the simplification of access to land by the poor through a mechanism free of excessive bureaucracy.

While *Kenya* calls for adjudication and consolidation processes that are speedy, efficient, transparent and accountable, *Swaziland* refers to allocation procedures that are transparent and allocating authorities who are accountable for their decisions.

Cambodia takes a move to prevent development of informal settlement and land grabbing as follows: Illegal acquisition and concentration of land possession by a few individuals or legal entities is a problem in Cambodia.

Rwanda and *Tanzania* requires that all grants of land be made after the subject land has been fully surveyed and approved by the Director of Surveys and Mapping. The two also add to this a component of cost recovery on allocation of land for residential and institutional use. *Rwanda* further requires that strategic options to be put in place to distinguish between urban and rural land; and the mode of acquisition will differ depending on whether it concerns urban or rural land.

Malawi tackles the issue of access to customary land and notes that in practice, the allocation of rights to customary land is the responsibility of traditional leaders. Chiefs rely on clan and family leaders to identify and allocate pieces of land to individuals and households from land owned by that group. Once allocated, the family land is held and managed in all respects as private property. But the Land Act gives the Minister responsible for land the power to administer customary land and to grant leases not exceeding 99 years. This practice has resulted in converting some customary communal land to freehold without adequate consultation with the customary owners. The process undermined tenure security and increased land pressure and conflict among customary landholders. Hence the NLP proposes that the present system of customary land administration shall be rationalized and the land management responsibilities of traditional leaders made more transparent and compatible with the land management requirements set out in the policy.

Regarding allocation of land on leasehold rights, *Zambia* calls for a systematic planning in the land delivery process; streamlining and simplifying the system for allocation of leasehold rights in order to reduce the number of authorities involved in land alienation and make the system more accessible and affordable to a wide range of eligible applicants; and decentralization of the functions of the Commissioner of Lands up to district level.

Access to land and gender

“Women access to land” and “gender and equity issues” have been used to refer to the same meaning.

Whereas in other sub-themes there are variations in the contents of the policy requirements from country to country, in this one on women access to land, there is a unanimous agreement that men and women shall be entitled to equal rights to land and land based resources; customary rules and procedures relating to succession shall be reviewed and liberalized so as to ensure that the transmission of land to women (e.g. through inheritance) is not impeded; and women are proportionately represented in institutions dealing with land at all levels.

Access for non-citizens

Cambodia and *Rwanda* are silent on non-citizens acquiring access to land. All the other countries are in agreement that non-citizens or foreign companies should not be allowed to acquire land save for investment purposes only and most specify durations that shall not exceed 99 years

Cambodia, Rwanda and Swaziland do not seem to have investment as a matter demanding special access to land.

Kenya provides for government compulsory acquisition of: (a) land for investment purposes, (b) all land on which mineral resources have been discovered before allocating it to investors, (c) land for strategic public ventures such as ports, airports, etc.

Access for vulnerable groups

The most vulnerable persons include subsistence farmers, pastoralists, hunter and gatherers/minority communities, agricultural laborers, unskilled and low skilled workers, unemployed youths, internally displaced persons, refugees, persons with disabilities, orphans, slum and street dwellers, the aged as well as persons living with HIV/AIDS. People in this category are described as being vulnerable because they lack the means to access, use and own land and land based resources.

Rwanda and *Tanzania* do not seem to be covered under this subtitle.

While some countries seek to put more emphasis on protection of the rights of the vulnerable people through improvement of land tenure security (*Kenya, Swaziland, Uganda and Zambia*), others (*Malawi, and Cambodia*) seek to address poverty alleviation measures through distribution and redistribution of land to them.

(a) Those which seek to protect land rights

Kenya, proposes to put in place a mechanism for redistribution of land and resettlement of internally displaced people and protecting their land rights from unjust and illegal expropriation. In a move to avert overstretching of resources such as land, fuel wood, water and pastures, *Kenya* proposes to establish refugee camps in conformity with development planning and control regulations. *Swaziland*, proposes to strengthen institutions to ensure the protection of inheritance of property rights relating to HIV/AIDS bereavements.

Uganda notes that most of the poor, ethnic minorities and the internally displaced persons occupy land on the basis of precarious and unprotected land rights systems, which expose them to constant evictions, removals and displacements. The policy paper therefore proposes that the government shall defend and preserve the traditional habitats of marginalized communities and provide infrastructure for their improvements.

(b) Those which seek to address poverty alleviation

Malawi puts forward a detailed proposal on poverty alleviation to (a) Undertake a land redistribution and resettlement program as a strategy for managing current land pressure; (b) Establish a social development fund for providing basic social and economic infrastructure, poverty alleviation and employment relief for households willing to resettle to new homesteads (c) Changing the present uneconomic household land holding of less than half a

hectare per household to holdings deemed adequate for subsistence and cash crop farming; (d) Encourage the resettlement of landless and land-short households in carefully selected areas throughout the country; and (e) Abandoned farms and estate holders who have defaulted will have their rights revoked and the land made available for redistribution to needy smallholders.

Access for investors

Cambodia, like *Malawi*, addresses the issue of poverty alleviation through institutional strengthening by stating thus: “Because of the strong link between landlessness and poverty, land distribution will directly lead to poverty reduction by providing households with productive assets as well as contributing to good governance by reducing land conflicts, thereby improving social relations at local levels”.

Zambia proposes a number of measures which include (a) assurance that the disabled persons will access land like any other persons; and (b) where practical and necessary persons with disabilities will be involved in land management decision making. Regarding people with HIV/AIDS, *Zambia* proposes that the government will ensure recognition of the impact of HIV/AIDS pandemic in land administration and management services and work in partnership with other stakeholders to redress the impact of the pandemic.

Tanzania’s policy plans to curb speculation and land grabbing or accumulation by setting a ceiling on allocated land (see more under land grabbing/speculation). Furthermore *Tanzania’s* policy notes that special areas for various investments will be identified and set aside for allocation to investors and that land allocated will be according to their ability to develop it.

Malawi and *Uganda* state that land will be set aside for investment and *Malawi* go further to fix the duration of the leasehold at a renewable period of 50 years.

Zambia’s large part of land lies under customary land (94%). So most of the background text on access to land for investment will be found under registration of customary land; whence the policy recommends to the government to: Continue to sensitize the public on the advantages of individual ownership of land through leasehold or customary tenure to improve the security of investments by improving land transferability and access to credit

3.3. Land Tenure Arrangements

Regarding the impact of the NLP on land tenure arrangements, is it important for the government to formulate explicitly what kind of land categories are recognized, which forms of land tenure and the legal security the government wants to provide. Also how to deal with history is an issue.

Land Tenure	Rwanda	Namibia	Kenya	Malawi	Swaziland	Tanzania	Zambia	Uganda	Cambodia
Categories of Land	√	√	√	√			√	√	√
Land Tenure Types	√	√	√	√	√	√	√	√	
Level Tenure Security									

Historical Injustices		√	√						
Conflict resolution		√	√	√	√	√	√	√	√

Categories of Land

The categories of land considered are the existing ones as well as those proposed in the National Land Policies (NLP). All country policies, except Swaziland and Tanzania's policies, specify various categories of land. The proposed ones with respective countries in brackets are summarized as follows:

- Public land (*Kenya, Uganda, Malawi*)
- Government land (*Malawi*).
- Community land (*Kenya, Uganda*)
- Private land (*Kenya, Uganda, Malawi*)
- State's Public land (*Rwanda*)
- State's Private land (*Rwanda*)
- Customary land (*Malawi*)
- Public Domain of the State (*Cambodia*)
- Private Domain of the State (*Cambodia*)
- Private Domain (*Cambodia*)
- Customary land (*Zambia*)
- State land (*Zambia, Malawi**)

*Private Land in Malawi is further subdivided into:

- Freehold, and
- Customary estates

The respective distinctions between each category are given under each country are:

Kenya's policy requires government to enact a legislation to govern all categories of land. The policy directs the Government to ensure that all land is put into productive use on a sustainable basis by facilitating the implementation of key principles on land use, productivity targets and guidelines as well as conservation.

Tanzania (categories of land are not stated in the policy).

The policy of *Uganda* says that the Constitution and the Land Law will be amended to classify land in Uganda in terms of broad ownership characteristics.

Rwanda (no additional information)

Malawi (no additional information)

Cambodia: About 80 percent of land area in Cambodia now falls under State ownership categories, and 20 percent falls under private ownership

Swaziland: (no land type mentioned in the NLP)

Zambia: Customary land is 94% of all land while State land is 6%.

Cambodia's current information about the location and characteristics of State land is dispersed and incomplete. This dispersion and incompleteness is a cause of disputes and ineffective management. Hence the policy document proposes to create a State land inventory and classification in order to allow the State to identify and locate its different properties in a systematic way.

Forms of Land Tenure

In the countries examined, it has been stated that prior to colonization, the land tenure existing at the time was customary tenure. As outlined in the NLP's of *Zambia* and *Tanzania* customary land tenure was used subject to local conditions and customs. Land was then held by the community rather than individuals. This facilitated periodic distribution of land among the community members based on population growth, a practice that prevented emergence of a class of landless individuals. The system of land holding under customary tenure is derived from continued occupation and is administered according to local custom and therefore varies from place to place. Traditional/Tribal leaders (Chiefs and Headmen) have a significant regulatory role of customary tenure.

Colonization added two forms of tenure system on the colonized lands. It added freehold and leasehold systems. Thus in each country there were the three types of tenure systems up to the independence time.

After attainment of independence many countries sought to convert freehold titles to leasehold titles. This was so because freehold titles being titles in perpetuity which confer to title holders unlimited rights of use, abuse and disposition (*Tanzania and Zambia*) were not popular with the independence governments. The new NLP's of Kenya and Uganda propose to promote leasehold tenure on the basis that leasehold tenure confers a holder the right to use land for a defined period of time in exchange for the performance of certain obligations such as the payment of rent. Leasehold rights provide a flexible mechanism for transacting rights in land and for land use control. *Malawi's* private land may be held either under freehold or customary tenure. Although not reported in any of the policies examined, customary tenure is in deed akin to freehold as long as customary tenure have weakened and ownership in rural/community areas has departed from communal to individualized entity.

