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Land Governance in Southern Africa Synthesis Report

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Land Governance in Southern Africa

Synthesis Report

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Abbreviations and Acronyms

AfDB	African Development Bank
ALPC	African Land Policy Centre
AU	African Union
DLPS	Department of Land and Property Science
ECA	Economic Commission for Africa
FAO	Food and Agricultural Organisation of the United Nations
FLTS	Flexible Land Tenure System
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
HOD	Head of Department
NELGA	Network of Excellence on Land Governance in Africa
NUST	Namibia University of Science and Technology
UN	United Nations
UNDP	United Nations Development Programme
USA	United States of America

Countries

ANG	Angola
BOT	Botswana
ESW	Eswatini
LES	Lesotho
NAM	Namibia
MAL	Malawi
MOZ	Mozambique
RSA	South Africa
ZAM	Zambia
ZIM	Zimbabwe

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1. Executive Summary

This project on “Land Governance in Southern Africa” covers a description and assessment of Land Governance in the Southern Africa Region (Africa mainland south of Tanzania and the Democratic Republic of Congo). The project covers ten countries: Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Eswatini, Zambia and Zimbabwe. Eight countries are completed while Angola and Mozambique are still pending.



The Southern Africa Region. Source: Google Earth.

The project stems from the NELGA (Network of Excellence on Land Governance in Africa) Initiative on promoting demand driven research on land policy issues and connecting scholars and researchers across Africa through academic networks. NELGA is established by the African Land Policy Centre (ALPC) in cooperation with Germany, World Bank and other partners. This project is conducted by the NELGA node for the Southern Africa region established 2017 at the Namibia University of Science and Technology (NUST), Department of Land and Property Science (DPLS), Windhoek, Namibia.

The project focuses on a land governance scoping study on the Southern Africa region. Each country team, formed by the NELGA partner institutions within the ten countries, develops a report with description and assessment of the national land governance issues. The reports follows a common template describing the land governance issues and identifying the key challenges. The reports, thereby, enables comparison between the countries as well as learning form best practice. This should facilitate further research collaboration and innovation towards meeting the key challenges faced by the countries and within the region as a whole.

The template for describing and assessing the land governance issue is developed in alignment with the thematic areas as provided in the Land Governance Assessment Framework (World Bank, 2012) while the emphasis is adapted to the Southern African Region. The key thematic areas addressed for each country includes the institutional framework, the legal framework of land tenure and administration, land dispute resolution; land valuation and taxation, land use planning and control; management of public land; and land information management. Furthermore, each country has described the key land governance challenges identified within the specific country context.

The draft country reports were reviewed by a panel (the authors of this synthesis report) and presented at the Land Governance Symposium 3-4 September 2019 in Windhoek, Namibia with a focus on country context challenges. The challenges were further discussed in group-sessions and the outcome feeds into this synthesis report.

The country reports are available at the Symposium website:
<http://landsymposium.nust.na/>



This synthesis report is structured in three parts:

1. **Executive summary** including introduction to the region, the background, purpose and design of the project, and some key outcomes;
2. **Land governance in Southern Africa** with an overview identifying similarities and differences with regard to the key institutional, legal and managerial issue as dealt with by the countries throughout the region.
3. **Key challenges and opportunities** presenting an overview of the key challenges identified within the region and opportunities for improvement.

Land Governance – why it matters?

“Land governance concerns the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, the way that competing interests in land are managed.”

“When land governance is effective, equitable access to land and security of tenure can contribute to improvements in social, economic and environmental conditions. With good governance, benefits from land and natural resources are responsibly managed and the benefits are equitably distributed. In cities, effective land management reduces social tensions and promotes economic growth and poverty reduction. When good governance exists, decision-making is more transparent and participatory, the rule of law is applied equally to all, and most disputes are resolved before they degenerate into conflict. Improved governance can result in land administration being simplified and made more accessible and effective.”

(FAO, 2009, 9-11)

1.1. Introduction to the Southern Africa Region

The population of the Southern Africa Region is estimated at about 163 million people of which about half live in urban areas. The countries cover an area of 6 million sq. km, just over half the USA that is 10 million sq. km. The average density of the region is about 28 people per sq. km, compared to 36 in the USA. The average rate of urbanisation is about 50 per cent that is rapidly increasing. However, with an exception of Angola, Botswana and South Africa, the region is still predominantly rural, see Table 1.

Country	Area sq. km	Population	Density per sq. km	% pop urban
Angola	1 246 700	30 810 000	25	66
Botswana	566 730	2 254 000	4	69
Eswatini	17 200	1 136 000	66	24
Lesotho	30 360	2 108 000	69	28
Malawi	94 280	18 143 000	192	17
Mozambique	786 360	29 496 000	38	36
Namibia	823 290	2 448 000	3	50
South Africa	1 213 090	57 780 000	48	66
Zambia	743 900	17 352 000	23	44
Zimbabwe	386 850	14 439 000	37	32
Total SA Region	5 908 760	162 970 000	28	50

Table 1. Statistics of the Southern Africa Region (Source: World Bank, 2018)

The population in the region is growing rapidly, mainly in the urban areas. The increasing rate of urbanisation calls for socio-economic responses to deal with informal settlements mushrooming in urban and peri-urban areas throughout the region. Land governance in terms of land use planning, infrastructure development and security of tenure are key means in dealing with this rapid urbanisation.

Geographically Southern Africa includes both tropical and sub-tropical climates with the Tropic of Capricorn running straight through the middle of the region. The region therefore include a wide biological diversity and grasslands providing excellent grazing for wildlife. The region is also exceptionally well endowed with mineral resources such as copper, diamonds, gold, zine, platinum, although these are not uniformly distributed across the different countries.

The ten countries within the region share a diverse colonial legacy with varied impact on their political, socio-economic development. Most of the countries were colonised under British rules while Angola and Mozambique were colonised by the Portuguese, Namibia by the Germans and then by Apartheid Africa, and South Africa itself was colonised first by Dutch settlers and later by the British. Independence was gained at various stages over the period 1960s – 1990s.

This colonial legacy continues to influence the land governance regime in terms of hierarchal, inequitable and discriminatory land tenure systems based on legal dualism. However, recent land reform initiatives have aimed at redressing unequal land distribution as well as gender equity, wide spread tenure security and protection of the commons against land grapping and privatisation. The implementation of such policies falls under the domain of land administration, a domain where the capacity of countries in the region is rather low.

1.2. Project Background, Purpose and Prospect

NELGA is a partnership of leading African universities and research institutions with proven leadership in education, training and research on land governance. The purpose of NELGA is to enhance the role of selected African universities and academic institutions in support of land policy development, implementation and monitoring.

The NUST NELGA node was officially launched 19 February 2018 even though it has been active since June 2017. The agenda of the node includes a wide range of activities in the area of land governance such as academic exchange, knowledge sharing, capacity development, improvement of curricula, institutional dialogues, and knowledge management for developing and sharing best practice in land administration and governance.

In this regard, the Scoping Study on Land Governance is a kind of flagship serving a number of different purposes:

- i. The project facilitates networking between the NELGA partners within the region;
- ii. The project encourage research and education within the land governance area;
- iii. The project provides at kind of baseline study of land governance within the region and, thereby, facilitates further research cooperation and innovation towards meeting the key land governance challenges faced within the countries and the region as a whole.

To provide the country studies, each country formed a team of academics from one or more research institutions and appointed a team leader. A workshop was held June 2018 in Windhoek, Namibia to discuss and adopt the project design and the template to be used for providing the country reports.

Importance of land issues for economic development

“Land lies at the heart of the economic, social and political life of most African countries. Most countries in the continent rely heavily on agriculture and natural resources for economic development. At the same time, other land-based activities such as mining, tourism and urban development are key to the livelihood, employment and income of rural and urban populations. Reliance on land as a principal source of livelihood and as a basis for economic development in Africa is likely to persist in the foreseeable future.

However, land in Africa is not only an economic asset; it has major historical, political, cultural and spiritual significance. Good governance of land and natural resources contributes to conflict prevention, consolidation of peace and public security.”

(UN-ECA, 2010b, 2)

1.3. Project Design

The template developed for description and assessment of the land governance issues is based on the Land Governance Assessment Framework (World Bank, 2012) and adapted to the Southern African Region. This diagnostic tool enables in depth understanding of the legal, institutional and managerial issues within the country as well as further comparison between the countries for identification of best practice and improvements.

Based on the structured description each country have also identified the key land governance challenges for presentation and discussion at the Land Governance Symposium. In turn, this can facilitate further research projects at country level or between countries for improving the land governance concept within the region as a whole.

Template

A Country Scoping Study on Land Governance in Southern Africa.

Each country partner to prepare a country scoping study of about 50 pages consisting of two parts:

- A. Description and analysis of the land governance framework (about 30 pages)
- B. Identification of the key challenges to be addressed (about 20 pages).

A. Draft Template for Description of the Land Governance Framework

Adapted from the Land Governance Assessment Framework, WB 2012, 40-45
Mainstreaming gender equity, sustainability and capacity.

Assessments based on criteria such as efficiency, equity, affordability, publicity, etc.

1. Country Information

Overall information about the country in terms of area, population (urban/rural), number of land parcels (urban/rural).

2. Institutional Framework on Land Governance and Administration

A diagram showing the various institutions responsible for land governance and administration at national, regional and local level. Assessment of the clarity of mandates concerning the regulation and management of the land sector.

3. Legal Framework on Land Tenure

3.1 Tenure regime.

The range and types of land rights (tenure types) recognized by law - statutory as well as customary tenure regimes, individual as well as groups' rights, bundle of rights, and secondary rights as well rights held by minorities and women.

3.2 Land registration.

The models of registration, processes and mechanisms for recognition and registration of land rights - including forms of evidence used to obtain recognition, recognition of long-term possession of both public and private land, the costs and time for typical first time sporadic registration. Assessment of the degree of completeness.

3.3 Enforcement of land rights.

The degree of registered individual properties in urban and rural areas. The degree of common properties registered, and communal lands demarcated and registered. Assessment of the degree to which rights are safeguarded.

