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Governance and Land Relations: A Review of Decentralisation of Land Administration and Management in Africa

Liz Alden Wily

Land Tenure and Resource Access in Africa

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GOVERNANCE AND LAND RELATIONS
A REVIEW OF DECENTRALISATION OF LAND ADMINISTRATION AND MANAGEMENT IN AFRICA

Liz Alden Wily
June 2003

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ABSTRACT

Are rural Africans gaining more control over how their land relations and their land use decisions are decided? Is their access and input to institutions that manage and regulate these matters improving? Is it cheaper and easier to have land interests and transactions recorded, and what kind of rights do these institutions recognise?

These are the kind of questions that this review of decentralising administration and management in sub-Saharan Africa seeks to answer. To do so, it closely examines the founding policy and legal texts guiding change in around twenty countries in East, West, and Southern Africa. Special attention is paid to where institutions and systems are being established, into whose hands and with what functions and powers. The extent to which these arrangements are accompanied by improving acknowledgement of historically vulnerable land interests is closely examined.

The findings are generally positive. The review concludes that policy or legal commitment to decentralisation in the land sector is very widespread and often the centrepiece or anchor of more general reform. It is certainly one of the more significant innovations. The trend is however predominantly new, usually still at the planning stage and quite commonly afflicted by characteristic shortfalls of top-down formulation, well meaning as the intentions may be. Systems design is thus often awkward, unrealistic, expensive and liable to lack the simplicity and local ownership of procedure that will be essential to widespread adoption and sustainable use. There is also a great deal of risk in this situation; already there are signs that governments do not always sustain their enthusiasm for decentralised mechanisms when they confront the realities of implementation or the loss of control over the periphery that some of the more genuine moves towards decentralisation embody. Nor do decentralised approaches always sit easily with other common objectives of current reforms and most particularly, a wish to free up the land market. This is because decentralised approaches tend to go hand in hand with heightened protective measures of majority land interests that may make land access by investors not as straightforward as they may wish.

New attention to the nature of land rights themselves is also proving integral to decentralising land administration. Whilst in the main, a much wider range of land rights are being catered to than has been the case in the past, crucial insufficiencies remain. These centre upon how land interests are identified and recorded, and how far the results will afford genuine equity with existing systems of statutory entitlement and equivalent security of tenure. It is in this area that most diversity is apparent. It is also closely interlinked to diverse handling of customarily structured right holding and management. Strategic exploration of ways to overcome the conundrums presented by the objectives of mass rights recordation is incomplete, but with important innovations emerging. New approaches have also raised new issues, or rather awakened long-standing issues, such as how far one must be a citizen, tribal member and/or local resident to qualify for recognition of land interests. Or, within the community, how different types of rights in the same land are to be ranked (and recorded) and overlapping interests extinguished or given a framework for co-existence.

It seems to be the case that the more devolutionary the systemic approach being devised, the more progress is being made in recognising and dealing with these questions. The review finds plenty of evidence to suggest that only when land administration and management is fully devolved to the community level and with a reasonable measure of empowerment and flexibility to act provided, is there likely to be significant success in bringing the majority of land interests under useful and lasting record-centred management and in ways that are fair and relevant to the majority poorer right holder. That is, the more localised and more inclusively formed the institutions of administration and management (and the more integrated their functions), the more likely it will be that new legal and administrative opportunities will be relevant, accessed, used – and crucially, client-sustained. Whilst this seems obvious, the review shows how contrary technocratic approaches still fashion a significant number of developments, holding decentralisation to district or higher levels, and of necessity binding them to Government support and thence control, and using community level authorities, traditional or elected, as more agents of the State, than leaders of more efficient and inclusive procedures.

Above all, it is clear that most developments are only at the beginning of what could and should be dynamic and open-ended evolution, with substantial learning by doing. The potential for setbacks and backtracking are also enormous. Gaps between what the policy and the law lay out as the future and what actually occurs could prove to be many. Keeping good watch on the trends and being able to identify and disseminate lessons learnt will be

critical at this early stage. Advocacy in support of approaches or actions that do support majority interests may also be timely. In many if not all cases, the promise of decentralisation does mean that ordinary people will gain a much stronger role in the organisation and management of their land interests – one of the most important arenas for democratisation in agrarian society. This represents an important element of social transformation and one that will inevitably generate some contention and complexities along the way. Nurturing the better spirit of this reform with encouragement and practical support and building solidarity among actors across the continent will be helpful.

ABOUT THE AUTHOR

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INTRODUCTION

A comparative review of policy, institutional and legal provisions

This study is a comparative review of land management and administration systems in a number of African countries selected from East, West and Southern Africa. The focus is upon the different policy and institutional options and legislative orientations that have been followed. Key issues addressed include analysis of the *types of institutions* that have or are being developed and their *strengths* and *weaknesses*.

Distinguishing between land administration and management

Land management and land administration are often used interchangeably in Africa, including in policy and legal texts. Tanzania for example designates its community level land administrators as Land Managers. The functions of land administration and land management overlap and are frequently implemented by the same bodies. In addition land administrators (or land managers) may have responsibilities for land dispute resolution.

Despite overlap, this paper will attempt to address administration and management separately. Land administration will cover institutions and processes associated with land rights regulation, and among which the recording of rights is prominent. Land management will refer to land use regulation such as associated with zoning, placing a ceiling upon the size of holdings, conditions and environmental protection measures. It will also examine measures taken to protect the land interests of selected vulnerable groups; women, children, pastoralists and hunter-gatherers.

A governance context

The context selected for this examination is socio-political; perhaps best summed up in the question: are ordinary citizens gaining a larger and legally-supported role in managing their own land rights? And, is democratisation of land administration and management occurring and if so, through which routes? If not, what is constraining this? Two simple premises underlie an interest that such democratisation should be an objective (and a position which this reviewer among others has consistently pursued in recent years).[1]

The first is pragmatic and a matter of proximity: it is assumed that the nearer that administration and management may be located to landholders, the more accessible, useable and used, cheaper, speedier and generally more efficient the system will be. Again, testing whether this is in fact the case will be a task of future monitoring of developments.

The second is a matter of principle and equally straightforward in its premise: security of space has importance in all circumstances whether this relates to one's urban dwelling, farm or common properties. It may be assumed it has even stronger importance in agrarian societies where (as a long line of authors and most popularly in recent years, Hernando de Soto, have elaborated) is often the only or main asset available to poorer millions where jobs and saleable skills and qualifications upon which to build other assets are limited. In such circumstances any discussion of improved governance needs to focus on the governance of the key land resource. And if improved governance in today's world means putting more power in the hands of people to determine how their society is managed and by whom, then the need to implement this in respect of this core resource seems crucial. This also establishes the kind of decentralisation looked for; not mere outreach of procedure to the periphery, but empowerment of people at the local level to manage their land relations themselves. This does not *necessarily* preclude a decision they might make for example to support a centrally or government managed system, but it does fairly consistently require that whatever land governance regime is put in place, that it be built upon norms and

[1] Both in respect to land reform in general (see Alden Wily 1998, 2000, 2002b) and with respect to a main component of common properties on the continent, forests/woodlands (Alden Wily 2001b, 2002c).

regulations of which they approve, and that it operate in ways that allow it to be directly accountable to themselves as the landholding body, not to state or central agencies.[2]

Two corollary considerations need brief comment here. First, significant simplification of procedure logically accompanies devolved land rights governance to allow for mass adoption and use. Elsewhere it has been argued that heavily technocratic approaches to land administration represent the largest impediment to workable devolution in this area. The demands of a cadastre based registration regime is the classic case in point, an instrument that has perhaps more than any other sustained and shaped Government appropriation of the primary right to manage land relations in the local sphere over the 20th century in Africa. Examining how far such simplification is taking place will be an important part of this review. Second, questions of developmentally sound process arise; if a fully democratic approach to land governance is taken, then it becomes less important that the centre design and deliver decentralised regimes, than an environment is established within which local bodies of landholders may design and deliver localised land administration themselves. Identifying the role of landholders in determining how their rights should be administered in the first place and then extent of subsequent flexibility built into the system will be aspects briefly examined.

Sources

For accuracy, original sources have been the focus of examination, in the form of national land policies and laws. Published and unpublished commentary has also been used. Land policy and legislation is however in great flux and latest versions were not always available. This and the brevity of time devoted to the review means that not all countries are covered for all subjects. Most attention is given to those states which either have decentralised regimes operating or a firm legal commitment to put these in place: Botswana, Namibia, Uganda, Tanzania, Ethiopia, Eritrea, Ghana, Niger, Burkina Faso, Malawi and Ivory Coast. Lesser attention is given to states which plan to adopt such strategies: Kenya, South Africa, Swaziland, Lesotho, Zimbabwe and Rwanda. Zambia and Mozambique, notable for limited intentions to develop formal support for existing customary land administration, are also covered. Occasional reference is made to Angola, Mali, Senegal and Mauritania.

An emphasis on intentions

Aside from cases where customary land administration is operating more or less as it has in the past and where policy is to sustain this (Ghana, Zambia), few states operate *formally* localised land administration and management. The notable exception is Botswana, where Land Boards at district level have been administering most of the country's land area since the early 1970s. Developments are at different but early stages of being put in place in Tigray (Ethiopia), Niger, Burkina Faso, Eritrea and Uganda, and just getting underway in Tanzania, Namibia and Amhara (Ethiopia). Detailed and formal policy commitment has been made to decentralise administration in Malawi. Proposals are being considered in Zimbabwe, Lesotho, Swaziland and South Africa (former homelands). The orientation is therefore upon planned rather than implemented action. This immediately locates this paper as a benchmark review in the sense that it is highly likely that what is planned and what actually results on the ground will differ. Keeping track of just what changes in the process and why will be an important focus of monitoring.

A rural focus

The focus of this review is rural Africa. This is deliberate given that with the notable exception of Botswana, rural populations in all these states still constitute the majority. Moreover, decentralisation is largely occurring in respect to the rural sector. Most (but not all) states are retaining the administration and management of urban land relations under central Government aegis. There is however widespread intentions towards regularising the untenured occupancy of millions of urban poor not covered here, and which links to new attention to poorer rural majorities. The linkage is expressed in two themes that run consistently through reformist approaches in general and steps to decentralise systems management in particular: *first*, determination on the part of Governments to bring as much occupancy as possible under written record management; and *second*, often as a consequence, acknowledgement of the need to determine the status of traditional regimes and the land rights they deliver. Registration and the status of customary tenure are accordingly crucial interlinked topics of decentralisation and are fully covered.

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[2] See Alden Wily 2002b for elaboration of this positioning.

Presentation

For brevity most information is presented in summarised and comparative tables. In one or two cases information sets are repeated where they have are considered pertinent in more than one context. The text is presented in five parts –

1. **Background** provides a short overview of the policy and legal context and the status of implementation.

2. **Land Administration** identifies the extent and character of localised land administration institutions, examines the processes associated with their evident main driver, the intention to register land rights and transactions, and examines the nature of rights that are registrable, with attention drawn to the resulting changing status of customary rights.

3. **Land Management** examines provision for land use planning and environmental protection within the context of decentralising norms; developments in common property tenure; measures designed to enhance equity in land access; and measures to protect the land interests of selected interest groups; women, orphans, pastoralists and hunter-gatherers.

4. **Dispute Resolution** is cursorily examined to identify the extent to which land dispute resolution machinery is also being decentralised and through which means.

5. **Conclusion** draws together trends, strengths and weaknesses and poses a list of questions that could focus monitoring of developments

1. BACKGROUND

Land 'reform'

The last decade has seen more and more African states seek to restructure the legal patterning of land rights within their societies and the way in which land rights are regulated and administered and related land use managed. At the time of writing, such 'land reform' is taking shape in more than 20 states [**Table 1**]. Reform is mainly first articulated in new national land policies [**Table 2**] and then of necessity receives more exact (and binding) treatment in new land legislation [**Table 3**]. Often this sees the repeal of laws with colonial origins and in one or two cases produces a comprehensively new body of land law, and one that is additionally liberated from metropolitan law. Tanzania provides a prominent example of this.[3] Everywhere these policies and laws embody at least some significant new tenure norms or approaches to their administration. The reformism in the sector at this time resonates more widely around the world [The World Bank 2002a]. Especially among agrarian societies, the turn of century is likely to be held as a period of watershed in this and related governance and natural resource spheres. More than 20 states have promulgated new national constitutions in the same post-1990 period, more than 20 states have promulgated new local government laws, and an astounding 44 new national forest management laws [Alden Wily 2002c]. As this paper will show, all of these have a role to play in the character of land administration.

A new process with mainly rural effects

This reform movement is new and developments predominately at the design stage. The status of existing systems for land administration and management – including that of widespread continuing customary regimes – is under change rather than fixedly new. Just how far land relations and their management will in practice be reformed is moot; the signs are that this will be probably more extensive than government administrations originally intend and less extensive than majority rural populations (and the urban poor) are being encouraged to hope [Alden Wily & Mbaya 2001, FAO 2002]. Certainly the transitions involved are proving more time-consuming, complex and contentious than most Governments envisaged [Palmer 2000, The World Bank 2002b].

New administration systems as the key

Where profound inequities in land access and rights have catalysed action, thorny issues of systems management have helped to complicate resolution (South Africa, Namibia, Zimbabwe). Where will to bring more efficient order to systems has been an early prompt to action (Kenya, Uganda, Tanzania, Rwanda, Ghana) just as problematic questions as to how interests in land are distributed and tenured have as inevitably entered the fray. Ultimately, both spheres are tending to find expression and a degree of resolution in new arrangements for the administration of majority land rights and related land use. These at one and the same time additionally tend to promise improvement in the legal status of those rights and relocate control over their exercise nearer to landholders themselves.

Deconcentration or devolution?

Just how near, and with what improvement in tenure security, are institutional trends this review will examine. A main focus of analysis will be upon the extent to which real empowerment of landholders over their landholding and related land use is being provided, and through which manner of institutions, traditional or modern, elected or administrative, and with what degree of autonomy from the State.

A governance issue

It has already been shown how such concerns thrust land reform directly into the arena of governance. The parameters of governance in general are under substantial change. In policy and legal terms this is evidenced in the texts of new constitutions, local government and natural resource management laws. New **national constitutions** are, for example, widely laying down new principles upon which the rights of women, children and minority land interests must be accorded respect and to which new land policies and laws must themselves adhere.

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3 Together the Land Act, 1999 and Village Land Act, 1999 and the Courts (Land Disputes Settlements) Act, 2002 provide an almost complete coverage of land matters, with mainly the Land Acquisition Act, 1967 outstanding. Section 180 of the Land Act removes the interpretative reference of the law from English law to guidance by the previously established National Land Policy 1995, local customary law, and common law and doctrines of equity as applied variously in the Commonwealth not just England, and encourages courts to develop a common law of Tanzania which will as near as possible express local national norms, not metropolitan norms. See McAuslan 2000 for excellent analysis of the treatment of land law overall this last century.

They establish the principles through which land along with other resources will be governed. These declamatory laws often serve as basic land policies (Eritrea, Ethiopia, Uganda, and with less welcomed effect, Zimbabwe).[4] At times, the drafting of new Constitutions has boldly set the agenda for land reform, currently the case in Kenya. The Draft Constitution published in 2002 [KCRC 2002] and now being debated, not only laid out a clear and radical vision as to how land relations should be ordered and administered, but eclipsed the work of the sitting Land Commission, accordingly chastened into producing its findings and recommendations after sitting for four years [KLC 2003]. Conversely, indecision on fundamental land issues may help delay finalisation of new Constitutions (Swaziland, Rwanda).

The substance of land articles in Constitutions is not uniformly supportive of institutional change or improvement in the security of rights. Some directly limit devolved approaches. It is prescription in Ghana's 1992 Constitution, for example, which entrenches customary land administration but does not devolve either the right to collect or administer revenue from those lands or the right to formally register occupancy, functions for which it established central government bodies.[5] Nor does the Ghanaian Constitution oblige customary authorities to share what portion of revenues they receive with those for whom they hold the land in trust; community members [RoG 1992; Art. 267]. In contrast, whilst devolved and participatory approaches are strongly favoured by the latest Ethiopian Constitution, it entrenches rather than removes land law strictures upon the sale of rights and sustains the option of redistributions to meet land needs, factors which decentralised land administrations have had to grapple with since [FDRE 1975, FDRE 1995; Art. 40].

Local government reform is proving as central to the character of emerging land administration and management. In 1997 the Lesotho Local Government Act vested control over land allocation and natural resources in new district and community councils, strongly influencing subsequent strategy [KoL 2000, KoL 2001]. Just as surely, difficulties being experienced in implementing this new local government regime are challenging the final drafting of new land policy and law [Selabalo 2002]. A similar shortfall in local government development is inhibiting design of plans for decentralised land administration in Rwanda [Kairaba 2002, Liversage 2003]. In Sahelian states, the linkage between local government development and new land administration and management systems has been even closer, with key functions in both spheres integrated [Senegal, Niger, Burkina Faso, Mali] [Ribot 1999, IIED 1999, 2001, Toulmin et al. 2002]. In Zimbabwe and Swaziland, proposals for new localised land administration and management institutions are integral to proposals for respectively Village Councils and Community Development Councils [GoZ 1998, GoS 1999].

The links between **natural resource management reform** and land governance are just as crucial. This is well illustrated in Pastoral Codes in Mali, Guinea, Mauritania and Burkina Faso, which help pastoralists secure land access at the same time as using these developments to lay down frameworks for improved pasture management [IIED 2001, Hesse 2000]. Policy and action to decentralise the way in which forests are managed and/or owned is particularly widespread. Among the above-mentioned 44 new forest policies and laws on the continent, over three-quarters provide directly for decentralised forest management regimes. I have shown elsewhere how this trend is helping to catalyse decentralised land management and also giving practical expression to evolving new norms for common property tenure [Alden Wily & Mbaya op cit., Alden Wily *In Press*]. In Sahelian states, land reform, forest (woodland) management reform and local governance reform proceed in relatively integrated ways [Ribot op cit., Banzaf et al. 2000, Dubois & Luwore 2000].

[4] Constitutional Amendment (June 2000) removed the legal obligation to compensate owners of expropriated property; see Alden Wily & Mbaya 2001; 276-277 for details.
[5] The Lands Commission and the Administrator of Stool Lands; RoG 1992; Art. 258-267.

Table 1: Land Reform: Overview of Reformist Policies & Laws since 1990 [6]

NO.	COUNTRY	NEW LAND POLICY	NEW LAND LAW	A MAIN AIM OF REFORM IS TO ALTER ADMINISTRATION	SUPPORTS DECENTRALISED ADMINISTRATION	DECENTR. IS OPERATING, LAW IN PLACE, OR PLANNED
1	Kenya	Draft 2003	Proposed	Yes	Yes	Proposed
2	Tanzania	1995	1999, 1999	Yes	Yes	Law in place
	Zanzibar	1991	1992	No	No	Operating
3	Uganda	-	1998	Yes	Yes	Operating
4	Rwanda	Draft 2002	Draft Bill 2003	Yes	Yes	Proposed
5	Ethiopia	1993	1993, 1997	Yes	No	Operating
	Tigray State	-	1997	Yes	Yes	Operating
	Amhara State		2000, 2000	Yes	Yes	Law in place
6	Eritrea	-	1994, 1997	Yes	Yes	Operating
7	Malawi	2002	Under prep.	Yes	Yes	Planned
8	Zambia	Draft 2002	1995	No	No	{no plan)
9	Mozambique	1995	1997	No	No	(no plan)
10	Zimbabwe	1998 (2002?)	-	Yes	Yes	Proposed
11	Namibia	1998	1995, 2002	Yes	Yes	Law in place
12	Angola	Proposed	1992,Under prep.	Yes	Yes	Planned
13	Lesotho	Under Prep.	Under prep.	Yes	Yes	Planned
14	Swaziland	Draft 1999	Proposed	Yes	Yes	Proposed
15	South Africa	1994-1998	Bill 2002	Yes	Yes	Proposed
16	Botswana	Draft 2003	(1993) Proposed	No (existing)	Yes	Operating
17	Ghana	1999	Proposed	Yes	Yes	Oper/planned
18	Niger	1993	1993 (1997)	Yes	Yes	Planned
19	Ivory Coast	1989	1998 (1999)	Yes	Yes	No data
20	Burkina Faso	1996, 2000	(1991) (1996)	Yes	Yes	Operating (urban)/ planned (rural)
21	Senegal		(1980) 1994	Yes	Yes	Operating
22	Mali	1991	1996, 1997, 2001	Yes	Yes	Operating
23	Mauritania	?	1990			Operating

Note: Dates in parenthesis reflect reformist amendments to pre 1990 laws or regulations/decrees under main laws.

6 This list is incomplete but dates for some countries were not ascertained.

Table 2: Land Reform: National Land Policy Development

COUNTRY	STATUS IN 2003
BOTSWANA Draft 2003	Long history of detailed policy planning and development with consultation on land matters (1975, 1983, 1991, 2000 (housing). New National Land Policy under draft in White Paper (2003) following major Policy Review 2002. Recommendations reflect dominance of urban property issues now that more than half the population reside in urban areas but also further development in customary land management.
RWANDA Draft 2002	Consultation at Provincial and District level in 2001 and 2002. Also NGO consultation. Under discussion since 2001 by Cabinet along with draft land bill (2003). *Villagisation Policy 1997* redefines land use and social change as a single process and this is integral to new process. Strong emphasis upon classical titling.
ANGOLA None	A land law has been drafted without a policy making process or consultation. Donors, and especially FAO, which is supporting land reform, and a civil society Land Forum (*Rede Terra*) formed in August 2002 pressing for a public policy process to be developed.
UGANDA None	No formal policy drafted prior to 1998 law but key principles embedded constitutionally (1995).A civil society initiative produced a Framework for Policy 2002, not followed up by the state but land sector plans integral to modernization of agriculture policy development.
KENYA In Preparation	Commission To Inquire into the Land Law System in Kenya ('Njonjo Commission') established in Nov. 1999, reported finally in May 2003. Mainly concerned to remove power over land from State to an autonomous National Land Authority. Constitutional Review Commission examined property rights and produced principles in Draft Bill for the Constitution (Sept. 2002), being publicly debated in May 2003, but decisions pending.
TANZANIA 1995	National Land Policy arose out of Commission of Inquiry process (1991-93). Provided 100+ directives used as basis for drafting basic new land law (1999). Devolution of control over land rights management to villages made one key objective.
ZANZIBAR	Zanzibar is member of Union (United Republic of Tanzania) and enacts its own natural resource management laws. No formal policy but stated in 'Land tenure in Zanzibar: a Review of the Land Tenure Act 1992' by Dept Lands.
ERITREA None	1994 Land Proclamation held to embody policy.
ETHIOPIA 1993	A Land Administration Policy 1993 which drew distinction between administration of rural and urban lands. Federal Constitution 1992 embodies key policy points as does Federal Law 1997.
MALAWI 1993	National Land Policy followed country-wide consultation by *Commission of Inquiry on Land Policy Reform* and Sector Wide Approach to implementation with multi-donor aid. Land law in draft in 2003.
ZAMBIA Draft 2002	Current draft of National Land Policy 2002 not much different from early drafts beginning in 1992. Main aim is to improve delivery of existing centralised state services and make it easier for non-citizens to access land.
ZIMBABWE Draft 1999	Reformist national land policy drafted in 1998, informally agreed to in 1999 but never approved (although unconfirmed report that it may have been approved in 2002). Main policy has been expressed in constitutional amendment in 2000 removing necessity to pay compensation for evicted farmers and further changes to Land Acquisition Act in 2002.
MOZAMBIQUE 1995	Policy led to *Land Act, 1997*. Recurrent proposals and decisions which add to policy.
SOUTH AFRICA 1997	National Land Policy preceded by ANC *Reconstruction and Development Programme* policy framework (1994), Land Policy Framework Document (1995), Green Paper (1996). Policy most detailed on continent, at least seven main laws passed since but minimal implementation and serious under-funding, including for restitution.