Attempts have unsuccessfully been made to convert customary tenure systems to either freehold or leasehold (*Uganda and Kenya*). The *Kenyan* attempt was quit strategic in that it used the registered Land Act (Cap 300) to extinguish customary tenure and replace it with rights that would be individually and exclusively held. In *Rwanda* customary tenure is not much favored as it has been responsible for excessive fragmentation of land. Elsewhere, such as in *Kenya, Tanzania, Uganda, Malawi and Zambia* customary tenure systems have been accommodated into statutes or are in the process of being accommodated. Restoration of the *mailo* system in *Uganda* is seen as being politically expedient. However, the NLP of *Uganda* sees the *mailo* tenure as perpetuating an outmoded and feudal regime. It has hence proposed its conversion into fully fledged freehold or long term leases for land located in urban areas.

In all the countries considered, registration of customary land is meant to modify, if not to extinguish, customary tenure. For example, the NLP of *Zambia* unequivocally states: "In order to advance the advantages of customary tenure practice, the government will introduce group land rights to allow for registration of village, family and clan land as well as cooperatives." Although this approach is being advanced, the general trend is towards individualization of tenure system (*Tanzania, Uganda, Malawi, and Zambia*). It is believed that individualization of land through leasehold tenure improves the security of investments by excluding concurrent ownership and improving land transferability and access to credit. *Kenya* clearly reaffirms this position as its NLP states: "Establish mechanism for the creation

of leasehold interests out of public, community and private land, such leases lasting for a maximum duration of 99 years". There is no doubt that the feasible land tenure of the future is leasehold system, be it for a short term or a long term.

Level of land tenure security to be guaranteed

This issue is not treated in the NLP documents. The choices that can be made for tenure security as related to the so called 'continuum of right' (see UN/Habitat publications) is not elaborated, although the use of different concepts for land tenure in the NLP's most likely has an implicit appreciation of tenure security.

Historical Injustices

This issue is mentioned only in the NLP of *Kenya and Namibia*

Kenya: Historical injustices are land grievances which stretch back to colonial land policies and laws (1895-onwards) that resulted in mass disinheritance of communities of their land, and which grievances have not been sufficiently resolved to date. The grievances remain unresolved because successive post independence governments have failed to address them in a holistic manner. Hence NLP directs government to:

- Establish mechanisms to resolve historical land claims arising in 1895 or thereafter. 1895 is the year when Kenya became a colony under the British East African Protectorate with power to enact policies and laws under the Crown. It is these colonial policies and laws which formed the genesis of the mass disinheritance of various Kenyan communities of their land.
- Establish a suitable legal and administrative framework to investigate the historical injustices and recommend mechanisms for their resolution.
- Review all laws and policies adopted by post independence governments that exacerbate the historical injustice, including the constitutional provisions on the right to private property and compensation on compulsory acquisition regardless of how the property was acquired.
- Establish suitable mechanism for restitution (restoration of land rights to those who have unjustly been deprived of such rights), reparation and compensation of historical injustices or claims.

Namibia: Restitution of land rights abrogated by the colonial and South African Authorities prior to independence will not form part of Namibian Land Policy.

3.4 Land Markets

As mentioned earlier land transactions are the land market forms an important mechanism. However, land market imperfections most likely do neither direct land to its most productive use, nor provide equal access to land ownership or access to land related benefits, from which the poor have to suffer. The policy of the government on how to regulate the market is therefore in any country an issue. The free market needs interventions.

Land Markets	Rwanda	Namibia	Kenya	Malawi	Swaziland	Tanzania	Zambia	Uganda	Cambodia
Regulations		√	√	√	√		√	√	√
Speculation		√	√	√	√	√	√	√	√
Ceilings							√	√	√

Land Markets Regulations

Although *Rwanda* and *Tanzania* have made supportive reference to land market, they have not dealt with it as a separate topic to merit coverage in this section. While *Kenya* would like to see a vibrant land market in place, the policy statement starts off by outlining aspects that are hindering the operation of the market. The hindrances include inadequate land information, political interference, bureaucratic inefficiencies, corruption and absence of innovative market mechanisms. Because land sale and long term leases are not effective in ensuring equity and access to land, the policy paper proposes that government shall encourage development of land rental markets as they have the potential to provide access to land to those who are productive but own little or no land. In order to enhance efficiency in land markets, the policy paper further proposes that the government shall decentralize land registries and facilitate allocation of serviced land for investment.

The benefits to be got from promoting land markets are clearly explained and justified by *Swaziland's* land policy. It states: "The private sector holds the key to economic growth. It is recognized that the majority of wealth in all countries is held in the form of real property. Without a properly functioning property market, access to that capital is constrained or even denied. Enabling real property markets to work for the benefit of the nation's citizens is therefore of fundamental economic importance".

All countries examined accept the benefits that can be derived from land markets. However *Malawi* seems to be very cautious about application of free land market to land held under customary rights: the policy states that (a) Customary property boundaries shall be demarcated and ownership of interest defined to effectively lower the time and cost required to complete customary land transactions, and (b) All dispositions of customary land shall require approval and signature by the relevant head of the land owning group, the Chief, and an independent member of a democratically elected customary land committee.

In *Zambia*, where the land market is restricted and unregulated, there have emerged racketeering and speculations in land. To capitalize on the benefits of land markets, all the countries have, therefore, recommended measures to promote efficient and equitable operation of private land markets through efficient land delivery services involving

registration of rights and record of transactions, as well as speedy dispute processing under specific tenure regimes.

Rwanda and *Tanzania* are silent on what ought to be done to promote land markets.

Anti-Speculation and Application of ceilings, hoarding of land

Land speculation is a symptom of both poorly functioning land market and a lack of viable alternative investment opportunities. It promotes development of unplanned settlements, encourages urban sprawl, increases the cost of delivering services, creates an artificial shortage of development land and interferes with the government's desire for fair distribution of land.

Countries which have tackled the issue of land hoarding propose to discourage it through strict enforcement of development conditions; granting of planned urban land and ensuring timely effective utilization of the land; disallow disposition of land for which all development conditions have not been complied with (this exempts mortgaged land); imposition of punitive tax incentives to prevent speculative holding of agricultural and urban land; and treating land that has not been developed as per the stipulated conditions to be speculative and so be considered as they have breached the development conditions. *Tanzania* goes further to state clearly that any party granted a Right of Occupancy over a piece of land, is guaranteed free enjoyment of the same during all the term of the Right of Occupancy, provided that the landholder fulfills all the conditions implied and stipulated in the Certificate. Short of this, the allocation authority shall initiate revocation process.

With regard to land ceiling, all policy documents propose that legislation should set the highest amount of land surface area that can be allocated. This approach is intended to check against holding of large tracts of land which is not economically utilized. The policy of *Cambodia* sets the ceiling at 10,000 hectares, clarifying that any existing area exceeding this amount shall be reduced. *Kenya* and *Malawi* are additionally against excessive fragmentation of land into sub economic levels.

3.5 Land value, valuation and taxation

As mentioned earlier, the recognition that land has a value, urges for a policy on valuation and taxation. Especially the use of the taxation instrument to not only generates revenue, but also to be applied as a policy instrument for desirable land use might be an issue.

Land Taxation	Rwanda	Namibia	Kenya	Malawi	Swaziland	Tanzania	Zambia	Uganda	Cambodia
Value	√	√		√	√	√	√	√	√
Taxation	√		√	√			√	√	√

Value of Land

Kenya does not seem to mention anywhere in the policy document that land has value. *Zambia* mentions that land has value under the sub theme 'Land Markets'.

With the exception of *Kenya*, all the policies state that land as a scarce resource has value and that it has other physical and intrinsic attributes that also contribute to its economic and social value.

Hence the policies state clearly that land values will be recognized in all transactions involving land and in the assessment of land tax and rent. In that regard, land valuation is necessary for public purchase and/or sale of land and immovable fixtures, for expropriation and compensation, for land property taxation, and for the functioning of property land markets. *Tanzania* and *Malawi* specify that land has value as a share in negotiation to create joint ventures in various projects.

Taxation of Land

The other themes that have been used in various policy documents are: Land rent, and Land revenue. *Tanzania*, *Rwanda* and *Swaziland*

In the countries examined, tax collection is not efficiently collected partly because: There is yet no mechanism for the collection of the tax (*Kenya*, *Zambia*, *Uganda*); registered land is limited partly because some people have been reluctant to obtain titles, in order to avoid the land transfer tax, and as a result the informal market that cannot be taxed is flourishing, making government to lose enormous income (*Cambodia*).

Kenya policy states that in order to facilitate efficient utilization of land and land based resources, the government shall (a) Introduce a development levy on undeveloped land, (b) Introduce land taxes for commercial farms in rural areas, and (c) Improve the capacity of public institutions including local authorities to assess and collect taxes.

Zambia gives reasons for the inefficient and ineffective revenue collection of ground rent and other fees as being cause by lack of accurate data and a reliable land information management system, lack of clear revenue collection system and lack of periodical reviews. Accordingly the challenges that *Zambia* is facing include: limited tax base due to unregistered settlements; lack of an efficient and effective revenue collection system for ground rent and other fees resulting in under collections; and Lack of accurate data and a reliable information system. The policy document therefore proposes that in order to address taxes that are land related government will: (a) establish an efficient and effective revenue collection system for ground rent and other land related fees and charges, (b) broaden the revenue base by regularizing the unplanned settlements, (c) improve land information management system, and (d) ensure accurate data is maintained and review fees and charges periodically.

Cambodia proposes that in order to ensure land transfers of the informal market are captured within the formal system, further consideration of developing new rates based on zoning or land use should be developed. For example low rates (1% or less) may be considered for rural agriculture while higher rates (1.5%-4%) for urban commercial zones may be developed. It is imperative that citizens are aware of the value of registering land transfers. Accordingly a programme of awareness is called for. If people do not feel that the benefit of the formal system outweighs the current and future costs then this will only reinforce the continual use of the informal market.

Uganda seeks to streamline fiscal transfers between national, local and community land rights delivery institutions so as to ensure equity in the sharing and use of land services revenue. It

also proposes to enhance the capacity of local and community governance institutions so as to be able to raise and utilize revenue from land sector operations.

Malawi does not specify the amount of tax collected. In general it says: Land rent payable annually for any land leased by the government shall be based on the economic value of the land in question.