3.4 Expropriation.

The process, legal base, legitimacy and transparency of expropriation processes. The degree of fair/full/fair compensation.

3.5 Equity and non-discrimination.

The degree to which policy and decision making processes are power neutral, non-discriminatory and incorporate equity objectives.

3.6 Land markets.

Incentives for support and regulation of land sales and rental markets.

4. Land Dispute Resolution

4.1 Assignment of responsibility.

Description of the dispute resolution system and processes at various levels and tenure regimes. The level of equity, accessibility, transparency and opportunity for appeal.

4.2 Conflict management.

The effectiveness and costs (including social capital) of conflict management.

5. Valuation and Taxation.

5.1 The principles and processes for different kinds of valuation and taxation.

Assessment of the degree of transparency, publicity and effectiveness.



6. Land Use Planning and Control

6.1 Land use planning framework and process.

The process at various level of government. Differentiation between regional / local and urban / rural land use planning. Assessment of the effectiveness, level of justification, efficiency, transparency and public participation in urban and rural areas.

6.2 Delivery of services.

Assessment of the land use planning process in terms coping with urban growth and timely delivery housing opportunities and services. Addressing infrastructural issues in informal settlements. Assessing effectiveness and efficiency of various actors.

6.3 Development permits.

Assessment of processes, time delays, the degree of predictability of applications for restricted land uses.

6.4 Land use control.

Assessment of the degree of monitoring and revision and enforcement of existing planning provisions and other statutory land use and environmental regulations.

6.5 Change and environmental management.

The degree to which climate change issues and environmental sustainability are addressed and integrated into the land use planning process.

7. Management of Public Land

7.1 Public land inventory.

The identification and management of different types of public land and the degree of publicity.

7.2 Allocation of public land.

The process, purposes and rationale of allocating public land to private use. The degree of transparency, competitiveness and auditing.

8. Land Information

8.1 Public provision of land information.

Description of the technologies, inventories and their contents. The degree of publicity, accessibility, currency, completeness and reliability.

8.2 Land administration services.

The degree of accessibility and cost-effectiveness.

B. Identification of the key challenges to be addressed

Within the country context, the key land governance challenges are identified and described in some detail. This may relate to the institutional framework, the rural or urban land tenure system, the land use planning processes, uncontrolled informal urban growth, lack of management of peri-urban areas, the general lack of transparency and equity, etc.

Each country team may select just one key challenge to presented and explained – or the team may select several challenges as appropriate for specific country context.

The challenge(s) should be presented in style and format as a case study on the key land governance challenge – or challenges – within the country.

In turn, this can facilitate identification of further research projects to be undertaken for improving the national land governance concept.



Table Mountain, Cape Town, South Africa



1.4. Key Findings

A summarised description of the land governance issues in the Southern Africa region is presented in Chapter 2 and the identified key challenges are unfolded in Chapter 3. This section presents a synthesis of the key findings.

Legal Dualism

Legal dualism (statutory vs customary tenure) remains prevalent within the Southern Africa region. The consequences are lack of tenure security for women/rural poor, ineffective communal resource management, and new land-related conflicts. In this context, the regulatory role of traditional authorities is critical due to tacit arrangements, management of the commons, parcelling, illegal fencing and only partial registration of customary lands. The land administration systems are not able to cope with the customary land holding and informal holding which constitute a majority of the land in the region.

Land Tenure Systems and Colonial Legacy

The colonial legacy continues to influence the land governance regime of all the countries in the region. The land related institutional frameworks have not been adapted to accommodate the range of parallel tenure types that have evolved as a result of the colonization. Countries need to look into including all land and all tenures in their land administration systems. Rather than using over-engineered solutions, countries should look at introducing Fit-For-Purpose Land Administration Systems that are affordable, sustainable and relatively quickly implemented. This approach is flexible, participatory and allows for incremental improvement over time in response to societal needs and financial opportunities.

Institutional Reform

Land-related legal institutions and regulating administration cannot keep up with pressure from rapidly changing tenure systems, the scale of urbanization and emerging land markets. Most countries in the region are confronted with poorly formed, uncoordinated legal bodies, inappropriate land governance instruments and dysfunctional administrative procedures at all levels. Thus, surveying, registration, valuation and land transfer are costly, unpredictable and prone to corruption. Countries need to rethink and modernize their land institutions.

Ineffective Redistributive Land Reforms

The implementation of redistributive land reforms to overcome colonial injustice and give land access and tenure security to the poor has resulted in rather mixed outcomes. Ambitious agricultural production goals and modernization have not been achieved and communal lands or informal urban settlements have been largely left out in the process, becoming a future challenge. The unintended effects have been to increase prices for agricultural and peri-urban land leading to a high fiscal burden of the state for compensation.

Informal Settlements

Over 1 billion people in the world live in informal settlements, with a significant number in the Southern Africa region. The problem is complex and difficult to solve, but this is not an excuse to ignore this major land issue. The solutions will vary from country to country but will only be obtained through multi-disciplinary approaches and piloting potential solutions before going to scale. Countries need to design and implement programs and share experiences to significantly reduce this urban affliction.

Encroachment of Customary Lands in Peri-Urban Areas

Customary tenure systems cannot cope with the rapid rate of change in peri-urban areas, including informal settlements. This has resulted in women, ethnic minorities and the young generation suffering the most. Therefore, countries should formulate new policies where the legitimate holding of land in customary areas of the country should be recognized in the formal system. This process should be co-managed through arrangements between the tribal chiefs and the formal governmental land institutions, wherever possible.

Management of State and Public Land

The implementation of land administration solutions is conventionally driven by the need to support land markets and has an initial focus on administering private land and properties. However, land and natural resources need to be managed as a whole and this requires the usually considerable state and public land holdings to be effectively managed. Otherwise, the significant loss of state and public land will continue through land grabbing and corruption.

Gender Equality

In many places, national laws, social customs and patriarchal tenure systems prevent many women from holding rights to land. Women often rely on their male relatives for access to land. Women's access to land needs first and foremost to be seen as a universal human right, independent of any other arguments in favour of it. New land policies should not just benefit the poor; they must also improve the situation of women.

Land Related Conflicts

Land related conflicts at all levels are mushrooming and are not being resolved due to limited efficiency of in-court solutions and out of court mediation and arbitration not being adopted at early stages. New approaches to early mediation and arbitration need to be designed and implemented to be very accessible to all.

Land Use Planning and Management

Urban land management and planning is lagging behind the demands of a rapidly increasing influx of rural migrants. Weak coordination and regulation capacities encourage uncontrolled action of private land developers, and creates conflicts between urban and rural authorities at the urban fringe. Incoherent land use and natural resource management in rural areas have direct negative impacts on environmental quality and biodiversity. Climate change impacts and adaptation measures must be embedded in the management processes.

Land Information

Transparent access to comprehensive information about land supports evidence-based policy, more equitable court decisions in land disputes, land reform implementation, efficient land markets, land services and taxation, and reduces corruption. It underlies all activities in land. Countries need to formulate a strategy to quickly create integrated, fit-for-purpose, land information at a national level and provide transparent, ease of access to all.

Capacity Development

A shortage of qualified professional staff at all administrative levels in urban and rural areas remains a major challenge on the way to improve the quality of sustainable land governance. . With decentralization, the land administration and

management tasks in rural areas become even more challenging, and there is a severe problem for rural municipalities to attract capable staff to the county side and to retain them. Furthermore, court cases in land tribunals are delayed and cannot be handled adequately. Land professionals within the various professions are also limited and this inhibits Public Private Partnership based solutions.

Institutional Development

Capacity development is not only about education and training, it also relates to the broader social system within which people and organizations function. Institutional development refers to internal structure, policies and procedures that determine an organization's effectiveness. The better resourced and aligned the institutional and individual levels are, the greater the potential for growing capacity. Universities have a key role to play in facilitating this more global understanding and designing and undertaking relevant capacity development activities at societal, institutional and individual level.

Research Opportunities

The overall project on Land Governance in Southern Africa includes country scoping studies with a description and assessment of their national land governance issues. The country reports follow a template that enables comparison and learning from best practice within the region. The overall project also forms a baseline for further development and improvement through research activities at national, bilateral or regional level and thereby facing the key land governance challenges as outlined in this report. It is recommended that this baseline be used to monitor and evaluate progress in say five years.

The findings as presented above were discussed at the symposium working group session to identify ways and means of the way forward. The outcome of these discussions are presented at the symposium website <http://landsymposium.nust.na/>

The Challenges of addressing Land Governance

Why has there not been more progress in land governance? Three reasons relate to (a) the technical complexity of land management and administration and the need to make policy trade-offs; (b) the political sensitivity and, in many cases, institutional fragmentation of the land sector; and (c) the country-specific and sometimes local nature of land tenure arrangements that makes simple institutional transplants impossible.

Land administration is technically complex and cuts across many disciplines, such as law; information technology; geodesy; geomatics and surveying; economics; urban planning; anthropology; and environmental, social, and political sciences. Some of these fields are rapidly advancing, making it important not to remain with outdated solutions but rather to design systems in a way that anticipates future improvements. A key challenge is also to make trade-offs that help improve overall system performance rather than focus on over-engineered approaches that may be appropriate from a disciplinary perspective but weigh down the system and eventually make it unsustainable. While these trade-offs are ultimately a policy decision, a framework for the land sector can help to identify key areas of concern and guide support for developing an integrated strategy.

(World Bank, 2012, 20)



Customary tenure area, Mozambique



Informal settlement, Windhoek, Namibia



Surveying the future, Malawi



2. Land Governance in Southern Africa

Describing the key characteristics of land governance in the region is the first step in deepening an understanding of the underlying issues that continue to hamper the improvement of land administration systems in the region. This will allow researchers to identify issues that are not only national, but also regional in scope. On the other hand, the description also highlights regional differences, as problems identified in one jurisdiction are often assumed the same in many other jurisdictions.