Table 2 continued

COUNTRY	STATUS IN 2003
NAMIBIA 1998	National Land Policy published in 1998 but finalised with changes in 2000.Subsequent key policy statement in December 2000 on accelerated land redistribution. Includes new administration system for both urban and rural areas.
LESOTHO In preparation 2003	The need for a national policy repeatedly observed by different studies & reports within and outside Government since 1987. Last of several Land Policy Review Commissions reported in 2000 and draft policy prepared 2001, not accepted. New land policy and land law finally now being drafted (2003). Will directly affect land administration.
SWAZILAND Draft 1999	Policy review in 1987, again in 1996, Draft National Land Policy finalised 1999, approval awaiting overdue finalisation of Constitutional Review. No public consultation until 2001 with mainly NGO land conference.
GHANA 1999	Original policy development through Law Reform Commission 1973 with recommendations not adopted then, reiterated in a Land Use Planning Committee (1979), Committee on Land Use Planning Policy (1994). Final Policy 1999 dropped most recommendations, focuses on improving existing state administration system and supporting role of traditional administration of majority customary lands. Periodic elaborations of Policy in 2002, mainly related to restoring vested lands to chiefly control.
IVORY COAST 1998	The Rural Land Plan represents the definitive policy on land administration and specifically registration, since evolved into a decentralised land administration and management approach/programme, structured around compulsory registration of ownership rights (citizens) and secondary rights (tenancy leases, migrants). The failure to enable several million migrants with long residence to acquire ownership rights helped cause the current civil war.
NIGER 1993	Niger's Rural Code (Edict 93-014) embodies policy. This decentralises land administration to an estimated 57 Land Commissions at commune level, with planning and decision-making powers including registration of customary rights.
BENIN 1994	The Rural Land Plan represents a land policy founded upon village level land use planning and decision-making. It was given force through an inter-ministerial directive ('decree').

Table 3 Land Reform: Laws Regulating Land Administration, Management & Dispute Resolution

COUNTRY & MAIN LAWS	NOTES
ETHIOPIA Federal Proclamation No.60/1993 Urban Lease Holding and Administration; Federal Rural Land; Administration Proclamation No. 89/1997; Tigray Rural Land Proclamation No. 23/1997; Proclamation No. 46/2000 Issued To Determine the Administration and Use of the Rural Land in The Amhara National Region; Proclamation No. 47/2000 on Environmental Protection, Land Administration and Use Authority Establishment.	New land policy and laws promised in new Constitution (1992) adopted 1994, delivering in 1993 and especially 1997 law which is basis upon which each Regional State makes own laws. Examples are for Tigray and Amhara National Regions
SWAZILAND Concession Partition Act, No 28 of 1907 & Land Concession Order, No. 15 of 1973; Vesting of land in the King Order, No. 45 of 1973; Crown Lands (Temporary Occupations) Act, No. 22 of 1964; Deeds Registry Act No. 37 of 1968; Farm Dwellers Control Act, No 12 of 1982; Sectional Titles Act, 1999; Safeguarding of Swazi Areas Act, No 39 of 1910 & Swazi Administration Order 1998	More than seventy mainly pre-Independence laws on land. Government keen to reform, support from Crown slim. Swazi Administration Order 1998 gives royal bodies and chiefs high powers to interfere in land and prevent a subject to use a lawyer to defend land interests. Farm Dwellers Act provides rights to farm dwellers but also allows their removal with compensation. Land Speculation Act aimed to accelerate Swazi ownership of freehold title. Marriage Act and Deeds Act make female rights inferior to male; women effectively minors.

Table 3 Land Reform: Laws Regulating Land Administration, Management & Dispute Resolution

BOTSWANA Tribal Land Act, 1968, (significantly amended in 1986 & 1993) State Land Act, 1966 Land Control Act, Cap. 32:11	Implementation developed over 30+ years with incremental changes. Primary law for rural land administration through autonomous land boards. 1993 Amendment decreased central powers, provided more opportunities for converting customary rights to leasehold forms and opened tribal land to any citizen. State Land Act renders occupants tenants at will, affecting minority groups resident in expansive game reserves. Comprehensive review of land policy in 2002, recommendations discussed widely, Draft White Paper being prepared 2003 for parliamentary approval. Proposal for a new land law and an elaborated customary code.
RWANDA Land Decrees: 1960, 1961, 1975, 1975, 1976 1997 Directive on Imidigudu (Villagisation). Draft Land Bill Feb. 2003	For all intents & purposes, statutes, decrees and customary law suspended following 1994 war & genocide, pending approval of new National Land Policy and Land Bill, drafted in 2000/01, originally to be enacted by end 2001 as committed in Economic and Structural Adjustment Facility Agreement., but still under Cabinet discussion in 2003. Weak elaboration of administration and dispute resolution regimes.
KENYA Transfer of Property Act of India, 1882; Registered Land Act, 1963 Cap. 300; Government Lands Act Cap 280; Trust Land Act Cap 288; Land Adjudication Act Cap 284 (1968); Land (Group Representatives) Act Cap 287 (1968); Land Titles Act Cap 282; Land Control Act Cap 302; Land Disputes Tribunals Act No 18 of 1990; Registration of Titles Ordinance Cap 281; Registration of Documents Act Cap. 285.	Mainly pre-independence laws and overlapping jurisdiction by subject and geographical jurisdiction. Little change since 1950s and 1960s and even recent amending bills (*Government Lands (Amendment) Bill 1994*) and the *Land Adjudication (Amendment) Bill 1999*) have failed to be tabled in Parliament. The need for legal harmonisation accepted by Government since mid 1980s but inaction until *Commission of Inquiry into the Land Law System in Kenya* (1999-2003) which along with Draft Bill Constitution strongly recommends new harmonised land law.
UGANDA Land Act No. 16 of 1998 Land (Amendment) Bill 2002	New national land law replacing four laws. Commenced on 2 July 1998, but under very slow implementation, mainly because of high costs of creating new institutions for administration and dispute resolution. Amendment proposes to eliminate community level committees and reduce number of tribunals. Three districts have begun pilot demarcation exercises. Main cause of delay in amendment relates to contentious changes in the rights of women to household property.
ERITREA Land Proclamation No. 58 of 1994 Registration Act, No. 95 of 1997 Regulation on Allocation Legal Notice No. 31 of 1997	Minimal implementation; mainly education campaigns (1994), research and pilot trials (1996). High cost of cadastral and new institutional intentions the main cause of delay (other than War with Ethiopia). Founding framework law invalidates customary rights and tenure regimes and introduces a new state tenure regime based on issue of lifetime usufructs and leases fully issued and controlled by the state through provincial level bodies.
ZAMBIA Lands Act, No 29 of 1995	Operational, builds on a 1985 Land Act. Law mainly concerns right of President to alienate land, recognised customary tenure but with strong encouragement to convert to leaseholds. New Policy in draft but no clear plans for new land law.
ANGOLA Land Law No. 21-C/92 in 1992, Regulations 1995 Draft Land Law (Lei de Terras) 2003	1973 Land Law preserved communal lands in principle but with no means of individuals securing ownership formally. 1992 law sustained protection in principle of peasant rights, provided for concessions.

Table 3 continued

TANZANIA [Mainland] Land Act No 4 1999 Village Land Act No 5 1999 The Courts (Land Disputes Settlement) Act 2002	New basic laws [i.e. independent of English law] passed February 1999 and assented May 1999 replacing ten laws. Came into force May 2001, along with Regulations under both Land and Village Land Acts. Disputes law mainly adds to land laws on district level tribunals.
ZANZIBAR [Island] Commission for Land and Environment Act 1989; Land Tenure Act, 1992; Land Adjudication Act, 1990; Registered Land Act, 1990; Land Transfer Act, 1994; Land Tribunal Act, 1994.	Tenure matters critical to Independence movement and rigorously maintained since as a non-union matter (i.e. outside purview of United Republic of Tanzania). Administration mainly dealt with in first law
MALAWI Land Act, 1965 Cap.57:01; Deeds Registration Act, Cap. 58.02; Registered Land Act, 1967; Customary Land (Development) Act, Cap. 59.01; Local Land Boards Act, Cap. 59.02.	New law under draft, expected to be a Bill by end 2003, based on new Land Policy 2002. Use of Customary Land Act stopped in 1996 to reduce loss of land from customary sector (through both leasing and freeholds
ZIMBABWE Land Acquisition Act, Act No. 3, 1992 revised 1996; Communal Land Act, No. 20, 1982; Rural Land Act, Cap. 20:18; Regional Town and Country Planning Act, 1976; Agricultural Land Settlement Act Cap. 20; Traditional Leaders Act, 1998. Land Tax Bill 2000.	Acquisition Act has unusual importance in Zimbabwe as actively used since 1992 to acquire settler estates for the Land Reform Programme (re-distribution). Legal amendment in 2002. Communal Land Act vests customary land areas in the President; gives inhabitants usufruct rights only and permits state re-allocation. Traditional Leaders Act 1998, designed to re-introduce leaders into local level tenure and other administrative procedures. Land Tax Bill to tax farms above specified sizes for each agro-economic zone; status in 2003 unknown.
NAMIBIA Agricultural (Commercial) Land Reform Act 1995 Communal Lands Reform Act 2002	1995 deals with white-owned commercial farms. Limits size of holdings, allows state to compulsorily purchase 'excessive' holdings, stipulates Government as having first refusal on all sales of commercial farming land. Plethora of other pre-Independence laws still in place. Commitment in December 2000 to accelerate redistribution and plans for higher taxes on commercial farms to encourage disposal of unused land. Communal Lands Reform Bill passed by National Assembly in 1999 but rejected by National Council May 2000 on grounds that it would encourage enclosure of communal grazing lands. Redrafted and passed finally in 2002.
MOZAMBIQUE Reform) Land Law No. 19 of 1997 Regulations, 16/87 of 1998 Technical Annex to Regulations, 1999 Technical Annex to Law 2000	A framework law, with more detail in Regulations 1998, 1999, 2000. In force. Characterised by higher than usual level of public influence on content. Regulations do not resolve all issues. Dynamic Land Campaign to educate people on their rights undertaken. Conflicts in law between rights available to investors and protection of local customary interest growing. Recent regulations, administrative orders shorten time needed to for State to decide on investor applications, increasing tensions.
SOUTH AFRICA *Redistribution laws:* Provision of Land and Assistance Act, 1993; Development Facilitation Act, 1995 *Restitution laws:* Restitution of Land Rights Act, 1994 *Tenure laws:* Upgrading of Land Tenure Rights Act, 1991; Interim Protection of Informal Land Rights Act, 1996; Land Reform (Labour Tenants) Act,1996; Communal Property Associations Act, 1996; Extension of Security of Tenure Act, 1997; Transformation of Certain Rural Areas Act, 1998; Communal Land Rights Bill 2002.	New laws, following end of apartheid, founded in new policies; *redistribution* to landless poor, labour tenants, farm workers, and emerging farmers for residential and productive use; *restitution* to restore land to those who lost land since 1913 through racially-discriminatory laws; *tenure reform* to remove insecurity, overlapping and disputed rights. None deal with land administration per se. Critical Communal Land Rights Bill first drafted June 1999, redrafted four times, still in draft in 2003.

Table 3 continued

LESOTHO Land Act No. 17 1979; Deed Registry Act, 1967; Land (Agricultural Lease) Regulations, 1992; Native Administration Proclamation, 1938 (Cap. 54)	Provides for the conversion of customary rights to registrable agricultural leases and declares land in Lesotho inalienable, vested in Nation, contradicted by Cap 54 which vests allocation authority in chiefs and established Land Committees. Changes recommended by 1987 *Land Review Commission* never implemented. New Commission reported end 2001, new Policy and Land Bill being drafted in 2003.
GHANA Administration of Lands Act 1962; State Lands Act 1962; Survey Act 1962; The Land Registry Act 1962; The Land Title Registration Law 1986	Administration of Lands Act provides for management of all stool lands by the State (land owned by Chiefs, Traditional Authorities in trust). Land Title Registration Law introduced land title registration, currently applied only to 2 cities (other areas subject to deeds registration only). Multi-donor funded programme (2003-2008) includes harmonisation and (limited) reform of laws.
NIGER Rural Land Code 1993 Ordonnance No. 93-015 Supplementary Decree 1997 No. 97-006/PRN/MAG/EL; No. 97-007, No. 97-008	The basis of land administration and management in rural areas through non-elected Land Commissions at commune level (district). Popularisation campaign in 1994, eleven commissions set up by 1998, and guidelines systematically issued since.
IVORY COAST Rural Land law 1998 No. 98-750 Decree 99-593 on Rural Land Tenure Committees Decree 99-594 on implementation of the law Decree 99-595 on registering temporary concessions [leases held by non-citizens]	Design of law based on 10 yrs of piloting of participatory registration process (Rural Land Plan) Defines land ownership capable of arising from customary or granted rights and held individually or in groups. Makes first stage registration compulsory after which holder may apply for full (cadastral) registration Establishes Village Land Committees to allocate, administer, vet rights applications.
MALI Code Domanial et Foncier 1986 Code Domanial et Foncier 2000 (00-027) Charte Pastorale Loi No. 01-004 2001	Pastoral charter not yet implemented but important for guaranteeing rights of access to pasture and water; ownership not dealt with.
BENIN Law 65-25 Rural Land Plan Decree 1994 **BURKINA FASO** Agrarian and Land Reform 1984 1991 Law, 1996 Law 014/96 with decree of application 1997	A law of registration. The Rural Land Plan was given semi-legal backing in an inter-ministerial decree in 1994.

2. LAND ADMINISTRATION

2.1 THE INSTITUTIONS

Although often inchoate in its formation, land administration shows strong signs of decentralisation, at least in respect of rural areas [**Table 4**]. A clear exception is **Eritrea**, where rights management has been centralised away from community level to Government bodies at the provincial level, along with the abolition of customary tenure [RoE 1994, RoE 1997]. Decentralisation does not necessarily imply real or complete devolution of authority, nor democratisation, in respect of to whom authority is transferred. Nor are new institutions necessarily being located at community level.

The purpose of this first section is to identify the location, character, purpose and powers of new institutions for land administration. This needs to be set against a background within which, *first*, formal rural land administration has historically been a function of central Governments and at most de-concentrated (usually to provincial and sometimes district levels); and *second*, to the fact that duality or even plurality in the way in which rural land rights are administered continues. The resulting picture is often complicated.

Dual or Plural Rural Land Administration

Duality or plurality arises through these routes –

- Administration is decentralised for only **certain types of land rights** (most commonly customary rights), whilst other rights in rural areas are administered centrally (e.g. the case in Tanzania, Burkina Faso, Botswana (in respect of freehold rights));
- Distinctions are drawn by **class of right-holder** (most commonly foreigners may only access land through central land administration systems) (e.g. Mozambique, Eritrea, Ethiopia, Namibia, Niger); or/and –
- Rights are locally administered but **registration of those rights is handled by central land administrations**. Often in these circumstances the right is converted by this centralised registration (e.g. Ivory Coast, South Africa (planned), Zambia, Nigeria). In other case the right retains its integrity to a significant (but still incomplete) degree (e.g. Mozambique, Ghana).

Mozambique provides examples of all the above. On the one hand, Mozambican policy and law provides for majority rights to be administered locally (through customary mechanisms, and with absolutely no guidance as to how this should be exercised). On the other, non-citizens may access land in the same rural area and have those land rights formalised and administered, through State controlled mechanisms. Furthermore, should a group of existing, customary right holders seek to have their rights recorded, this may only occur through the State system; a system that only has branch offices at provincial level and some districts [RoM 1997, RoM 2000, Norfolk & Liversage 2002]. The case in Ghana is similar [RoG 1986, Augustinus 2003, The World Bank & MLF 2003].

Even where new and localised regimes are established, this is frequently to be operated at two different levels, and/or with two different types of actors. Thus in **Namibia**, proposed Communal Land Boards at Regional level will formalise land rights otherwise administered by Traditional Authorities and in addition issue other rights (leases) [RoN 1998, RoN 2002]. In **Niger** Chiefs have formal responsibilities subordinate to district level Land Commissions [Yacouba *passim*, Lund 2000]. Both **Malawi** and **Lesotho** plan two-tier administrations at the local level (district and village) (see below).

Area-Based Administration

Uganda perhaps more definitively than any other state has instituted a uniformly decentralised land administration. District Land Boards, put in place over the last several years (but barely operating), will administer all types of rights within their area of jurisdiction (freehold, leasehold, *mailo* and customary). The registration of each may be undertaken at district level or for customary rights at an administratively lower level (Sub-County, in effect a Sub-District administrative area) [RoU 1998]. **Lesotho** and **Malawi** plan to introduce a similarly consistently devolved regime for rural areas [KoL 2001, KoL 2001].

Table 4: Land Administration: Overview of Character & Location of Decentralised Land Administration

COUNTRY	BODY/ ACTORS	TYPE OF DECENTRALIZATION	EXTENT EMPOWERMENT	NO. LEVELS INVOLVED AT LOCAL LEVEL	PROVINCE, REGION	DISTRICT, COMMUNE,	SUB-DISTRICT	VILLAGE
ERITREA	Govt	Deconcentrated	Low	1	X			
TIGRAY ET.	Local Govt	Devolved	High	2		X		X
AMHARA ET.	Govt	Mixed	Medium	3	X	X		X
UGANDA	Autonomous	Devolved	High	2		X	X	
TANZANIA	Local Govt	Devolved	High	1				X
KENYA *	Autonomous	Devolved	High	1		X		
ZANZIBAR	Govt	-	Low	2	(central)	X		
RWANDA *	Semi-auto.	Deconcentrated	Medium	1		X		
ZAMBIA	Govt & TA	Mixed	Low	2	[x]			X [chief]
MALAWI	TA & comm.	Devolved	High	2		X		X [chief]
MOZAMBIQ.	Govt & TA	Deconcentrated	Low	1	[x]			X [chief]
ZIMBABWE*	Local Govt	Devolved	High	2		X		X
STH AFRICA*	Govt & comm.	Devolved	Mixed	2		X	?	? [will vary]
BOTSWANA	Autonomous	Devolved	High	2		X	X	
LESOTHO*	Local Govt	Devolved	High	2		X		X
SWAZILAND*	Community	Devolved	Medium	1				X
NAMIBIA	Auton. & TA	Mixed	Medium	2	X			X [chief]
ANGOLA*	Govt	Deconcentrated	Medium	1	X			
GHANA	Govt & TA	Mixed	Medium	2	X		X [chief]	
BURK. FASO	Local govt	Mixed	Medium	1				X
NIGER	Govt & TA	Mixed	Medium	2		X		X [chief]
IVORY COAST	Community	Devolved	High	2		X		X
SENEGAL	Local govt	Devolved	Medium	1		X		

* Proposed; provided in policies or laws that are not yet officially approved.

2.1.1 LOCUS OF INSTITUTIONS

Table 5 shows the precise level where new or proposed land administration bodies are located. The decentralising trend is evident; among 20 cases, eight locate the main body at village level, and seven at District/Commune level. The remaining five effectively operate centralised administrations.

Village/community based administration is underway in Burkina Faso, Tigray (Ethiopia), getting underway in Tanzania, and proposed in Swaziland and Zimbabwe. Lesotho plans to complement community level administration with district level bodies as does Malawi. South Africa's Draft Communal Land Rights Bill proposes community level Administrative Structures that may or may not be village level, depending upon how 'community' defines itself; it could be defined as a whole tribe – the objective of many paramount chiefs [Moore & Deane 2003].

District based bodies are operating in Niger, Uganda and Botswana and provided for in the ('Regional') Boards of Namibia (as proposed in Angola) [Palmer 2003]. Districts (*Wereda*) will also be the operational level of land administration in Amhara Regional State in Ethiopia, under the instituted Regional State Land Authority [ARS 2000a, 2000b]. Committees may also be established at village level although their powers have not yet been decided [G. Zeleke pers. Comm.]. District Land Commissions are proposed in Rwanda.

Central land administration is the norm in Zambia, Ghana, Mozambique and Zanzibar, although all but the last permissively admit customary land management at the periphery (but without registration capabilities). Only Ghana has plans to consolidate this level and type of land administration but so far, without intention to endow traditional authorities with more administration powers that they currently possess [see later]. Physical de-concentration of State land administration bodies is limited to the ten regions, but with plans to extend services to district level over time [The World Bank & MLF op cit.]. **Eritrea** is a special case in that implementation of its proclaimed decentralisation land law (1994) has in fact centralised what was, up until the passage of the new law, operating community based land administration [Lindsay 1997, Castellani 2000]. Administration is now firmly in the hands of a central Government administered National Land Commission, with Branches at Provincial (*Zoba*) level.

