

Report on SaferAfrica's Expert Consultation on the Governance of Land in the SADC Region

“The Governance of Land for Peace and Development in SADC: Toward Continental Minimum Standards for the Exploitation and Management of Natural Resources,”

Pretoria, South Africa, 4 August 2006

I. Introduction

1. The Expert Consultation on the Governance of Land in the Southern African Development Community (SADC) Region was held at SaferAfrica in Pretoria on 4 August 2006. A total of thirteen expert participants were drawn from national and regional non-governmental organisations, universities and training institutions, multi-lateral organisations and independent land consultants (see participants list, Annex A).
2. The consultation aimed to initiate exploratory discussions on the minimum standards that should govern the management and use of land resources in the SADC region, including the identification of implementation and monitoring mechanisms. The meeting sought to begin to delineate the principles, guidelines and standards needed to ensure that the management and use of land enhances peace, stability and security as well as economic growth and sustainable development.
- 3) The consultation was sponsored by the Conflict and Governance Facility of the European Union (CAGE).

II. Context: African peace and security agenda and architecture

- 4) Following Dr. Monica Juma's welcoming remarks and explanation of the significance of the current meeting in terms of the larger continental process towards the development of minimum standards for the exploitation and management of natural resources, Mr. John Rocha from SaferAfrica situated the process within the context of the African peace and security agenda and architecture, underscoring the indivisibility of Africa's peace and security priorities and highlighting the instruments and mechanisms created to prevent and resolve conflict at continental and regional level. Mr. Rocha explained that the continental vision espoused by the African Union and NEPAD is that of the inter-connectedness of peace, security and development, underpinned by a holistic notion of human security. In this regard, it is essential that Africa manage its resources appropriately for the purposes of growth and development at national, regional and continental levels, in the interest of long-term human security on the African continent.
- 5) At the AU-NEPAD Peace and Security consultations in February 2003, the need to generate “minimum standards for application in the exploitation and management of

Africa's natural resources in areas affected by conflict," was identified as one of the eight priority areas that together constitute the African peace and security agenda. At the core of this agenda is the need to engage in the prevention, management and resolution of conflict in a proactive fashion.

- 6) The aim of continental minimum standards on the exploitation and management of natural resources is to ensure that states have the capacity to prevent, manage and resolve conflicts related to resources, to enhance the value of these resources through adequate management, and improve their negotiating power with other stakeholders. The minimum standards will apply to all countries regardless of whether they have experienced conflict.

III. Overview and outlook

- 7) Ms. Gladys Mutangadura, Economic Affairs Officer of the United Nations Economic Commission for Africa (UNECA) Southern Africa Office and Ms. Abby Mgugu, Executive Director of Women Land and Water Rights in Southern Africa, gave an overview of the governance of land in the region and analysed the challenges and threats to effective land management in SADC. The multi-faceted value of land as an economic, social, cultural and environmental resource was highlighted. The presentations and discussion noted that the governance of land is affected by a number of critical issues, including: historical factors (especially colonial land policies), the existence of dual land tenure systems, institutional capacity, the role of the state as set out in policies and legal frameworks, the position of women in society with regard to inheritance and property laws, environmental concerns such as land degradation, high population growth rates, HIV/AIDS and its impact on labour, climate change and globalisation.
- 8) The presentations and discussion raised a number of challenges facing the region with regard to the governance of land. These included:
 - a) **Lack of Capacity** of the State: both financial and institutional, with the result of diminished effectiveness, efficiency and transparency in land governance;
 - b) The need for **reliable, updated information**, and for **better information dissemination**;
 - c) The **poor harmonisation of laws** related to land governance at national level taking into account the various uses of land. Additionally, national level laws are rarely harmonised with regional frameworks;
 - d) The **failure to domesticate** existing **international instruments** relating to land management. While various international, continental and regional human rights agreements have been ratified by member states, they are rarely implemented at national level;
 - e) Weak **monitoring and evaluation** of access to land and the security of rights;
 - f) Minimal **participation of the poor** in policy development or decision making;
 - g) The impact of **HIV/AIDS** on land use and management;
 - h) Failure to protect the **rights of women and children**, either by law or in practice, which is exacerbated by the limited participation by women in decision making at

national and regional levels, and the lack of political will among policy makers to implement policies and legislation.