There are similarities with regards to the institutional frameworks in the region, with much of it borrowed from the colonial powers, and with little institutional development over the last half century. Land rights are registered in a deeds system for freehold rights, with large tracts of state and communal land being unregistered. Land is still a significant part of the political system with half the countries having no freehold land and all land belonging to the state (ANG, ESW, LES, MOZ, ZAM). Even in countries where land is not nationalised (BOT, NAM, RSA, MAL, ZIM), the state has exerted significant influence in the allocation of land and has significant and increasing land holdings.

This chapter will outline and classify the major institutional and legal frameworks on land governance and tenure in the region. It will examine the nature of dispute resolution mechanism and describe the principles and processes of land valuation and taxation in the region. Next, we will describe the land use planning and control mechanisms, including issues such as the delivery of services, development permits and the inclusion of the environment in planning processes. The chapter will also explain how public land is managed and the extent to which land information is collected, stored and used for sustainable development.

Understanding these regional similarities and differences may allow for a dialogue between African scholars and policy makers on land matters that can serve as a platform for improving land governance in the region. The chapter will follow the structure of the template as presented in section 1.3 above.

2.1. Institutional Frameworks

Southern African countries are constitutional democracies with a president or prime minister as the executive authority (except ESW). The typical structure is that a Ministry of Lands in various forms are responsible for the land registration and administration functions. The Ministry typically performs the role of setting

the policy direction and ensures that technical support is provided in the form of a deeds registry and a survey registry. In some instances, the Deeds registry is situated in the Ministry of Justice while the survey registry is based in the Ministry responsible for Lands (ZIM). In all instances, there is a delegated authority to the regional and local level through a variety of institutional designations. Local level government is usually done through municipal/city government and or rural councils.

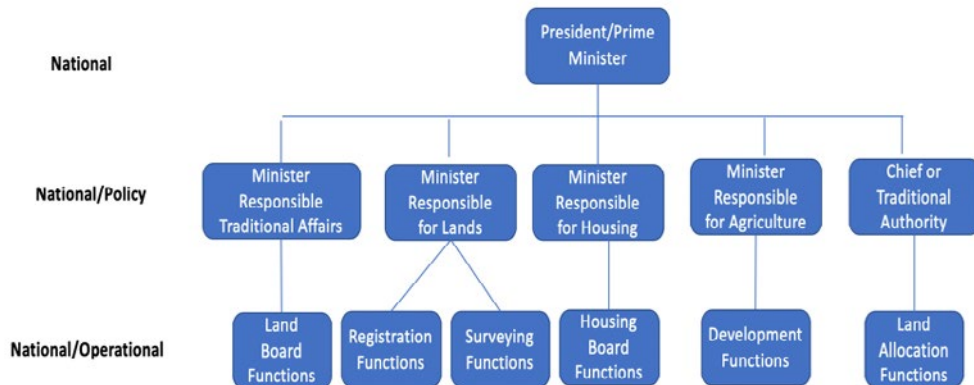


Figure 1. High Level Institutional Framework

However, responsibility for land governance is spread through other supporting ministries such as those responsible for urban and rural development, who are typically housing ministries. There are also support functions for land reform programs that do not typically fall under the ministry responsible for land (except NAM). There appears to be little integration of environmental and resource concerns and issues in the land administration functions. Environmental and resource rights are not integrated and are often situated in parallel systems.

Another feature common to all the countries is the presence of customary land, largely unregistered and undocumented, typically under the auspices of the respective traditional authorities. The traditional authorities are responsible for allocation of land rights under their jurisdiction and all countries recognise these rights. Malawi and Botswana are the only countries that has legislation that has removed these powers from traditional authorities, but the traditional authorities are represented on the respective land management boards. The degree of registration of these customary rights varies from country to country, but the rights are generally recognised by the government.

2.2. Legal Frameworks and Land Tenure Systems

A variety of tenure arrangements occur in Southern Africa that do not always comfortably correlate with the existing definitions. Typically, tenure rights may be described as private, communal, open access or state (FAO, 2002). However, this distinction is insufficient and does not capture the full range of land-people relationship that exist. Williamson, Enemark, Wallace, & Rajabifard (2010) state that each tenure classification is unique and that the infinite variation across nations and cultures have such unique characteristics that it defies categorisation. Instead, we will describe the tenure types as they exist in the Southern Africa and the reader can relate the classes to the various general classifications under which they might fall.

Generally, the land tenure regime in Southern Africa can be described as being comprised of three broad classes. The first is customary/traditional land under the authority of traditional leaders/structures, unregistered in most cases. The second is public/state land under authority of the government, which may be registered or unregistered and can include national parks and other conservation areas. The third class of land is private/freehold land typically registered, surveyed, and used for commercial agricultural purposes and also urban land used for residential purposes.

Customary tenure, which may include private and communal or group rights are very prevalent across the region. These customary tenure regimes are characterised by a lack of formal registration systems and, with some exceptions, the parcels are typically not surveyed and registered. The allocation and administration of these rights are normally carried out by the traditional authorities but may also be carried out by statutory bodies such as specially appointed land boards. Legally, in some jurisdictions customary land may be considered state land but is generally administered by or on behalf of the traditional community for residential or agricultural purposes.

Public tenure or state land may include land held privately by public (state) entities, land held by local authorities or land held by the state by proclamation, parks, forests, and nature reserves as well as any other un-surveyed land. In some instances, the only land available for commercial agriculture is the leasing of land from the state, and in some countries, this is considered as freehold land. For the purposes of this report, we will consider that as public tenure.

Freehold tenure is seen as being private individual rights held by natural or juristic

persons essentially free from any interference and held in perpetuity. These private rights are freely tradable and are surveyed and registered. Not included in here are other private rights to trees or agricultural parcels that are typically held under customary rules and practices.

2.2.1. Tenure Regime

It is important to note that in the Southern African context public tenure includes land held by the state under state title or other land that has not been surveyed and registered. In some jurisdictions public land includes not only land held by the state such as parks, nature reserves and other uses for public purposes, but also land that is designated for private use through leasehold agreements. In Lesotho, Angola, Zambia and Mozambique all land belongs to the state, so land that is used for housing and agriculture is leased from the state for periods ranging from 10 years to 99 years. As this is not freehold land, it is considered state land, but used for private purposes. In Namibia, South Africa and Zimbabwe, where extensive land reform initiatives have been carried out the definition of state land also includes land that was under private ownership but that has been acquired by the state for redistribution. Typically, the state holds the title to this land, which has been surveyed, and which has been allocated to various classes of beneficiaries for use rights only, but the titles have typically not been transferred.

Freehold tenure excludes leasehold rights where the land is leased from the state, as some countries (LES, ZAM, ANG, MOZ) do not have freehold rights and private rights are held only through up to 99-year leases from the state. In such cases, the leasehold rights may be mortgaged, traded and inherited. However, these private rights form a very small percentage of the available land rights. In the countries where true freehold tenure rights exist, extensive formal land markets are active, but there are also significant, but difficult to quantify, informal markets in urban informal settlements and customary areas. In the countries where there is little to no freehold rights there are almost no formal land markets and most of the transactions are informal but extensive.

Aside from Namibia and South Africa, **customary tenure** is the most prevalent form of tenure. Customary tenure is generally recognised and protected but with some critical limitations. In most cases, customary rights are not surveyed and registered, leaving right holders vulnerable to the loss of rights to the state. Customary land is sometimes considered state land to be held in trust for the community (NAM), but this provides broad powers for the state to abrogate rights in the name of development. In other jurisdictions, the power of customary

leaders has been removed by statute as far as the allocation of land rights are concerned (BOT, MAL). The role of customary leaders has been given to statutory bodies such as land boards and they are responsible for the allocation of land rights. Formally, customary rights are provided free of charge or at a nominal cost (free).

Group/communal rights are also common, especially in the customary regimes, but with no formal descriptions and or protections. Namibia is the only country to have codified its customary rights into a statute. Customary rights are limited in nature and are not tradable in Southern Africa. These rights may be bequeathed, but often within the parameters of cultural norms and practices. These rights are theoretically given in perpetuity, but are lost when the property is not physically occupied or used by the rights holder, or if abrogated by the state. The state has broad powers to abrogate customary rights for developmental or other purposes.

Other than South Africa and Namibia, it seems that land under public tenure and traditional tenure comprises the majority of land in Southern Africa. The administration of this land is largely done without the formal surveying and registration of parcels.

Rights of women are generally protected under statutory provisions for freehold land but not under customary law and land allocations. Under customary allocations, the rights of women do not have equal standing, with the exception of Namibia. Under statutory rights, where rights are allocated by the state, women's access to land is generally protected. As customary land is still the primary tenure regime in Southern Africa, it leaves women and minorities very vulnerable with regards to the access to land rights.

2.2.2. Land Registration

The overwhelmingly prevalent system for land registration in Southern Africa is based on the deeds registration system. For freehold land and public/state land, the transactions are recorded in a deed's registry. The information recorded is typical for a deed system, namely the details of the purchaser, property and any rights or encumbrances that may be attached to the property. Only in Namibia and Malawi, is there an element of title registration. However, title registration in Malawi is limited to certain specific districts and record keeping is completely decentralized. In Namibia title registration is restricted to the newly registered customary rights although these rights and proposed for the registration of

informal urban land parcels. The Survey Registries and Deeds Registries are generally transparent and keep public records that are open to inspection by the general public. The registration of land rights is managed by a Deeds Registry and the surveying of cadastral parcels is managed by the Survey Registry in all cases except Lesotho. In Lesotho, where all land belongs to the state, the survey and registration function is carried out by the Land Administration Authority, which has a “legal and registration division” as well as a “surveying” division.

Customary land records are subject to significant variation in processes and procedures across the region as well as within each country. The procedures and fees payable are not standardised and are applicable at the local level only. Botswana, Malawi and to some extent Namibia are exempted from this variation. In the first two instances allocation functions have been placed with administrative bodies and in the case of Namibia, allocation has remained with the traditional authority, but ratification is required by an administrative body. Recently, efforts to improve the registration and surveying of customary land through the sporadic surveying and registration of customary land holdings have been implemented (BOT, NAM). Despite these efforts of improvement, most customary rights are still un-surveyed and unregistered. South Africa (90%) and Namibia (81%) are the only countries in Southern Africa where the majority of land parcels are surveyed and registered. Some countries issue certificates that are not registered but that provide the certificate holder with some form of evidence of their right to the parcel of land in question (LES, ZAM). This is not considered as registered land however.