Table 5: Land Administration: Locus and Form of Rural Land Administration

COUNTRY	LEVEL	NAME	TYPE OF INSTITUTION	LOCUS OF REGISTRY	LEGAL BASIS OF ADMIN-ISTRATION	INSTITUTIONS IN PLACE
LESOTHO Under planning	District Community	District Councils Community Councils	Policy & law being finalised. Likely to devolve administration to local government councils at community and district level LOCAL GOVERNMENT/ COMMUNITY BASED	District for leasehold Community for customary	Land Bill under draft 2003	NO Councils in process of being elected (1997 local government law)
MOZAMBIQUE	Centre Community	Provincial branches of ministry	GOVERNMENT/CUSTOMARY Central Government with provincial offices. Customary governance operates but without institutional support or development	Centre	Land Law 1997	YES Underway, difficult for rural people to secure titles because of distance, cost, mapping
TANZANIA Mainland	Village	Village Council Land Registration Officer Adjudication Committee	COMMUNITY BASED LOCAL GOVERNMENT Elected Village Council as Trustee Land Manager of land within village area. Village Executive Officer designated Land Registration Officer. Adjudication Committee elected.	Village	Village Land Act 1999	PARTIAL Village Councils in place since 1975; VEOs in place; Adjudication Co. not yet elected.
ZANZIBAR	Centre & District	Land Office	GOVERNMENT Commission for Lands & Environment & Ministry of Land Affairs	Centre	Commission Act 1989, Adjudication Act 1990, Land Tenure Act 1992	PARTIAL Pilot adjudication & registration process undertaken.
ANGOLA Proposed	Province	No data	No data but decentralisation to provinces likely	Centre	Law under draft	NO
ETHIOPIA Amhara Regional State	Regional State level & Districts (Wereda)	Environmental Protection, Land Administration and Use Authority	AUTONOMOUS AUTHORITY appointed & accountable to state government	Regional State & Districts	Federal law (1997) and Regional State Laws 2000, 2000	PARTIAL Authority established. Branches in Districts being established.
Tigray Regional State	Parish (Tabia) (several villages) And Village	Parish Councils	LOCAL GOVERNMENTS Elected	Parish	Federal Law (1997) and Regional State Law 1997	YES Were already existing

Table 5 continued

COUNTRY	LEVEL	NAME	TYPE OF INSTITUTION	LOCUS OF REGISTRY	LEGAL BASIS OF ADMINISTRATION	INSTITUTIONS IN PLACE
MALAWI	Village	Village Land Committee	CHIEF/COMMUNITY	Village 'Traditional Land Index' managed by Traditional Land Clerk	Law in draft	NO Several pilots to institute committees, district registries etc.
	District	Registry	GOVERNMENT For registration, survey & mgt.	District	Law in draft	PARTIAL Pilots only
NAMIBIA	Region	Communal Land Board	AUTONOMOUS	Region	Law 2002	NO
	Community	Chief or Traditional Authority	TRADITIONAL	Region	Law 2002	PARTIAL In place traditionally but without new expanded roles
SOUTH AFRICA Proposed for ex-homelands	'Community'	Administrative Structure	COMMUNITY BASED. Likely to be traditional. Jural person.	Community but also Central Register when rights formally transferred to individuals	Law; currently Draft Communal Land Rights Bill 2002 with Deeds Act	NO Land Rights Bill not finalised partly due to dispute as to meaning of 'community' (e.g. tribe or village)
	Unspecified: likely 1 in each of 11 former homelands	Land Rights Board	GOVERNMENT Advisory & technical support to community structures	N/A	Draft Communal Land Rights Bill	NO
SWAZILAND Proposed for Swazi Nation Lands	Community (likely to coincide with a Chiefdom)	Community Development Council [CDC]	COMMUNITY BASED with elected Committee to make and enforce tenure by-laws, create register, etc.	Community	Would be new law drafted on basis of draft new Policy 1999	NO
BOTSWANA	District & Sub-district	Main Land Board Subordinate Land Board	AUTONOMOUS legal body, mainly nominated members	District	Customary law as embedded in statute (Tribal Land Act 1968)	YES Existing since 1970

Table 5 continued

COUNTRY	LEVEL	NAME	TYPE OF INSTITUTION	LOCUS OF REGISTRY	LEGAL BASIS OF ADMINISTRATION	INSTITUTIONS IN PLACE
ZAMBIA	Centre Chiefdom	Land Offices Chief or Chief's Council	GOVERNMENT TRADITIONAL	Centre	Law 1995 permits customary administration to continue pending conversion to leaseholds	YES Traditional role only
RWANDA Proposed	Province District	Land Commissions District Land Registrar	GOVERNMENT & AUTONOMOUS Commissions likely to be autonomous bodies funded by Government. Registrar will be Government employee.	Province District	Proposed land law (draft 2003)	NO
UGANDA	District Sub-County	Land Board Land Committee	AUTONOMOUS legal body of nominated persons. Committees are appointed advisory bodies only	Recorder at Sub-County level for customary interests. District Registries & Registrar intended.	Land Act & customary law	YES Most Boards in place but not operating. Not all Recorders or Committees in place; none operating.
ERITREA	National Province (sub-zoba)	Land Administration Bodies [LAB]	GOVERNMENT State agencies	Provincial LAB with copies to central Registry	Statute (1994, 1997)	NO
ZIMBABWE Proposed	Village		COMMUNITY BASED Proposal for elected Village Council & Village Land Court & Registry. District Land Board as branch of National Land Board only for non-customary lands	Village for customary District for statutory freeholds & leaseholds	NONE; current law devolves some elements of land administration to elected county councils on behalf of President in whom customary lands vested	NO Policy in draft and no legal instruments developed
IVORY COAST	Village	Village Land Management Committee	COMMUNITY BASED Traditionally appointed (?)	District	Rural Land Domain Law 1998	YES Incomplete, Pilots only
BURKINA FASO	Village	Village Council Village Land Use Cmttees	COMMUNITY BASED elected	?	1984 Law and amendments 1991, 1996	YES But competing mandates

Table 5 continued

COUNTRY	LEVEL	NAME	TYPE OF INSTITUTION	LOCUS OF REGISTRY	LEGAL BASIS OF ADMINISTRATION	INSTITUTIONS IN PLACE
NIGER	Commune (Parish)	Land Commission	GOVERNMENT BASED with other elected representatives	Commune (Parish)	Rural Land Code 1993	YES Not all
GHANA	Centre Chiefdom	Land Commission & Administrator of Stool Lands Traditional Authorities (Chiefs, etc.)	DUAL: GOVERNMENT & TRADITIONAL Administrator controls revenue, Commission controls registration, Traditional Authorities [TA] control allocation and transfers, generally with elders/advisers ('Customary Secretariats')	Chiefdoms for customary and Centre with branches for non-customary	Constitution 1992 Administration of Lands Act 1962	PARTIAL Operating customary institutions but poorly. Regional Land Commissions and Administrators of Stools in place

2.1.2 TYPE OF INSTITUTIONS

Broadly the institutions for land administration may be categorised as -

- Legally autonomous bodies (that is, with independent legal personality and statutorily autonomous of central or local Governments and of traditional authorities);
- Government or local government institutions or bodies under their auspices;
- Traditional institutions (chiefs and other traditional authorities); and
- Other.

Autonomous Bodies

The outstanding example is the Land Board system of **Botswana**, the nature of which has altered significantly since their launch more than 30 years ago. One of the more significant changes included the removal in 1993 of Chiefs or district councillors as ex officio members of the Boards [Mathuba 1999a, 1999b, RoB 1993]. Today there are 12 Main Land Boards and 37 Subordinate Land Boards, together governing nearly 71 percent of the total land area [NRS 2003]. They have comprehensive jurisdiction within their respective areas, administering customary rights and non-customary rights, which may be acquired in the area, both brought under a single statutory law [The Tribal Land Act Cap. 32:05].

Uganda's 1995 National Constitution adopted a similar approach, elaborated in the 1998 Land Act. This vested land administration in Land Boards in what should be around 50 Districts. Less than half have actually been put in place, five years after the passage of the law (pers. Comm. H. Busingye May 2003). The Boards are to administer rights stemming from all tenure regimes that may accrue in the area. Under the terms of the Land Act, they were to be assisted by some 4,500 community level Parish Land Committees, none of which have been put in place. A pending amendment to the law proposes that these institutions be removed to the higher Sub-County level (Land Act (Amendment) Bill 2002).

Communal Land Boards that are yet more similar to the Botswana model will be established in **Namibia** during the course of the next two or three years [Palmer 2003, Werner 2001, RoN 2002]. These will be assisted by existing traditional authorities (Headmen). The Federal Rural Land Law in **Ethiopia** (1997) empowered Regional Nation States to autonomously administer land, and importantly, to determine the manner in which they implement this [FDRE 1997]. As recorded above, Amhara State has since established a Regional Authority for this purpose, working through district level bodies that are as yet undefined.

Rwanda's Draft Policy (2002) and Law (2003) do not define the source or autonomy of its proposed District Land Commissions [GoR 2002, 2003]. It is already known that they will not hold registration powers; these will be in the hands of concurrent District Registrars [ibid]. It is likely that the Commissions will be *semi-autonomous* entities [Liversage op cit.]. District level Land Commissions have slowly been established in **Niger** consequent upon the Niger Rural Land Code 1993. These have functions that enable them to register customary rights as confirmed by Chiefs, whose support function is confirmed by the law [Yacouba *passim*]. The Commissions are semi-autonomous agencies, mainly staffed by central government technical officers. Well under half are instituted and their performance as registration authorities has been extremely slow [ibid]. This has encouraged Chiefs to issue documentation themselves, of dubious legality [Lund 2000].

Proposed Community Development Councils in **Swaziland** will be corporate and autonomous entities but with elements that suggest they could at the same time evolve as more general elected community level governments [GoS 1999]. In **South Africa**, the draft Communal Land Rights Bill lays out future Administrative Structures, to be created and managed by communities and registered as legal persons [GoSA 2002]. These would be *advised* by Government instituted Land Rights Boards.

Local government institutions

Tigray State in Ethiopia and (Mainland) Tanzania have designated existing community elected governments as land administration authorities. In **Tigray**, these *Tabia* councils are at parish level, comprising several small villages [TRS 1997, IIED 2002]. In **Tanzania**, the Village Land Act 1999 designates Village Councils as Land Managers and provides an elaborate manual of procedures for their operation [GoT 1999, Alden Wily 2003b]. Each Village Council may establish an advisory Committee, and many villagers already have such committees in place. Community members, rather than the Council, are to elect an Adjudication Committee for the purpose of determining land rights (see later). Village Councils already employ an administrator in the form of a Village Executive officer, and this village level civil servant is given the function of Land Registrar under the Village Land Act. **Zimbabwe's** Draft National Land Policy suggested a similar set of strategies [GoZ 1998, 1999].

In **Lesotho**, local land administration is unevenly already in the hands of elected Village Development Committees under the terms of the Land Act, 1979. The proposed strategy is to remove these functions into more formally elected Community Councils [KoL 2000, KoL 2001]. Up to two traditional leaders may have places on these bodies [KoL 1997]. In **Senegal**, local governments ("communautés rurales") have been responsible for land management since the 1970s. In **Mali**, legislation grants local governments (e.g. communes) their own "domaine" and the responsibility to manage it, although the transfer of lands and powers is not yet operational [Intercooperation 2001, Lavigne Delville 2000].

Traditional institutions

Chiefs or other traditional authorities administer land tenure in most other states, either by permissive legal acknowledgement without support (Zambia, Nigeria, Cameroon), or by more formal policy and legal decision (Ghana, Mozambique, Niger). A developed case of this is **Ghana**, where 80 percent of the land area is administered by Traditional Authorities, mainly Chiefs, but with incomplete powers. Government policy (1999) and its scheduled new support programme (the Land Administration Programme, 2003-2008) embodies an improvement approach, but with little sign that existing controlling mandates of state agencies will be devolved to Traditional Authorities [GoG 1999, The World Bank & MLF op cit.]. Nor will Traditional Authorities be improved to the extent that they are forcibly required to adopt more participatory processes [ibid]. This is not the case in **Malawi** where national policy has laid down how chiefs will operate in future as land administrators, including a requirement that they work with three locally elected advisers within a context of Village Land Committees, thus combining traditional and modern regimes. Higher level Traditional Authorities at Area or District level will in addition be supported by Government Offices [GoM 2002]. The proposed Community Development Councils in **Swaziland** have a similar objective; these will be elected bodies of which Chiefs may be members [GoS 1999].

An interesting fact about current and planned land administration systems is that in no case do Traditional Authorities have **full** authority over even customary land administration, nor is this anywhere intended. Even in **Ghana** where chiefs and other traditional land authorities are endowed constitutionally supported roles, they neither fully control revenues from customary land management, nor are able to serve as official registration authorities [Alden Wily & Hammond 2001, Augustinus op cit.]. To a real degree, their roles and rights are support

functions to the dominant State land administration regime. This is even more clearly so in countries like **Zambia** and **Mozambique** (and Nigeria and Cameroon), and in the decentralised regimes of **Niger** and **Namibia**. In these countries, traditional authorities retain their customary role as land allocators, notaries and endorsers of transactions and may, if they wish, establish registers of various ilk, but without the important power to statutorily register and title rights and transactions. This is not to say that *localisation* of this function is never localised; on the contrary, as shown shortly, customary rights may now be formally registered and titled locally in a growing number of states, but in no case, by customary authorities.

2.1.3 COMPOSITION & ACCOUNTABILITY OF INSTITUTIONS

Table 6 compares membership of local land administration bodies. Those whose members are fully elected are only found in **Tigray** and **Tanzania** and proposed in **Lesotho** and **Swaziland**. Chiefs may hold up to 25 percent of places in proposed community Administrative Structures in the former homelands of South Africa and in the Village Land Committees of Malawi. Only five of 12 members of Botswana's Main Land Boards are elected, and this is arrived at through public meetings rather than private ballot. The regional Land Administration Bodies of Eritrea and the district level Land Commissions of Niger comprise entirely nominated members and mainly Government officers, operating largely as technical bodies. The District Land Boards of Uganda are much smaller and also made up of nominated persons, but with more lay skills.

Table 7 looks more specifically at the **accountability** of these bodies to the populace. Predictably, levels of this correlates mainly with whether or not the institution is fully, partially or not an elected body. Whilst in theory fiduciary Traditional Authorities may also be presumed to be responsible and accountable to their subjects, there is all too much evidence that this is not the case. Lund for **Niger** (2000), Alden Wily & Hammond (2001 and Lund (2003) for **Ghana**, Hanlon (2002) and Negrao (2002) for **Mozambique** among others identify strong rent-seeking trends on the part of Chiefs in land administration. In these and states, the misuse of powers by Chiefs is a rising issue, against which customary occupants sometimes seek direct redress.[7]

Nor is downward accountability particularly well developed where land bodies are made up of appointed persons. It is noticeable for example that despite their operation as service agencies, no legal mechanisms are prescribed in **Botswana**, **Namibia**, **Eritrea** or **Uganda** to require land administration bodies to formally report problems and progress to land holders [RoB 1968, 1993, RoN 1999, 2002, RoE 1994, 1997, RoU 1998, 2002]. Most are accountable upwards to their appointees, Governments or Ministers.

Table 7 also takes the opportunity to illustrate the very limited, but growing role that landholders have in determining at which level their rights will be administered and by whom. There are two elements to this; *first*, in the extent of participatory planning towards designed new land administration regimes, and *second*, whether the design of these regimes is flexible enough to allow communities to shape or reshape these institutions themselves. Broadly, with each new national policy development, **consultation** is increasing, variously occurring through commissions of inquiry and post-Policy formulation debate [Palmer *passim*, Alden Wily & Mbaya op cit.]. At different times and in different ways, Botswana, Malawi, Mozambique and Tanzania have been exemplary in the extent of consultation carried out [NRS op cit., GoM 2002, Negrao 1999, URT 1994]. Ghana and Rwanda have various consultative intentions afoot [The World Bank & MLF op cit., Palmer 2001, GoR 2002, Liversage op cit.]. Consultation may however be a far cry from equitable participation and very little of this basic approach to development is being adopted in the land sector [Alden Wily 2002b].

Moreover, flexibility in the systems finally selected by Governments for their people is limited. Only in **South Africa** and **Swaziland** have there been proposals that will enable communities to **draft the constitutions** of their local administration bodies themselves and therefore to design and shape the manner of institution which will manage their land rights [GoSA 2002, GoS 1999]. This could also prove eventually to be the case in **Ghana** in respect to evolving (or not evolving) customary land administrations [The World Bank &MLF op cit.]. This possibility could be im-

[7] A court ruling in Ghana in 2002 gained much publicity when it ruled in favour of a challenge by four subjects to their chief, demanding that he spend income for the benefit of his people [The Evening News Accra, Editorial: 6 November 2002].

portant, for as elaborated elsewhere, the ultimate democratisation in land relations must be founded upon the power to determine how and who will regulate and manage land rights in the first instance [Alden Wily 2002b]. To a real extent, landholders are gaining this opportunity in terms of defining the nature of their customary land interests (Uganda, Tanzania, Malawi, Namibia). This does not extend fully however to determining how these interests are administered [RoU 1998, URT 1999a, 1999b, GoM 1999, RoN 2002]. To have this power would be advantageous to the supervising State as well as to landholders, in respect of ensuring the social legitimacy and acceptability of the designated institution. Had, for example, Ugandans been afforded the opportunity to voluntarily set up their own local land administrations as was briefly mooted immediately prior to the passage of the Land Act in 1998 [Alden Wily 1998], then the impossible commitment it made for Government to underwrite more than 4,500 statutory Parish Land Committees would not have been necessary – nor as inevitably eventually legally retrenched as currently proposed in amendment to the law [GoU 2002].

Table 6: Land Administration: Composition of Local Land Administration Bodies

COUNTRY & BODY	Total Members	No. Ex Officio & Source	No. Elected Members	Elected By	Appointed/ Nominated members & by whom	Chair	Term of Body
NIGER Land Commission	15+	11 Government officers, Mayor, commune	0	0	Secretary appoints rep, from women, youth, herders, farmers	Mayor	5 years
BOTSWANA Existing Main Land Board	12	2 Ministries Commerce, Agriculture	5 elected onto list for Minister to consider only	*Kgotla* traditional assembly, then selected & approved by Minister	5 Minister for Lands	Elected by all members annually	5 years, staggered; nominees 3 yrs; elected 4 years
Subordinate Land Board	10	2 Ministries Commerce, Agriculture	4 elected	As above	4 Minister for Lands	Elected by all members annually	As above
GHANA Customary Secretariat	Varies	None	None	-	Chief	Chief	standing
LESOTHO Proposed Community Council	No data	None	All	Community members	None	Elected	No data
TANZANIA Village Council	25	0	100%	All adult members of village	0	Elected directly	5 years
MALAWI Proposed Village Land Committee	Min. 4	1 Headman	3+	Community 'in accordance with tradition'	-	Headman	Not stated

Table 6 continued

COUNTRY & BODY	Total Members	No. Ex Officio & Source	No. Elected Members	Elected By	Appointed/ Nominated members & by whom	Chair	Term of Body
NAMIBIA Proposed Communal Land Board	10-11	4 Regional Officer; 3 Public Servants;	0 (although nominated) prior to appointment by Minister of all Board members		Traditional Authorities nominate or consulted by Minister	Elect own chair	3 yrs, eligible reappointment
SOUTH AFRICA Proposed Administrative Structure	Not specified	Up to 25% traditional authority	75%	Community members	-	Not specified	Not specified
SWAZILAND Proposed Community Development Council	Not specified	Community may designated if wish	All	Community	As and if desired	Elected	To be decided
UGANDA Existing District Land Board	Min. 5	2 municipality, urban councils	0	0	Unstated but District Council	Unstated	5 yrs, with reappointment possible for 1 term
ZAMBIA Existing Chief's Council	No data	Chief's & advisers	0	0	Chief	Chief	No data
ETHIOPIA Amhara Authority with Board	No data	Most: from regional Government Depts.	-	-	Regional President and Executive Committee	Appointed by Regional Government	Unspecified in law
District	No data; unclear if the Board is using elected District Councils or has established a Branch Office of its own with own employees						
Kebelle (village)	No data, but signs are that Board will adopt community based land administration and supervise						
Tigray Parish Councils [Tabia]	No data	Some as advisers	100%	People	(Government)	No data	Existing body
RWANDA Land Commission	No details provided in Draft National Land Policy 2002						
KENYA District Land Boards	Njonjo Commission Report on Land Matters released May 2003 after sitting 4 yrs; provides for LB autonomous from Government and gaining support from an autonomous National Land Authority. Composition of LB not known.						
ERITREA Land Administration Bodies	No details provided in No. 58/1994 and status of implementation unknown						

Table 7: Land Administration: Accountability to Land Holders

COUNTRY & INSTITUTION	L/HOLDERS HAD DIRECT ROLE IN DESIGNING SYSTEM	L/HOLDERS MAY DESIGN OWN ADMINISTRATION INSTITUTION/ SYSTEM	ADMINISTRATORS DIRECTLY ACCOUNTABLE TO L/HOLDERS
LESOTHO Draft Policy 2001 & final Draft in preparation 2003	NO Although consultation prior to final approval of Policy intended.	NO But may make by-laws on procedure etc.	YES Likely if Community Councils selected as institutional framework.
TANZANIA Law 1999	NO But nationwide consultation prior to policy formulation	NO But may make by-laws on procedure etc.	YES VC must report quarterly on land matters and most issues require community approval
ZANZIBAR Laws 1990-1994	NO No consultation and no system whereby design system.	NO	NO Only indirectly through state elections.
ERITREA Land Administration Body	NO (and not even pre-policy/law consultation)	NO	NO LAB members report to upward hierarchy to Ministry
MOZAMBIQUE Law 1997[8]	INDIRECTLY Through considerable national and NGO-led consultation. YES to extent that each community may design its own customary administration system.	YES in principle, at customary level only	NO For central state but YES indirectly in respect of unregistered informal rights administered by traditional authorities.
ZIMBABWE Draft Policy 1998/99 Proposed	NO Commission's recommendations with limited consultation so far.	NO But may make rules of procedure	YES Would be directly accountable to community members ('village assembly').
ETHIOPIA Amhara Authority	NO	NO But must adopt participatory approach and may permit diversity	NO But changes towards this likely
Tigray Councils	NO	NO	YES
MALAWI Policy 2002	YES Considerable consultation 2000-2002	NO	YES
NAMIBIA Law 2002	NO	NO But consultation of chiefs required prior to establishment of Boards	NO Reporting is to Minister & then Parliament not downwards to landholders

8 FAO is encouraging the Government of Angola to adopt regime similar to that existing in Mozambique above.

Table 7 continued

COUNTRY & INSTITUTION	L/HOLDERS HAD DIRECT ROLE IN DESIGNING SYSTEM	L/HOLDERS MAY DESIGN OWN ADMINISTRATION INSTITUTION/ SYSTEM	ADMINISTRATORS DIRECTLY ACCOUNTABLE TO L/HOLDERS
SOUTH AFRICA Draft Communal Land Rights Bill 1999	YES	YES Free to create own structures within loose guidelines	YES
GHANA Policy 1999	NO Minimal consultation even with chiefs but consultation planned.	YES in principle at customary level only	IN PRINCIPLE YES Chiefs are trustee land owners/managers but many operate as land owners/managers in own right
IVORY COAST Law 1998	YES Through pilot developments	YES	YES
NIGER Code 1993	NO But chiefs were consulted; proved critical as they had withheld support in the past	NO	NO But have a clear consultative remit
BURKINA FASO	NO	NO	YES But conflicting powers with state agents
SWAZILAND Proposed in Draft Policy 1999	YES Community will draft own constitution	YES Community will draft own Constitution	Yes Regular report back required and certain decisions to be subject to community approval
ZAMBIA Law 1995	NO (And law passed before consultation got underway). Policy 2002 out for consultation	YES in principle at customary level only	NO No system to make Commissioner accountable to people. Chiefs are indirectly accountable to their subjects
BOTSWANA Land Board	MIXED Not in 1968 but consultations since	NO	No (to Minister)
RWANDA Land Commission	MINOR Consultation 2001 & 2002 held	NO	No/uncertain District Commissions likely to report upwards to Provincial and National Commission
UGANDA District Land Board	NO Land Board idea introduced	NO	NO No routes for reporting to people but neither accountable to Government or Local Government, although in effect reports to latter through appointments

2.1.4 DUTIES & POWERS OF INSTITUTIONS

Table 8 gives examples from nine states of the functions of local land administrations as articulated in policies or laws. This includes those mandated to regional (Amhara), district (Niger, Malawi, Botswana, Namibia) and village levels (Tanzania, Swaziland, Tigray, South Africa).