In *Namibia*, land and property taxation in proclaimed urban areas already exists in the form of rates against land and improvements situated on freehold land. The NLP proposes to introduce two different rates of land taxes in the rural areas.

3.6 Land Use Planning, Implementation and Maintenance

As mentioned in previous chapters, socially desirable land use requires certain government interventions, like regulations for planning, public acquisition of land, and specific regulations for informal settlements and transition areas.

Land Use Planning	Rwanda	Namibia	Kenya	Malawi	Swaziland	Tanzania	Zambia	Uganda	Cambodia
Planning regulations		√	√	√		√	√	√	
Public Acquisition									
Expropriation	√	√	√	√	√	√	√		√
Informal Settlements	√	√	√	√	√	√		√	√
Peri Urban Area	√	√	√	√	√	√			

Land Use Planning Rules

Two terminologies are in use, namely: “Urban and Rural planning” and “Spatial Planning”. “Urban agriculture” is referred to in only two policies, namely, the policy of *Kenya* and that of *Tanzania*.

Rwanda, *Cambodia* and *Swaziland* have not discussed this sub theme separately. *Malawi* discusses it in general terms only while *Kenya* refers to it in respect of urban agriculture.

Planning relates to all human activities and may be directed to reconcile the social and economic aims of private and public objectives. It is the allocation of land resources in such a manner as to obtain maximum effective use. When development occurs in an isolated, haphazard fashion outside a formal planning and development structure, many issues of social or physical design nature too often remain unresolved or allow only short-term solutions that work to the ultimate detriment of the total environment (*Malawi*).

While *Tanzania* proposes to discard the use of Master Plans in urban development, *Rwanda* and *Uganda* propose to use Master Plans for setting out broad land use expectations, strategies for the management of rural-urban population migration, and the development of physical infrastructure for the guidance of implementation planning authorities. *Tanzania* instead proposes adoption of strategic urban planning that out-sources local community participatory approach.

Although not a function of towns, when properly organized, urban agriculture has the potential to provide employment, income, and is a supplementary source of food supply. The policy statements of *Tanzania* and *Kenya* encourage regulated urban agriculture in a way that it does not disrupt planned urban development.

Rwanda proposes to define a coherent urban framework for development and elaborate or update town master plans through strategic options that include:

- Raising public awareness of urban master plans to enable the public to understand the justification of space allocation for various activities.
- Town planning should restructure/recognize and rehabilitate areas with disorganized constructions by legalizing the land ownership status of the residents, and by reorganizing their lifestyle by establishing traffic routes, water supply systems, electrical networks and other basic services.

In *Zambia*, the policy reports that there has been a considerable decline in land use planning over the years due to constrained resources allocated to this function resulting in sporadic and unplanned development and use. Approved land use plans are often not followed up with land development services. Challenges include: Lack of up to date national land use plan; Inadequate planning and enforcement of land use planning controls and restrictions by local authorities; Lack of coordinated approaches to land use planning; and Lack of compliance by land users. To address these limitations, the policy directs government to:

- Develop and implement spatial planning system that meets needs of urban and rural environments, and to ensure compliance by land developers and users.
- Ensure that all land for human settlements, agriculture, industry and commerce and other uses is planned, surveyed and serviced before it is allocated.

Concerning common properties in urban areas such as open spaces for recreation, public utilities, sites for schools, and other community facilities, it's only the policy document of *Malawi* that has set out how such areas are to be treated. The policy document states that

- Public open spaces, all of Lake Malawi and other sites for public uses are surveyed and registered as public land.
- All sites for public activities in towns shall be registered to appropriate authorities including local Community Based Organizations, NGOs and others who will be required to develop and maintain these sites in accordance with the intended public use.
- Protective measures shall be taken to protect environmentally fragile or hazardous areas not suitable for normal forms of development and which require conservation.

Public Acquisition of Land

A wider approach to public acquisition of land (willing buyer, willing seller), pre-emptive rights, land funds, is not dealt with in the NLP's. However, the right of the State to acquire land for general purposes is underlined in all documents, however directly related to expropriation.

Expropriation

The phrase “compulsory acquisition of land for public interest” or “acquisition of land for public interest” has been used to mean “expropriation of land” by the State for public interest.

With the exception of *Uganda* which is silent on compulsory acquisition of land for public interest /expropriation, all countries are in agreement that land may be expropriated for public interest following legally established procedures. *Tanzania* and *Swaziland*'s policy paper state that reasons for acquisition must be clearly spelt out. Tanzania's policy further provides that acquisition for public interest may be challenged in a court of law.

As the government has a duty to protect the free enjoyment of legally acquired property rights in land, a landholder is entitled to prompt, fair and adequate compensation if the owner's property happens to be acquired by the government for public use.

Informal Settlements

This section on informal urban settlements includes an issue of housing which has been raised only in *Malawi*'s policy.

Zambia's policy does not address the question of informal settlements.

Without giving quantitative information, *Kenya*'s policy notes that many Kenyans live as squatters, in slums and other squalid places. In the same breath the policy realizes that informal sector activities are a key feature of the economy as a source of livelihoods in both planned and unplanned areas.

Tanzania, on its part, observes that more than 50% of urban residents in Tanzania live in poor conditions in unplanned settlements where they have no security of tenure, access to sanitary and other basic services. In spite of this, the policy asserts that these settlements contain a considerable stock of houses which must be preserved.

Uganda clarifies that tenancies by occupancy, at will or at sufferance are common in urban areas or rural farmlands. Although precarious, land use under these conditions is important for poverty eradication. State refusal or reluctance to legitimize such bases of occupation and use is the cause of much injustice and misery in urban and rural Africa. It is therefore important that informal tenancies be stabilized and regularized.

Rwanda explains that urbanization is currently 16.89% of the country's total population of 8,128,553. The growth rate is approximately 9% p.a. Most of the ordinary housing (90% in Kigali, more in other towns) has been developing in a spontaneous manner (spontaneous is a euphemism for squatter/informal).

Malawi reports that most residents in traditional towns live in poor conditions in unplanned settlements. They have no access to basic services and also have no security of tenure. There are many factors that contribute to the growth of unplanned settlements. Some arise from natural population increases, rural to urban migration, costly and bureaucratic procedures for land acquisition, high building standards that are unaffordable to the poor urban majority, and laxity in the control of development.

Cambodia notes that urban development must lead to the provision of safe and healthy shelter for all. Informal settlements and homelessness are serious problems in Phnom Penh and in some provincial cities.

In *Swaziland*, land settlement often occurs without consideration for infrastructure provision, and there is uncontrolled spread of informal settlements. In particular as peri-urban and rural population pressures increase, there is an increasing amount of development which pre-empts future rational land use (including cost-effective infrastructure delivery), and provides hazardous environmental health conditions. Destruction of indigenous forests for fuel wood is another consequence of unplanned and uncontrolled developments.

To remedy all these situations, the following have been proposed by the individual policies.

Kenya proposes the following:

- Put in place mechanism for the removal of squatter from unsuitable land and their settlement, and facilitate planning of land found to be suitable for human settlement.
- Facilitate negotiation between private owners and squatters in cases of squatter settlements found on private land.
- For slums on public or communal land: develop a slum upgrading and resettlement programme under specified flexible tenure systems.
- Put in place measures to prevent further slum development on private land and open spaces and
- Facilitate the carrying out of informal commercial activities in a planned manner. Facilitate the carrying out of informal commercial activities in a planned manner.

Tanzania has the following proposals to arrest growth of informal settlements:

- Timely planning of all the potential areas in the periphery of all towns.
- Designating special areas for low income housing with simplified building regulations and affordable level of services.
- Upgrading of informal settlements through participation of the residents.

Uganda proposes the following measures:

- According statutory security for informal sector activities without compromising physical planning standards and requirements.
- Providing social infrastructure for informal sector developments.
- Encouraging land users in the informal sector to acquire more secure tenure rights through the market, individually or as communities.

Rwanda concludes that spatial growth shall be controlled through the following strategic options:

- The spatial growth of towns will be controlled. Land development programmes will define appropriate sites for urbanization.
- Formulation and updating of master plans for land use management and town planning for a better organization of the urban fabric.
- Promotion of the construction of high rise buildings.
- Training and capacity building of personnel responsible for the formulation and execution of plans.
- Town planning instruments which provide guidance and control of land.
- A study of simplified methods of plot distribution and authorization to build.

- Organization of housing financing.
- Demarcate all districts and forbid unauthorized constructions. To this end:
 - The role of the local communities in urban management and urban planning will be strengthened.
 - The law on expropriation (in the public interest) and relevant compensations will be modified.

The living conditions of squatters have to be improved:

- Accepting that the living conditions of squatters has to be improved the policy stresses that:
 - Squatter areas should be recognized. This will entail the reorganization of land and the development of networks of infrastructure and facilities. This implies expropriation of land rights, the clearing of houses and other buildings located in public areas, and the possibility for the resettlements of the communities.
 - The occupation status in squatters should be regularized.

Malawi dedicates itself to directing its efforts towards arresting the growth of unplanned settlements thus:

- Ensure timely planning of all potential areas for urban development in the periphery of towns so as to pre-empt haphazard development. Except for non-conforming uses and housing in hazardous areas, the land rights of residents will be protected through upgrading.
- Designing special areas that will be planned for low income housing with simplified building regulations. These areas will be provided with services that the residents need and can afford.
- Upgrading plans will be prepared and implemented by local authorities with the participation of residents and their local community organizations. Local resources will be mobilized to finance planning, development and appropriate cost recovery systems.
- On housing: for households in the lowest income group, the main housing intervention will comprise the regularization of land tenure in existing traditional areas, the provision of demarcated plots with secure tenure, the provision of basic infrastructure services, and the provision of income generating activities.

In *Cambodia* the policy consensus is to:

- Recognize limited, temporary rights to occupancy in informal settlements while searching for permanent shelter solutions.
- Avoid forced eviction as much as possible, and if compulsory relocation is required, then adequate preparation time, compensation and adequate relocation sites must be provided.