The time frames for registration vary significantly from country to country. In Namibia and South Africa, registration of a property transfer takes between two to four weeks while in Zimbabwe it can take more than nine months. There is no information available on the time it takes to register customary rights as these rights are not so readily transparent and the information about these rights are generally not recorded in a systematic manner.

The cost of land registration varies across the region with South Africa and Namibia spending about 5% and 7.6% of the property value on registration activities. These data are only available for South Africa and Namibia, as they are the only two countries in the region where the majority of land parcels are surveyed and registered and have significant and active land markets countrywide. In all the other countries land is either held exclusively by the state, or the majority of the land is held through customary allocations.



2.2.3. *Enforcement of Land Rights*

Registered parcels and rights are considered secure and are typically enforced. With the exception of South Africa and Namibia, where the majority of land is registered, it means that a minority of land rights are legally secured. Even when the rights are secured, with the courts having the last say, access to legal services may still prove to be problematic. In Zimbabwe, however there was a deliberate effort to ignore the legal processes and land rights were not enforced. Extra-legal dispossession of land rights, both in urban and rural areas, occurred during the land reform process creating significant tenure insecurity in the country. Land rights in Zimbabwe across all tenure regimes are generally considered as insecure. This is exacerbated by poor land administration processes which create conflicting land rights and allocations outside of the law. This leaves especially women and the poor vulnerable to the loss of land rights.

In Southern Africa, customary rights are generally recognised and enjoy legal protection, but there is very little in the way of practical legal mechanisms by which to safeguard these rights, as they are often not legally documented. This makes it difficult to provide evidence in a court of law, provided citizens have access to legal services. As customary tenure is the predominant tenure type in the region, generally, land rights can be described as insecure and unregistered. Equally, in peri-urban areas where the largest numbers of informal urban land rights are located, there is very little legal protection for the rights of land occupiers. With the exception of South Africa and to some degree Namibia, very few legal mechanisms exist for protecting the rights of residents in these informal areas. South Africa has passed a range of anti-eviction laws, which makes provision for “squatters”, tenants and farm workers not to be arbitrarily evicted. These protections for occupancy rights are not without their criticisms, but they go some way towards protecting the rights of informal residents. In Namibia, no one may be evicted from land that they occupy, legally or otherwise, without a court order, ensuring that even lawful owners may not take the law into their hands and make a determination about the rights of the “squatter”.

Generally, the poor and women are more likely to suffer from tenure insecurity. Even though urban areas tend to have rights of enforcement due to the higher rate of registration of rights, increasing informal settlement of urban areas is a threat to the degree of efficient and effective land registration.

2.2.4. Expropriation

Land expropriation is often seen in the context of redress of past imbalances in land ownership, and not always in the somewhat more neutral context of expropriation for public infrastructure or needs for the benefit of society (NAM, RSA, ZIM). This has tended to add a layer of complexity to an already fraught and contested process.

Constitutional provisions protect the rights of registered landowners and make provision for fair compensation. Constitutional and legal provisions are numerous making expropriation of land a long and complicated process. In Southern Africa, the judiciary has upheld these provisions, but that has not happened in Zimbabwe, where the reform process took on an extra-legal character. In addition, expropriated land rights, including those acquired under the resettlement/reform programmes, the other major problem has been in the re-allocation of these land rights. Typically, expropriated land would resort to the state, but in these three countries (NAM, RSA, ZIM) the rights have been re-allocated to private individuals. It could even be said that the process of re-allocating the newly acquired state land has been more problematic. These allocations have been marred by a lack of transparency, corruption, wasteful spending and land acquisition benefitting the elite. In Lesotho, there are no provisions for transparency in the allocation of expropriated land. If the process of expropriation can be said to be comprised of two components, namely the acquisition of land by the state as the first part, this seems to be generally a fair and juridical process. However, the second process, namely the re-allocation of the newly acquired rights, is fraught with corruption, lack of transparency and, generally, a lack of appropriate procedures in line with good governance principles.

As a result of numerous land rights being unregistered or undocumented in the region, determining fair compensation often undervalues or ignores the rights that are not fully documented or registered. This also results in overlapping and contradictory compensation mechanisms for these undocumented rights. Thus, exist a multitude of compensation instruments exist that may be exploited when it comes to the expropriation of customary rights. The state and local authorities often abuse the system so that the perception exists that, especially informal and undocumented rights, are typically undervalued and therefore not fairly compensated or not compensated at all. Namibia and Botswana have developed compensation schedules for customary land rights that are being expropriated. This typically takes into account crops, fruit trees and other resources that are on the land. They also make provision for alternative land in cases where it is

feasible. While this may be a step in the rights directions, it is not sufficient as rights are not sufficiently documented and the loss of a livelihood far exceeds the compensated value of a single season's crop.

2.2.5. Equity and Non-Discrimination

Overall, constitutional provisions and the major legal instruments provide for non-discrimination and equality for minorities and women. The challenge is in implementing these provisions and ensuring their social acceptance concerning equity and non-discrimination in accessing land rights.

Freehold land is acquired at market rates and while there is no discriminatory legislation, the system discriminates against the poor, which constitute a significant majority in Southern Africa. It cannot be said that these processes are power neutral. Namibia is attempting to provide tenure security to the marginalised in urban areas through the Flexible Land Tenure System (FLTS). The FLTS aims to provide tenure security only in urban areas for persons that do not own any other property in the country. The FLTS concept is targeted at informal settlement residents and, in theory, it provides for upgradable titles from group titles to individual titles. However, the system is still being piloted and no statement can be made on the results or outcomes of this concept.

Rules and legislation regarding access to customary land in Namibia, Botswana and South Africa provide protections against gender discrimination. Land ownership by women are also the highest in the region. In the rest of Southern Africa, there are also generally constitutional protections for women, but due to the legal dualism, there is deference to the customary practices, even where they are discriminatory. Women headed household are at increased risk of losing their land rights due to customary practices, inheritance laws or customs and financial exclusion. As women are often excluded from owning land, they are also excluded from the decision-making process about land, further perpetuating the cycle of exclusion and discrimination. In Lesotho, for example, women may not own land and fixed property. However, the passing of the new laws 2006 and 2010 has increased the rights of women significantly. In Malawi, women hold less than 15% of land parcels, whether jointly or severally.

Access to state land is often the only other means for the poor to access land in Southern Africa. While there are numerous legal provisions to ensure equity and equal access to land in practice this is not always the case. In Botswana, women and the youth are less likely to be able to access state land, due to a lack

of financial resources. Reform measures in South Africa, Namibia and Zimbabwe especially, which are designed to redress past discriminatory legislation, ironically are seen as a means to empower the political elite, who are still classified as previously disadvantaged from a historical perspective.

2.2.6. Land Markets

In the freehold areas in Southern Africa, reasonably well functioning land markets are evident, especially in the urban areas. These markets typically have little or no restrictions, with the exception of agricultural land, where sales to non-national are typically not allowed or subject to Ministerial approval. This includes markets for rental occupation as well as land sales. The rapid growth of urban populations have increased the demand for property in the rental market and while there have been some attempts at regulation of the rental market (NAM, ZAM), the market forces generally determine rents. The land markets apply to residential, agricultural and industrial property, notably in South Africa, Botswana, Zambia Namibia and formally Zimbabwe. Agricultural land is no longer tradable in Zimbabwe, although the urban land market, and increasingly the rental market, are still active, albeit subject to interference from the government. Lesotho has the least active formal market with the majority of land not being registered.

Where customary tenure is the dominant tenure type, we find that no formal land markets exist, although evidence of limited trading and sales in land do occur. As these transactions are extra-legal in their extent, it is difficult to determine the value, range and frequency of these land informal markets. There is a limited extent to the scale of land markets in Southern Africa. Customary allocations are typically not acceptable as collateral for loans and revert to the traditional authority upon the cessation of the right. Land acquired by the state through the various land reform programs is typically also not tradable and no land market exists.

2.3. Land Dispute Resolution

In the customary tenure regimes, the traditional authority structures dominate the conflict resolution mechanisms. In the jurisdictions where customary law has been embedded in legislation, the structures tend to be the administrative bodies responsible for the land allocations. Therefore, we find that land boards or similar institutions serve as the first conflict resolution mechanism. Where the traditional authority has the power to allocate land, we find that the traditional

methods of conflict resolution prevail, even sometimes in cases where statutory institutions have been created. In the case of Botswana, Land Tribunals, which is a statutory court, is authorised to hear cases on land conflict resulting from traditional land allocations. Botswana has also made provision for alternative dispute resolution processes that allow parties outside of the court system to hear and settle disputes. This is typically cheaper, faster and more accessible than the court system.

State land allocations, specifically those that deal with disputes related to land reform initiatives, are to be dealt with the Land Tribunal (NAM) or Land Commissions (ZIM). Such disputes may relate to the inheritance or use rights of leasehold rights or allocations of state land, for which there often is no formal title possessed by the beneficiary as described in Section 2.2.1 above. Generally, these conflicts may be escalated to the judicial system such as the high court or even constitutional court, as has been the case in Namibia and South Africa.

Zimbabwe does not allow the court system to hear matters related to the land reform programme leaving very few options for legal redress by complainants. One avenue that has been open to complaints has been the Southern African Development Community (SADC) Tribunal. In a landmark case, the court ruled in favour of 78 evicted farmers against the government of Zimbabwe. The court ruled that the farmers may “keep their farms because the land reform undermined the rule of law” and that “fair compensation” should be paid to farmers already evicted. The SADC tribunal has no power to enforce the ruling, but it does add political pressure to a member state and speaks to the illegitimacy of the land reform programme in Zimbabwe. There is thus very little in terms of fair, equitable and accessible opportunities for land dispute resolution in Zimbabwe. However, this is an exception in the region⁴.