Those in Ethiopia, Malawi, Botswana, Swaziland and Tanzania strongly include land use management functions alongside administrative roles, as later described. Only a handful are mandated to deal with dispute resolution as well [see later]. Recording of rights, or providing back up adjudication and documentation for this to be undertaken, is in all cases an important function of local level institutions (including the Village Land Committees of Ivory Coast, not exampled in the table), and arguably the *raison d'etre* for their establishment, as discussed below.

Uneven empowerment

In assessing the powers of the State over agencies at all these levels, it is evident that even where they are legally autonomous, they are far from free from Government **authority**. This extends well beyond Ministerial powers to regulate. In **Ghana** customary authorities are able in principle to operate relatively autonomously from Government and with minimal checks from central or local Government bodies. This stops short however of empowering them to collect land based revenues such as relating to forestry, and which yield millions of Cedis to Government coffers, only portions of which are returned to the trustee landowners. Another forceful route for Government to exert its authority is through being able to hire and fire land administrators. In **Botswana** the Minister holds this power: he nominates half the members of each Land Board, approves the nomination of the remainder, may dismiss any member, and the Board reports to him and is subject to the administrative directives of his Permanent Secretary [Dickson 1990, White 1998, Mathuba *passim*, NRS op cit.]. In **Swaziland**, 'autonomous' Community Development Councils [CDC] will in practice be autonomous only to the extent that they will administer and manage local land relations on the basis of a proposed ten year contract with the supervising National Land Authority [GoS 1999].

Local land authorities have a greater degree of autonomy in Tanzania, Uganda and Ethiopia, although at the same time, the governing laws under which they gain this authority also take the opportunity to lay down quite substantial parameters for administration. Thus in **Tanzania**, the Village Land Act cautions District Councils and their Land Officers to advise rather than dictate to the community level. This is a caution that is in line with the intentions of local government reform overall, which seeks *inter alia* to develop the role of District bodies as advisers to 'the real place for governance; the village level' [Alden Wily 2003b]. Nonetheless, the law leaves significant room for the central Government Commissioner of Lands to forcibly direct the Village Councils, through regulations or directives, applicable to one community, several, many or all, depending upon the issue. She may also intervene in the running of village level land administration in certain situations, including where 100 village members request her to do so. In **Tigray**, regional state law emphasises the autonomy of district (*Wereda*) and parish (*Tabia*) elected councils to administer lands at the same time as laying out the limitations of their roles in law [TRS op cit.]. **Uganda's** Land Boards exhibit perhaps the greatest autonomy in design. They are to be independent of the Uganda Land Commission and not subject to the control or any person or authority, although they do need to take account of national land policy and local district land policy [Land Act 1998, section 61].

Financial & Technical Autonomy

In general, the more sophisticated the proposed land administration operation, the more dependent the local administrator is upon Government for **finance** and **technical** expertise. This predictably circumscribes the decision-making autonomy granted local land administrations such as above. This is already highly visibly the case in **Botswana**. There, Government provides land use planners, surveyors, and other technical, professional and administrative staff directly to each Main Land Board. The Land Board Secretary, a civil servant, is especially powerful [Dickson op cit., White op cit.]. Most of a Land Board's substantial budget derives from Grant-In-Aid in Botswana with revenue from fees and services accounting for the remaining 13 percent.[9] Policy proposals include increas-

[9] The cost of running all land boards amounts to 77% of the total recurrent expenditure of all institutions in the land sector, or 1.2% of total annual government expenditure; NRS op cit.

photo: Liz Alden Wily

A District Officer in Babati District, Tanzania, facilitates a workshop with District Councillors to discuss how they will help Village Councils to set up Village Land Registries (March 2003)

ing their revenue-generating capacity [NRS op cit]. A similar level and routing of support is planned in respect of the new Communal Land Boards in **Namibia** [RoN 2002, Werner 2001].

In **South Africa**, community Administrative Structures will have technical support from Land Rights Boards as well as from the Department of Land Affairs and would likely become similarly dependent upon the State for their operations (and a state that is yet to budget sufficiently for this) [GoSA 2002, Jacobs 2002, Adams 2002, Cousins 2002]. Similar multi-functional technical Land Offices are in the process of being set up at district level in **Uganda** to assist the Land Boards, but now, as budgetary constraints dictate, serving several Land Boards at once [RoU 2002], thereby likely diluting their influence along with their service. An administrative Secretary to the Land Board is also to be provided by the District Service Commission for Local Government [RoU 1998], not all of whom have after five years been provided. Nor are all Government paid Recorders in place in more than 2,000 Sub-County offices, severely constraining the ability of local people to take up registration opportunities as promised by the law.

Drafters of the final National Land Policy statement and proposed land bills in **Lesotho** are acutely aware of the limitations likely to arise in decentralising support to district levels, helping to fashion what has already been proposed as dual registration opportunities, enabling the majority of holdings to be recorded without formal survey and mapping requirements [KoL 2001, pers. Comm. Patrick McAuslan]. Financial and technical constraints more than political decisions, are indisputably partly (and perhaps largely) responsible for emergent willingness among African Governments described later to provide for simpler registration techniques, and related, their improving attitude to customary norms. Meanwhile, financial dependence upon the State predictably correlates with technical requirements and dependence, as Government pays the salaries for these professionals where their services are required and provided. A reluctance to simplify procedures or reduce technical standards tends to correlate with formal encouragement to private sector roles in these spheres [Ghana, South Africa, Lesotho] but one that realistically requires state subsidization or loan schemes if the better off are not to be the only clients who can afford these services [Malawi, Swaziland].

Community level land administration bodies and functions are generally posed as simpler operations, more self-reliant and cost-covering. The proposed Community Development Councils (CDC) in **Swaziland** are designed with these objectives in mind, but they will be provided with technical, legal and extension support to draft and land use and management plan and to operate administration [GoS 1999]. An interesting provision in the Draft Policy is for each CDC to be able to raise a community mortgage on its land jurisdiction area, in order to help fund administration costs.

Tabia [Councils] in **Tigray** are presumed to be minimally funded from either District or Regional State coffers. This is certainly the case in **Tanzania** where Village Councils are not expecting, nor being promised, any form of financial or technical support beyond verbal facilitation, to be provided by District Councils [Alden Wily 2003b]. The salary of their single administrative employee, the Village Executive Officer, and now also the Village Land Registrar, is in most communities still paid for by the District Council. Recordation costs associated with land administration will be met through community levies, and fees charged to the land holder for certain voluntary activities. Regulations set these at very low levels.[10] Some Village Councils may use annually collected village tax to cover adjudication costs where they decide to systematically pursue this, thus making it 'free and fair' for all villagers. The main cost to be covered will be sitting allowances to members of the local Village Adjudication Committee and the Adjudication Adviser they select to advise them. 'Spot' adjudication may also be demanded for individual cases, a provision interpreted by some commentators as opening the door to stratification of landholders into richer title holders and poor untitled tenants [Sundet 2002]. Malawi, Swaziland, Namibia and Ivory Coast aim to pursue systematic registration to avoid such stratification [GoM 1999, GoS 1999, Stamm 2000], a procedure that also may have enormous costs, depending upon how it is exercised.

10 These run at between US$ 25c to $1.50 for most tasks; Regulations 2001 under The Village Land Act 1999.

photo: Liz Alden Wily

A District Officer in Babati District, Tanzania, facilitates a workshop with District Councillors to discuss how they will help Village Councils to set up Village Land Registries (March 2003)

Table 8: Land Administration: Duties & Powers of Localised Land Administrations

COUNTRY, BODY, SOURCE	DUTIES & POWERS AS FORMALLY LAID OUT IN POLICIES OR LAWS
NIGER **Land Commissions at Commune Level** **Rural Land Code 1993**	The Code lays down that the Commissions have a consultative remit (must be consulted on all land matters) and decision-making powers, including – • Acknowledging and establishing the content of tenure law, following customary, Islamic, received and state law • Transforming rural allocations into ownership rights (registration) • Determining the scope of those rights • Establishing the amount of compensation that may be due in cases • Keeping a register, which comprises maps and files on land ownership
SOUTH AFRICA **Administrative Structure; as defined in draft Communal Land Rights Bill 2002**	The Administrative Structure will - • Be appointed by community to represent or manage its land interests, to – • Register the communal land in the name of the community and names of right-holders • Manage the establishment, promotion, protection, implementation and development of the land tenure system • Promote and safeguard the interests of the community and individual members • Promote cooperation among members • Involve itself in resolution of land disputes among members and with non-members • Compile and maintain record of existing rights to facilitate updating of (central register) • Manage the processes required to comply with the Act • Obtain assistance from the Department of Land Affairs or elsewhere as required • Keep minutes of meetings • Liaise with Land Rights Board

Table 8 continued

COUNTRY, BODY, SOURCE	DUTIES & POWERS AS FORMALLY LAID OUT IN POLICIES OR LAWS
Land Rights Board	These will – • Advise the Minister on matters relating to land tenure rights, the validation and cancellation of rights, aware of tenure redress and content and registration of community rules • Advise communities, their administrative structures or members • Monitor compliance by communities • Liaise with national, provincial and municipal governments and other institutions • Receive and mediate disputes or refer them to appropriate other forums • Investigate any matter, convene meetings
ETHIOPIA Regional Land Administration Authority; as defined in Amhara Land Law 47/2000	Amhara Land Administration Authority has these duties and powers - • To study and register land, administer land, follow up on its use • Educate land users to protect the land and take punitive actions against those who fail • Study and determine optimal land use in the region • Conduct simple cadastral survey and issue maps with a certificate book to each land holder which states the size of the plot and its boundaries • Make regulations or issue directives on the transfer of holding rights held by individuals or organisations, via inheritance or lease • Evaluate and approve use plans prepared by investors • Make and implement environmental protection strategies for the region • Develop environmental impact assessment and monitoring procedures • Carry out studies for rehabilitation of degraded areas • Study the use and management of regional biodiversity resources and parks, prepare strategies and regulations and monitor their implementation • Educate communities on environmental protection • Prepare environmental standards • Make sure waste is collected and recycled and health protected • Establish a data base for environmental land administration and disseminate to users • Submit timely reports to appropriate committees [Amhara Law 47/2000]
TIGRAY Baito (elected Councils) Tigray Rural Proclamation 1997	No details given other than to state that – Each Tabia or Wereda (i.e. village or district levels) has the mandate to administer all lands through its *baito*. It may not demarcate new land without the authorization of the regional state. The regional council will determine the use of vacant areas and hills. Other parts of the law show that the baito has authority over land allocation, registration, and land use management decisions.
MALAWI Traditional Authority; as defined in National Land Policy 2002	The Chief/TA will be assisted by a Traditional Land Clerk, to be employed by the District Assembly, and trained in land tenure issues and basic map preparation. The TA will - • Allocate vacant land • Support functions delegated to Headpersons and family heads • Register all transactions occurring within jurisdiction maintaining a Traditional Land Records Storage and Management System • Monitor transactions by granting Consent to Transfer • Collect and account for land revenue from leases and royalties paid for use of communal land • Serve as agents of government for enforcing conservation and environmental regulations • Preside over Traditional Land Tribunal to settle disputes • Perform as Public Notary with respect to transactions, wills, inheritance • Create and maintain Traditional Archive of historical and cultural artefacts to protect cultural and community values • Administer existing leases out of customary land, a function to be handed over from Government.

Table 8 continued

COUNTRY, BODY, SOURCE	DUTIES & POWERS AS FORMALLY LAID OUT IN POLICIES OR LAWS
Customary Land Committee (or Village Land Committee)	These will - • Vet applications and allocate land • Oversee formalisation of existing land grants • Approve/refuse applications to use public land in the village (previously a function of the Chief)
BOTSWANA Main Land Boards; as defined in Tribal Land Act	These are responsible for • Granting of rights to use land • Cancellation of grants to use land including grants made prior to TLA • Imposing of restrictions on use of tribal land • Authorising change or use of tribal land • Authorising any transfer of tribal land • Defining land use zones • Hearing appeals from Subordinate Land Boards; resolution of disputes. Draft Land Policy proposal: enable LB to raise more revenue to manage better and more independently or state grants.
Subordinate Land Board	These – • allocate land for customary uses • impose restrictions on use and recommend cancellation of customary land rights to the Main Land Board • adjudicate applications and recommend to the Main Land Board on applications for common law leases • settle land disputes.
SWAZILAND Community Development Councils; as defined in Draft National Land Policy 1999	The CDC will - • Develop rules for land use within the CDC area and mechanisms for evolution of rules • Decide up the nature, conditions and scope of leasehold rights to individual land holders and incremental individuation of tenure if and when desired • Develop rules regarding use of common property resources (rivers, wells, grazing, forests etc.) • Determine how customary and other rights in the CDC area may be transferred • Write a Constitution embodying these rules and bye-laws for enforcement • Establish a Land Use and Development Plan for the area, including zoning • Define standards for rubbish disposal, building regulations, hygiene within the community area • Develop appeal procedure with dispute resolution system • Create a Register of landholding and owners, identifying rightful inheritors in case of death • Develop and approve bye-laws for all the above including settlement of boundary disputes, rules for settlement and tenancy, enforcement methods including right of CDC to impose fines upon, or in extreme cases, evict those infringing rules, rules relating to protection and enforcement of the inherited rights of orphans and others unable to protect their rights.
NAMIBIA Communal Land Boards, as defined in Communal Land Reform Act 2002	These Boards will - • Exercise control over the allocation and cancellation of customary land rights by Chiefs or Traditional Authorities • Consider and decide on applications for right of leasehold • Establish and maintain a register and system for registration for recording the allocation, transfer and cancellation of customary and leasehold rights • Advise Minister on regulations

Table 8 continued

COUNTRY, BODY, SOURCE	DUTIES & POWERS AS FORMALLY LAID OUT IN POLICIES OR LAWS
TANZANIA Village Councils; as defined in the Village Land Act 1999 and Regulations 2001	These are designated as Village Land Managers and the law tasks them with myriad tasks. These are generally described in the Regulations as responsibility to - • manage the land in accordance with customary law of the area • protect the environment • protect rights of way • maintain the perimeter boundary of the village area • keep secure the certificate of village land which is given when it is made Land Manager • report alterations in the boundary to the Commissioner for endorsement on the certificate • issue certificates of customary title, and - • maintain a register of communal land [Village Land Act Regulations 2001].
Village Registration Officer	The Village Land Officer is employed by and reports to the Village Council. He has no decision making powers and in land matters only deals with the Village Land Register. In this work, the Regulations instructs him to - • use the 50 various forms provided for maintaining land administration and the Village Land Register or to design similar forms as needed (this is because the forms list all the information that should be considered in the procedure. They also help save the village the costs of paper as these forms will be issues free). • register documents in the way laid out in the Regulations. • permit the Register to be freely examined by an applicant during office hours but not to allow documents to be taken out of it. The Registry is to be open to the public at hours determined by the Village Council. • be satisfied as to the identity of the person presenting documents for registration. • number and file every document consecutively and make sure each is dated. • attach a noted signed by himself to each registered document, recording particulars. • keep a book for each of the three registers and into which he enters the registered number of every certificate registered, the name of the holder/s, the date of the certificate, the date of registration. Each certificate shall have its own page. • give applicants two months to bring documents evidencing the transfer of land. • ensure that when the consent of a spouse/s is required, that written evidence of this is provided. • Take no action to register documents presented to him by persons other than the original owner until he is fully satisfied that the transaction was undertaken freely and with full knowledge by the owner [Village Land Act Regulations 2001]
Village Adjudication Adviser	Appointed by the Village Council, this person is to be known and respected in the community for his judgement and impartiality. He may be a villager, civil servant, magistrate or other. The law charges him to – • Carry out any lawful orders of the Village Adjudication Committee • Draw its attention to any error or omission in the register at any time before it is completed • Claim on behalf of an absent or disabled person if he considers it necessary to avoid injustice • Attempt to resolve any dispute concerning boundaries or interests through conciliation • Conduct any inquiries as directed by the committee [Village Land Act 1999 s. 52].
Village Adjudication Committee	The Committee is elected by the village community and the law charges it to – • Determine the boundaries and interests in the lands under adjudication • Set aside of make reservations of land or demarcate rights of way as consider necessary • Adjudicate and decide in accordance with customary law any question referred to on by a person • Advise the Village Adjudication Adviser upon any point of customary law • Safeguard the interests of women, absent persons, minors and persons with a disability • Take account of any interest in land in respect of which for any reason no claim has been made [Village Land Act 1999 s. 53].

2.2 REGISTRATION

2.2.1 THE PRIMARY TASK

The duties of new bodies as laid out in **Table 8** illustrate the centrality of registration and entitlement procedures to land administration. This departs from the traditional focus of administration at the periphery on land allocation, witnessing of transfers and mediation among right-holders. In those cases where the modern local body identified is not mandated to register rights itself, it nonetheless plays an indispensable role in laying the groundwork for this; new Administrative Structures in South Africa and Traditional Authorities in Ghana, Niger and Zambia among others have this formal role. Traditional Authorities also play this role in Mozambique, but where the law itself emphasises that any three to nine persons in the community may issue confirmation that the identified land area is available for allocation [RoM 1997, 2000].[11]

Attempting to Capture all Land Rights in Records

Throughout the emphasis is upon **first registration**. This exists in an environment where less than one percent of the total land area in sub-Saharan Africa is covered by any kind of cadastral survey and entitlement [Augustinus op cit.].[12] A common objective of most land reforms on the continent at this time is to capture as many rights as possible in written records and bring these into a system that may be *managed*. There is little doubt that this is the driving force behind **decentralisation** of land administration, and alongside this, the adoption quite widely (but not uniformly) of simpler and cheaper systems for its achievement.

Factors that determine whether the resulting system will in fact be **simpler** and cheaper include -

- Whether or not the procedures leading up to recordation (i.e. adjudication of rights) is being carried out at and by the local level or by professional or government bodies, thereby incurring higher costs;
- Where the registry and therefore final documentation work, is located;
- Whether formal survey and mapping is required in order for a land right over a parcel to be registered;
- Whether the nature of the right alters upon registration and thereby enters a new system for its administration, or retains its existing integrity and mode of administration (generally customary).

Factors that determine whether the process will be **equitable**, include –

- Whether or not registration will be opportunistic or systematically effected;
- The level of costs that will be incurred by the landholder; including whether or not a premium and/or rent will be levied on the property on registration;
- The way in which subsequent land taxes will (or will not) be levied;
- The extent to which the rights of family members, secondary right-holders, vulnerable groups and those who use land in minority ways (e.g. hunter-gatherers) will have their rights recognised and accounted for.

Although information of each of the above is given elsewhere in this paper, **Table 9** brings some key indicators together. Data was not obtainable for some cases and little hard data was collected in respect of costs.

The results are mixed. Most countries are laying the groundwork for localised and simplified registration systems, and within which the **land register** itself is moving much closer to landholders. Outstanding exceptions are found in the proposals for the former homelands in **South Africa,** where rights will be registrable only by entering the sophisticated national system; **Ghana**, where a similar entry into a nationally maintained regime is effected (although the right itself is sustained as a customary right); and **Eritrea**, where a classical conversion and centralisation of land rights management is intended (such as currently exist in Kenya and Zambia).

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11 Norfolk & Liversage 2002 note that many applications are now being approved solely through traditional leadership structures. 'Government justifies this by reference to a degree passed in 2000 that reinstates the traditional leaders to the status of semi-official public servants'.

12 Special exceptions are South Africa and Namibia where the greater part of the land area has been subject to cadastral entitlement. However, even in these cases, most of the population live outside these areas.

An Effect of Land Market Liberalisation

Often the need to help majority rural populations secure their tenure derives directly from policies to make rural land much more freely available to investors, including foreign investors. This has been the catalyst to changes in land administration and tenure norms in countries as far apart as Eritrea, Ghana, Tanzania, Angola and Mozambique. Often, this objective blunts equity aspects of encouraged local level registration.

This is very well seen in the case of **Mozambique**. There a special form of registration has been developed to counter the worst effects of opening the countryside up to investor access [Negrao 1999]. This **delimitation** exercise is a form of elaborated 'permission to occupy'. The rhetoric surrounding its formulation aside, this process seeks less to identify and entrench local rights than to clear the way for allocation of these lands by the State to outsiders. Through a consultation process, communities are able to indicate where a proposed concession to a non-local person or foreigner will interfere with their own occupation and use. This consultation is supposed to take place twice and the results to be recorded and witnessed by a handful of local persons [GoMoz 1997, 2000]. The enormous number of land concession applications (around 10,000) and for sometimes estates of thousands of hectares, has generated a number of documented community consultations but everywhere these number many less than actual allocations of concessions made, raising queries as to how seriously the procedures is being taken. Records show for example that whilst 1,141 allocations to outsiders have been made in Zambezia Province, only 137 consultations have been recorded [Hanlon op cit., Norfolk & Liversage op cit., de Quadros 2002, Palmer 2003].

Moreover, there is nothing in either the law or regulations that require Government to *not* allocate the land if it is found to be occupied or used by communities [GoMoz 1997, 2000]. Recognition of the vulnerability of communities to invasive land applications from outsiders did however give impetus to a more elaborate procedure provided in the law; the right of communities to have their area surveyed, mapped and entered into the national land registry. Whilst widely praised for taking an innovative step towards a modern community based property right (by this reviewer among others; Alden Wily 2001b], the procedure is highly expensive, and has so far only been achieved in practice with external resources and assistance. In addition, the resulting certification is less of an entitlement than a more binding version of delimitation, an attribute amply illustrated in the naming of the deed received – a Delimitation Certificate.[13]

Table 9: Registration: Is It Simpler and Cheaper to Effect?