Swaziland policy states that the solution to informal settlements is to:

- Ensure that all development of land shall be according to an approved plan and subject to the approval of the appropriate authorities.
- Institute structure plans for rural and peri-urban areas based on the agro-ecological zoning concept and economic criteria.
- Improve the functioning of the formal land market, and provide means to regularize informal or semi-formal land tenure so as to reduce demands on the informal market which aggravates the problems of uncontrolled developments (squatter settlements).

Peri-urban areas

This part combines two sub themes, namely; “urban and peri-urban land use planning” and “Development of intermediate settlements”. The latter sub theme has been addressed in the policy documents of only *Tanzania*, *Rwanda* and *Malawi*.

Cambodia, *Uganda* and *Zambia* have not addressed the issues of peri-urban areas and development of intermediate settlements.

(a) *Urban and peri-urban land use planning*

Development of land in urban and peri-urban areas has been inhibited by lack of an effective coordinating framework for preparation and implementation of planning proposals and regulations, rapid growth of human settlements and activities that have led to urban sprawl, land use conflicts, environmental degradation, inadequate provision of infrastructure, spread of slum development and low levels of land utilization (*Kenya*). With annual urban population growth rate of 6-10%, *Tanzania* is experiencing rapid urbanization. The impacts of uncontrolled expansion of towns, particularly the encroachment of productive rural agricultural and pasture lands are not desirable. Such expansions create uncertainty in tenure and use of rural land which is enclosed within the urban boundaries (*Tanzania*). *Rwanda*'s towns are typically spread out due to scattered settlement and various buildings. The spreading out of towns is expensive in terms of infrastructure, and it reduces arable land (*Rwanda*). Urbanization is an integral aspect of modern economic and social development. As small towns and service centers transform from rural to urban centers, local authorities have to respond by extending their statutory boundaries and services to abounding areas. However, one of the effects of not extending land use planning controls into areas where land is predominantly under customary tenure is that traditional leaders retain the authority to allocate the use and occupation of rural and peri-urban land. This is often done without conforming to any formal planning scheme. There is nothing unlawful about development on customary land in rural and urban areas under the current law. However, the Town and Country Planning Act consider all development in a planning area without planning permission to be illegal and unauthorized. Furthermore, the current principle form of building, especially residential building, is simple single storied structure. This means that each dwelling unit requires a separate plot of land, which contributes to urban sprawl. (*Malawi*).

To address these problems, the policies observe and propose as follows:

Noting that proper planning will provide for well coordinated development of urban and peri-urban areas in terms of housing, commercial, industrial and infrastructure development to accommodate changes in lifestyle and economic activities the *Kenya* NLP directs government to:

- Amend the current Physical Planning Act (Cap 286) and Local Government Act (Cap 265).
- Develop a national land use policy as a basis of land use management and provide an appropriate framework for preparation and implementation of national, regional and local land use plans, ensuring that the process is integrated and participatory and meets stakeholders needs.

- Facilitate appropriate institutional and technical capacity building initiatives for accelerating plan implementation at national, regional and local levels.
- Prepare and implement local area development plans for all urban and peri-urban areas in the country in a participatory manner.
- Establish an effective coordinating mechanism for the preparation, implementation of plans and development control, and
- Encourage development of under utilized land within urban areas.

Noting that disputes arise due to conflicts between statutory tenure (in urban areas) and customary tenure (in expanded rural areas) *Tanzania's* policy directs the government to:

- Institute measures to limit the loss of agricultural land to urban growth by controlling lateral expansion of all towns.
- Revise planning standards to accommodate vertical building developments.
- Prevent conflicts of interest arising from expansion of towns into rural land (statutory rights vs. customary rights) through careful recording of all customary interests and paying of fair and prompt compensation before formally extinguishing existing land rights in the new (extended) planning areas.

Rwanda's policy proposes implementation of the following strategic plans:

- Adopt plans which allow for more economic use of land by housing a larger number of people in suitable conditions: high rise buildings and horizontal semi-detached houses.
- Land will be reserved for large scale infrastructure or facilities.

Malawi proposes that a comprehensive National Land Use and Physical Development Management policy shall be developed and employed as a guide for rural and urban land use and development decisions so that upon declaration of planning areas, preparation of land use and development plans in new areas shall be preceded by the following:

- All interests in land including customary land rights that exist in the planning areas shall be identified and recorded.
- Due process of law shall be instituted to formally extinguish existing land rights in the planning areas that contravene planning requirements.
- All third party interests that exist in the planning area shall first be cleared before the land is allocated for urban development.
- Regarding form of buildings, all urban land use and development plans will aim at more intensive use of urban land than has been the case in the past. To achieve this, the government will:
 - Revise all space and planning standards to promote more compact form of building in all urban areas.
 - Zone more area of towns for vertical development.
 - Within the Central Business Districts and in the immediate surroundings, vertical extension will constitute the principle building form.

On the mechanism of converting rural and peri-urban land to urban status *Swaziland* offers the following solution:

- Peri-urban areas shall be defined and designated and ensure that developments are in accord with laid down plans.

(b) Development of intermediate settlements

Regarding development of intermediate settlements, *Tanzania's* policy document directs district councils to prepare general planning schemes for all intermediate settlements within their jurisdiction.

Regarding development of intermediate settlements, *Rwanda's* policy document notes that Kigali's City and capital accounts for 85.7% of the country's urban population of 770,000, and that industrial activity and various other services are concentrated in the capital while secondary towns are hardly being developed. As decentralization should harmonize the spatial distribution of activities and services, the strategic options to take include:

- Some economic and industrial activities still centralized in big towns will be transferred to other more suitable urban centers.
- Land development technicians will be trained.
- A programme for providing towns with public facilities and infrastructure shall be drawn up for the development of secondary towns.

Regarding development of intermediate settlements, the *Malawi* policy document directs government as follows:

- District and Town Assemblies shall be required to prepare Township Planning Schemes for all Trading Centers and settlements within their jurisdiction. The scheme shall contain simple land use development proposals and detailed land subdivision plans to guide orderly development of the settlement.

3.7 Land Reform

Remarkably the instrument of land reform is not explicitly formulated in the NLP's. Nevertheless, at various stages in the NLP documents reference is made to gross disparity in land ownership (*Kenya*), the problems with 'mailo-land' (*Uganda*), privatization policies (*Zambia*), large white owned farms (*Malawi*), individualization of certain customary land tenure (*Rwanda, Kenya, Tanzania, Zambia, Malawi*), but it remains unclear which reform processes the countries have in place to cope with the issue.

Land Reform	Rwanda	Namibia	Kenya	Malawi	Swaziland	Tanzania	Zambia	Uganda	Cambodia
Tenure Reform	√		√			√	√	√	
Redistribution		√	√	√					
Conflict Resolution									
Authority									

3.8 Management of natural resources

Without proper land tenure arrangements and land management, management of natural resources is proven to be difficult. This regards both private land and state land. The latter, 'state land management' is getting an issue, also related to transparency.

Management Resources	Rwanda	Namibia	Kenya	Malawi	Swaziland	Tanzania	Zambia	Uganda	Cambodia
Land tenure Recognition				√		√			
Common land management		√	√	√	√	√		√	
Environment	√	√	√	√		√		√	
Rangelands			√	√	√	√		√	
Military land									√

Recognition of existing land tenure

In some places there may be long-term existing land tenure systems which have been established due to administrative directives that overlooked legal implications and now the government wishes to replace such tenure systems with new ones. Situations of this type have occurred in *Malawi* and *Tanzania*. In *Malawi* and *Tanzania* licenses or rights and claims such as mining rights, water rights, hunting rights/leases and timber harvesting licenses which usually co-exist with other land use rights are issued without coordination with public authorities or land owners. In *Tanzania*, the nationalization of properties resulting from the Arusha Declaration of 1967, made many settlers/companies to abandon the farms they owned. The government did not take any legal steps to divest such lands from the registered owners. During the villagization programme of 1970s, most of these lands were invaded and settled upon by villagers/institutions that are now developing the lands. They do so as squatters as they have no legal rights to be on the lands. With the liberalization of trade the former occupiers came back and villagers are unilaterally evicted.

In such conditions the policy statements direct: (a) the *Malawi* Government to ensure that permits, licenses, claims and rights for the exploitation of land-based resources are coordinated and that environmental impact assessment studies be carried out before any major land development project is carried out. (b) the *Tanzania* Government to: (i) take legal steps to extinguish the existing rights through revocation and acquisition procedures, (ii) redistribute the land to eligible citizens only after the successful completion of the acquisition process, and (iii) issuance of licenses, rights, and claims such as for mining, water rights, to ensure that hunting rights/leases and timber harvesting will take cognizance of existing land tenure rights and in line with land use policies and environmental conservation.

Land management of common lands

This sub theme on common land based natural resource tenure policy including protection and benefit sharing of the resources refers to resources that are of public interest such as wildlife

forests, water minerals marine, land itself, cultural heritage, small islands, beaches, coastlines, wetlands, common grazing areas, islands, etc. Regarding terrestrial fishing, only two policy documents, namely; of *Malawi* and *Tanzania* have tackled this sub theme.

Cambodia, *Rwanda* and *Zambia* policy documents have not subscribed to this sub theme.

Kenya' policy proposes to (a) develop comprehensive resource tenure policy regarding the land based resources such as wildlife, forests, water, etc. and (b) develop activities that take into account concerns of public access to beaches, the fragility of the ecosystem and national security.

Tanzania observes that allocation of sensitive areas like small islands to individuals and privatization of beaches (e.g. for location of hotels and private homes) has caused destruction to such areas. Hence the policy document directs the Government to: (a) Create a mechanism for protecting sensitive areas such as small islands, border areas, beaches, mountains, national parks, rivers, river basins and banks, seasonal migration routes of wildlife and areas of biodiversity. These shall not be allocated to individuals. (b) All beaches will be public and waterfront development shall be regulated. (c) Marginal land areas shall be defined as a tenure category requiring special development conditions. On terrestrial fishing, the policy statement recommends to government to identify land suitable for terrestrial fishing and conserve it to promote fish farming.