What is not exceptional is the preference for male dominated and patriarchal system across the region to limit opportunities for women in seeking redress. Aside from the specific mechanisms for dispute resolution or alternatives created in any other legislation dealing specifically with an aspect of land reform, the normal procedure would be to bring disputes before the civil court systems. Aside from Zimbabwe, this is generally the case for Southern Africa, and as good as this is, there are some downsides. The civil court system is not very accessible to poor, marginalised and vulnerable people who are often poorly educated and possess insufficient resources to engage the civil court systems. Urban informal settlement residents often prefer to resolve disputes amongst themselves and find the judicial system as being too complicated and expensive.

2.4. Valuation and Taxation

Valuation and taxation principles and processes are applied consistently across the region for freehold/titled land and function in a similar manner. Property taxes are typically levied on land and and/or improvements and sometimes on the capital or investment dividend over a period of time. Typically, valuation is done for statutory purposes such as rates and taxes and for commercial purposes such as insurance, lending and sales. The primary taxes are transfer tax to be paid to government and local property taxes to be paid to the relevant local authority or Ministry of Agriculture where the land is not situated in an urban area. Valuations for the purposes of statutory taxes are based on the valuation role, which is public, and revised periodically such as every five years. Valuers are registered professionals with their respective boards. Procedures provide a period after publication of the valuation role for affected parties to object or raise other concerns at the valuation court,

Sometimes administrative shortcomings may reduce the effectiveness of the procedures but they are generally considered to be well functioning. Valuations for property transactions, insurance and lending purposes are usually carried out at the time of the transaction by a private valuer. The current market value of the asset to be exchanged is the determining factor in the insurance, lending or transfer and needs to provide a detailed and current evaluations of the economic value of the asset. Such a valuation must be seen as being an impartial professional opinion based on sound “legal, economic, physical and social principles affecting real estate to estimate its value”.

The systems are generally perceived to be public, transparent, just and effective. There is one major caveat, in that the valuation and taxation system is typically only applicable to the surveyed and registered properties. Thus, aside from South Africa and Namibia where the majority of 80-90% of properties are surveyed and registered, the valuation and taxation system does not apply to the majority of land rights holders in the region. The challenge about informality or a lack of titles is that there is no ownership record, and thus it reduces the tax base significantly. In Zimbabwe, the property tax system is hampered by the illegality of the reform programme and the lack of titles for new beneficiaries. The tax base is further eroded by significant political interference in tax affairs and waivers of

⁴ For a more detailed discussion on the SADC ruling against Zimbabwe in *Mike Campbell (Pvt) Ltd et al v The Republic of Zimbabwe* at (http://www.jstor.org/stable/40646848?seq=1#page_scan_tab_contents).

outstanding taxes due to political expediency. Capital gains tax, which is a tax on the appreciation in value on an investment, typical for registered properties, is charged in all countries in Southern Africa, except for Namibia.

2.5. Land Use Planning and Control

2.5.1. *Land Use Planning Framework and Process*

The land use planning in Southern Africa takes place on several levels: national, regional and local. The national levels are responsible for policy and legislation, planning at the national scale as well as providing technical support to the local and regional level due to a lack of sufficient planning capacity. The regional planning level is responsible for planning at regional (district) level as well as for planning at the local levels in rural areas such as villages and settlement areas, which do not have sufficient local administration capacity. Municipalities are responsible for land use planning at the local level in line with the national development plans. There is generally no distinction between the urban and rural areas, except for Lesotho, where rural area planning is the mandate of the Ministry of Agriculture, and for which no legal framework exists. Namibia has also been criticised for not having a national land use policy or integrated planning at the national level.

The plans allow for varying degrees of public input and consultation, although this has been argued to be insufficient, and are generally available for public inspection. The planning frameworks are generally based on the British systems and date from the 1960's which are centrally planned, highly regulated and inflexible. It has been argued that the planning frameworks in Southern Africa are outdated and do not serve the current needs of the countries. It is argued that the planning frameworks are too technocratic, takes too long time and are therefore unable to cope with the reality such as increasing informality. As a result, the planning paradigm has been overturned by informal settlements, with settlements happening first, services then being delivered and finally planning taking place, if at all.

2.5.2. *Delivery of Services*

The planning processes in Southern Africa make provision for low density sprawling settlement areas, which is not compatible with the needs for higher density cities. As a result, infrastructure costs are high and cannot accommodate

the growing number of urban residents. The planning process is not able to deliver on housing, sanitation, water and energy needs of residents. In some cases, the existing infrastructure for water, power and sanitation is deteriorating with increasing interruption in water and energy supplies. In informal settlements, these services are not available to residents resulting in fewer people in the region having access to these basic services. Opportunities for jobs, transport and development of sustainable communities are considered as even lower on the list of priorities compared to the basic needs for survival.

2.5.3. Development Permits

Development planning permission involves a lengthy process of submissions and approvals. This is required to safeguard the quality of life, underpin consistent decision-making and ensure adherence to permit conditions.

Approvals for development may take anything from three months up to two years with the outcomes less than predictable and subject to political influence in some cases. It is also common to note that by payment of a bribe decisions may speed up, or assure favourable outcomes. The perception that the process is not fair has resulted in a build first approach with permits sought afterwards. The lack of enforcement also contributes to the practice of not applying for development permits, creating a further cycle of lawlessness, where it is not seen as worthwhile adhering to the rule of law.

2.5.4. Land Use Control

There is little or no enforcement of land use controls and development conditions. After permits have been issued, there is an almost universal lack of monitoring or enforcement reported from Southern Africa. The requirements for environmental clearance certificates are seen as certificates to be acquired, rather than being adhered to.

2.5.5. Climate Change and Environmental Management

Although environmental management is seen as an important aspect to be considered in the planning process, it is not yet included in the statutory planning processes in Southern Africa. Beyond basic issues such as flood zones for rivers, stream banks and generally uninhabitable land that is unsafe for occupation, environmental concerns are not addressed. Partially this is due to the outdated planning procedures that are still being practiced in the region. As a result, the environment is still the preserve of the Ministry responsible for the environment, but it is rarely integrated into the planning process.



2.6. Management of Public Land

2.6.1. *Public Land Inventory*

Public includes national parks, wildlife preserves, conservation areas, customary lands and land reserved for public uses. It also includes land owned by local regional and national authorities and registered in the Deeds registry as such. While no official public land inventory exists in the Southern African countries, some estimates have been done based on publicly available data. Changing definitions of public land, such as the inclusion or exclusion of customary areas, would significantly alter the figures.

2.6.2. *Allocation of Public Land*

Due to the varying approaches to state land there is no evidence of a coherent policy for the allocation of public land. Public land alienation is fragmented and for specific narrow purposes. These functions occur in isolation of a broader policy or perspective. Land acquired for resettlement is managed by the departments responsible for resettlement and reform, while customary lands that are alienated are treated completely differently with no reference to an overarching national system or process. There are almost no provisions for public input in many of these processes when alienating state land. Zambia, in which all land belongs to the state, provides a set of objectives for the alienation of state land, but does not define a process in law for such alienation.

2.7. Land Information

2.7.1. *Public Provision of Land Information*

In Southern Africa, land information is firstly held in the deed's registry and the survey registry. The survey registries hold the cadastral parcel information and the deeds registry hold the ownership information. In general, with some exceptions, the data is not available in digital format or online. Large municipalities have their own corporate GIS systems that allow varying degrees of access to information on servitudes, building plans and infrastructure layouts (RSA, NAM). To acquire public land information about a parcel or municipal restrictions, physical inspections of the deed's office and the surveyor general's office is required. The typical information available to the public is limited to topographic maps at different scales, survey data, and ownership data.

Data on public restrictions and developments such as zoning, land uses and building lines are not stored in the cadastre and is typically held by the local authorities and municipalities. Information from the water and power utilities tend to be on separate systems and are not mapped or integrated on to the cadastral systems. Data on roads is generally kept by the roads authorities and again are separate from all the other data. This creates serious obstacles for accessing information, as multiple agencies have to be contacted. All these agencies have different policies for information access, security, updates and interoperability is severely hampered.

The information described above is applicable only to the registered and surveyed land. Only in South African and Namibia, is the largest proportion of land surveyed and registered. Information about land that is not registered in the deed's registry, which is the case for the majority of the region, is generally not available at all.

2.7.2. Land Administration Services

The current land administration systems in Southern Africa are able to provide limited land information about parcels and owners for the formally registered component. It cannot provide information about the unregistered parcels. The information is not very accessible, not available online and require physical inspection at centralized locations. In addition, the information is in analogue form and not conducive to analysis and planning using modern geo-information system tools. The systems are not able to support modern land management functions regarding development, taxation and environmental planning. As the land administration system does not meet the demands for a modern land administration system, the system cannot support sustainable development.



Victoria Falls represent a kind of meeting point of many Southern Africa Countries including Zimbabwe, Zambia, Botswana, Namibia and Angola [source: Africa-safari.dk]

3. Key Challenges

The reports have identified some key challenges for land governance that all the countries have in common. These are characterised by a noticeable mismatch between how land reform has been implemented and the associated land policy concepts. This has limited the ability to successfully implementing policies on the ground without triggering severe, unintended, negative side effects. This outcome has been further compounded by institutional constraints that have to respect and balance statutory land legislation with the customary tenure approaches. Customary tenure is becoming more complex and difficult to maintain in rural areas that are absorbed into the peri-urban and urban contexts. This has resulted in women, ethnic minorities and the young generation suffering the most from these new inequalities in access to and use of different land categories.

Partly as a consequence of this legal dualism / pluralism, overlapping and partly competitive land administrative structures are expanding and diverging. The combined effect is often to discriminate against the uninformed urban and rural poor. The situation is further compounded with the continued use of cumbersome, outdated, and time-consuming procedures for surveying, registration and valuation. This discourages urban land development, housing, and the upgrading of informal settlements as well as viable agriculture. Not surprisingly, land rental and sale markets are gaining in importance for land transfers. They are often poorly established on an insufficient and biased information base and lack of regulation. This regularly leads to informal, grey arrangements and corruption. Land related conflicts at all levels are mushrooming and are not being resolved due to limited efficiency of in-court solutions and out of court mediation and arbitration being at early stages only.