COUNTRY	Are adjudicators local to the area?**	Is cadastral survey required?	Does the land right enter a centralised administration system on registration?	Are costs to the l/holder high?	Are costs to the l/holder high?
Mozambique	No	No***	Yes	Yes	Yes
Botswana	Yes	No	No	No	No
Eritrea	No	Yes	Yes	No data	No data
Amhara	Yes	No	No	No	No
Tigray	Yes	No	No	No	No
Uganda	Yes	No	No	No	No
Kenya	No	Yes	Yes	Yes	Yes
Tanzania	Yes	No	No	No	No
Zambia	No	Yes	Yes	Yes	Yes
Niger	Yes	Yes	Yes	No data	No data
Ghana	Yes	Yes	Yes	Yes	Yes
Ivory Coast	Yes	No***	Yes	Medium	Medium
Malawi*	Yes	No	No	Medium	Medium
Sth Africa *	Yes	Yes	Yes	Yes	Yes
Lesotho *	Yes	Yes?	No	Medium	Medium
Swaziland*	Yes	No	No	No	No
Zimbabwe*	Yes	No	No	No	No
Rwanda*	No	Yes	Yes	Yes	Yes

* Proposed, not yet law. ** Local is interpreted as within the sub-district area.
*** Not for community delimitation certificates but is required for individual, household or family entitlements.

13 Norfolk & Liversage in 2002 reported that 32 communities in Zambezia have initiated the delimitation procedure. Sixteen had received a Delimitation Certificate. Hanlon in the same year estimated that only 100 communities in total had by then received Delimitation Certificates. Sometimes very small groups constitute the applicant 'community'.

2.2.2 THE PROCESS

Three related aspects of registration need brief comment here; first, whether registration is made compulsory or voluntary, and related, whether or not the procedure is operated on a systematic coverage basis, or on a 'spot' or selective basis; second, whether a titles or deeds registration approach is being pursued; and third, how reforms facilitate the registration of transactions, or get quagmired in the business of first registration.

Systematic as compared to selective titling generally goes together with making registration compulsory; the case in **Ivory Coast**, **Eritrea**, **Rwanda** and **Ethiopia**, and where various legal statements are even made that will in certain conditions render unregistered properties ownerless.[14] Voluntary registration is more widely favoured. This also has the advantage of tending to be transaction-led, a seller and buyer seeking to have the transaction registered and through this, the property surveyed and titled. This is the case in **Botswana** for example, where change of ownership is the main catalyst to house or farm registration. However, voluntary registration does tend to open the way for only some members of the community (usually the better off) to have their land registered.

A compromise solution seems to be emerging in the form of incremental purposive registration exercises. This is in effect what Ivory Coast, Eritrea and Ethiopia are doing and what Namibia will also do, even though these states claim that registration is compulsory. In practice, registration is or will be compulsory only where a registration area has been declared, and few people are able to pursue registration without the assistance of a facilitating initiative. These initiatives target a specific village, area or even district and systematically adjudicate and title all owners within the area. This only works well where costs are kept very low so that all members of the community are able to pay any fees involved, or where subsidies are arranged. The **Ugandan** Government is currently sponsoring systematic but voluntary demarcation and certification in three Districts, having noted how few customary occupants have bothered to seek registration themselves (pers. Comm. H. Busingye). However, it is not clear yet what fees will be involved and whether or not all landholders in those three districts will be able to complete the registration process. **Kenya's** land registration exercise which began in the late 1950s and is still continuing has shown that even after forty or more years, many deeds lie uncollected in the central or provincial land offices, owners unable to pay the fees or travel costs involved in collecting these. In such circumstances, the purposes of registration may break down; landholders pass on, sell, or transfer land without reference to the title deed and without registering the transaction. The result is that listed owners in the Register (the 'legal' owners) are not necessarily the real owners of the land. This renders the reliability of the Register spurious.

Where the focus is upon registering transactions rather than ownership, this kind of problem is more easily avoided. However, this is seriously encouraged only where a deeds registration rather than titles registration process is provided for. Deeds registration in effect gives rise to a transactions register, in that the process only indicates who has sold, gifted, willed or otherwise transferred property to whom. It is the transaction, not the ownership of the land that is provable through looking at deeds register. The register cannot be used for example as proof that the seller is in fact the real owner of the land. A main objective of titles registration is for information about the land parcel and its ownership to be integrated; a titles register is considered conclusive evidence of who is the owner of a specifically described parcel. Obviously it only works well when all transactions are registered.

Even where first registration is safely and fully accomplished, owners are unlikely to register change of ownership unless the registry and procedures involved are cheap and easily accessible to them – in short, how far away the Registry is located.

Stages Towards Registration

Broadly, decentralised land administration systems are following the same basic stages towards registration that are undertaken more widely, with stages of adjudication, demarcation, documentation, approval, registration, and certification. Mostly these are straightforward. **Boxes 1 & 2** illustrate the case for Tanzania and Uganda as specifically laid out in their respective laws. **Box 3** gives related policy decisions in Malawi's National Land Policy 2002. **Box 4** draws upon secondary accounts for the procedure in Ivory Coast.

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14 Lindsay op cit., Stamm op cit., Gueye et al. 2002, Alden Wily 2002a.

BOX 1
ADJUDICATING RURAL RIGHTS FOR REGISTRATION IN TANZANIA

PROCEDURE –

- A notice shall be posted in a prominent place and on the land which is to be adjudicated, stating which land will be subject to adjudication, requesting all persons with an interest in the land to attend the specified meeting, and asking all persons with claims to mark or indicate their boundaries prior to the meeting;
- On the day of the meeting, the Village Adjudication Committee hears and determines all claims;
- To do this the Committee walks around the land, ascertaining, verifying and determining and marking the boundary;
- To mark and describe the boundary it uses markers commonly used in the area (tracks, ditches, fences, sisal, stones, etc);
- The Committee pays special attention to turning points, corners and other changes in direction;
- The Committee, the applicant and at least two other village residents certify and witness the boundaries by signing a form;
- Three sketch maps are prepared, one of which will be given to the applicant, one to the Village Council and one to be retained by the Committee; these will show approximate north, indicate name of occupiers of all adjacent parcels, mark prominent reference features such as paths, roads, rivers, buildings, rocks, trees; the map does not need to be to scale;
- The area is measured, using a metre measure (the occupant may hire a land surveyor is s/he wishes, at his own cost, but this is not necessary);
- As necessary, the Committee may direct the Adjudication Adviser to investigate further;
- The Committee must do its best to reconcile parties having conflicting claims;
- On completion, the Committee prepares a provisional adjudication record; this comprises the names of claimants, the nature of interests in land, amount of land, length of time claimant/s have had land, location and boundaries of plot, any rights of way or other way leaves in the land, determination of the committee; the record is signed by the Chairman of the Committee, the Adviser and by each person whose interest has been adjudicated;
- The record is posted in a public place;
- Appeals against its contents may be made within 30 days to the Village Land Council;
- The record becomes the final adjudication record 30 days later, if no appeals against its contents have been made, or 30 days after the last appeal is resolved;
- If the record is approved, then the plot will be given a Land Parcel Identification Number (LPIN) and this will be recorded in the Register [any sub-division of the plot will result in new LPINs);
- The adjudication record must be approved by the Village Assembly prior to any allocation of land or granting of a customary right of occupancy

PRINCIPLES that will guide adjudicators are -

- A person will be entitled to a customary right of occupancy if s/he or they are found to have occupied or used the land in a peaceful, open and uninterrupted way for not less than 12 years, either by custom, allocation or transaction under customary law or by a written law and for which there is documentary proof;
- Continuous occupation is not necessary if the land has not been occupied by another person or group claiming the same peaceable open and uninterrupted occupation;
- Person/s or non-village organization without any right or interest as above will be determined as unauthorised occupiers and permitted to remain on the land temporarily as licensees;
- In making determination of rights, the Committee must treat the rights of women and pastoralists no less favourably than the rights of men or agriculturalists;
- The customary rights of people in urban and per-urban areas have to be respected and even orders under Town and Country Planning Ordinance cannot deprive them of these rights;
- Record may be made of co-occupation and the Committee may determine whether the occupants are joint occupiers or occupiers in common;
- Peaceable dual use of land by pastoralists and agriculturalists may be recorded and if it is needed in order to reduce disputes between them, then a land sharing arrangement may be drafted in which rights are specified and the procedure for dispute resolution laid out; if the parties agree to this, the Land Sharing Arrangement may be registered in the Village Land Registry and District Land Registry.

Source: Extracted from Village Land Act 1999; s. 8, 54, 58 & Regulations 61-74 (2001).

BOX 2
REGISTERING A CUSTOMARY RIGHT IN UGANDA

PROCEDURE & PRINCIPLES

1. Any individual, family or community holding land under customary tenure may obtain an application form from the Sub-County LAND COMMITTEE and fill it in.
2. The Land Committee will publish a notice and post this in a prominent place in the area, specifying the land and requiring all persons who claim any interest in the land or adjacent land which may be affected, to attend a meeting at the time indicated, at a date not less than two weeks from the time of putting the notice up.
3. The Land Committee may request an officer from the District Land Office or any other person/s to conduct further investigations.
4. The Land Committee will visit the land and –

- investigate and confirm the boundaries, demarcate these;
- hold meetings or other discussions to identify all interests in the land as above;
- decide on any question of customary law relating to the ownership of the land;
- if any person/s have rights, record these and indicate the share of each person in the land and the nature of that right;
- ensure that any interests that do not amount to ownership are recorded as third party rights and the names of the persons holding these interests;
- ensure that any known interest which has, for any reason, not been claimed is taken account of;
- ensure that the interests and rights in land held by women, absent persons, minors and persons with disability are safeguarded.

5 To achieve the above, the Land Committee may –

- Call, hear and use evidence in its assessment, including evidence that would otherwise not be admissible in a court of law;
- Refer any matter to any customary institution habitually accepted in the area as an institution with functions over land;
- Determine its own procedure.

6. The Committee will prepare a report on the application, recording all claims to interests in the land, and give its opinion of whether these claims have been proved to exist, setting out its findings and recommendations;
7. It will give a copy of the Report to the applicant, make another copy available in the Parish for inspection by all persons who submitted claims, and submit the Report to the District Land Board;
8. The BOARD will consider the application and may confirm the recommendations of the Committee, issue the Certificate with conditions, return the Report for more investigations, or reject the application;
9. If the Board agrees to issue a certificate then it will inform the Sub-County Recorder of its decision in writing and the Recorder will issue the Certificate of Customary Ownership accordingly (with or without conditions, as specified by the Board);
10. Any person may appeal to the Land Tribunal against a decision and the Land Tribunal may confirm, vary, reverse or modify the decision of the Board.

Source: Extracted from Uganda Land Act 1998; sections 5-8.

BOX 3
PREPARING FOR LAND REGISTRATION IN CUSTOMARY LANDS
IN MALAWI

THE DISTRICT LAND REGISTRY

The policy 2002 states that Government is concerned promote community based land management in concert with the placement of government services as close as possible to the local level. The intention of the Ministry is that each district has its own Land Registry, with the staff and equipment capacity to handle the following –

1. Allocation of user rights in government land and recognition and registration of allocations on community lands;
2. Monitoring land use regulations and enforcing restrictions when necessary;
3. Performing development impact assessments and authorizing change of use, subdivisions and other land development management functions;
4. Provision of support and facilities for the operation of District Traditional Authority Land Tribunals for resolving land disputes;
5. Preparation land development plans to facilitate local development.

PRINCIPLES

- Government will undertake boundary demarcation of each Traditional Authority Area, to assist TA to know the area of their jurisdiction and to facilitate land use planning; maps will be provided. This will also be used as a reference for parcel and cadastral plans and legal descriptions of parcels within the area.

- Individuals and families will be given the opportunity to register their interest; they may commission a survey and prepare deed/cadastral plans of their customary estates to facilitate the registration of individual titles.

- Costs will be kept low and assisted by a Revolving Credit Finance System to bring the cost within the means of the majority of landowners.

- Customary adjudication procedures already exist, exercised by Headpersons and Traditional Authorities. These will be formalized and restructured and deemed to be a judicial proceeding.

- Chiefs and Village Heads, through their Village Land Committees will be allowed to demarcate such common access or public lands and have them registered as public land in order to protect them against degradation and encroachment.

- Less stringent survey requirements will be enacted in law to allow customary land transactions, subdivisions, change of ownership, and inheritance to be registered. This policy will facilitate transparency in the current informal land market in customary estates.

- Customary land will continue to be vested in the President in trust for the citizens for as long as it will take to survey and register the communal lands of each traditional authority.

Source: Extracted from Malawi National Land Policy 2002; Cht. 5, 6 & 8.

BOX 4
REGISTRATION IN IVORY COAST

As in so many African states, the impact of colonial and post-colonial land policies and laws means that in any one rural community customary rights may co-exist with rights which have been acquired from the State as short or long-term leases. The root title of land is vested in the State. In 1989 the World Bank funded a pilot initiative to explore with village chiefs, lineage heads and farmers how land rights could be best identified, mapped and recorded (Rural Land Plan). The team in each zone comprised of an interviewer, topographer and facilitator. The pilot operated in 400 villages in eight zones of the country and mapped 30,000 plots, totally 50,000 ha. Both migrant and indigene rights were identified. For each parcel holder, a map was produced together with a land tenure document certifying the tenure status. A baseline inventory of rights was created in these 400 villages. Many rights were recorded as community owned rights, held collectively by members of the community. At the same time a system was set up to help village authorities manage land rights. By 1997 costs of registration had fallen to 3,600 per ha, encouraging Government to expand the operation nationally.

The Rural Land Domain Law was passed in December 1998 [No. 98-750]. This did not follow the findings or recommendations of the *Plan Foncier Rural* exactly. It did the following –

- Permitted only citizens to be land owners, with non-citizens able to access land by short or long term leases
- Rights will be customary or granted (*domaine coutumier* or *domaine concede*)
- A 'land tenure certificate' will be issued for each registered right
- Land that in 2008 is not registered will revert to the State
- These rights may be held individually or collectively by a family, clan, village or local authority
- Land may be sold or inherited
- The state will in future allocate no rights in rural areas without consulting with Village authorities
- Village Land Management Committees will autonomously manage all land rights within the collectively held area and will observe, record and report all changes in ownership to the unit committees.
- Unit committees (Rural Land Tenure Commissions) will be established at District level to systematically identify and register all rural rights and to manage the register and make amendments as necessary.

A number of subsidiary laws were passed in 1999 and since, to help implement the Rural Land Law. One sets up village land committees to manage land rights at the local level. One of their main functions is to adjudicate interests in preparation for issue of Certificates of Occupation.

The procedure follows a simple procedure of identifying all parcels in a specified area; identifying owners and other right holders through participatory procedures and interviews; making public the identified owner and the nature of the ownership; hearing claims against the finding within three months, using customary means (and not proceeding with parcels where conflicts remain unresolved; formalising the documentation for approved parcels; giving each an identification number and registering the parcel with map attached; issuing a Land Tenure Certificate to the holder.

Most rights so far registered are to collective rights. The group, clan or village manages these right autonomously and may subdivide the right among members. The State exercises no direct influence over village land tenure policy. This has enabled some villages to sustain past relations with migrants in the community. Most of these exist in the form of rental contracts.

Most commentators observe these concerns about this particular model of compulsory registration:

- Insufficient planning has gone into defining the exact rights that are being registered with a fear that many secondary rights will after all be lost, even though these were recorded in the original surveys;
- The decision to give the Land Certificate a lower status than a conventionally registered entitlement, greatly increasing the bureaucracy involved in securing firm ownership;
- Problems associated with the reduction in the entitlement of many non-Ivorian nationals who already hold substantial entitlements;
- The costs involved in registration, payable by the land holder and the inequities that may result with some unable to acquire the Certificate and then have their land revert to the State in 2008.

Sources: The World Bank 2002b, Stamm 2000, Kone 2002, Gueye et al. 2002.

2.2.3 THE NATURE OF REGISTRABLE RIGHTS

What is the character of the rights that result from these decentralised systems? **Table 10** provides an overview. Notably, 11 of 16 states have now provided for (or plan to provide for) customary land interests to be registered. In nine of these cases, the process is undertaken by a decentralised body (Ghana and Mozambique are the exceptions). The remaining four states enable rights that may be existing or have some foundation in custom to be registered but in the process reconstruct these into new and centralised tenure forms; a Lifetime Usufruct in Eritrea, a Holding Right in Ethiopia; a Right of Private Ownership in South Africa; a Leasehold in Zambia and a Concession in Rwanda.

Table 11 selects nine examples of the land right most likely to be registered by rural people and examines their incidents more closely. Some features are reviewed later but need briefly listing here –

1. The first is that many of these entitlements (but, note, not all) may be applied to properties other than residential plots, farms or plots for commercial purposes (shops etc). They may for example apply to **pasture, forests and marshes or simply open areas for multiple uses.** This represents an important departure from convention.

2. Related, in these same cases, these entitlements may be awarded to groups of people and **whole communities**; and in some cases new constructs for such group entitlements are developed to give these more clarity and to integrate the management of those resources with confirmation of their shared owners. This represents an important advance in common property development [Alden Wily 2001b]. It has also demonstrably opened routes for community based conservation management to be rooted more securely, something that the forestry sector in Tanzania has been especially quick to exploit. Care has to be taken however not to confuse agreements to allow communities to manage forests or other common resources with recognition of the right to own those resources as a legal person; in many countries only the former is so far provided, through local conventions or joint management agreements. These do seem to provide a stepping stone to demand for recognition as owners however [Alden Wily 2003a, Alden Wily *In press*].

3. These entitlements are also often open to **family title**, another innovation on conventional practice, most explicitly provided for in Ethiopia and Malawi. This is proving a quite complicated tenure form, for its main purpose and benefit is in protecting the land interests of family members. Developing workable procedures which limit transfers of family land without the full support of family members but which also do not inhibit transactions unduly, has preoccupied several states (e.g. Uganda, Malawi) and is likely to preoccupy Lesotho and Swaziland, also considering introducing family entitlements.

4. These entitlements are generally **restricted to citizen access** and often to only residents of the local area, in order to strengthen local control over land access decisions; in some cases, residency is defined by custom; that is, a person is considered a resident, if custom considers that person a resident. This kind of condition may work against certain tribal groups, or workers of long-standing, or may be very flexible, depending upon who is making the decision (Namibia, Ghana, Niger, Mozambique). In other cases, the law itself lays down on what basis a person may be considered a resident; Tanzanians for example, who do not come from the village area in question may acquire a registrable customary right only by making the village their principal place of residence or work; in Ethiopia, soldiers and civil servants generally retain their land interests, now registrable, even though they may be absent for long periods.

5. They are relatively **freely transferable**, as long as local custom permits this. The right to mortgage these rights is more restricted although Tanzania and Botswana have encouraged this through providing clearly for small mortgage opportunities.

6. These rights are almost all given **equivalent legal status** and weight with titles that may be granted by the State. This increases the attractiveness of these entitlements. There are cases where this is undermined by making the right convertible into more conventionally secure forms of tenure (in Uganda, the Customary Certificate of Occupancy may be converted into a freehold; in Ivory Coast an Ownership Certificate is not held to be full ownership but may be registered subsequently as converted in the process. Evolving policy in Lesotho proposes to enable registered customary rights to be converted into leaseholds). Meanwhile a main legal effect of in principle equivalency

is that should the holding be acquired by the State for public purpose, then compensation has to be paid at rates equivalent to those introduced tenures. This makes a large inroad into the practice of past where it has been the norm for holders only to be compensated for the value of the crops or buildings on the land. Important policy and legal statements to the effect that a land right has inherent value that must be accounted for (Tanzania), and that its transfer involves compensation of various kinds (Ethiopia, Eritrea, Malawi), constitute significant departures from previous policies.

Table 10: Registration: Role in Decentralised Land Administration & Nature of Registrable Rights

COUNTRY & BODY	RIGHTS REGISTRATION IS PRIMARY FUNCTION OF BODY	REGISTRATION OF RIGHTS COMPULSORY	REGISTRATION EXPLICITLY PROVIDES FOR COMMON PROPERTY RIGHTS REGISTRATION	ENTITLEMENTS WHICH BODY MAY ISSUE	TYPE OF RIGHTS WHICH MAY REGISTER	MAXIMUM TERM OF RIGHT	EXPLICIT LEGAL EQUIVALENCY WITH ENTITLEMENTS ISSUES BY STATE BODIES
NIGER Land Commissions	YES	NO	YES	'Ownership right'	Customary	Perpetuity	Yes
GHANA Traditional Authority	NO	NO	NO	No formal rights: this is done by State agencies	- (but State issues Allodial Title, Customary Freehold, Customary Leasehold)	Perpetuity for Allodial Title & Freehold and limited terms (now 15-50 years) for rural leaseholds	Not stated and given that a right registered in a customary secretariat is not considered formal registration, unlikely to have equivalency.
LESOTHO [Proposed] Community Council	YES	NO	NO	Customary title	Customary	Perpetuity	Yes but given opportunity to convert to leasehold, in practice weakened
TANZANIA [Village Councils]	YES	NO	YES	Customary Right of Occupancy Derivative Right	Customary	Perpetuity	Guaranteed by law as equal in every respect of equal status and effect as a right granted by Government (Village Land Act 1999 s.18)
ETHIOPIA Amhara [Regional Authority]	YES	YES	YES	Holding Right Leasehold	Existing	Lifetime usufruct, may subdivide to children and children may then inherit (land subject to redistribution)	N/A: only right available. Leases are secondary to primary holding right

Table 10 continued

COUNTRY & BODY	RIGHTS REGISTRATION IS PRIMARY FUNCTION OF BODY	REGISTRATION OF RIGHTS COMPULSORY	REGISTRATION EXPLICITLY PROVIDES FOR COMMON PROPERTY RIGHTS REGISTRATION	ENTITLEMENTS WHICH BODY MAY ISSUE	TYPE OF RIGHTS WHICH MAY REGISTER	MAXIMUM TERM OF RIGHT	EXPLICIT LEGAL EQUIVALENCY WITH ENTITLEMENTS ISSUES BY STATE BODIES
Tigray [Parish Council]	YES	YES	NO	Certificate of Right Leasehold	Existing	In perpetuity Limited	As above
MALAWI [Prop. Village & TA Committees]	YES	NO	YES	Customary Estate	Customary	In perpetuity	Policy assures that if community confirms it will be recognised as granting legal ownership whether registered or not [Policy 2002;5.6]
NAMIBIA [Proposed Regional Board & Chiefs]	YES	YES (when area declared for registration)	NO	Certificate of rights for customary grants for residential and farmland Leaseholds	Customary and Introduced	Lifetime usufruct, inheritable by family members only. Leases up to 99 years but period exceeding 10 years requires Ministerial approval [s.34]	Policy assures 'equal status, security and protection' [3.3, 3.5]
SWAZILAND [Proposed Community Development Council]		NO	YES	Policy 1999 proposes customary rights, community property titles, leases	Existing	Not indicated	To be assured
BOTSWANA [District & Subordinate Boards]	YES	NO	NO [Proposed]	Certificate of Customary Land Grant Common Law Lease Tribal Grazing Land Policy Lease	Customary and Introduced	In perpetuity, inheritable Variable term 50 years	Less than freehold in ease of transfer and conditionality