- 9) To improve the governance of land resources in the SADC region and enhance the contribution of land to human security, it was suggested that the focus be broadened beyond sustainable land use, to consider the role of land in broader sustainable development strategies. The following issues were emphasised:
- a) The need to **prioritise resources** and **build capacity** (human and institutional), at national and regional level, as a basis for the implementation of land reform policies and programmes in a way that benefits the poor;
 - b) The need to improve the management and **regulation of peri-urban settlements**;
 - c) The creation of an **enabling framework for poverty eradication** to ensure that security of tenure leads to human security, through support for agricultural production including access to water and water rights, **technology**, markets, inputs, credit, training, infrastructure & extension services;
 - d) The importance of **indicators and mechanisms** to assess progress;
 - e) The need for the domestication of **international and regional conventions**;
 - f) The need for **integrated land and water management** policies and programmes;
 - g) The importance of deeper regional integration in response to the challenges of **globalisation**
 - h) The **incorporation of climate change** concerns into policies on land;
 - i) The importance of strengthening networks for **information sharing** and dissemination.

IV. Comparison of existing governance regimes in SADC Member States and discussion of best practice, gaps and challenges, roles and responsibilities

- 10) In order to develop a comparative perspective of governance regimes in the region, and to learn from experience at national level, a number of participants gave an overview of the land governance frameworks in their countries. Dr. Absalom Manyatsi from the University of Swaziland, Mr. Robert Kafakoma, Executive Director of Training Support for Partners in Malawi, Mr. Henry Machina, National Coordinator of the Zambia Land Alliance, Mr. Raimundo Cossa, from the Directorate of Lands, Government of Mozambique and Mr. Wolfgang Werner, an independent consultant from Namibia, highlighted challenges and examples of best practice around issues of:
- a) Policy development and implementation;
 - b) Governance systems at different levels (from local to national);
 - c) Tenure and ownership systems;
 - d) Competing land uses (eg small-holder vs. commercial or agricultural vs. industrial);
 - e) Linkages between land and other natural resource governance regimes (such as water or minerals); and
 - f) Major drivers of conflict over land.

11) The presentations indicated that land policies and administration vary across the region. Ownership of land varies from all state-owned in Mozambique, to approximately 45% privately owned in Namibia, to predominantly privately owned in South Africa. While most countries in the region have dual tenure systems (customary and conventional), the administration of customary land rights varies between countries. It also became apparent that access and rights to, ownership and use of land has bearing on other resources and rights. For instance, in Swaziland citizenship rights hinge upon land ownership. A number of SADC Member States have reviewed and reformed their land laws and policies in the last decade, with varying degrees of public participation. The presentations and discussion also highlighted the fact that even when good laws and policies are in place, implementation remains a challenge due to lack of political will, lack of capacity, or both.

Summary of presentations on governance regimes in SADC Member States

Area	Challenges	Best Practice
Policy development	<ul style="list-style-type: none"> • Lack of land use plan • Population density and land shortages • Policy development is sometimes driven by donors • Absence of policies/ laws 	<ul style="list-style-type: none"> • Land policy part of larger economic development strategy • Involvement of civil society in development of policy and law
Implementation of existing laws/ policies	<ul style="list-style-type: none"> • Corruption and skewed power relations • Lack of capacity for land use planning, management and law enforcement • Conflicting legislation (on water, land, minerals, protected areas, etc) • Lack of reliable and updated information on land (no audit) upon which to base decisions 	<ul style="list-style-type: none"> • Transparency and reduced bureaucracy • Environmental impact monitoring • Enforcement of rights and representation of local communities' needs at decision making levels • Information dissemination with regard to land rights
Levels of governance (local to national)	<ul style="list-style-type: none"> • Communal administration can vest too much power in one individual (eg Chief) • Over-centralisation means National Land authority doesn't have knowledge of situation on the ground • Lack of access to dispute resolution mechanisms at local level 	<ul style="list-style-type: none"> • Decentralisation of decision-making regarding land use, and of land administration • Clear delineation of roles/ responsibilities at each level of governance • Dispute resolution at all levels of governance
	<ul style="list-style-type: none"> • Lack of regulation of peri-urban 	<ul style="list-style-type: none"> • Recognition of customary rights,