Opportunities are emerging to improve and widen the use of conflict resolution mechanisms. However, this will require: intensified capacity development in land-related administration; stronger jurisdiction; the emergence of private valuator and developer businesses; more effective civil society organizations that can act as advocates for the disadvantaged; and more focused, streamlined and timely land registration, land development and land market activities. These essential and facilitating changes can be expected in the near future.

3.1. Colonial Legacy and Land Reform

The colonial legacy has produced a highly skewed land distribution in favour of white owners. This has only been addressed by redistributive agricultural land reforms in four countries with mixed results. In cases where the reform process was based on the willing-buyer-willing-seller principle (NAM), its implementation has been constrained by time consuming and bureaucratic land acquisition procedures for private freehold. This has also led to increased land prices, putting an increased fiscal burden on the state. Such price increases largely restricted large-scale land acquisition by the state.

More radical redistributive reforms lost momentum through a combination of expectations in their impact being too high, the associated legal framework being inadequate, and inconsistencies in their implementation (ZIM). There have consequently been severe negative impacts on agricultural performance, the emergence of new sorts of inequalities and the increased persistence of rural poverty. Contrary to constitutional provisions and safeguards, no compensation for expropriation has been provided and land surveys have not been undertaken

in a systematic and standardized way to grant land as (inheritable) leasehold to reform beneficiaries (RSA, NAM). No legal transfer mechanisms were formulated for expropriated lands to be transferred to the state, leaving allocation decisions to the discretion of the President. This has created arbitrary decisions and dangerous opportunities to easily reverse the process in case of political regime changes (ZIM). Therefore, land reform in Zimbabwe remains highly insecure with the danger of arbitrary expropriation high. The trading of land and its use as an investment instrument remains prohibited. These developments generate a climate of corruption and result in security belonging mainly to the social and political standing and associated networks.

Land reform remains concentrated on private freehold only and largely ignores the transfer to communal lands (ZIM, NAM). This has created grey areas of informal transactions and has encouraged elite capture and power misuse. In Zimbabwe, land reform has not delivered benefits to the rural landless poor, but has simply allowed political heavyweights to enrich themselves. This includes traditional chiefs, local bureaucrats, army officers and the church. Unfortunately, land reforms have just intensified those land asset inequalities they were originally intended to overcome.

The narrow interpretation of land reform to redistribute freehold has largely ignored other property rights categories. Claims for ancestral land by ethnic groups remain unresolved (NAM). The fate and opportunities for farm workers are continually side lined. Although their situation has been raised repeatedly, their poor living conditions and insecurity of workplace are prevailing (NAM, RSA). When focusing on agricultural lands, governments are confronted with difficulties to change their priorities to respond to the urgency of removing the colonial land legacy. Whereas after regime change, the rural lands and resettlement were at the center of interest, now facilitating urban housing of low income groups has become even more pressing (NAM). Post-apartheid constitutional change accelerated informal urban settlement growth since all citizens now have the right to settle wherever they want. For these citizens, insufficient human resources within land institutions led to disastrous planning and service supply. In cases where post-independence land rights reforms were executed, parts of the urban lands were handed over to private companies. These private ownership rights and territorial expansion are now impeding urban development to improve the situation of informal settlers (BOT).

The first steps to solve urgent rural and urban problems are to improve land data availability and information on reform land, to develop appropriate indicators

for land reform performance and to monitor the status (and costs) of restitution (RSA, ZIM) in order to effectively manage the overall reform progress. In addition, a much more coherent land reform policy has to be established to replace ad hoc decision-making and to provide a vision for future agriculture models. The trade-off between highly efficient large farms with an industrialized approach and social equity goals within smallholder driven agricultural development has to be addressed.

3.2. Legal Dualism and Protection of the Commons

Policy challenges emanating from legal dualism between statutory, codified land tenure and customary, mostly unwritten land rights are prevalent in all countries reviewed. They often contribute to ineffective shared, communal resource management and protection of the commons. Customary tenure often remains insecure since chiefs apply their individual and ad hoc rules on land administration. In this context, tenure security depends on group membership and this does not always guarantee equal treatment in front of the law (ZAM). In some countries customary tenure has either not even been legally recognised or it is decided upon at the discretion of the President (MAL, ZIM). Tenure questions then became highly politicized, ignoring any distribution and allocation of power and rule of law, provoking abuse and corruption by the local powerful.

In particular, women, young families and indigenous peoples as holders of derived or secondary rights are often negatively affected, forcing them to stay in insecurity and poverty. Their rights remain ill-defined as they cannot be effectively documented within formulated categories of statutory law. In addition, they are also in danger of being ignored within customary land regulations since the legal system does not treat each person equally. Tenure insecurity on customary lands is perpetuated when rules are constantly changing and evolving in an unstructured way. This creates new insecurity for vulnerable users (MAL, RSA). It has become evident that such pressure on communal lands is not a rural phenomenon any more, but increasingly affects more and more peri-urban areas.

Traditional authorities still exercise strong power, which is often not to the advantage of women. Women are not well represented in the decision making process and often are subordinate under patriarchal power (NAM, ZAM, ESW). They often have insufficient knowledge of their statutory rights, e.g. shared ownership rights in land and inheritance rights, and this compounds the situation. The definition of customary rights is often understood to be rather rigid, referring to rural residential, cropland and pastures mainly. However, this does not do

justice to the existing complexity of natural resource rights, such as rights to water sources, plants components or plant-based by-products, thatching grass, wild animals, etc. (NAM).

A tacit process of individualization and privatization of customary lands is under way. Illegal fencing, as a local form of land grabbing, is increasingly limiting the access to communal grazing resources, firewood and building material collection. This again is affecting mostly the poorest (NAM). Even modern, post-independence legislation on communal areas is lacking the legal instruments that would effectively allow the punishment of illegal fencing. Such legal ambiguities lead to increased incidents of corruption in communal areas with the chiefs the most culpable. Village heads and council members support illegal land sales and traditional leaders misuse their function as land custodians, forcing even community members to pay fees to get their future use rights guaranteed (ZIM). The need to identify and register communal land is well understood by governments. However, it is costly and time consuming. In Namibia, for example, only about 50% of presumed rights are currently registered. This leads to strong regional disparities in registration, especially to the disadvantage of those rural dwellers living in remote areas. Registration of communal areas enhances tenure security. However, this is not sufficient to fully extract the economic potential of these lands. As communal lands cannot be transferred freely, they remain of rather low economic value and cannot be used as collateral (NAM). The further economization of communal lands remains a controversial issue since there is a trade-off between efficiency of land management and equity considerations.

Legal pluralism in land rights has also become a challenge for urban development. On the one hand, traditional authorities keep a strong influence on even urban land access by making use of legal loopholes that arise from contradictions and inconsistencies between statutory and customary legislation (LES, ESW). On the other hand, traditional authorities' power is questioned when customary lands are nationalized without compensation for actual users. This happens when statutory rules cannot be easily applied for communal lands for registration and the fact that claimants for these kinds of rights are excluded from land tribunals (ZAM).

Legal dualism creates new land conflicts or intensifies existing ones between landholders, between family members or between traditional authorities caused by overlapping boundaries of areas of jurisdiction (NAM).

3.3. Overlapping Institutional Responsibilities

Developing tenure systems and improving land governance require the mobilization of different informal and legal institutions, the implementation of organizations at different levels and the coordinated of their actions to avoid overlapping responsibilities causing deadlocks or conflicts. Most countries reviewed have reported poorly formed, uncoordinated legal bodies, inappropriate policy instruments as well as dysfunctional administrative procedures. Severe shortcomings are related to the bureaucratic steps for land acquisition, i.e. the registration of private, public or communal lands. Centralized and inaccessible land information systems together with insufficient human and financial capacities undermine the chances of less affluent and ill-informed groups of obtaining secure tenure through robust land lease contracts, ownership titles or public land services.

Zambia, for example, still recognizes an incoherent bundle of land related pieces of law, which do not provide clear-cut criteria for land expropriation in case of public interests. Limited capabilities at lower administrative levels to address land disputes in time and with qualified staff lead to many cases shifting to High Courts. These are located far away from the plaintiffs, often in the capital, creating additional costs. Even there, competent court verdicts are hampered by insufficient access to a comprehensive land information system as an evidence base for decisions.

Incoherent land administration and land management organizations often mirror a dysfunctional government in general. In countries like Zimbabwe, the institutional framework is in a state of collapse with insufficient human and technical capacities to carry out core duties. In many cases, ministries overstepping their spheres of mandate and create duplications.

The high number of administrative steps and the corresponding higher costs and time needed to register private plots in cities or customary lands in rural regions, discourage people to follow the official process. This then generates informal channels fuelled by corruption (MAL). Cadastral systems also lack coordinated efforts in collecting land information, leading to a duplication of information that often results in the allocation of one plot to different users or owners. The situation is often even worse for communal lands (ZIM).

3.4. Unequal Distribution of Land

In Southern Africa, legal reforms to secure land tenure, redistributive land reforms and attempts to practice good land governance all try to reduce inequalities in access, ownership or use of land. However, none of these initiatives has abolished existing inequalities in assets deeply embedded in (colonial) history or avoided generating new ones. Population growth, corruption, poorly implemented land reforms and gender insensitive policies are major reasons for failure. These failings become more visible in rural areas. However, they are also gaining in importance in urban informal settlements.

High population growth in rural areas perpetuates landlessness and will skew access to land in future, especially for women, the young generation, or farm labourers (MAL, RSA). As land reform and market-based practices for access to land often do not follow clear regulation and rule enforcements, corruption, political connections and networks encourage the concentration of rural land in the hands of a few, who often do not use it optimally (MAL, ZIM). The higher the degree of ease of transferability and marketability of communal lands under these conditions, the higher the danger of a more unequal distribution of the commons (NAM).