Table 10 continued

COUNTRY & BODY	RIGHTS REGISTRATION IS PRIMARY FUNCTION OF BODY	REGISTRATION OF RIGHTS COMPULSORY	REGISTRATION EXPLICITLY PROVIDES FOR COMMON PROPERTY RIGHTS REGISTRATION	ENTITLEMENTS WHICH BODY MAY ISSUE	TYPE OF RIGHTS WHICH MAY REGISTER	MAXIMUM TERM OF RIGHT	EXPLICIT LEGAL EQUIVALENCY WITH ENTITLEMENTS ISSUES BY STATE BODIES
RWANDA [Proposed District & other Commissions]	YES	YES	NO	Undescribed 'concessions' (grants)	Introduced	Likely to indefinite term, subject to annual rent and tax	Current titles are leasehold and urban leaseholds with no term stated. Aim is to develop single unified system and titles
UGANDA [District Land Boards & Sub-County Committees]	YES	NO	YES	Certificate of Customary Ownership; Certificate of Freehold; Certificate of Mailo (may be subject to issued Certificates of Occupancy to bona fide tenants); Leasehold (from state, local governments or private owners)	Customary Mailo Leasehold Freehold	Perpetuity Perpetuity Perpetuity Not stated but not limited. In theory could be one day less than in perpetuity.	Because Certificate of Customary Ownership is convertible to Freehold, implication is that of lesser security or value
SOUTH AFRICA [Proposed Administrative Structure]	CANNOT REGISTER but lays groundwork	NO	YES	None. The Administrative Structure serves as conduit to Registrar of Deeds which may issue individual or communal titles	Converted to Roman-Dutch 'private ownership' [non-customary]		Is the same as existing Deed of Transfer or Private Ownership Title
ZIMBABWE [Proposed]	YES	NO	YES	Village registration certificates and settlement permits as per Traditional Leaders Act, 1998, Section 24; not implemented yet. State leaseholds with option to purchase (resettlement areas)	Customary	None specified In perpetuity Varies	

Table 10 continued

COUNTRY & BODY	RIGHTS REGISTRATION IS PRIMARY FUNCTION OF BODY	REGISTRATION OF RIGHTS COMPULSORY	REGISTRATION EXPLICITLY PROVIDES FOR COMMON PROPERTY RIGHTS REGISTRATION	ENTITLEMENTS WHICH BODY MAY ISSUE	TYPE OF RIGHTS WHICH MAY REGISTER	MAXIMUM TERM OF RIGHT	EXPLICIT LEGAL EQUIVALENCY WITH ENTITLEMENTS ISSUES BY STATE BODIES
ERITREA [Regional Land Administration Bodies]	YES	YES	NO	Usufruct certificate (can convert to leasehold) Leaseholds	Introduced	Lifetime (inheritable only by direction of land authority) Issued only to individuals Leaseholds: limited term	Equal with Commercial Agricultural Licences (leases)
ZAMBIA [Chiefs]	[no]	NO	NO	None. Chiefs, and Councils only provide 'consent' to enable Commissioner of Lands to issue a Leasehold Title	Introduced	99 years	Same, because converted into Leasehold
MOZAMBIQUE NOT local body; Ministry function	[yes]	NO	YES	'Delimitation Certificate' indicates joint ownership of community members of the described area. Title for Use & Benefit for individuals, households, businesses etc. (incl. foreigners)	Customary & Introduced	Customary title – potentially in perpetuity. Title granted provisionally to non-nationals for five year authorisation' period during which certain steps must be fulfilled. With compliance, title then confirmed	Yes
ZANZIBAR NOT local body: Ministry function	[yes]	YES	INDIRECTLY	Right of Occupancy Leases	Introduced	In perpetuity after three-year provisional issue of grant	

Table 11: Registration: Details on Nature and Incidents or Rights Able to Registered Locally

	TANZANIA	**NIGER**	**IVORY COAST**	**UGANDA** [15]	**AMHARA ETHIOPIA**	**TIGRAY ETHIOPIA**	**BOTSWANA**	**NAMIBIA** [16]	**GHANA**
Entitlement	Right of Customary Occupancy	Ownership right	Land Title Certificate	Certificate of Customary Ownership	Holding Right	Land Certificate	Customary Land Grant	Certificate of Registration of Customary Right	Customary law freehold
Body which issues entitlement	Village Council	Land Commission	Central Commission with District Branches (?)	District Land Board	Parish Council	Land Authority	Land Board	Communal Land Board	Government following certification by Allodial Owner Trustee (Chief)
Applies to any type of land (residential, farm, shop, pasture, forest etc.)	Yes	Yes	Yes	Yes	Yes	No (excludes commons)	No (excludes commons)	No (excludes pasture, forests etc)	In theory yes
Certificate Issued	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
To be held as conclusive evidence of title	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Available to non-citizens	No	No	No	No	Yes; on conditions	Yes; on conditions	No (but proposed)	No	No
Available to non-residents of area	Only with permission of Body	No	No	No	Yes; on conditions	Yes; on conditions	No	No	No (with exceptions)
May be Issued to Individuals	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Assumes co-ownership by spouses	Yes	No	No	No	No	No	No	No	No
May be Issued to Family	Yes	Yes	Yes	Yes	Yes	Yes	In theory	No	In theory
May be Issued as Common Property	Yes	Yes	Yes	Yes	Yes	No [17]	No	No	No

[15] District Land Boards may also issue a Freehold Title, which is to be issued by the Registrar (to be decentralised to District level), may convert leaseholds into freeholds, and may issue a Certificate of Occupancy to legal tenants of landlords in the mailo tenure system. These are not covered here.

[16] A Communal Land Board may also issue a Leasehold, not covered here.

[17] Only family and individual title is provided specifically for in Regulations under Tigray Land Law 1997 but both National and Tigray Constitutions and Federal Land Law guarantee the right for a community to possess common property (untitled).

Table 11 continued

	TANZANIA	NIGER	IVORY COAST	UGANDA [18]	AMHARA ETHIOPIA	TIGRAY ETHIOPIA	BOTSWANA	NAMIBIA [19]	GHANA
Premium charged on award of right	Only if non-resident	?	Yes	No	No	No	No	No	Yes
Maximum Term	Perpetuity	Perpe-tuity	Perpetuity	Perpetuity	Lifetime	Lifetime	Perpetuity	Lifetime	Perpetuity
Subject to Occupation &/or Use	Yes	Yes	Unclear	Only if customary	Yes	Yes	Yes	Yes	Only if customary
Subject to Ceilings	Yes	No	No	Only if customary	Yes	Yes	Yes	Yes	No
Subject to Limits on Sub-division	Yes	No	No	Only if customary	Yes	Yes	Yes	No	No
May be Gifted	Yes	Yes	Yes	Only if customary	Only to children	Only to children	Yes	No	Yes
May be Sold	Yes	Yes	Yes	Only if customary	No	No	Only if developed	No	Yes
May be Inherited	Yes	Yes	Yes	Only if customary	Yes	Only if land-less heir	Yes	Reverts to Chief for re-allocation to spouse	Yes
May be Rented or Leased In/Out	Yes	Yes	Yes	Only if customary	Yes (limits on term)	Yes (limits on term)	Yes	Only with consent of Chief	Yes
May be Mort-gaged	Small Mortgage	Yes	Unclear	Only if customary	No	No	Yes	No	Yes
Subsequent Transactions only legal if registered	Yes	Yes	Yes	Yes	Yes	Not indicated	Yes	Yes (inheri-tance only)	Yes
Treated as full private prop-erty in event of compulsory acquisition	Yes	Yes	No data	Yes	Yes	Not indi-cated	No: lower payments	Yes	Yes

[18] District Land Boards may also issue a Freehold Title, which is to be issued by the Registrar (to be decentralised to District level), may convert leaseholds into freeholds, and may issue a Certificate of Occupancy to legal tenants of landlords in the mailo tenure system. These are not covered here.

[19] A Communal Land Board may also issue a leasehold, not covered here.

2.2.4 THE STATUS OF CUSTOMARY TENURE

Table 12 examines some of these same rights from the perspective of their origins as customary rights, with inference to the overall status of customary tenure. The trend is not only towards the integration of these into state law bound procedures and protection but in the process, to codify prominent incidents of those rights. Thus whilst both Tables 11 and 12 show that local traditional practice is embedded in law as the ultimate determinant of whether or not the right may be bought, sold, gifted, leased, mortgaged etc. the inherent right of the holder to take such actions, custom permitting, is at the same time regularly observed [RoU 1998, URT 1999b]. Certain constitutional strictures, such as those designed to prevent rendering wives and children landless, are also entered into the law, customary practice notwithstanding [see later]. Moreover the norms through which rights are recognised are as often reframed, as illustrated in the procedures laid out in Boxes 1 & 2.

An instrumental factor is the matter of in which body power to administer customary rights beyond allocation is vested; as shown earlier this is by no means restricted to customary authorities. To recap, he case is clearest in **Tanzania** where customary rights are declared to exist and be registrable at the same time as determination of these rights and authority over them is vested in definitively *non-traditional* bodies, the elected village governments. A more or less similar position exists in **Burkina Faso**, **Mali** and **Senegal** where non-customary bodies confirm or register customary rights. A modified version is proposed in **Malawi**, where Chiefs are to be accompanied by elected representatives in their decision-making. The role of headmen and chiefs in **Botswana** has been steadily reduced to informal allocation and mediation, also the case in **Niger**, and the trends towards this now set underway in **Namibia**.

The Village Government of Ayascuda Village, Babati District, Tanzania, meet to discuss communal land management issues in the village area (March 2003).

In sum, the case can be made that customary tenure, both as a regime of administration and in terms of the rights it customarily gives rise to, is under highly significant transformation – and one that is democratic in the main, in terms of the constitution of bodies that now take over those functions. One route towards such democratisation is the **Botswana** route, also broadly followed by **Niger** and **Namibia**; this has seen customary rights themselves remain unchanged but their administration removed from chiefs into the hands of supposedly more neutral, and better equipped and skilled bodies like variously elected/appointed Land Boards. This does however remove authority from the periphery. An equally strong trend is to keep administration at the periphery but alter how customary administration operates. The trend here is for authority to move from traditional to elected hands at community level. The result may be described as 'communitisation', a move from customarily based to **community based** rights and administration. Poorer people, women, and many others who may have been excluded from land-related decision-making on the basis of customary norms, may have a better chance to have their interests considered in these new governance regimes - and even to participate as members of the new decision-making bodies.

Table 12: Customary Land Rights: Status as defined in Legislation

	Registrable	**Voluntary**	**Right will be upheld by courts even if not registered**	**Potential Legal Term**	**Subject to conditions of occupancy, agreed use, etc.**	**May be held by two or more persons jointly**	**Women have independent rights to acquire property**	**May be sold**	**May be inherited**	**May be mortgaged**	**Valued equally with other private property**
Zambia Drt. Policy	No	N/A	Ambivalent	Perpetuity	Traditional only	If traditional	Exceptionally	No	Yes	No	No
Niger	Yes	Yes	?	Perpetuity	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Uganda	Yes	Yes	Yes	Perpetuity	Yes	If customary	Yes	If customary	Yes	In principle	Yes
Ghana	Yes	Yes	In principle	Perpetuity	In principle	In principle	Yes	Yes	Yes	Yes	No
Lesotho Proposed	Yes	Yes	Yes	Perpetuity	Yes	In principle	Yes	Will depend on custom	Yes	Yes	Yes
Malawi Policy	Yes	Yes	Yes	Perpetuity	Yes	Yes	Yes	Yes 20	Yes	Only if formally registered	Yes
Swaziland Proposed	Yes	Yes		Perpetuity	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Botswana Law	Yes	Yes	Yes	Perpetuity	Yes	In principle	Yes	Yes	Yes	No	No
Rwanda Drt Policy	No	No	No	Varies	Yes	Not clear	Yes	Yes	Yes	Yes	N/A
Burkina Faso	The status of customary rights is uncertain given that the 1984 law in effect abolished customary tenure norms but later permitted customary rights to exist in 'undeveloped areas'. Allocation and transfer by customary norms and involving chiefs still exists but in competition to decisions made by elected village councils and state officials.										
Eritrea Current	Customary regimes explicitly repealed and replaced by terms of the Land Proclamation of 1994 along with all previously introduced systems.										
South Africa	Not registrable as a customary right: recognised as basis for transfer of land from State and recipient individual, family, community may apply to have right converted to a full ownership right, registered by Registrar of Deeds in same way as non-customary entitlements.										

20 There will be a freeze on transactions outside the lineage for one decade following registration to protect against distress or unreasoned sales.

3. LAND MANAGEMENT

Land management functions variously include land use and physical planning, protection of valuable natural resources, and related decisions as to distribution and access to resources. The status of common property resources and measures taken to support the land interests of particular groups of land users are prominent concerns that arise. This part reviews trends in two parts; first identifying resource centred elements and then examining the impact upon selected vulnerable land using groups.

3.1 RESOURCE PLANNING & PROTECTION

In general, legal and administrative provisions for land management are on the increase in Sub-Saharan Africa, as evident in the content of new national land policies, laws and implementation programmes. This is directly complemented by a plethora of new sectoral strategies, embodied new town and country planning laws and laws affecting the use and management of wildlife, water, minerals wildlife, water, forests and pasture. A new body of legislation integrating some of these interests has also emerged, in the form of environmental management laws.[21] Most countries in Africa have prepared some form of environmental management policy [FAO 2002].

The questions that concern us here are how far powers over land use and resource management are being **decentralised** and into whose hands, the **nature** of provisions being developed and the **linkages** between new tenure strategies and resource management provisions.

Integrating Land Administration and Management Authority

Table 13 draws conclusions as to the locus of decision making in land management. **Table 14** gives examples of the strategies that national land policies and laws articulate in this area.

The general empowerment of emerging local institutions over local land management decisions is quite clear. Sometimes this is counteracted by the creation of national technical environmental or land use institutions. There is also widespread integration of land management and tenure administration functions. An interesting case is Amhara Regional State in **Ethiopia**. Although the Federal Rural Land Law (1997) made no mention of land management issues beyond the (important) directive that regional states should provide for communal use land areas to be demarcated, Amhara expanded its remit in a highly purposive manner to include a wide range of land use management functions. The policy and strategy were laid out in one law and a special authority created in another to deliver integrated administration and management responsibilities [Amhara Laws No. 46 & 47 of 2000]. District and village level councils in Tigray are also enjoined in laws to carry out both administration and especially environmental protection management [TRS op cit.].

[21] For example: in environmental management, coordination and authority establishment laws passed in Zanzibar (1989), Uganda (1995), Kenya (1999) and Mozambique (1997).

Table 13: Land Management: Extent of Localisation of Authority over Land Management Matters

COUNTRY	MAKES LAND MANAGE-MENT A HIGH PRIORITY	EMPOWERS LOCAL INSTITUTION TO DO LAND USE PLANNING & MGT, ENVIRON. PROTECTION	INSTITUTION	LOCUS	ALSO HAS LAND ADMIN-ISTRATION ROLE
LESOTHO Dft. NLP 2001	Yes	Yes	Community Councils & District Councils	Village	Yes
ETHIOPIA Amhara Laws 2000	Yes	Yes	Land Administration and Use Authority	Regional State, Districts	Yes
NIGER	Yes	Yes	Land Commission	District	Yes
MALI 1996	Yes	Yes	Communal Council	Parish	Yes
BURKINA FASO	Yes	Yes	Village Land Use Man-agement Committee	Village	No
BENIN RLP 1994	Yes	Yes	Village Land	Village	Yes
IVORY COAST Law 1998	Yes	Yes	Village Committee	Village	Yes
RWANDA	Yes	Yes	Land Commission	District	Yes
KENYA Dft. Constitu-tion 2002	Yes	Yes	Community with back up of Nat. Commission	Community District State	-
MALAWI NLP 2002	Yes	Yes	Customary Land Committees Traditional Authority	Village Traditional Land Management Area	Yes
BOTSWANA Review 2002	No	Yes	Land Board	District and Sub-District	Yes
SWAZILAND Dft. Policy 1999	Yes	Yes	Community Develop-ment Council	Village or Tradi-tional Area	Yes
NAMIBIA Law 2002	No	Yes	Regional Land Use & Management Board	Region	No
ERITREA Law 1994	Yes	No	National Commission	National with Provincial offices	Yes
ZAMBIA Law 1995 & Dft. Policy 2002	No	No	[National]	District	No
GHANA Land Project 2003	Yes	Yes	District Assembly		No

Table 14: Land Management: Foci & Instruments for Land Use Planning, Management & Environmental Protection

COUNTRY	FOCI	INSTRUMENTS AT LOCAL LEVEL
LESOTHO **Dft. NLP 2001**	• CPR mgt. development • Grazing control • Woodlands • Settlement Planning	• Town & Country Planning to extend to District level • Empowers elected councils under Local Government Act 1997 • Community Land Use Plans by Community Councils • Transfer of woodlands to community ownership & control (Forest Law 1999) • Local Grazing Associations to be designated managers of Grazing Management Areas • Grazing fees for all livestock to be charged & deposited into village funds • Guidelines to be drafted for agriculture, forestry, grazing, settlement, industry & mining development • NGOs & CBOs to be supported in environmental protection work • Use conditions to land allocation & occupancy
RWANDA **Dft. Policy 2002 & Law 2003**	• Uneconomic size of holdings • Fragmentation • Marshland conservation	• Limits on legal size of holdings • Village land use plans • Use conditions • Marshland conservation
SWAZILAND **Drt. NLP 1999**	• CPR mgt • Protection arable lands • Wildlife & forest management	• Zoning, land management plans at all levels, integration of land policy with environmental and other policies. • Empowerment to local level community councils made main route to local level land management planning with community land use plans. Special areas for attention by community bodies: • Protection of scarce arable land • Regulation of common grazing areas to limit erosion • Protection of forests and wildlife
ETHIOPIA **Amhara State Laws of 2000**	• CPR mgt. • Soil conservation • Water regulation • Protected areas development	• Development of rules and application, mainly through district and village level land use planning and implementation, including measures to – • Control unsound land uses • Limit subdivision • Establish environmental standards • Develop waste disposal and collection systems • Regulate investors use of land • Protect river beds, gullies, flood control, irrigation management • Terracing & soil conservation • Tree planting, protecting species • Rehabilitation degraded areas • Punitive measures against environmental offenders • Local level creation of protected areas, including from commons • Use conditions to land allocation & occupancy
MALAWI **NLP 2002**	• Farm fragmentation • Soil conservation • Forest & wildlife protection • Bush fire mgt.	• Allocation to prevent undue subdivision • Collective responsibility for commons • Clearance of community needed for commercial & industrial developments • Chiefs and headmen to be agents for environmental conservation enforcement • Community forests to be established, trees planted • Lakeshore, water source, river bed & marsh protection • Mining limitations • Use conditions to land allocation & occupancy

Table 14 continued

COUNTRY	FOCI	INSTRUMENTS AT LOCAL LEVEL
KENYA Dft. Constitution 2002	• Wildlife & forest protection • Water conservation • Waste management • Energy conservation	Cht. 12 Environment & Natural Resources specifies 2 principles as: • Public participation • Community based management and traditional socio-cultural principles to be applied
NAMIBIA Law 2002	Grazing areas	• Enclosure of commons disallowed • Conservancies for wildlife management under other law • Woodland management under forest law
BOTSWANA Policy Review 2002	• Review identifies 7 issues for Land Boards to act on/law to be amended - • Need for increased ability to rent out and lease land, enter sharecropping and share farming agreements to optimise limited arable land • Need to protect limited arable land • Need to provide tenure form for common properties (c. 47% of total land area) • Need for control over land use of leasehold ranches • Fair allocation of government boreholes • Improved management of wildlife areas by private sector with communities	
ERITREA Law 1994	Regulations from centre (all land belongs to the State and control over forests, wildlife, pasture, water definitively centralised [Art. 3, 46-49]).	

In many cases the integration of land administration and management tasks is such that the terms land administration and land management are used interchangeably and decisions in their regard, made in ways that do not distinguish between the two. When for example a land administration authority in rural Tanzania, rural Ethiopia or rural Burkina Faso decides to award of a land right, this is shaped substantially against a backdrop of zoning and land use decisions.

Tanzania provides a precise example. Its rural land law charges the Village Land Manager with managing land rights and the land itself. In dealing with rights, it is directed by the law

'to have regard to the principles of sustainable development in the management of village land and the relationship between land use, other natural resources and the environment' [Village Land Act, 1999; section 8 (3)].

The area under its jurisdiction must first be zoned, into community land, individually occupied land (including families and groups) and 'spare land', which it might later make available for either common or individual purposes [section 12]. The Council is to put a simple land use management plan to the community, along with suggestions as to how the land its members hold in common will be managed; that is, its use regulated and its assets like water, marsh, forest and pasture, protected [section 13]. Only after the plans are agreed and the common property registered in the Village Land Register, may the Land Manager then proceed to register individual holdings.

Similar integration prevails in **Niger**. In the main, Land Commissions are land rights administrators, 'recognising and establishing land rights and transforming these into ownership rights through registration'. Their responsibilities for monitoring land use and the management of natural resources are more or less integral to this. Reporting on the work of a District level Land Commission in Niger, Yacouba describes that, whilst visiting 51 villages, 16 waterholes and two groups of herders, the Commission discussed with them

'problems between farmers and herders, livestock corridors, disputes relating to water courses, patterns of access to land and ways of proving rights over natural resources …and drew up a regional land use plan 'by identifying

and recording the number of livestock corridors, water points, grazing areas, forestry resources and cropping areas, as well as existing systems of natural resources management' [Yacouba 2002].

Burkina Faso provides an example of the problems that arise when land administration and management are decentralised to different bodies. Elected Village Councils are empowered to allocate land (albeit in an allegedly weak legal manner) whilst Village Land Use Management Committees are empowered to make the zoning and planning decisions upon which rights allocation need to be based [Pare op cit.]. Confusion and conflict are rife, exacerbated by the uncertain but active role of customary authorities as well [Lavigne Delville op cit., Pare op cit., Ouedraogo op cit., Gado op cit.].

Now that a policy decision is emerging in **Ghana** to the effect that elected local governments (District Assemblies) will have no role in local land administration, their function in land use planning and management is being enhanced - almost as compensation [The World Bank & MLF op cit.]. In practice, to be effective, Assemblies will have to work with and through the land administrators – the Traditional Authorities.

Localisation of Authority

The extent to which authority over land management matters is decentralised expectedly correlates strongly with that of land administration. That is, where authority over administration is devolved to district/county or commune level, so too is land management authority (e.g. Burkina Faso, Mali, Tigray, Botswana). Where administration is devolved to community level, management authority also tends to follow (e.g. Tanzania, Malawi). **Kenya's** Draft Constitution is notable for making community based management and public participation the two founding principles of natural resource management to be followed, irrespective of where land administration authority will be vested [CRCK op cit; Cht. 12].