Tenure and ownership	<p>areas</p> <ul style="list-style-type: none"> • Dual tenure system can be difficult to administer • How to encourage investment in state-owned land, if only granting limited license for use • Titling costly for governments and for the poor 	<p>without requiring title</p> <ul style="list-style-type: none"> • Protection of women's rights to access, inherit and use land • Provide legal protection from eviction and access to redress and fair compensation
Competing land uses	<ul style="list-style-type: none"> • Balancing industrial and commercial uses, such as tourism, with local uses of land • Land degradation and conversion of agricultural land for settlements 	<ul style="list-style-type: none"> • Institutionalise consultation with communities in deciding land use (provide information, allow discussion, undertake joint delimitation, require community approval)
Linkages with other resources	<ul style="list-style-type: none"> • Lack of coordination between various sectors related to land administration • Mineral resources often take precedence • Loss of access to land can entail loss of access to other communal resources (eg water) 	<ul style="list-style-type: none"> • Coordination between sectors for management of protected areas • Integrated coastal management
Land-related conflict	<ul style="list-style-type: none"> • Lack of delimitation of communal lands and boundary disputes • Cross-border encroachment by immigrants • Eroding authority of traditional leaders 	<ul style="list-style-type: none"> • Promote partnerships between local communities and large-scale investors, and involve communities in decision-making • Accessible conflict resolution mechanisms

12) In the discussion of existing governance regimes in SADC states, the following issues were raised:

- a) Coastal land management needs to take into account security threats in the form of terrorism and trafficking and the impact that this could have on tourism;
- b) The underlying political and class interests that drive land issues are middle class interests, which obstruct genuine pro-poor reform;
- c) Whether titling increases or decreases security and/or the likelihood of conflict in communal lands remains unclear;
- d) It is essential to provide space for public dialogue and debate on land issues, at national and local levels;
- e) Decisions about the land tenure systems should be context sensitive, and should take the interests of communities into account. The usefulness of land tenure systems should be judged in terms of the extent to which they protect the rights of minority and/or marginalized groups;

- f) The role of traditional leaders in land administration can be positive or negative. However, if their role is properly defined and monitored, they can enhance public participation and contribute to human security;
- g) In SADC, colonial governments removed the land rights of certain groups, which impacted negatively upon their livelihoods and their security. The responsibility of previous governments in this regard still has to be decided, but in principle the governments should be held accountable.

V. Discussion Session 1: Strategic value of land resources to the region and continent

- 13) The discussion on the strategic value of land resources to the region and continent reflected on issues such as the value of land, the drivers of conflict and cooperation over land and the strategic linkages between land and other resources. Some of the ways in which land has value, as highlighted in the discussion, include:
- a) Economic value- through production, tourism or the natural resources located on or under the land;
 - b) Social value- for community security, food security and shelter;
 - c) Cultural value- linked to individual and group identity.
- 14) In this regard, the following recommendations were made:
- a) It is important for the SADC region to develop a vision of what role land can and should play in broader sustainable development and then develop a strategy to achieve the vision. The strategy should be flexible to adapt to a changing global and regional context.
 - b) Communal tenure should clearly define how resources that are part of the land (e.g.-wildlife, trees, and minerals) should be utilised by all those who have a stake in them. Communities should be informed of their rights in this regard, and should be guaranteed a share of the profits accrued from resources on their land.
 - c) Minimum standards for corporate governance should be included in land governance standards;
 - d) Trans-boundary parks provide a useful example of cooperative regional land governance.