Nearly all the reviewed countries have in common the issue that gender-neutral land legislation and policy instruments have not yet eradicated a dramatic gender bias against women in land use and transfer practices. Although land legislation is moving to a gender-neutral approach, promoting holding of land by women, fewer women than men do currently hold land in their own right, largely remaining marginalized (ZAM, MAL, ESW). Women often use land via land rights given to their husbands, with marriage being a precondition for land access. However, in case of divorce, they often lose these rights and security nets. As for communal lands, women only hold secondary rights as only men as household heads are awarded with plots (ZIM). In cases where customary rights and traditional authorities remain important for land access, young individuals or couples are in danger of discriminating against the older generation.

3.5. Inconsistent and Unsustainable Land Use Management and Control

Many attempts have been undertaken to reform land administration and land management to be more user friendly, have higher transparency and generate

enhanced tenure security. Eswatini experiences demonstrate the need for a long crafting process to establish the legal foundations of a coherent land policy draft. Nevertheless, fragmented, outdated, inconsistent, even contradictory instruments to manage land transfers and land use together with low enforcement of sanctions and control mechanisms still characterize land governance in urban and rural areas.

In some cases, old colonial legislation is still operational and does not correspond to modern technical, planning and control requirements. In many countries new land legislation on land management, e.g. for zoning and urban planning, has been crafted. However, limited enforcement capabilities negatively affect the quality of land administration and management, leading to encroachment of private interests into public land and the illegal conversion and use of areas demarcated for public services (road construction) or agriculture. The encroachment on public land is a major challenge, leading to a breakdown of government spatial planning tools, thwarting the concept of land governance and disrupting public services provided, e.g. piped water and electricity (MAL).

An incoherent legal framework on land goes hand in hand with inconsistent land policies. Lack of clear objectives, strategies and instruments leads to ad hoc decisions that are driven by the actual political climate and leads to missing visions for urban development and the future of agriculture. Spatial and land use planning remain characterized by rigidity and inflexibility in responding to changing demands in urbanization and rural development, e.g. business models in agriculture, ecosystem services, or protected areas (ZIM).

Land registration suffers from deeds systems, which do not verify the authenticity of the deed in question regarding its material content, do not provide proof that the parties involved are in fact entitled to do so, and allow unqualified staff to enter documents where legal authenticity cannot be proven. These weaknesses can often lead to the production of false titles (ZIM). Technical shortcomings, such as non-digitalized information, slow and expensive access to land information and loss of documents due to inappropriate storage aggravate the problem. Where forced eviction from private lands for public interests is practiced (ESW), the assessment and transfer of compensation remains a serious bone of contention; this is all more true for communal land ruled by customary law.

In many cases, planning standards, regulations and administrative procedures for registering, developing and transferring land have proven to be inappropriate to the changing needs of the country. As for urban housing, program management

is weak and aggravated by insufficient finance, monitoring and evaluation. (NAM, MAL). The distribution of land development permits takes too long a time and often private land developers start without valid permits. The developers also tend to overlook regulations since they are not being monitored or made accountable for their action (ZIM). In particular, informal rules in communal areas are largely disrespected by land development companies (RSA).

Lack of transparency and auditing capability in land administration and management activities allows a concentration of power in the hand of a few decision makers. This leads to unpredictability, in particular, with access to urban lands (ZIM). The sustainable management of public lands in the context of concessions supporting of large-scale land acquisition is undermined by the insufficient participation of local communities in negotiations when concessions are awarded (RSA).

Sustainability of land management is poorly addressed: it is surprising that contrary to the worldwide public debate on the severe impacts of resource overuse and climate change, these are not perceived as key challenges for land governance. However, it is acknowledged that incoherent land use planning and corruption have a direct negative impact on the environmental quality. If local leaders subdivide and sell the commons to investors, community initiatives for sustainable natural resource management come to a stop without alternative mechanisms being implemented. This directly leads to land degradation and deforestation (MAL, ZIM).

In many cases, colonial and apartheid injustice deprived local communities of their ancestral lands. Not only by converting them into private freehold, but also by consolidating large tracts of land into state national parks. South Africa gives examples on how to address such challenges and create win-win situations, even without immediate land restitution. The resolved conflict between the Makuleke and the Government on land assigned to Kruger Park offers one option of how to respect the interests of both the local community and government conservation interests, with benefits from ecotourism going directly to the community.

3.6. Rapid Urbanization and Informal Settlements

In nearly all countries reviewed, urban land management and planning are lagging behind the demands of an ever increasing influx of rural migrants. They do not find access to residential land. Their land acquisition is inhibited by outdated laws, regulations, and land registers, a shortage of land that is already serviced, lack

of state funds to buy plots for housing programs or to expropriate private lands against fair compensation, but also by land speculation and corruption during acquisition (BOT, MAL, ZIM, ESW).

The practice of outsourcing urban housing programs to private land developers shows problematic results: in some cases, the emergence of dubious developers and housing cooperatives fuels bribing, informal settlers are cheated out of their savings (ZIM). In other cases, private sector involvement in land provision remains rather limited due to a lack of complementary infrastructure, which must be provided by the government (BOT).

The provision of tenure security in informal settlements is still far behind expectations (MAL, NAM, RSA). Either fast, low-cost mechanisms for rights registration are not yet adapted and approved for the countries' situations making adoption slow or the new approaches are not accessible due to shortcomings in the surveying and work of land registers. Robust and comprehensive land information is meanwhile accepted as a precondition to deal with urban informality. Plots are acquired on so-called 'social markets', where networking is crucial in trading land. For South Africa, opportunities for security of tenure in informal settlements are seen in multi-level urban land governance that rely on incremental tenure approaches for urban informal settlements at a municipality level, together with support by the central state.

The need to gradually upgrade informal settlements and provide affordable housing has led to new project initiatives, but with just partial success only in some countries. These projects are high complex, e.g. by applying high building standards, and are in danger of failing when this complexity is attempted to be implemented in an environment of limited funds and overburdened administration. Tenure security could not be enhanced to a desirable degree (NAM). Furthermore, the link and integration between housing and other sectoral policies has to be considered. Without employment growth in industry and the service sector, the poorer segment of the urban population will not be able to purchase, rent and maintain the housing provided to them.

3.7. Management of peri-urban areas

Whereas countries like Zimbabwe actually attempt to address in parallel terms a multitude of challenges and conflicts arising from urban sprawl and badly managed lands in peri-urban areas, countries like South Africa start to think beyond short-term crisis management and develop long-term perspectives for housing at the urban fringe.

In particular, peri-urban lands show unclear institutional responsibilities between municipal administration and traditional authorities. This increases tenure insecurity, leads to unplanned urban expansion, creates grey zones for decision making, delays the delivery of public services, creates further loss of rich agricultural lands and significant environmental problems (ZIM). In such a chaotic environment, traditional authorities see their opportunity to sub-divide communal lands entrusted to them close to the cities and sell them either to community members or developers as middlemen (LES). Community members are hesitant to participate in upgrading programs due to tenure insecurity issues and the cooperative self-help approach is still at an infant stage only.

In countries like Zimbabwe, the dramatic peri-urban land management situation is closely linked to the outcome of other past policies. Rural land reform has had a direct impact, as some of the redistributed farms are located close to the cities with multiple authorities fighting for influence in planning and land transactions (ZIM). Another consequence is often the forced relocation of informal settlers from the city centres back to rural areas and the urban fringe. This only increases land pressure and social tensions there.

Such institutional ambiguity creates tensions between informal users and municipalities, but also with urban dwellers. In Zambia, the government tries to test solutions in confining land conflict resolution through civil society organizations. They offer legal and paralegal services to all communities that do not have easy access to the formal arrangement (ZAM). In South African, local policy makers are considering new options, including low-income housing projects that can only be an efficient and socially acceptable investment if houses are close to urban infrastructure, i.e. cheap transport must be available. However, being apparently more cost-effective in the short run, it unfortunately leaves out future indirect private and social costs (RSA).

3.8. Land Valuation and Taxation, Land Sale and Tenure Markets

Scattered, outdated, incomplete and inaccessible land information causes a lower quality of surveying, land valuation and land taxation activities. Their impact negatively affects the efficiency of land tenancy and sales markets. Current international standards of surveying and valuation methods can often not be integrated easily into the daily activities. This again generates conflicts between private sector agents, more often working with most recent standards, and the local administration staff not yet trained in these methods. In most countries reviewed, a comprehensive land information management system is only just starting and often not yet available in a digitalized version (MAL, ZIM).

Various challenges have been identified in surveying and land valuation activities in Zambia. Surveyors' decisions are often based on unreliable data and invalid assumptions. A rather incompetent staff is producing measurement errors and misinterpreting findings. Ill-equipped and untrained surveyors have not kept pace with the demands of land market dynamics in the last decades. Insufficient comparable data sets that interested parties can refer to, and the lack of market transparency, lead to a high degree of subjectivity in the valuation process. Namibia, for example, lacks a functioning agency for the quality control of property valuation. This leads to litigations whenever investments are based on incorrect official information.

Malfunctioning urban land services are not only disastrous for the poor, but they also generate a setback for local authorities in generating land tax revenues to finance urban land development (NAM, ZAM). Furthermore, land taxation as a policy instrument has apparently been overrated by authorities in the past. For Namibia, a progressive, punitive land tax has proven to be a very poor instrument for land redistribution, which should have forced owners to sell unused or underused lands. However, it has shown to contradict other legal bodies (including the Constitution), allowing farmers to question external valuation of their lands as a tax base in court.