The Ubiquitous Use Condition

A primary instrument that integrates land administration and management is the deployment of conditions to occupancy. Historically, both by custom and national law, access to land outside the freehold or Roman-Dutch private ownership sphere has been widely conditional upon **occupation and use.** There has been an increase rather than decline in this conditionality in the current wave of reform [Alden Wily & Mbaya op cit.]. This is despite demonstrated laxness or inability to enforce conditions [ibid]. There are few instances recorded in East or Southern Africa for example, where a right holder has been evicted solely on the grounds that s/he failed to occupy or use the plot allocated [ibid]. In West African states, evictions or deprivation of land access is more common, but founded more often on the status of the occupant as native or stranger/migrant than upon his or her use/misuse of the property [Alden Wily & Hammond op cit., IIED 1999, Kone op cit., Pare op cit.].

One of the supposed advantages of bringing land related functions closer to the periphery is that occupancy and use conditions will be better applied. This may only be realistic where authority is devolved into the community itself. Certainly communities have the capacity to regulate access and use according to community agreed conditions; this is widely evident in the burgeoning community forest management sector [Alden Wily 2003a].

Examination of current or proposed policies and legal texts shows that the primary condition of occupancy and use (usually underwritten with residency and/or membership of the local community) remains a formal and explicit strategy in these states: **Niger, Senegal, Burkina Faso, Ivory Coast, Botswana, Rwanda, Eritrea, Tanzania, Ethiopia, Mozambique, Namibia, Malawi** and **Lesotho**. In **Eritrea** the importance of occupancy and use is emphasised by recognition of all holding rights as a 'lifetime usufruct', an entitlement that is not even automatically inheritable. Furthermore the land must be developed within two years, or it will be confiscated [Land Proclamation 1994; Art. 13 & 18]. In land-short **Rwanda**, the emphasis upon appropriate and maximum land use is rigorous, with the proposed Land Law going so far as to dictate what percentage of a field has to be cultivated in order to be considered under active use. Even pasture that has not been planted with at least 50 percent of fodder crops is considered insufficient development. Fencing and walls are also specifically outlawed as evidence of land occupation, use or development. Land consolidation will also be enforced [Draft Land Law 2003; Art. 56-59]. Use conditions on rural land are specifically left to customary practice in **Uganda** [Land Act 1998; s. 4 (1)] and in **Swaziland** [Draft Policy 1999]. The Draft Communal Land Rights Bill 2002 in South Africa for example, leaves such decisions up to community organised structures to determine.

A more nuanced approach is proposed in **Botswana** where a policy decision has been provisionally accepted to loosen, rather than entrench certain use conditions, and most notably the requirement under the Tribal Land Act that undeveloped land may not be sold [NRS op cit.]. The reason for this, the Policy Review argues, is that many needed half developed or unused plots stand empty. To pre-empt speculation, the Review proposes that half the proceeds revert to the Land Board and that residency qualifications be introduced to limit allocation of more than one plot per person in peri-urban villages. Change of use from subsistence to commercial uses would also be permitted. There is also a proposal to relax the condition that farms uncultivated for five years revert to the Land Board, something women have had more and more difficulty achieving as the AIDS pandemic and poverty constrain their ability to hire in the draught power needed to plough [ibid].

3.1.1 CPR MANAGEMENT

Heightened provision for common property management is another important emerging trend that accompanies decentralised land authority [**Table 14**]. The identification and demarcation of forests, woodlands, marshes and pasture, and encouragement to community authorities to regulate their access and use, are measures found in the guiding land policies and laws of Tanzania, Uganda, Ethiopia, Malawi, Namibia, South Africa, Swaziland, Lesotho, Mozambique, Niger, Ivory Coast and Mali.

Distinguishing Community Jurisdiction from Community Tenure

This goes together with improved provision for groups and whole communities to be registered as a land owner and accordingly for common properties to be registrable estates. An indication of exactly where this being provided for has been given earlier in **Tables 10, 11 & 12**. The resulting entitlements range from the **delimitation** type of certificate that was described in the case of **Mozambique**, to the issue of title deeds that refer specifically and discretely to a fully common estate, such as may be awarded to a Common Property Association in **South Africa** or to a Communal Land Association in **Uganda**.

The former entitlement is least definitive, usually embracing properties that are owned by individuals and families as well as commons. The collective Land Title Certificate being issued to clans, family, local authority or community in **Ivory Coast** is this kind of tenure, and their fate in final stage of registration remains vague [Stamm op cit.]. The issue of allodial titles to chiefdoms in **Ghana** contains similar conundrums [The World Bank & MLF op cit.]. This is also the nature of intentions in the proposed transfer of lands from State to communities proposed in the South African Communal Land Rights Bill. This manner of entitlements is evidently less one of tenure than of jurisdiction; what it endows and confirms is community *authority* over the described land area, and within which very significant discrete individual, family – and community - ownership rights and estates may occur.

Formal recognition of this crucial distinction between community reference systems and physical community estates was made through passage of the Village Land Act 1999 in **Tanzania**. This removed the policy that had operated since 1984 to issue Village Title Deeds to Village Councils as trustee owners. Instead, these bodies only receive a Certificate of Village Land, which confirms their management and administrative *authority* over the land area, not ownership of it [Alden Wily 2003b]. As already observed, community members may then proceed to define and demarcate those areas that are owned by community members in common. It is these properties that are then registered in the Village Land Register as community owned property [or 'Commonholds']. A similar development is evident in growing provision in other laws for holding rights to be available to communities as well as individuals. **Amhara** State law is clear for example that a registered Holding Right may be an individual or communal holding [Amhara Rural Land Law No. 46/2000 Art.13]. **Kenya** is the latest in a growing line of states to recognise community tenure, providing in its Draft Bill for a Constitution in 2002 that laws be passed to enable *communities* to be acknowledged directly as land owners in their own right [Art. 234].

It has already been noted how those seeking to bring woodlands and forests under community management have been able to take advantage of such developments (and indeed help promote them).[22] Upwards of twenty countries in sub-Saharan Africa now make legal provision in forest laws for **Community Forests** [Alden Wily 2003a]. With improving group tenure possibilities, this construct increasingly expresses community tenure, not just community jurisdiction. Many more states provide for the latter, in the form of local conventions or management agreements [ibid].

22 See Alden Wily 2002c, 2003a.

The development of **Pastoral Charters** in Sahelian States shows promise in a potentially similar direction. These have been promulgated in Guinea (1995), Mauritania (2000), Mali (2001), Niger (1997),[23] and most recently Burkina Faso.[24] So far these regulations fall short of acknowledging or providing for community based property rights, although by virtue of assuring them access under different conditions, advance in the recognition of their land interests is indisputably furthered.

The obverse trend is also interesting. There are strategies afoot which explicitly do *not* permit communities to title their commons as private estates or even to have discrete community jurisdiction confirmed, and yet usually encourage them to manage those areas better: Zambia, Eritrea, Namibia and Botswana among them. In **Eritrea**, the state has co-opted the management of all resources like pasture and forests to itself (1994) and sees no need for communities to secure co-ownership over these commons. In **Namibia**, the new land law (2002) permits commons to be held customarily but not to be registrable private property. This caution stems from a long history of enclosure by wealthy individuals who have been able to afford fencing, provoking wariness towards any kind of provision that might encourage this trend.[25] Community rights in the process were truncated along with those of individuals to secure commons as private property. This constrains common property tenure development, which as a matter of course requires clear definition of right holding communities [Alden Wily 2001b, Alden Wily 2003c]. In Botswana, the failure of the Tribal Land Act 1968 or its subsequent amendments to permit the granting of certificates over common properties (and yet permit their lease to individuals under the Tribal Grazing Lands Policy, 1975) is gradually being acknowledged as a driver to continued degradation and loss of pasture commons. Finally, the Policy Review, following upon a similar recommendation of Rural Development Policy in 2002, recommends that community based property rights be developed [NRS op cit.].

3.2 EQUITY AND PROTECTION OF VULNERABLE LAND INTERESTS

The objective of this section is to identify the support to the land interests of special groups being afforded through the localisation of land administration and management. Women constitute the largest group and are most fully addressed. Urban poor and squatters (not covered here) constitute another large group, growing annually with continuing rural to urban migration and the growth of small towns. In some parts of Africa, pastoralists (or 'herders') comprise a significant proportion of the population, and whose interests have been touched upon above and further below. The interests of youth also need considering, given worsening shortage of usable and especially arable land, arising mainly from high rates of population growth. Usually 18 years is the age at which members of customary societies are 'deemed emancipated' (in the words of the Eritrean law) and eligible to be allocated land in their own right. This is raised in some case cases where land shortage is acute,[26] and lowered in some cases where arable land lies idle.[27] With the HIV/AIDS pandemic, the extent to which the land rights of orphans are being attended to also needs comment. Tenants of long-standing, farmers who are non-tribesmen (and sometimes non-citizens but long-term residents) constitute a group of land occupants whose rights are rapidly crystallising as vulnerable in some countries and most noticeably in Ghana and Ivory Coast.

By no means all the measures identified below are a direct function of decentralising trends, but arise from reformist policies in general and of which the emergence of more participatory and localised processes are part. Some of the groups mentioned above are, for example, gaining new in principle support for their rights in general in new National Constitutions, as exampled below in the case of women.

3.2.1 GENERAL MEASURES FOR EQUITY

First, however it is useful to note general tenure provisions and which both impact upon the rights of special groups and society in general. Important among these is the extent to which **equity** of access and rights over land is an objective, and which in turn shapes how devolved land administrations manage land rights and the land itself.

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23 This is not in a pastoral law per se but as a Decree (No. 97-007) under the Rural Land Code of 1993.
24 In a draft *Loi d'Orientation sur le Pastoralisme* [IIED 2001].
25 It is notable in this respect that even the Nature Conservation Amendment Act of 1996, which empowered communities to manage wildlife areas, did not permit them to exclude any users from those areas [Werner 2002].
26 In Tigray, the law stipulates that males should be 22 years and females 16 years to be eligible for allocations [Tigray Rural Land Law 1997].
27 In Botswana, the Policy Review proposes lowering eligibility from from 21 to 18 years [NRS op cit.].

In some states, law, or more precisely, administrative interpretation of law, has guaranteed access to land (and free) to all rural citizens who need it; the case in Ethiopia and Eritrea.[28] This goes a step beyond much more common declamatory guarantee of equal freedom of the right to acquire land, most recently articulated in Rwanda, with perhaps more meaning than usual, given that land shortage is acute and not expected to be available for all citizens.[29] This in turn may necessitate redistribution of land – something that up until recent years occurred with regularity and much contention in many regions of Ethiopia.[30]

Historically, common instruments to encourage equity in landholding have been -
– to impose conditions of occupancy or use upon landholders as described earlier
– to place a limit on the amount of farmland that may be held
– to limit or regulate sales of land that may leave peasant farmers landless; and
– to protect majority rural landholders against invasive purchase of land by investors and particular of those who have 'lesser' right to rural land - non-citizens.

We have seen already that the first, conditionality, is a strategy widely adopted by localised administrations, as guided by national legislation. Below the case in respect of ceilings, limits upon rural land sales and regulation of non-citizen land access is cursorily reviewed.

Land Ceilings

Among 19 countries considered, only six new laws in fact impose ceilings on rural landholding; **Eritrea, Ethiopia, Tanzania, Namibia, Rwanda** and **Botswana**. Eritrea and Ethiopia operate quite stringent ceilings. For example, in Eritrea, if an heir opts to take his or her parents land, then s/he must surrender other land. Farmers may only be allotted land in one village [Land Proclamation 1994; Art. 11 & 25]. The current ceiling imposed in Tanzania is a generous 20 ha per person.[31] Administrative and customary restrictions may also restrict size of farms, such as where conditions that land is occupied and used are particularly stringent. Swaziland among others operates indirect ceilings by limiting plots to households, not individuals and by preventing the accumulation of land through polygamous marriages [GoS 1999].

In practice however, the imposition of ceilings does not appear to have halted a steady trend towards more diversely sized holdings.[32] It may however help to limit this.

Regulating the Land Market

There is somewhat more regulation as to land sales, although there has also been liberalisation. What this means in practice is that the right to sell land is almost everywhere now made the norm, but limitations are put upon the way this is done or in which circumstances sale may occur. Mostly these limitations are designed to protect family member land interests, protect against exploitative purchases, to prevent sales that will result in the ceiling upon holding size being exceeded, or to regulate non-citizen access.

Sale remains however in many cases sale of improvements, or of the land right, rarely the land itself. This is always the case where the root title of land is vested in the President, State or Nation and citizens hold only interests or rights in the land [e.g. Eritrea, Ethiopia, Tanzania, Zambia, Zimbabwe, Mozambique, Malawi, Zambia, Senegal, Niger, Bukina Faso]. It may also be the case where root title of certain classes of land if not the entire land area of the country, is vested in a body rather than the land right holder, the case for example of tribal lands in Botswana and Namibia where root title is held by the Land Boards, or in the former homelands of South Africa (still vested in the State) or the communal lands of Zimbabwe. This need not necessarily constrain the value of the land interest that may be held over that land, especially where state or board ownership is more symbolic than interventionist.

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28 Eritrea Land Proclamation 1994; Art.6; Ethiopia Federal Land Proclamation 1997; Art. 6. Art 4 of the Rural Land Proclamation of 1975 was always interpreted as obliging Government to provide everyone with land, resulting in periodic redistribution. Strictly speaking, the law only promised equitable access to land. The current federal law [No. 89 of 1997] and some subsequent regional state laws [Amhara No. 46 of 2000 but not Tigray No. 23 of 1997] continue to guarantee equitable access. This is in keeping with Article 40 of the 1992 Constitution which eschews promising land to all.
29 Rwanda Draft National Land Law 2003; Art. 4. For elaborated statements on this right see Tanzania National Land Policy 1995; 4.2.4; Swaziland Draft National Policy 1999; 1.4 and Ghana National Land Policy 1999; 3.1.
30 Admassie 2001, Alden Wily 2002a, Nega et al. 2002.
31 Village Land Regulations 2001 Part VII.
32 See Toulmin & Quan (eds) op cit., Toulmin, Lavigne Delville & Traore (eds) op cit., Alden Wily & Mbaya op cit.

As FAO has observed, the mere fact of state ownership in itself provides little information about the nature and strength of the rights that private persons may acquire in land' [FAO 2002; 214].[33] Alternatively, in cases where root title is vested in Chiefs, the value of the land interest held by occupants is seeing some practical diminishment, as Chiefs seek to reconstruct their trustee ownership as outright propriety; the case in South Africa and Ghana.

Thus farmers in Amhara Region **Ethiopia** may now sell improvements – but only to their heirs [Amhara Land Law N0. 46/2000; Art. 6 (6)]. Tigray farmers may lease out their land freely – for up to ten year periods [Tigray Land Law 1997; Art. 7]. **Tanzanians** may freely sell their rights to other villagers but need permission of the Land Manager (the Village Council) to sell to non-villagers, approved only with a deposition from the buyer that s/he will make the villager her/his home thereafter, or main place of business [Village Land Act 1999; s. 30]. Draft policies in **Swaziland**, **Lesotho** and **Malawi** propose to free up transfers, but in Malawi with a freeze on newly titled land being sold to non-family members for the first ten years on the grounds that this will help limit distress or other ill-thought through sales [GoM 2002]. Regulation by Land Control Boards and Chiefs can sometimes be quite vigorous in **Kenya**, either on grounds that sale would deprive family members of farmland, or contrarily, that the buyer 'will acquire more land than he needs' [Land Control Act Cap 302; Art. 9]. Such social regulation, exercised mainly through customary or statutory family consent requirements are now widespread [**Niger, Tanzania, Uganda, Rwanda, Malawi, Swaziland, Mozambique** among others]. In West Africa, customary limitation may also be quite severe in respect of migrants, non-tribesmen or settlers, who are currently finding their rights destabilised [Toulmin et al. op cit., Lund 2000, OASL 2000].

Several questions arise in respect of these regulatory mechanisms; how well are they enforced? How easily may they be sidestepped? How consistently are they applied? Is their effect protective upon those most needing protection in the real estate markets? And do they unduly constrain a market in land?[34] Market regulation is not a main subject of this current paper but such questions could be flagged for future monitoring within the context of decentralising administration. For the moment it may be assumed as a matter of principle that the more local the administration of such regulation, the more likely it is to be implemented and the more sensitive to special cases.

Limiting Non-Citizen Land Access

Legal restriction upon non-citizen access is also widely being relaxed, but generally only on a fixed term or leasehold basis and often on a number of conditions and demonstrated intentions to invest [**Eritrea, Ethiopia, Tanzania, Rwanda**]. The conditions are most rigorous in respect of rural land [e.g. Kenya and proposed in Swaziland]. **Tanzania** may be singled out in that it disallows foreigners direct access to most rural lands ('Village Land'). For a foreigner to acquire such land, he would have to convince the President to remove the land from Village into Government Land ('General Land') and then proceed to apply for a lease from Government, The procedure is deliberately cumbersome, involves substantial compensation to the community and requires its formal support [Village Land Act 1999; s. 4]. A private sector lobby with support from The World Bank is arguing for a change in the law to make it easier for foreign investors to access villagers land [The East African 2003]. This is a good example of the tensions that may be expected to exist between the objectives of market liberalisation and protection of majority rights. In differing versions, the tension exists almost everywhere, from Eritrea to Mozambique, Senegal to Zanzibar

3.2.2 PROMOTING AND PROTECTING THE LAND RIGHTS OF WOMEN

Laying the Basis in Constitutional Law

Women have been among those gaining support for their interests in new National Constitutions. For example, **Mozambique**'s Constitution 1990 pledges to provide incentives to increase the role of women in society (among other measures) whilst **Malawi**'s Constitution 1994 includes a commitment to address 'domestic violence, security of the person, lack of maternity benefits, economic exploitation and rights to property'. After long years of debate, amendment was finally made to the Kenyan Constitution in 1997, which introduced 'sex' among the prohibited

[33] Space does not allow treatment of this issue of radical or root title; refer Alden Wily & Mbaya op cit; 80-84 for details. Also note the point made by FAO that many states which retain root title in the State have highly active real estate markets, where land rights not the land itself are being transferred.

[34] Certainly it has taken a very long time for the World Bank to modify its strong advocacy for a totally free land market with recognition that even the most liberal land markets generally operate with substantial regulation; see The World Bank 2002a.

grounds of discrimination. This and related measures are much more fully elaborated in the proposed new Constitution [CRCK op cit.].

In some countries however, the principle of non-discrimination remains firmly qualified by exceptions for family and succession law and for customary law – the case in **Ghana** and **Kenya**. Most other states now prevent customary law pursuing practices that are repugnant to equality and natural justice [e.g. Uganda Constitution 1995; Art. 33 (6), Malawi Constitution 1995; Art. 24 (2)]. Still, taken as a whole, constitutional support requires the specificity of sector legislation to be delivered with any weight and some direct that such laws be specifically enacted [e.g. South Africa Constitution 1996; Art. 9 (4)].

Inheritance Laws

In the past drafters of land laws were loathe to involve themselves in gender matters and would routinely refer such issues to family and succession law. This is still sometimes the case but with increasing opposition. Ugandan women have fought valiantly since 1998 to see their rights better protected in the Land Act 1998, not the longstanding Draft Domestic Relations Bill [Rugadya and Busingye 2002]. Domestic relations laws remain key in matters of inheritance and can be helpful. The failure of the Land Law in **Mozambique**, for example, to deliver rights to widows has been partially remedied by the first approved reading of a new Family Law Bill in April 2003.[35] The Family Code 2000 of Ethiopia provides for community of property in relation to property acquired after marriage, creates a presumption of common property for goods registered in the name of one spouse and requires the consent of both spouses for transfers of property [FAO 2002]. In other cases, inheritance laws may fail women when it comes to land; some make a point of excluding land from their equity provisions; the case in **Ghana**,[36] and **Rwanda**.[37] Fortunately, the Rwanda Draft Land Law 2003 emphasises gender equality in all matters relating to land ownership and presumably including inheritance of land [Art. 4].

Land Policies & Laws

In the current wave of land reform, women's rights are seeing more and more coverage (and more research).[38] The South African Government went so far as to follow up the National Land Policy 1997 with a Land Reform Gender Policy, which has seen 'some' implementation [Walker 2002]. Protection of widows' rights to remain on household land, spousal consent clauses to land transfers and co-ownership of primary household property, or equal rights to independent land allocations, are all variously promised in policy declamations [Alden Wily 2001a]. For the most part these are entering law as shown in **Table 15**, the notable exception of Zambia notwithstanding.

Table 16 provides more detail on the indicator most directly related to decentralisation: the extent to which women are being included in these institutions. Eight of eleven laws directly require improved or equal representation on land administration bodies by men and women. The requirement is much weaker in respect of land dispute resolution bodies; only four of nine policies/laws requiring any female participation.

35 The main thrust of the law is to remove marital power, currently given to the male by the Civil Code 1966.
36 PNFC Intestate Succession Law 1985, but which included houses in the distribution of the estate to spouse and children and by an amendment in 1991 prevented the spouse's eviction prior to distribution of the estate; see Alden Wily & Hammond op cit., FAO 2002.
37 Law No. 22 of 1999; Article 90 gave equal inheritance rights to male and female children, but ruled that inheritance relating to land would be left to land legislation [Kairaba op cit.].
38 This includes useful analysis as to the impact of weak tenure security for women upon farm production; rigorously demonstrated for example in Ghana by Goldstein & Udry 2002.

Table 15: Evidence of Promotion of Women's Rights in New Land Law

INDICATORS OF DIRECT SUPPORT FOR WOMEN'S RIGHTS & INDIRECT CONDUITS OF SUPPORT	**Eritrea Law 1994**	**Rwan. Dft. Law 2003**	**Zam. Law 1995**	**Eth. Law 1997**	**Mozam. Law 1997 & Regs. 1999**	**Uga. Law 1998**	**Tanz. Laws 1999** [39]	**Nam. Law 2002**
1. Makes equal rights with men a matter of stated principle of the law	Art. 4-4, Art. 11-3	Art.4	-	s.5-4	-	-	LA s.3-2 VLA s.3-2	-
2. Makes any customary action which deprives women of rights illegal	N/A	Art. 4	-	N/A	1998 Art 11-1	s.28	LA s.20 VLA s.20-2	-
3. Makes any administrative act which discriminates against women illegal	Art. 4-4	Art. 4	-	s.6-1	-	s.6-1g	VLA s.23-1, 30-4, 53	-
4. Provides positive female discrimination in matters of application for settlement schemes etc.	-	-	-	-	-	-	-	-
5. Provides for improved or equal female representation in land administration bodies	-	Art. 8	-	s.6-10	-	s.48-4 s.58-3 s.66-2	LA s.17-2 VLA s.53-3	s.4
6. Provides for improved or equal female representation in land courts/tribunals/dispute resolution bodies	-	Art. 8	-	s.6-10	-	-	VLA s.60-2	-
7. Makes any transfer of household land subject to spouse's approval	N/A	Art. 43 - 46	-	-	-	s.40-1	LA s.112-3, s. 161-3 VLA s.30-4	-
8. Provides for widows to be first in line to inherit with/without children	Art. 12-3	-	-	-	1998-Art. 8-2	-	LA s. 161	s.26
9. Provides for land to be inherited in equal shares by male/female children	Art 12-4	[yes]	-	-	Art. 13-1	-	-	-
10. Provides for divorcees to retain share of land	Art. 16	-	-	-	-	-	LA s.161-2 VLA s.22-1	-
Presumes spousal co-ownership of household's primary land (house & farm), or, provides equitable allocation	Art. 4-4, 6, 11, 15	Art. 43	-	Art. 6-1	1998 Art. 8-1	-	LA s.161	-

[39] LA = Land Act 1999, VLA = Village Land Act 1999.