Uganda notes that common property resources such as grazing lands, woodlands, water points, ritual grounds, fisheries, irrigation systems, recreational parks, natural lakes, ground water, natural ponds, natural streams, wetlands, forest reserves, national parks and any land reserved for ecological and tourist purposes are usually managed through institutional arrangements. The NLP directs that effective preservation and management of common property resources mechanisms be put in place to: (a) Enact legislation to clarify who may have access to what categories of common property resources and how such access may be secured. (b) Identify, document and gazette all common property resources wherever located and irrespective of their status. (c) Document indigenous knowledge of particular common property resources, especially those of ritual or medicinal value, and (d) Ensure that common property resources exclusively used by or available to particular communities are directly held and managed by them.

Malawi explains that since lakeshore recreational areas attract national and international tourists. The attractive beaches of Lake Malawi have already attracted hotel investors and offer good investment opportunities for Malawians. However public access to the beaches is poor because the usable shoreline has already been allocated to private cottages, institutions and industry. This has displaced some fishing villages, interfered with access for fishing operations and threatens the livelihood of fishing communities along the lake. The few remaining village clusters along the shore are under increasing pressure to relocate and make room for private development. The policy document therefore directs government to bring order to development by (a) enforcing the provisions of the Development of Lakeshore Plots (Control) Amendment Order, 1996 in order to prevent undesirable use and to gain control over future development abounding the lake, and (b) Reviewing all existing property rights and development falling within the controlled area for compliance with the lakeshore development master plan. Regarding continued tendency of allocating sensitive areas like lakeshores land and marshes the NLP states as follows to protect such areas (a) for security

reasons, small islands must be protected. Forests and wildlife reserves or seasonal grazing routes of wildlife must also be safeguarded for environmental and habitat management purposes. These areas or parts of them should not be allocated to individuals, and (b) to facilitate public access to all lakes in Malawi, a public easement equal to 50 meters from all points along the shoreline and stretching inland from the high water mark shall be accessible to the public.

Regarding protection of common grazing areas from degradation, *Swaziland* policy document explains that a recent survey had determined that over half of the common grazing area in Swaziland, including much of Swaziland's scarce supply of arable land, was very seriously eroded. Continuance of this erosion can only be avoided by the institution and maintenance of strong management. The policy document therefore proposes that both the means and responsibility of controlling land degradation on common grazing areas be placed in the hands of the local community. All livestock grazing must be kept within the carrying capacity of the land.

On benefit sharing only two country policy documents, namely of *Kenya* and *Malawi* have been explicit, thus: The spirit here is that local communities/villagers are (a) concerned that they should have a right to share the land based natural resources that are within their environs such as forests, woodlands, and (b) the policy is desirous to conserve these resources. The policies therefore seek to direct governments to recognize community and private rights over the resources and therefore establish mechanism for communities to conserve and manage the resources in a sustainable way.

Kenya's policy directs government to establish legal frameworks to recognize community and private rights over renewable and non renewable land based natural resources including access thereto.

Malawi notes that more than 90% of Malawians use fuel wood (firewood) for cooking and tobacco curing; there was a high level of environmental damage done through bushfires, poor farming practices, overgrazing, over harvesting of trees, forest clearing for agriculture and others. The policy concludes that all this calls for better management of forests and woodlands. Hence the policy document recommends to government to (a) encourage Local/village communities to manage forest products locally and be watchdogs to protect community forests and woodlands, (b) encourage community and village development organizations to practice agro-forestry and (c) encourage and support programs to involve Communities in safeguarding forest reserves, conservation areas and national parks and to share the revenue derived from them.

Regarding terrestrial fishing the policy notes that government will ensure that traditional fishing communities have adequate access to lakeshore areas for fishing operations, special areas will be reserved on the lakeshore for this purpose and as wetlands serve as breeding grounds for fish, and support a variety of wild birds, animals and plants, the NLP further states that wetlands will be studied and proper land uses assigned to appropriate users and authorities for management.

Management of the environment

Cambodia, Swaziland and Zambia did not address this theme. All the other countries did address it.

Kenya addresses various aspects of environmental management namely; protection from degradation of natural resources and ecosystem, urban environmental management, and restoration and conservation of land. To address the question of degradation of natural resources such as forests, wildlife, water, marine and coastal resources as well as soil erosion, and the pollution of air, water and land, the NLP proposed government to, among others: (a) encourage preparation of participatory environmental action plans by communities and individuals living near environmentally sensitive areas to preserve cultural and socio-economic aspects, and (b) identify, map and gazette critical wildlife migration and dispersal areas and corridors. On the protection of ecosystem (including forests, wetlands and marine and coastal ecosystems, national parks, arid and semi-arid lands, water sheds, lakes and drainage basins) the government shall establish measures to ensure that healthy ecosystems are protected through land use controls, development of comprehensive and integrated land use policy that considers the needs of neighbouring communities and individuals. Regarding urban environmental management the government shall: (a) prohibit discharge of untreated solid and liquid waste into rivers, lakes and the ocean. (b) regulate all quarrying and excavation activities, etc. and (c) ensure that environmental impact assessment and audit are carried out on all land developments that have a propensity to degrade the environment. On restoration and conservation of land the government shall introduce incentives to encourage the use of technology and scientific methods for soil conservation and put in place institutional mechanisms for conservation of quality of land for environmental conservation purposes.

Tanzania's policy observes that large farms and ranches allocated in districts with wildlife had blocked wildlife migration routes; wetlands were being considered as wastelands and hazard lands were being encroached. The policy recommended to Government to: (a) revoke titles to large scale farms and ranches blocking routes of wild life. (b) allocate wetlands to users who will protect them. (c) prevent building on hazard lands and on fragile environments such as in river valleys, areas of steep slopes, mangrove swamps, marshlands, etc.

Uganda's policy proposes that to ensure that a framework for the protection and preservation of natural resources (water, minerals, forests, wetlands, wildlife, nature reserves and sensitive ecosystems) for the benefit of the people of Uganda is in place measures will be taken to: (a) review and revise the regulatory framework of natural resources to clarify who may have access to what natural resources products. (b) develop and institutionalize mechanisms for the joint and participatory management of natural resources with communities owning or contiguous to land in or over which these resources are situated. (c) ensure that large-scale investment decisions and activities do not compromise the sustainable management and conservation of natural resources. (d) develop programmes for the rehabilitation of waste disposal sites, polluted water courses, and control of green house gas emissions, and (e) provide for special protection for fragile ecosystems and biodiversity colonies, wetlands, water-sheds, lake-shores, and drainage basins. On poor land use practices and loss of soil and vegetation cover the policy document recommends the rehabilitation of degraded lands

through design and implementation of prevention and management measures, prepare programmes for the delivery of community based land management extension services and training on appropriate soil management techniques.

Rwanda addresses use and management of rural land which comprises hills, marshlands and protected areas. Each category has been assigned strategies for implementation. Noting that grouped settlement is the only form of settlement that will allow good planning and land use management on Hill Lands, consolidation of parceled and scattered plots shall be encouraged as a method of plot distribution and that agriculture in Rwanda shall be oriented towards specialization that will take into account the land use, plans and soil types. On marshland the policy paper recommends that (a) the Ministry of Lands and Environment shall classify and allocate marshlands in accordance with a legislation that will be enforced, and (b) marshland meant for agriculture should only be cultivated after making adequate planning and environmental impact assessment. Regarding protected areas the policy explains that these areas include the natural reserves (i.e. the national parks, game and forest reserves). It recommends that while protection and management of these areas is the responsibility of all Rwandans, a special law should govern the management of protected areas.

Malawi's policy explains that villagers will be sensitized during the land use planning process to provide and establish fuel-wood plantations to meet the demands for wood energy. Fragile areas such as steep slopes, wetlands and areas susceptible to flooding will be zoned to prevent or minimize the adverse environmental impact of cultivation and other developments. Concerning management of solid wastes urban areas City, Town and District Assemblies, while involving private sector and local communities, will be required to ensure that all solid wastes are promptly collected from all areas of towns. All effluent generating industries will be obliged to undertake pre-treatment of their effluent to environmentally acceptable quality before discharge into drains, or natural water courses.

Range lands and livestock (pastoralists land rights)

This sub theme is addressed by only five policy documents, namely of *Kenya, Tanzania, Uganda, Malawi* and *Swaziland*. The rest did not do so.

Kenya's policy point out that colonial and post colonial land administration in the pastoralist areas led to the deprivation of land management rights from the traditional institutions thereby creating uncertainty on the access, control and exploitation of land based resources including grazing lands, water and salt licks. The policy therefore directs government to secure pastoralists livelihood and tenure to land by: (a) establishing a legislative framework to regulate dealings in land in pastoralist areas, and (b) providing for flexible and negotiated cross boundary access to water, pastures and salt licks among clans, groups and communities for mutual benefit to facilitate the migratory nature of pastoralism.

Tanzania's policy notes that alienation of rangelands for large scale agriculture has frequently disowned pastoralists of grazing land thus creating conflicts. Hence the government shall: (a) guarantee security of tenure for pastoralists by appropriate measures including gazetment to protect grazing land from encroachment, and (b) issue certificates of village land to protect common property regimes. Because free movement of pastoralists with their cattle bring

about land ownership and land use conflicts with settled communities and additionally cause land degradation in areas where they pass, the following policy will further be enforced: (a) shifting and nomadism will be prohibited, (b) cattle movement will be regulated, and (c) pastoralists and agriculturalists/peasants will be educated on good land management and utilization.

Uganda observes that pastoral communities occupy dry lands which are harsh in terms both of climate and ecology. The dry lands environments also provide habitat for many wildlife species. In order to prevent threats to pastoral resources, legislative measures will be put in place to: (a) prescribe clear principles of ownership, control and management of pastoral lands as common property under customary law. (b) protect pastoral lands from indiscriminate appropriation by individuals or corporate institutions under the guise of investment. (c) maintain an equitable balance between the use of land for pasture, agriculture, and for wildlife protection. (d) establish mechanisms for flexible and negotiated cross-border access to pastoral resources among clans, lineages and communities for their mutual benefit, and (e) establish efficient mechanisms for the speedy resolution of conflict over pastoral resources.

Malawi observes that land use plans will contain guidelines for the location of livestock grazing consistent with agricultural land use. However, there are growing conflicts between agriculture and other land uses as both human and animal population increase. To address this, the NLP directs that: (a) the government will introduce buffer zones in areas where agriculture conflicts with forestry or grazing land, and (b) sensitive areas like steep slopes, severe gullies, overgrazed lands, shallow soils and semiarid lands, which form fragile ecosystems, will be earmarked for conservation.