VI. Discussion Session 2 and 3: Governance, Policy and Strategic Issues

- 15) The discussion on governance covered past and current practices of land governance, trends in the legal and regulatory environment, the balancing of multiple uses, interests and stakeholders as well as best practices and gaps in governance. With regard to policy and strategic issues, the strategic approach to the governance of land within SADC and the continent was discussed along with policy actions required to advance and sustain such a strategy.
- 16) In the discussion on governance issues, the following issues were raised:

- a) There is a need for coordination and joint planning between government ministries/ departments, and institutions charged with various aspects of land governance;
 - b) There is a need for more effective monitoring of land usage policies or agreements, especially where land usage affects water that is shared by a number of countries;
 - c) Governments should strengthen their capacity to oversee community development initiatives. Resources for community development from outside the country should be managed by government at national and local level;
 - d) Impact assessments should incorporate not only the environment, but also social impact, and should go beyond national borders, where relevant.
- 17) In the discussion on policy and strategic issues, the participants noted that the governance of land is a political issue, not only a technical one. Some of the issues raised in relation to a regional approach to land governance included:
- a) The importance of water to land viability should be recognised and incorporated into policies;
 - b) The impact of globalisation and climate change on land management should be addressed in land policies, at national and regional level;
 - c) Governance should address the conflict between ecological protection, livelihoods food security and economic development;
 - d) The challenges to regional common positions arising from differences in their respective levels of development should be identified and addressed by countries in the SADC region.

VII. Way forward: Recommendations
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- 18) In the concluding session, the group proposed a set of recommendations for the way forward, in terms of the development of a set of guidelines for the governance of land in the SADC region based on the gaps identified. Participants stated that guidelines might be more acceptable to governments than standards, but recommended that guidelines be accompanied by benchmarks, indicators and implementation plans. The forum also emphasised the importance of:
- a) Cultivating political will amongst member states and ensuring that actions required to implement the guidelines are reflected in country budgets;
 - b) Collecting critical, correct information on the strategic value of resource governance in the long-term for regeneration;
 - c) Identifying stakeholders that can push for the acceptance and implementation of guidelines, such as the SADC Parliamentary Forum and SADC National Contact Points;
 - d) Creating a critical mass of support amongst civil society actors for the guidelines.
- 19) The discussions over the course of the day coalesced around six key areas of focus for the development of guidelines on the governance of land in the SADC region, including:
- a) The politics of land reform:

- i) The need to take cognisance of critical political interests driving land reform, and for the creation of space to discuss the kind of land reform that is beneficial to all stakeholders;
 - ii) Institutionalise community participation through decentralised mechanisms for land governance;
 - iii) Information dissemination and knowledge creation amongst communities on their rights according to land policy and legislation.
- b) Integrated conflict resolution mechanisms:
 - i) Need for creation and capacity building of mechanisms at all levels for conflict resolution (community, district and national level);
 - ii) Create awareness of procedures and mechanisms for dispute resolution.
- c) The fragmentation of resource legislation at national level:
 - i) Land governance is under various ministries and often covered by conflicting laws, which obstructs any possibility of national and/or regional coherence;
 - ii) Need for the harmonisation of national, regional and continental frameworks;
 - iii) Need for the domestication of international and regional human rights instruments and other frameworks that affect land management at national level, and for inclusion of the necessary resources for implementation in national budgets.
- d) Capacity building at all levels to maximise the use and value of land:
 - i) Develop the capacity of the state, and technical institutions and community activities, for governance of land;
 - ii) Reform ineffective existing systems of governance;
 - iii) Need for technology that is appropriate, sustainable and accessible to small scale farmers in Southern Africa;
 - iv) Codification and strengthening of beneficial traditional systems, as needed.
- e) The strategic value of land for human security:
 - i) Need to recognise the value and rights attached to land, and the non-quantifiable cultural and social value of land;
 - ii) Recognise the linkages between land and other resources, such as water, and provide for integrated management and planning;
 - iii) A regional land governance system should ensure sustainability in a changing context.
- f) Additional factors in the region that impact on the governance of land in SADC, such as:
 - i) HIV/AIDS;
 - ii) Population and economic growth;
 - iii) Climate change;
 - iv) Globalisation;
 - v) Cross-border movement of people.