Land markets are not only emerging for private urban and agricultural plots, but also in communal areas where increasing infrastructure needs, domestic and foreign investment in land, or the proclamation of new local authority areas all lead to the appropriation and commercialization of communal land. As the commons are sold, despite it being explicitly forbidden to trade these lands that should serve as a safety net for the local population, new challenges are emerging to achieve good land governance, coherent land use planning and environmental protection (NAM). Questions of compensation of users of the communal lands are not yet settled. It has not yet been agreed how to determine the land value if no official market exists and prices from a grey market are not accepted. This often leads to insufficient compensation with rates far below potential market value. The urgency to develop new strategies is highlighted by the fact that it is mainly the very poor who will lose their lands in cases of distress and forced selling of customary rights of communal lands. The ambivalent role of traditional authorities has to be taken into focus, because they benefit directly from land markets dynamics at the expense of ordinary community members (NAM). Improving technical services to have more transparent information on land value and prices have to go hand in hand with clear changes in legislation to react to the strong land rental and sales markets (RSA).

3.9. Land Conflict Resolution

Outbreaks of land conflicts are becoming more frequent as a consequence of higher population density, conflicts between statutory and customary law, continuing urban sprawl, higher market activities, more complex surveying and valuation techniques, large scale direct investment in land and a stronger role of civil society organizations to protect the rights of the (land) poor in law suits. Actually, conflicts are becoming more complicated because of additional stakeholders involved. Urban growth pushes municipalities with public land interests to encroach into other public, private or customary lands and competencies (MAL, ZIM, ESW). Increasing values of communal lands also creates inter-chieftain disputes on boundaries (ESW).

In-court solutions of land conflicts still benefit the more powerful, affluent and better informed strata in society. Fees to get court cases started and moving are high and delays in settling cases are long (ZAM). Specialized land tribunals in Zambia are highly centralized and inherently exclude claimants from rural areas to bring their cases to court. Those claiming on customary lands remain disadvantaged. Although subordinate courts have jurisdiction to hear land disputes, they are confronted with limitations as state land affairs can only be resolved at this level, if all parties (including the state) agree. If not, a compulsory transfer to a high court takes place creating additional costs.

Cheap, fast-track and out of court solutions are desirable. However, incomplete information on land status and the stakeholders involved impedes successful arbitration and mediation (ZAM). As for mediation processes, all parties have to be involved on equal terms. Their authority can be questioned as soon as internal problems of representation arise, for example, who is the legitimate chief of the community? (RSA). More conceptual work can help to develop more efficient land dispute and conflict resolution mechanisms and to improve the acceptance of existing procedures. For some countries, this first of all means a better stocktaking and mapping of existing instruments, strategies and actors and more intensive coordination with the formal legal system.

3.10. Capacity Development

A shortage of qualified professional staff at all administrative levels in urban and rural areas remains a major challenge on the way to improve the quality of sustainable land governance. With the new pressure on land, disputes on land become more and more complex and involve contracts on business models, documentation of land transfers, parties involved, etc. Due to shortages in qualified legal staff, court cases in land tribunals can no longer be dealt with adequately and land information data can only be digitalized slowly (ZAM, MAL). Supervising and regulating government agencies, which should monitor and control the activities of (private) land surveyors and valuers, lack qualified staff that is well-trained in the most recent technologies and evaluation methods (ZAM, NAM). In the last decade the real estate boom has increased salary differentials between private and state employers severely, leading to a brain drain in favour of private enterprises.

Even if capacity development is successfully applied to support the new land-related legislation and the implementation of spatial and land use planning and land management is more successful in urban areas, the urban-rural divide remains. With decentralization, the land management tasks in rural areas become even more challenging. It is, however, a severe problem for rural municipalities to attract capable planners to the county side and to retain them (RSA).

Capacity development refers to the process through which individuals, organizations and societies obtain, strengthen and maintain the capabilities to set and achieve their own development objectives over time (UNDP, 2009). Nevertheless, some confusion around the term seems to have grown along with its popularity. For some, capacity development can be any effort to teach someone to do something, or to do it better. For others, it may be about creating new institutions or strengthening old ones. Some see capacity development as a focus on education and training, while others take a broader view of it as improving individual rights, access or freedoms.

The reality is that capacity development contains elements of all these aspects mentioned above. There are three levels where capacity is grown and nurtured: in an enabling environment, in organizations and within individuals. These three levels influence each other in a fluid way – the strength of each depends on, and determines, the strength of the others:

Importantly, universities have a key role to play in facilitating this more global understanding and designing and undertaking relevant capacity development activities at societal, institutional as well as individual level.



Kasane river delta, Botswana



Village, Malawi



Beach market, Maputo, Mozambique

References

Enemark, S., McLaren, R., and Lemmen, C., [2016]: Fit-for-purpose land administration - guiding principles for country implementation. GLTN / UN-Habitat, Nairobi.

<https://glt.n.net/download/fit-for-purpose-land-administration-guiding-principles-for-countryimplementation/>

FAO [2009]: Towards Improved Land Governance. <http://www.fao.org/3/a-ak999e.pdf>

FAO [2012]: Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs). <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

UNDP [2009]: Capacity development: A UNDP Primer. <http://www.undp.org/content/dam/aplaws/publication/en/publications/capacity>

UN-ECA [2010a]: Regional Assessment Studies on Land Policy in central, Eastern, North, Southern and West Africa: Synthesis Report.

<http://repository.uneca.org/bitstream/handle/123456789/17775/Bib-67927.pdf?sequence=1>

UN-ECA [2010b]: Land Policy in Africa: Southern Africa Regional Assessment. <https://www.uneca.org/publications/land-policy-africa-southern-africa-regional-assessment>

Williamson I., Enemark, S., Wallace, J. and Rajabifard, A. [2010]: Land Administration for Sustainable Development. ESRI Academic Press. http://csdila.unimelb.edu.au/publication/books/esri/LADMIN_book.pdf

World Bank [2012]: The Land Governance Assessment Framework. <https://openknowledge.worldbank.org/handle/10986/2376>

Programme
Regional Symposium on Land Governance
Tuesday, 03 September 2019

Director of Ceremonies

Prof Mutjinde Katjua

Head of Department: Land and Property Sciences

Time	Activity / Topic	Presenter
08:50	Welcoming and Opening Remarks	Prof Rolf Becker Dean: Faculty of Natural Resources and Spatial Sciences, NUST
08:55	Message from Partners	Dr Tomas Kirsch Country Director: GIZ Namibia
09:10	Keynote Address	Mr Robert Kahimise CEO: City of Windhoek
09:30	Objectives and expected outcomes of the Symposium	Prof Mutjinde Katjua Network of Excellence on Land Governance in Africa (NELGA) Southern Africa Node Coordinator and HoD: Department of Land and Property Sciences, NUST
Country Presentations - Key Challenges		
09:40	Zambia	Dr Fatima Mandhu HoD: School of Law, University of Zambia
09:50	South Africa	Dr James Chakwizira HoD: Urban and Regional Planning, University of Venda
10:10	Discussions	Mr Cyrilus Tjipetekera Lecturer: Department of Architecture and Spatial Sciences, NUST
10:30	Tea break	
Country Presentations - Key Challenges		
11:00	Lesotho	Mr Malopo Ntaote Lecturer: Department of Geography and Environmental Sciences, National University of Lesotho
11:20	Botswana	Mr Johnson Kampamba Senior Lecturer and Programme Leader: Department of Architecture and Planning, University of Botswana
11:40	Eswatini	Prof Absalom Manyatsi Professor of Land and Water Management: Department of Agricultural and Biosphere Engineering, University of Eswatini
12:00	Discussion	Dr Anthony Mushingi Lecturer: Department of Real Estate, Copperbelt University
12:30	Lunch	

Country Presentations - Key Challenges		
13:30	Malawi	Dr Edward Chikhwenda HoD: Land Surveying and Physical Planning, The Polytechnic University of Malawi
13:50	Namibia	Ms Stephnie de Villiers Lecturer: Department of Land and Property Sciences, NUST
14:10	Zimbabwe	Dr Charles Chavunduka Senior Lecturer: Department of Rural and Urban Planning, University of Zimbabwe
14:30	Discussion	Mr Loyd Sungirirai Lecturer: Department of Real Estate, Ba Isago University
15:00	Tea Break	
15:30	Panel discussion with one representative from each country	Mr Charl-Thom Bayer Project Manager, NELGA Southern Africa
Close of Day 1		

Programme
Regional Symposium on Land Governance
Wednesday, 04 September 2019

Time	Activity / Topic	Presenter
09:00	Introduction to Group Work	Prof Stig Enemark Adjunct Professor, NUST
09:20	Group Discussions	Mr Charl-Thom Bayer Project Manager, NELGA Southern Africa Prof Stig Enemark Adjunct Professor, NUST Prof Michael Kirk Adjunct Professor, NUST
10:50	Tea Break	
11:20	Presentations from each group	Mr Charl-Thom Bayer Project Manager, NELGA Southern Africa
12:20	Discussion/ Clarifications	Prof Stig Enemark Adjunct Professor, NUST Prof Michael Kirk Adjunct Professor, NUST
12:50	Closing	Prof Mutjinde Katjua NELGA Southern Africa Node Coordinator and HoD: Department of Land and Property Sciences, NUST
13:00	Lunch	
14:15	MoU discussions with the NELGA partners	Mr Theodor Muduva Advisor for Academic Cooperation: NELGA, NUST Ms Stephnie de Villiers Lecturer: Department of Land and Property Sciences, NUST

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This publication presents a synthesis of the project on “Land Governance in Southern Africa”. The project stems from the NELGA (Network of Excellence on Land Governance in Africa) Initiative on promoting demand driven research on land policy issues and connecting scholars and researchers across Africa through academic networks. NELGA is established by the African Land Policy Centre (ALPC) in cooperation with Germany, World Bank and other partners. This project is conducted by the NELGA node for the Southern Africa region established 2017 at the Namibia University of Science and Technology (NUST), Department of Land and Property Science (DPLS), Windhoek, Namibia.

The project focuses on a land governance scoping study on the Southern Africa region. Each country team, formed by the NELGA partner institutions within the ten countries, develops a report with description and assessment of the national land governance issues. The reports follows a common template describing the land governance issues and identifying the key challenges. The reports, thereby, enables comparison between the countries as well as learning form best practice. This should facilitate further research collaboration and innovation towards meeting the key challenges faced by the countries and within the region as a whole.



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