Swaziland, like Malawi, observes that integrated land management is to ensure adequate provision of land for both human settlements and wildlife conservation. Hence wildlife conservation shall be provided for through allocating adequate land for the purpose.

Military lands

This issue is mentioned in the NLP of *Cambodia* only. Land will be reserved for Military Development areas and to be used by the military services for their various needs including settlement for demobilized soldiers. In general, border areas are preferred for the development of Military Development areas.

3.9 Land Administration

It is interesting to learn whether governments define their understanding of land administration, related to registration, cadastre/LIS, conflict resolution mechanisms, and institutional matters. One might expect that different land policies require different forms of land administration.

Land Admin	Rwanda	Namibia	Kenya	Malawi	Swaziland	Tanzania	Zambia	Uganda	Cambodia
Definition	√		√	√				√	√
Registration				√	√		√		
Registration Customary Interests	√	√	√	√		√		√	√
LIS/Cadastre	√	√	√	√	√	√	√	√	√
Survey and Mapping	√	√	√	√		√	√	√	
Decentralization	√	√	√	√	√	√	√	√	√
PPP			√				√	√	√
Conflict resolution		√	√	√	√	√	√	√	√
Authority	√	√	√	√	√	√	√	√	√

What form of 'land administration' is needed for supporting land policies?

Five countries, namely *Kenya*, *Uganda*, *Rwanda*, *Malawi* and *Cambodia*, each put forward a definition or a description that shows how Land Administration is perceived. *Tanzania*, *Swaziland* and *Zambia* did not offer a description giving the meaning of the key subject matter, land administration, which was addressed in the policy document.

(a) *Definition/Description of Land Administration*

Kenya defines land administration as the process of determining, recording and disseminating information about ownership, value and use of land. An efficient land administration system guarantees land titles and tenure security, guides land transactions and supports the process of land taxation. The principal components of land administration are:

- Ascertainment and registration of land rights.
- Allocation and management of public land.
- Facilitation of efficient transactions in land.
- Maintenance of efficient and accurate land information system.
- Mechanism for assessment of land resources for fiscal development and revenue collection, and
- Efficient and accessible mechanism for resolving land disputes.

Uganda describes land administration as: Land rights administration comprises the structures and processes through which rights in land are created, refined, and recorded or certified; the integrity of land transactions are assured and guaranteed, land rights disputes are processed, land revenue is generated, and land information is inventoried, provided or otherwise archived.

Rwanda defines land administration as: The process of registration and dissemination of information in relation to land titles and all sorts of land transactions, as well as the use of land-linked natural resources. This process includes the establishment of rights and other

attributes characterizing land ownership and the mode of acquisition, measuring and demarcation of plots, as well as their description.

According to *Malawi*: Land administration embraces such matters as the delivery of land rights, the planning of land uses, demarcation and survey of land parcels, the registration and maintenance of land information. It also includes conveyance, policies to facilitate decisions on mortgages and investment, development management, property valuation for assessment purposes and monitoring the environmental impact of all land based activities.

Cambodia describes land administration in terms of its objectives: The objective of land administration policy is to clarify and record ownership and other rights to and the location of all properties (public and private) in order to strengthen land tenure security, improve the efficiency and reliability of land markets, and protect social harmony by preventing or resolving disputes. Improved land administration will make immovable property tenure less susceptible to corruption or abuse, and clarify administrative competencies, thereby aiding governance.

(b) Status of Land Administration

The statuses of land administration in the countries studied as well as the proposed policy measures to address the situation are different and country specific from one country to another: However, there are common problems. Land administration is bureaucratic thus resulting in inordinate delays and injustice, inefficient and expensive (*Kenya, Uganda*); has poor record keeping which has led to multiple allocations and registration of land which in turn led to complicated land disputes (*Kenya, Tanzania, Uganda*); corruption practices (*Kenya and Zambia*); and while there is a Ministry for Lands mandated to administer land matters, some of the land administration functions are executed by departments in other ministries thus causing duplicity of roles leading to corrupt practices with no proper system to effect the efficient and equitable distribution of land (*Cambodia, Malawi, Swaziland, and Zambia*).

Country specific issues related to land administration include:

In *Kenya* land administration system is undemocratic and prone to abuse; has not supplied adequate serviced land at an affordable price; has not achieved equitable and fair distribution of land; and is undermined by land speculation, political interference and the abuse of power by the public agencies mandated to manage land. Kenya then proposes the following as solutions: Consolidate, harmonize and streamline all land registration statutes to ensure clarity and reduce bureaucratic bottlenecks, and Computerize land records and facilitate access to information.

Land administration in *Tanzania* lacks clearly defined institutional hierarchy resulting to government agencies responsible for land matters spending a lot of time dealing with disputes instead of doing proper land management and planning work. In response the policy proposes the government to make the Commissioner for Lands the sole authority responsible for land administration and empower him to appoint officers who will have authority to administer land other than village land at the appropriate level of government. On village land the policy states that Village Councils shall administer village lands but will be required to report all decisions on land allocation to the Village Assemblies. The policy goes further to stipulate that the procedure and powers of the appointed officers will be defined by the Minister for

Lands and shall include the execution of decisions made by Village Councils with respect to village land administration.

Uganda proposes that the land rights administration system must be designed and operated with a view to enhancing and facilitating the management of land resources; and ensure that land rights administration structures and processes at all levels are transparent, cost-effective and accessible to the ordinary land using public.

Rwanda proposes to ensure that land administration is based on a reformed cadastral system, including mapping, recording of all land related data and land titles, and encouragement of the population in land management. In the process the government will establish a National Land Management Centre equipped with a geographical information system; elaborate a standardized land law guaranteeing fair rights to tenants; promote people's active participation in land management and establish a national, provincial and district land management commissions both in rural and urban areas.

In *Malawi*, existence of a number of institutions and statutory agencies (e.g. Ministry of Agriculture and irrigation, Ministry of Water development, Ministry of Natural resources and environment affairs, Local Assemblies, etc) dealing with land resulting in confusion over jurisdiction and inadequate policy intervention. In Malawi, the NLP directs government to ensure that the powers of administration delegated by the President to the Minister responsible for land matters makes the ministry of Lands and Housing, the principal authority responsible for land administration in Malawi. In regard to formalization of traditional land administration, the NLP directs government to institute the following: record all transactions involving customary land; and develop a carefully structured program on Customary Land Administration and Customary Land Records Management for training Chiefs and Headpersons, and for certifying Traditional Land Clerks.

Cambodia notes that improved land administration will: (a) make immovable property tenure less susceptible to corruption or abuse, and clarify administrative competencies, thereby aiding governance, (b) improve the basis for cost recovery and facilitate land taxation, thereby improving the revenue basis for governance. Clarity of administrative boundaries will facilitate the operations of local governance and the community based management of land and natural resources.

Swaziland says that a unified, coherent, transparent and representative land administration be established, with the required technical and administrative support, at national and local levels. An institutional framework is to be created which is able to decide between competing demands and determine such conflicts. This is to include a body entrusted with the authority to rationalize land allocation for various uses at national level. Land administration be unified under one Ministry, as far as is practicable and efficient.

In *Zambia* land administration is executed by the Ministry of Lands through its constituent departments dealing with land delivery, land administration, land survey and land registration. However, departments falling under a number of ministries such as Physical Planning and housing, Valuation, Agriculture and natural Resources and other statutory institutions also contribute to land management. This leads to duplicity of roles leading to corrupt practices with no proper system to effect the efficient and equitable distribution of land. Furthermore, the land administration system has remained static and not adapting sufficiently to changing

circumstances (from pre- and post independence), thus rendering public land administrative functions less effective. The solutions proposed by the NLP

The policies of *Cambodia, Uganda, and Rwanda*; and to some extent that of Tanzania, have been presented from more-or-less a positive perspective saying, “doing this will benefit the people in this way and that” and then states what the government will do.

Kenya, on the other hand takes on a strong position of stating the problems forcefully and throwing blames to the those deemed responsible for causing the problems, then proposes what ought to be done.

Land Registration

Two terminologies, “land registration” and “land rights delivery” have been used synonymously.

Only *Swaziland* and *Zambia* have stated the type of land registration that they implemented. *Malawi* used to have a deeds registration system which was later replaced with title registration. *Zambia* operates a deeds system. All the other country policies are not explicit on this matter.

All policies refer to inefficient land rights delivery system largely caused by poor records keeping which, in *Kenya*, has additionally encouraged multiple allocations and registration of plots of land; lack of records on land held by villages, public institutions, and government; and registration systems that are manually operated causing many errors and delays in the registration system. Hence all propose to modernize and computerize the land registration systems as well as to provide for registration of all government properties and properties under public institutions such as forests and wildlife sanctuaries.

Specifically, *Kenya* refers to having too many statutes dealing with registration of land rights. It therefore recommends repeal of these statutes and replacing them with one Land Registration Act which shall recognize and protect all legitimate rights and interests in land held under the categories of land set out in the policy. The policy points out other existing shortfalls which include a land delivery system that: has not achieved equitable and fair distribution of the limited land resource; is rife with land speculation, corruption, political interference and the abuse of power by the public agencies mandated to manage land. Accordingly, the policy recommends: the need to facilitate access to land information; and to ensure that land records are authenticated, documented, and their custody and sanctity secured.

Tanzania's additional issues include: Many alienated lands remain unregistered for many years because of the slow process of preparation of Certificates of Right of Occupancy; encroachments and alienations of government and statutory allocations as well as double allocations of untitled land that have resulted in many land disputes. Hence the policy document has proposed to: Ensure that grantees of granted Certificates of Title get the Certificate within 180 days from the date he got the letter of offer, otherwise the grantee can register the Letter of Offer with the Registrar of Titles as notice of impending ownership; and to issue Certificates of Title for all government and public properties such as National Parks. Regarding village land the policy directs the government to: (a) demarcate village land and

issue to villages, title on common property resources; and (b) make compulsory the registration of customary interests in land to safeguard the interests of villagers.

Uganda's policy proposes that the registration system needs urgent modernization and simplification to: establish, operationalize and observe regular maintenance of community land registries for the recording and certification of land rights under customary law; and to amend existing laws to eliminate the need for expensive cadastral maps and deed plans.

Rwanda's current land registry contains some gaps: it exists only in urban areas, and it is not based on cadastral maps that have reliable bases. Hence the strategic options include to: make an inventory of all plots of land including owners and their particulars; carry out a fiscal evaluation of all properties so as to determine, for each developed land unit, a cadastral rental value for calculating taxes; update the land registry; train senior employees in land-use planning and rural development as well as topographical surveyors and land surveyors; and to formulate decrees and laws creating rural land districts and prepare the way for the appointment of land title registrars.

Malawi is experiencing a severe absence of technology for speeding up the title registration process and it intends to computerize the system.

Cambodia desires to improve the registration of all properties as a policy goal so as to increase land tenure security and improve the operation of the land market; thus fostering economic growth.

Zambia will employ a system of land registration that avoids duplicate issuance of one parcel, forgery, and Implement a systematic adjudication and registration of land interests in customary areas to equalize the rights of all citizens to land.

Registration of customary interests

(a) customary tenure

Rwanda's policy is quite straightforward in stating that customary land tenure has become obsolete and does not offer any economic advantage to the tenants or the state. [Also see sub theme on village demarcation]. Some other policy statements take a much softer stance to reach the same goal by proposing/directing that villagers shall be issued with individual titles (*Tanzania, Malawi, and Zambia*).

There is no doubt that the intention of different governments is to ultimately get all customary tenures individualized (*Kenya, Tanzania, Malawi and Zambia*). Such process in Kenya started during the colonial rule and was further advanced by the post independence governments through enactment of the registered Land Act (Cap 300). The Kenya policy is correctly seeing the effect of customary tenure individualization through formal registration on the customary tenure systems.

Furthermore, the policy paper goes further to reason that because smallholders grow nearly 100% of *Malawi's* subsistence food crops, they virtually guarantee the country's food security; the smallholder sector shall be guaranteed security of tenure by granting title to customary landholdings to encourage long-term improvements in agricultural productivity.

In *Tanzania* the process of individualizing customary tenure begins with a recommendation for titling village land and giving elected village Councils the mandate to administer all village land. Kenya's policy, though silent on individualization of customary tenure

recommends an approach similar to that of Tanzania through documentation of Communal land tenures (customary or non-customary), and then registering all community rights to land followed by imposition of accountable, participatory procedures to transact communal land. *Malawi* passes the onus to implement a systematic formalization of property in customary land to the Ministry of Lands and Housing working in partnership with the private sector to ensure the process is fast and cost effective.

Cambodia, like *Kenya*, is silent on individualization of indigenous tenure. It proposes that indigenous communities shall be granted communal ownership rights to their land. This communal ownership includes all land rights and protection of ownership as enjoyed by other private owner under law, with a sole exception that the community does not have the right to dispose of any communally owned property.

Zambia poses a unique situation whereby 94% of the land is under customary tenure. Chiefdom is also quite strong. Hence, Chiefs and Headmen have a significant regulatory role of customary tenure. The government, desirous to convert customary land to State land must get the consent of the Chief. This situation has presented an encumbrance on the vestment as the President has to consult the Chief before alienation of land. The NLP encourages systematic registration of customary land areas; Introduce group land rights to allow for registration of village, family and clan land as well as cooperatives; Continue to sensitize the public on the advantages of individual ownership of land through leasehold or customary tenure to improve the security of investments by improving land transferability and access to credit; Ensure that no Chief shall recommend land for alienation without consulting his/her subjects; and

Ensure and uphold that the final grant of land lies with the President in whom land is vested. *Swaziland's* policy is quite silent on this sub theme.

(b) village demarcation

The purpose of the proposals to undertake village demarcation or to demarcate traditional and individual customary land is clearly outlined by *Tanzania* and *Malawi* as the need to protect villagers' land rights and promote better and sustainable use of the natural resources within villages (*Tanzania*), and to reduce land disputes and further eliminate impediments to individuals who need to invest to improve their land assets (*Malawi*). A map showing traditional land boundaries will assist traditional leaders in land-use planning and land policy administration (*Malawi*). Spatial definition of national, provincial, municipal, district, commune and village areas creates physical jurisdictions for the supply of services and infrastructure, revenue collection, electoral procedures, and judicial competence (*Cambodia*). In *Swaziland* there have been an increasing number of boundary disputes between Chiefs, which have already resulted in violence, including loss of life.

The policy documents for *Malawi* and *Tanzania* provide for the participatory preparation of village land use plans. In *Malawi* the land use planning in rural areas will be monitored and enforced by district planning offices following decentralization. Until such time, villagers will be sensitized through civic education on collective responsibility for land use planning, environmental monitoring and enforcement of land use policies.

To implement village land demarcation, the policy mandates the government of *Tanzania* to provide guidance and support to speed up the process. In *Cambodia* and *Malawi* the policy

documents mandate the government, through the Ministries of Lands, to demarcate administrative boundaries of villages, communes and districts and provinces as the case may be. In *Swaziland* a special Commission would do the task.

Rwanda's policy requires selection of sites for group settlements to be easily accessible and with facilities such as water, electricity and free land. Risky and forest areas are to be avoided. Master plans will be prepared for land allocation and land use. The master plans will determine the boundaries between agricultural land and appropriate settlement sites. The policy paper goes on to specify that:

- District mayors, (on recommendation of land commissions under their authority), should agree on a new cadastre that prevents viable plots.
- The minimum surface area of a homestead property should be fixed at 1 hectare for it to be economically profitable.
- A district cadastral service will be introduced in order to register all the plots and ensure that they retain their undivided character.
- All decisions concerning the establishment of a grouped settlement site will be taken by the grassroots authorities in consultation with the target population.

The implementation procedure in *Malawi* is as follows:

- Individuals should be allowed to commission a survey and prepare deed/cadastral plans of their customary estates to facilitate registration of individual titles.
- Chiefs and Village Heads, through their Village Land Committees will be allowed to demarcate common access or public lands (e.g. areas for forestation, communal grazing land, block or cooperative farming, etc.) and have such lands registered as public lands to protect them against degradation and encroachment.

LIS/Cadastre, Survey and Mapping

This sub-theme has been discussed in the NLP's under two titles, namely "Surveys and Mapping", and "Surveys and Geo-information". Where geo-information has been used, it refers to mapping.

Keywords under this sub theme include: delays, high cost, cumbersome procedures, shortage/lack of surveyors, outdated maps, training.

The problems make a tall list:

The processes of surveying and mapping have been hampered by slow, cumbersome, outdated modes of operation; cadastral surveys that are expensive, centralized (*Kenya*); Acute shortage of surveyors in rapidly growing urban areas and topographic maps that are out of date (*Tanzania*); Shortage of qualified personnel, administrative bottlenecks in the approval of plans, and prohibitive private survey costs (*Uganda*); Existing plans and maps are old and out of date. Lack of large scale plans and maps (*Rwanda*); Survey department lacks the staff capacity to cope with the workload of cadastral surveying. Long delays in the process between the times a survey request is lodged to final approval of a survey (*Malawi*); inadequacy in human and institutional capacity of the survey and geo-information resource. Lack of unified, consistent spatial geodetic reference frame thus making surveys and geo-information activities more costly. Lack of resources that make the government fail to facilitate the surveying, geo-information activities, topographic, hydrographic and engineering

surveys. Lack of qualified surveyors. Lack of revised maps, lack of equipment for production and printing of maps and inadequate human resource capacity (*Zambia*).

Based on these problems, the NLP's propose remedial actions as follows:

- *Kenya* proposes: (a) for use of modern technology such as GPS, GIS and streamline survey authentication procedures, (b) Improve mapping standards in general boundary areas so that they fit into a computerized system.
- *Tanzania* recommends: (a) Undertake all control surveys, (b) Encourage government certified private land surveyors to play a bigger role in the execution of cadastral surveys. (c) Concentrate on the preparation of basic maps e.g. topographic maps at the scale of 1:50,000 and 1:2,500, etc. preparation of other map types (e.g. tourist maps) will be left to the private sector.
- *Uganda* suggests: (a) Amendment of existing laws to eliminate the need for expensive cadastral maps and deed plans, (b) Adopt simple demarcation and general (not fixed) boundary making procedures in respect of all tenure categories, (c) Privatize topographical, geodetic, hydrographic and triangulation mapping, subject to strict standard-setting and public regulation, (d) Set and enforce clear, achievable standards for the preparation of maps and registry plans by public and private agencies.
- *Rwanda* proposes: (a) All centers considered as urban centers should have land use master plans, (b) To computerize the existing data. Existing maps and plans should be digitized, (c) Strengthen and train the staff responsible for the elaboration and execution of programmes and plans.
- *Malawi* recommends: (a) surveyors are required to explore community based approaches and adaptations of spatial information technologies in the practice and standards required for registration, (b) acquire modern survey equipment, such as GPS, should be made so that survey services can be done quickly (c) allow for public and customary land to be performed under contract by private surveyors to alleviate the shortage of government surveyors, (d) undertake mass survey of the land and to meet current and expected future increases in demand for land surveys, (e) develop survey training and certification facilities to accelerate the pace at which surveyors are trained and certified in Malawi, (f) Contract private surveyors to prepare registration section maps, parcel and cadastral plans and to obtain layouts from the Physical Planning Department in the case of urban and town plots (g) Government to concentrate on the preparation of basic maps such as topographical maps of the scale 1:50,000, 1:25,000, etc. and preparation of other types of maps such as tourist maps, special areas maps, etc. will be left to the private sector and other organizations, operating in accordance with established laws and regulations.
- *Zambia* proposes: (a) build human resource capacity through modular competence based training and support short term courses, (b) procure modern production and printing equipment.

Cambodia and *Swaziland* do not mention anything on this sub theme.

3.8 Capacity Building

To implement a land policy, capacity is needed (Enemark & van der Molen, 2006)

Capacity Building	Rwanda	Namibia	Kenya	Malawi	Swaziland	Tanzania	Zambia	Uganda	Cambodia
Education and Training	√	√	√	√		√	√	√	√

This sub theme should be read together with the sub theme on “Surveys and Mapping” where the need for capacity building has been discussed in context of the core activities discussed in that section. The capacity building component could not be disaggregated.

All NLP documents examined acknowledge that survey and mapping functions are integral to an efficient land delivery system under any tenure system. These functions support the planning process in general, and the registry system, in particular, by supplying accurate information on parcel characteristics, sizes, boundaries and servitudes. They also point out that the manually operated cadastral systems are not delivering services efficiently; and that there is a dearth of human capacity.

The policy documents therefore note that there is need enhance institutional and human resource capacity through education and training of land administration and management professionals at a variety of levels. *Kenya, Tanzania and Malawi* specifically refer to creating human resource capacity to operate the computerized infrastructure for land delivery.

Kenya proposes to ensure that education and training will ensure that land use plans are applied as tools for effective land use management.

Uganda additionally, proposes to:

- Educate the land using public on the need for public regulation of land use.
- Build capacity for enforcement and periodic monitoring of the effects of public regulation.

Prior to undertaking the said training, *Malawi* proposes to undertake a project that will review the survey needs of the country, professional and technical staffing levels, training facilities and equipment needed to meet the requirements for demarcation and registration of customary land ownership will be developed and funded as soon as possible.

In addition to the said education and training initiatives, *Cambodia* proposes additional measures that include supporting domestic training in the areas of management and technical skills for systematic and sporadic land registration and focused study tours and overseas training opportunities to enhance the understanding of recent developments in land administration and management.

3.9 What about implementation?

It is good to be ambitious at policy level. However, experiences show that implementation should not be forgotten, as it is in many cases a bottleneck.

Implementation Instruments	Rwanda	Namibia	Kenya	Malawi	Swaziland	Tanzania	Zambia	Uganda	Cambodia
How to implement	√	√	√		√	√	√	√	√
Authority	√	√	√		√	√	√	√	√

With the exception of *Malawi*, all examined policy documents address how the policy will be implemented. In all countries the Ministries responsible for land development have been entrusted with the duty to coordinate implementation of the policies, ensuring that they consulted and worked together other stakeholder ministries agencies and Non-Governmental Organizations. *Kenya* recommends establishment of a Land Reform Transformation Unit to act as an interim administrative mechanism (initially for two years) to operationalize policy pending the establishment of National Land Commission. The Unit shall undertake training to build capacity of ministerial staff, staff of the Unit, and for the local level institutions that will be involved in land administration and management functions.

Uganda, stressing on full involvement of stakeholders in the implementation of the policy framework, underscores that a platform for professional organizations to discuss changes proposed in the land policy and to identify appropriate strategies for the programme of action under it shall be established. Also the private sector shall be given the opportunity to contribute resources for the implementation of the policy.

The implementation strategy in *Rwanda* shall include the establishment of a Master Plan for land allocation, land use and land development as well as a National Land and Geographical Information Centre that will include land registry and land use planning. Because human capacity is weak the policy document further says that the capacity of the decentralized services shall be strengthened and improved.

Cambodia sees implementation of the policy through strategies to (a) implement and operate a nation-wide land registration system using both sporadic and systematic registration procedures, including all property, both public and private, (b) resolve land disputes through the local Administrative Commission, Provincial/Municipal Land Dispute Settlement Commissions and the court organs, and (c) establish an accurate geodesic network, aerial photography and base mapping, and up to date land information systems.

Swaziland says it will implement the policy through revision of various laws, including: the Human Settlements Authority Act, Building and Housing Act, and Town Planning Act with the view to drafting a single Act to be known as “Physical planning and Development Control Act” and based on this Act, develop a National Development Code. It will also upgrade professional standards through relevant legislative reforms (Valuers’ Act, Real Estate Agents Act, Engineers, Architects and Surveyors Act) in order to create the much needed credibility and integrity of property-related professionals in smooth functioning of a property market.

Swaziland continues to note that: Good land resource management is dependent on efficient gathering and production of effective land related information. Sectors involved in this are: survey and mapping, registration, valuation, allocation, planning and environmental management. In essence this means the application of computer technology, and an integrated, corporate approach is necessary because land information is dispersed across numerous Ministries and organizations.

Zambia, on its part notes that in order to implement the Policy, the Government will adopt a strategy that involves all stakeholders in a participatory and inclusive manner.

Zambia touches on an issue that has not been referred to by other policy documents, namely; monitoring and evaluation of the implementation of the policy. Accordingly the government will:

- Establish an integrated system of monitoring and evaluation, and
- Develop monitoring and evaluating instruments for the implementation of the land policy.

On financing, only three policy documents make reference to it, namely; Kenya, Uganda and Zambia. *Kenya* comes up with an upfront specific lump sum budget for a period of six years. Uganda and Zambia provide outlines of inputs which need to be considered to arrive at a realistic cost for the implementation of the policy. Uganda goes further to note that public awareness and education about the policy is necessary to ensure that the policy is fully understood.

CONCLUSIONS

First a word of appreciation: the comparative study shows that the researched countries can be proud of their work. While many countries in the world do not have a National Land Policy in place, the 9 countries developed a sound document, in many cases after a participatory process, with opportunities for stakeholders (and the citizenry at large) to have their say. Secondly, also remarkable decisions were taken, especially regarding the recognition of customary land tenure and land management. NLP's are of course political documents, not research reports. However, the 'Silayo'-research shows that the link between political objectives, land policy choices, designed interventions in land tenure, transactions (markets) and socially desirable land use (inclusive of planning, taxation, public acquisition, resource management is present in the NLP's, but needs further elaboration in -for example- implementation plans.

Regarding land administration systems, these might also be further defined during the implementation process, because the 'old' colonial systems (freehold, title, deed, parcels etc.) definitely need adaptation.

Finally, it is wise policy to assign responsibility within the public administration for the implementation. The NLP's propose the following as the Authority responsible for land administration:

- (1) *Kenya*: National Land Commission. At district level there will be District Land Boards and Community Land boards at community level.
- (2) *Tanzania*: The Commissioner for Lands, who will appoint officers to administer land other than village land at appropriate level of government. Village land is administered by Village Councils.
- (3) *Uganda*: Uganda Land Commission and District Land Boards. The District Land Boards operate independent of The Uganda Land Commission.
- (4) *Rwanda*: National Land Commission, Provincial Land Commission, and District Land Commission. The Secretary of each commission shall be the registrar of land titles in urban districts or urban centers and rural areas under his/her authority. The National Land

Commission shall be responsible for the management of public and private state land on behalf of the Government and the nation at large. NLC shall also be the registrar of title deeds for public and private state land. Provincial Land Commissions should supervise and coordinate the work of District Land Commissions and deal especially with the management and use of urban land.

(5) *Malawi*: Ministry of Lands and Housing.

(6) *Cambodia*: Ministry of Land Management, Urban Planning and Construction.

(7) *Swaziland*: Ministry of Lands.

(8) *Zambia*: The Commissioner of Lands administers the State lands as farms and agricultural holdings as stands for buildings and other uses, all under leasehold. Chiefs administer land in customary areas but the Commissioner may allocate land under customary tenure provided that it is vacant and the Chief does not object.

(9) *Namibia*: Ministry of Lands, Resettlement and Rehabilitation.

REFERENCES

Deininger, K., 2003, World Bank Policy Research Report 'Land Policies for Growth and Poverty Reduction', Oxford University Press, which also can be accessed at:

(http://econ.worldbank.org/WBSITE/EXTERNAL/EXTMODELSITE/EXTPRRMODEL/0,,I mgPagePK:64202988~entityID:000094946_0307250400474~pagePK:64212652~piPK:64212659~theSitePK:477757,00.html)

Enemark, S & van der Molen, P, 2006, A framework for self-assessment of capacity needs in land administration, FIG Munich (www.oicrf.org)

GTZ, 1998, Land Tenure in Development Cooperation', Wiesbaden

UN/ECE/WPLA, 1996, Land Administration Guidelines, New York, Geneva (see: <http://www.unece.org/hlm/wpla/publications/lguidelines.html>)

Silayo, E.H., 2007, Comparative Analysis of Core Issues addressed in the National Land Policies of Eight Countries of Eastern and Southern Africa and Cambodia, ITC (<http://www.oicrf.org>)

Van der Molen, P., & Lemmen, C.H.F, 2004, Unconventional approaches to land administration, UN/FIG Comm 7, Nairobi Kenya (in <http://www.oicrf.org>)

World Bank Doing Business Reports

(see: http://www.doingbusiness.org/documents/FullReport/2008/DB08_Full_Report.pdf)

Used National Land Policy Documents:

- 1) National Land Policy secretariat, (March 2007), National Land policy - The Formulation Process, Nairobi, Kenya.
- 2) GoT (Government of Tanzania), 1997. The National Land Policy, Second Edition, Printed by the Ministry of Lands, Housing and Urban Development, Dar es Salaam, Tanzania.
- 3) Ministry of Lands, Housing and Urban Development, (January, 2007). Drafting the National Land Policy – Working Draft 3, Kampala, Uganda.
- 4) Ministry of Lands, Environment, Forests, Water and Mines, (February 2005). National Land Policy, Kigali, Rwanda.
- 5) Ministry of Lands, Physical Planning and Surveys, 2002. Malawi National Land Policy, 17th January 2002.
- 6) Kingdom of Cambodia, Strategy of Land policy Framework, Interim Paper, Approved by Council of Ministers on September 06, 2002.
- 7) Government of Swaziland, The Draft National Land Policy. February 2004. www.ecs.co.sz/land_policy/land_policy_chapter
- 8) The Republic of Zambia (October 2006). Draft Land Administration and Management Policy, ministry of Lands. Lusaka, Zambia.
- 9) Republic of Namibia, (1998). National Land Policy, Ministry of Lands, Resettlement and rehabilitation, April 1998.

BIOGRAPHICAL NOTES

Paul van der Molen is currently director of Kadaster International and a professor at the International Institute for Geo-information Science and Earth Observation ITC in Enschede (NL)

Eugene H. Silayo was a visiting scientist at ITC in 2007, and is senior scientist at Ardhi University in Dar es Salaam.

Arbind M. Tuladhar is assistant professor at ITC and visiting professor at Chang-An University in Xi'an (China).

CONTACT

E-mail: paul.vandermolen@kadaster.nl

E-mail: silayo@aru.ac.tz or ehsilayo@yahoo.com.uk

E-mail: tuladhar@itc.nl