Table 16: Requirement for Female Membership in Decentralised Land Decision Making Bodies

Country & Law	Land Administration Body	Land Dispute Resolution Body	Other Bodies
Uganda Law 1998	Board: Min. one third members. Local Committees: min. one quarter	No requirement on gender indicated for Land Tribunals	Mediators – Not required
Botswana Policy Review 2003	Proposes 30% by 2005 on Boards	No gender requirements indicated	30% for all elected councils
Eritrea Law 1994	Not directly indicated but gender equity emphasised	No gender requirements indicated	
Namibia Law 2002	4 of 11 members of Communal Land Board No requirement for Chief or Traditional Authority to involve women	No requirement for Headmen to involve women	
Malawi Policy 2002	VLC: 1 of 4 to be a woman	1 of 4 on Village Land Tribunal and 1 on Traditional Authority Land Tribunal	
Tanzania Law 1999 & Disputes Act 2002	Village Council as Land Manager comprises at least 1/3 women	3 of 7 members of Village Land Council to be women; 3 of 8 members of Ward Land Tribunal to be women	4 of 9 members of Adjudication Co. to be women
South Africa Draft Communal Rights Law 2002	Reference to Constitution made; must include women in Administrative Structure	No data Claims Court & Magistrates Courts regulated under different legislation	Advisory Land Rights Board to be constituted 'with attention to gender'
Niger Rural Land Code 1993	Commission to have 1 representative of women	No data	Women must be represented on councils; no data of details
Rwanda Draft Law 2003	To be equal with men	Equal with men	Equal with men
Kenya Draft Constitution 2002 & Land Commission Report 2003	Not directly indicated in former. No data on latter	Not directly indicated	Constitution pledges women to be one third of all governance institutions
Ethiopia Amhara Regional Land Law 2000	Does not provide but Federal Law 1997 requires administration to be carried out 'through a system that is transparent, fair and has the participation of peasants, especially of women'. Authorities to ensure rights of women and children protected in disputes.		

3.2.3 PROTECTING THE LAND INTERESTS OF CHILDREN

Through improvement of women's rights to land, and land-related decision-making, children also gain. Other routes where improvement in attention to children's land interests is being seen, include –
– steps relating to gender equitable inheritance of land, commented upon above;
– the need to safeguard the interests of orphans whose numbers are rising daily as a consequence of the HIV/AIDS pandemic; and -
– regulation of land transfers to minimise loss of subsistence to children (and spouses).

Table 17 records examples. Palmer 2003 observes that children's land rights are coming sharply into focus as the HIV/AIDS pandemic puts growing pressure on the customary rights of women and children to sustain life in rural areas. He, and the Botswana Policy Review comment upon the evident improved sympathy being shown to AIDS orphans by Land Boards. Concerns as to the effects of the pandemic on land holding (and subsistence) are being expressed in the newer Land Policies (excepting Zambia which makes no reference to the issue). A lack of concrete proposals is however also evident (Malawi Policy 2002, Rwanda Draft Policy 2002) and despite quite active lobbies [Kairaba op cit., Mbaya 2002].

Table 17: Equity & Protection: New Legal Provisions for Children and Especially Orphans

COUNTRY	DOES NEW LAW GIVE NEW PROTECTION TO CHILDREN AND ESPECIALLY ORPHANS?
Ethiopia **Amhara Land Laws 2000**	YES In disputes, rights of children have to be protected [Amhara Land Law 2000]
Tigray Land Law 1997 & 1994 Reg.	YES Specifies that any person living on the land possessed by the deceased father or mother shall have the right to inherit [Art. 16 (6)].
Eritrea **Law 1994**	YES Priority over land given to heirs and especially to minors. A guardian to be appointed to administer the land in the name & interest of the children [Art.12, 24] Land Administration Body must ensure children's interests have priority.
Lesotho **Draft Policy 2001**	YES Policy estimates that currently 200,000 orphans as a consequence of AIDS and law must protect their land interests and also develop urban policy programmes.
Ghana **Land Policy 1999**	YES Decision making as to disposal of land to take into account factors including '*accountability to the subjects for whom the land is held in trust*' including as per the Head of Family Accountability Law 1985, and '*land disposal or acquisition should not render a land title holder, his kith and kin an descendants completely landless or tenants on the land to which they originally had legitimate title*' [Section 4.3. (b) & (h)].
Botswana **Policy Review 2003**	YES • Proposes amendment of Children's Act 1981 to protect the rights of orphans, especially in urban areas. • Minors: age to be waived when orphans in need of land. • Plan to allow orphans to rent our or lease out their property to gain income rather than sell the land.
Swaziland **Draft Policy 1999**	YES Support to be put in place 'to ensure the property rights of the bereaved are protected' in face of the Aids pandemic.

Table 17 continued

COUNTRY	DOES NEW LAW GIVE NEW PROTECTION TO CHILDREN AND ESPECIALLY ORPHANS?
Tanzania **Village Land Act 1999**	YES • Section 20(2) makes it illegal for an action in land administration to deny children lawful access to ownership, occupation or use of land. • In the event of a land sale, the Village Council is to ensure that this will not leave the children bereft of support. • When an applicant applies for land as an individual, rather than as a family, the Village Council find out how that individual intends to provide for his/her dependants out of that land, should s/he die [s. 23 (2) (e) (iv)]. This is designed to encourage the applicant to apply with his/her spouses or family. • The Council is to disallow a transfer of land where this will result in insufficient land to provide for the livelihood of the family [s.30 (3) (c)]. • When decided whether to approve an application by a non-village organisation to lease land in the village, the village assembly is advised to consider carefully whether this will jeopardize the future land needs of children in the community [s. 33 (1) (c)].
Namibia **Law 2002**	NO Children to inherit customary land if no surviving spouse but no provision for guardianship and choice left up to Chief or Traditional Authority, who must consult with family [Communal Land Act s.26].
Rwanda **Draft Law 2003**	YES Consent of spouses, grown up children, minors represented by their guardians (i.e. orphans) required in all cases of land transfer, and demonstrated in writing or finger printing before a registrar of lands and recorded [Art. 43-46].

3.2.4 ATTENDING TO THE LAND INTERESTS OF PASTORALISTS

People who depend primarily upon livestock keeping (herders, pastoralists, and agro-pastoralists) represent a significant group of citizens in most of the countries reviewed. Space and time have not allowed more than cursory investigation of the strategies being pursued. **Table 18** provides snapshots. In East and Southern Africa, attention to the tenure developments required to underpin sustainable pasture management are in places beginning to be made available (**Tanzania, Ethiopia**) or proposed (**Botswana**). In other situations, they are not; **Eritrea** for example ignores pastoral interests altogether and Namibia adopts half-measures – limiting enclosure by individuals but failing to provide for communities to be their definitive owner [Communal Land Reform Act 2002].

The picture in West Africa is also mixed. **Ghana**'s National Land Policy 1999 makes no reference to grazing issues, despite a significant proportion of the northern population being livestock-dependent. Sahelian states paying much more attention to these issues, but as yet in incomplete ways [Hesse 2000, Hammel 2001, IIED 2001]. Broadly, legislation in **Niger**, **Mali** and **Mauritania** (and Senegal and Guinea not covered here) recognize the land access rights of herders and accept grazing as a legitimate land use (*mise en valeur*), although frequently with unrealistic development requirements. In addition, the mobility of herders is accepted as essential and legal (even across international boundaries in the case of Mauritania).

However, pastoral rights are not made private or registrable rights, nor conceived as permitting exclusive access. The emphasis is upon balancing herders' rights with those of cultivators', even within identified pastoral home areas. Nor do pastoral groups in **Mali**, **Mauritania** and **Niger** appear to be properly empowered to demarcate, and regulate their pastures; these powers lie with local governments in Mali and Mauritania and with the technical land commissions in Niger, at supra-community levels [Hesse op cit.]. Insufficient devolution to the grassroots is a constraint that impacts negatively upon herders and cultivators alike.

Table 18: Equity & Protection: Attention to Land Interests of Pastoralists in Current Land Reforms

Country & Policy/Law	DO NEW LAND POLICIES & LAWS OFFER SPECIFIC SUPPORT FOR LAND RIGHTS OF PASTORALISTS?
Eritrea **Land Law 1994**	NO Despite large number of pastoralists and heavy dependence upon grazing by many citizens, law covers only housing (urban & rural) and farming with one Article only that 'All villages in Eritrea shall, according to local custom, use their own pasture and wood' and The Government of appropriate administrative body may issue general and special regulations and directives pertaining to the use of pasture and wood' [Article 48].
Ethiopia **Land Laws**	YES Constitution guarantees that Ethiopian pastoralists (sic) shall have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands [Art. 40 (4)]. Federal Land Law 1997 requires that holding rights be assigned sufficiently 'to both peasants and nomads' [Art.]. Tigray Land Law states that land used for pasture will be delineated by agreements and use of pasture will be defined by pre-existing customs of the people. The local *baito* [council] may issue regulations when necessary [Art. 18].
Ghana **Land Policy 1999**	NO No mention of pasture, grazing or pastoralist, except in reference to fact that wetlands may be used for grazing.
Tanzania **Rural land Law 1999**	YES Village Land Act 1999 provides that – • A customary right may be issued for pastoral purposes [s. 29 (2) (a) (iii)]. • Land markets are to be regulated to ensure that pastoralists are not disadvantaged [s. 3 (1)]. • Definition of the area of the village's land may include grazing land and land used for stock passage [s. 7 (1)]. • Where the villagers are pastoralists, the Certificate of Village Land will not only affirm the village area but related areas customarily used by those persons [s. 8 (8) (d)]. • The law makes provision for two or more villages to decide to jointly share the management of a certain area [s. 11]; this may be useful for pastoralists in respect of seasonal shared grazing areas. • Plenty of provision is made for communal village land to be identified and earmarked solely for communal use, includes pasture [s. 12 (1)]. • Definition of communal village land must include all exiting properties used as community or public village land [s. 13 (7)]. • A group of citizens are eligible to be allocated a customary right of occupancy, not just individuals or families [s. 18 (1)]; this is helpful to clans of pastoralists.
Kenya **2002 Draft Constitution**	YES Provides for community based tenure rights for grazing areas and other common properties [Art.234 (3) (c)].
Lesotho **Draft Policy 2001**	YES Provisions for granting of exclusive rights to organised Grazing Associations, but in consultation with wider community interests and right of community to collect grazing fees.

Table 18 continued

Country & Policy/Law	DO NEW LAND POLICIES & LAWS OFFER SPECIFIC SUPPORT FOR LAND RIGHTS OF PASTORALISTS?
Botswana **Law 1968 &** **Policy Review 2003**	YES Grazing represents main use of commons. Grazing issues have been central to land policy development (1975, 1991) and Policy Review 2003 seeks to retrench of mistakes: recommendations include – • Develop community based management in communal areas; • Develop community based property rights as private ownership; • Involve locally based institutions in allocation of land and natural resources associated with commons; • Limit fencing of cattle posts; • Require that any person who wishes to move livestock from a fenced farm to a communal area first obtain permission of the body responsible for the management of the commons; • Levy rents on fenced farms at commercial levels.
Niger **Code Rural 1993 & Decree No. 97-007.**	YES The Rural Code includes definition of pastoral 'home area' (terroirs d'attaches) but does not give herder ownership of these areas, just priority access rights [Art. 28]. The law also provides for livestock corridors to be delimited, and watering sources to be protected. By recognising customary rights, including pastoral rights as equivalent to state law rights, the code improves the tenure security of pastoralists, but as one of several customary users. Does not provide for pastoralists to organise themselves as pasture management associations but are to be represented in other local groupings. Only one pastoral representative on the Land Commissions (Commissions Foncieres). Commission may determine what constitutes productive land use by pastoralists and others and may withdraw improperly used land. Land use planning will be implemented and this will define productive use; plan is oriented around farm and housing investment, such as tree planting, and do not cater properly for pastoral activities and norms. A supplementary decree provided details on the status of the terroirs d'attache des pasteurs [No. 97-007].
Mauritania **Code Pastoral 2000**	YES Provides legally for compensation if herders lose land for public interest. Preserves pastoral mobility [Art. 10].Provides for local organisation into associations, to be set up by local governments. Provides for locally based dispute resolution. Does not address the many privately owned water points by pastoralists.
Mali **Pastoral Charter** **2001**	YES The Charter partially empowers pastoralists to govern their own pastures, through proposed pasture associations. Local governments are to facilitate their formation. Recognises customary land use practices. Provides for compensation for land taken for public interest. Assures right of movement of people and stock among countries [Art. 4-6 Provides for customary dispute resolution over pastures. Land use planning of pastures will be undertaken. Right to determine use norms lies with Government

3.2.5 ATTENDING TO MINORITY RIGHTS

A cursory final word may be made on the handling of **hunter gatherer land rights** in the current reform movement. Hunter gatherers on the continent are extremely few in number but access to very large land areas remains crucial to their survival [Colchester (ed) 2001]. They comprise San (Bushmen), living in South Africa, Angola, Namibia, Zambia, and Botswana; Hadzabe in Tanzania, Ogieki and other Dorobo in Kenya and Uganda, and Pygmies in Uganda, Rwanda, DRC, CAR, Gabon and Equatorial Guinea. Recognition of hunter-gatherer land rights has been historically tenuous and few have security today, the majority living as tenants, squatters and serfs on their original lands [ibid]. Although beset by a myriad of needs, the most crucial relate to tenure. Ideally, this would manifest in *first*, recognition of hunting and gathering as a legitimate customary use of land, rather than the current positioning of their lands as *terres sans maitres, second*, rapid acknowledgement of ownership of the limited access to land they may still enjoy, and *third*, some degree of restitution of lands lost.

In minor ways so far, the current reform movement has generated some steps in these directions. Examples are given in **Table 19**. The case of **Botswana** is of main note in its linking of San requirements with the more general need to develop community based property constructs for a range of communal properties. Related, the tenure administration and management of those estates would be devolved to the community level. These proposals in fact mirror those made as early as 1974, but largely abandoned by 1980, in face of stronger pastoral land interests. These, for all intents and purposes remain dominant today [CMI 1996].

Table 19: Attention to Land Rights of Hunter-gatherers

COUNTRY	SPECIFIC PROVISIONS TO ENHANCE TENURE SECURITY IN STATES WHERE HUNTER GATHERER MINORITIES EXIST
Rwanda	NONE Batwa Pygmies, currently landless. The Land Law to declare commons (marshlands) to be State property and to issue by individual concession. Several groups have been assisted to form Associations to enable future formal allocation of these residual parts of their lands.
South Africa	SOME San, some of whom have got back part of their property through restitution of part of the Kalahari Transfrontier Park, under trust arrangements.
Namibia	NONE San (Bushmen) hunter-gatherers, who with NGO assistance have secured several key conservancy area agreements but which do not represent communal property rights, just priority access. Under Communal Reform Land Act 2002, no provision to recognise customary hunting and gathering as land use and registrable rights specified to include only for commercial, residential and farming rights. Communal grazing access provided for, but not registrable. One loophole through which hunter-gatherers could seek common title is via fact that by section 21(c), the Minister may gazette 'any form of customary tenure other than for farming and residential units'.
Tanzania	NONE Hadzabe hunter gatherers. No comment on status of hunting and gathering as land uses, due allocation of customary rights, although neither specifically excluded in broad customary basis upon which rights may be secured and titled. Most Hadzabe now live within two very large village areas, which they control, and make their own rules as to land use. Each Village Land Manager may manage in accordance with majority decision so route to sustaining hunting gathering as land use is available.
Uganda	NONE Abayanda Pygmies resident around Bwindi, Mgahinga, Rwenzori Parks and Dorobo around Mt. Elgon National Park; no provisions for return of these areas to hunter gatherers and no special provisions for hunting and gathering as a basis for registrable customary rights, but neither is it excluded.

Table 19 continued

Country	SPECIFIC PROVISIONS TO ENHANCE TENURE SECURITY IN STATES WHERE HUNTER GATHERER MINORITIES EXIST
Botswana	PROVISIONS in Policy Review 2003 recommendations to – 1. Create separate sub-land boards where Remote Area Dwellers [RADS] (mainly San hunter gatherers) are the majority; or to establish community based rural land management bodies; 2. All Boards to take cognizance of customary rules of RADS (hunting & gathering) for land allocation and land use; 3. Protection to be given RADS residents from eviction as a result of common law leases to fencing component under the National Policy on Agricultural Development; 4. These residents and those in associated settlements to be empowered to limit the stock of outsiders entering their areas; 5. Freehold farms to enter tribal land sector to provide more leasehold land available for the dispossessed; 6. Where RADS have been made squatters through allocation of their land to lessees, their use rights over land and water to be secured in law.

4. LAND DISPUTE RESOLUTION

In the main, decentralisation of land administration and management has been accompanied by localisation of land dispute resolution machinery. Developments possess a certain urgency in light of the fact that land disputes frequently constitute the major proportion of formal litigation. In Ghana for example, there is a backlog of 26,000 land cases currently before the courts, some that have been standing for several decades and few with any prospect of early resolution [The World Bank & MLF op cit.]. Comparable backlogs are reported in Lesotho and Kenya [KoL 2001, Alden Wily & Mbaya op cit.]. When Uganda stopped courts hearing land cases in preparation for the transfer of this function to dedicated tribunals that in the event failed to be quickly established, litigants sometimes took the law into their own hands, and murders over land disputes multiplied [GoU 2002].

Table 20 summarises steps being taken or planned. These are generally plural, combining new approval to customary and informal machinery at the local level, support provision for mediation, improvements made to the justice system (courts), and/or creation of semi-formal land tribunals. The latter are generally not staffed by magistrates but most have access to magistrates as advisers. In **Ghana** donors plan to fund special land courts in regional capitals to clear the backlog of cases [The World Bank & MLF op cit.]. These are more formal than tribunals and will be expensive to operate and thus intended to be temporary. Customary authorities will at the same time be assisted to deal more efficiently and transparently with disputes, with assistance from new Local Advisory Committees [LAC]. Referral will be to a District level LAC, comprising members selected from both traditional authorities and the elected District Assembly. Cases will proceed to court only on failure of the LAC to resolve the dispute. This proposal gained a great deal of support from the action of Ghana's *Asantahene*, the King of the Ashanti, who was so frustrated with the failure of the courts to deal with disputes that he ordered his subjects to remove their cases from courts and have them resolved by his local chiefs or, failing resolution, bring them to his central Customary Court. By 2000 all but ten cases had been resolved [Alden Wily & Hammond op cit.].

High costs continue to drive support for every more informal dispute resolution ('alternative dispute resolution' or ADR). In **Uganda** original legal provision for Tribunals in every Sub-County (now 1,000+) and District (now up to 50) had to be abandoned in favour of designating existing informal Village and Parish Courts the court of first instance, with recourse to a District Tribunal, itself only now served by a part-time Magistrate [GoU 2002].

Table 20: Locus and Form of Land Dispute Resolution Machinery Available to Rural Majority

COUNTRY	LEGAL/POLICY SOURCE	LOCUS	FORM	MACHINERY
Niger	Rural Land Code 1993	Parish, District	Customary and Court	Chiefs (Chef de canton), with hierarchy to Sous-Prefet to Magistrate to Supreme Court
Botswana	Tribal Land Act 1968 + amendments	Village, District	Administrative & Tribunal	Undertaken formally by Subordinate Land Boards with help of customary courts. Appeals against LB to Land Tribunal. Customary and ADR resolution encouraged to limit cases.
Rwanda	Draft Policy & Law 2002/03	Unstated	[Administrative]	Neither Draft Policy nor Law address but implication is that administration bodies (Commissions) will also handle disputes. ADR to be encouraged.
Kenya	Draft Bill Constitution 2002	Unstated	[Tribunals]	Does not indicate any regime for land dispute resolution. Existing system is District Land Tribunals and Courts.
Uganda	Constitution 1995 Land Act 16/1998 & Land (Amendment) Act 2001 & 2002	Village, parish	Customary, Mediation, Tribunal	Original elaborate tribunal plan abandoned because of cost/staff with existing village & parish courts to handle, with Mediator if needed (1+ per district) and a Circuit Tribunal with Magistrate covering several districts.
Eritrea	Constitution 1996, Land Proclamation 58/1994	Province	Administrative	Integrated into administration as function of LAB with appeal to Commission. Existing customary norms abolished along with customary land tenure regimes and rights (and all disputes prior to Proclamation were cancelled; Art.41). However 12,000 Village Courts, using custom, continue.
Ethiopia	Constitution 1994, Federal Rural Land Proclamation 89/1997, Amhara Regional State laws 46 & 47/2000	Village, District	Informal, administrative, courts	Integrated as a devolved function to regional state governance. Amhara State advocates local mediation with appeal to courts. Regulations to limit time of disputes so land doesn't lie idle and to ensure rights of women and children protected.
Tanzania	Land Act 4/1999 & Village Land Act 5/1999 & Regulations 2001, Land Disputes Courts Settlement Act 2002	Village, Ward, District	Customary Tribunals to Courts	Law establishes a dedicated system with each community creating a Village Land Council of seven villagers to mediate disputes with referral to new Ward and District Tribunals; only the last is staffed by a qualified lawyer.
Zanzibar	Adjudication Act 1990, Registered Land Act 1990, Tenure Act 1992, Tribunal Act 1994, Land Transfer Act 1994	Village, District	Tribunals to Courts	Circuit Tribunal with community assessors to receive petitions, take part in tribunal

Table 20 continued

COUNTRY	LEGAL/POLICY SOURCE	LOCUS	FORM	MACHINERY
Malawi	National Land Policy 2002	Village, Ward, Area, District	Customary Tribunals to Courts	Treated as integral to land management in customary sector. Formalization of existing role with Village Land Tribunal, Group Village Tribunal, Traditional Authority Land Tribunal, District Tribunal of Traditional Authorities, with appeals to Central Land Settlement Board, then High Court. Customary Land Dispute Settlement Act to be drafted.
Zambia	Land Act 1995	Village	Customary with Central Tribunal	Ministerial appointed Lands Tribunal, potentially with branches, no locally nominated/elected members. Draft Policy 2002 offers no localised tribunal system.
Mozambique	1997, Regulations 1998 & Technical Annex to Law 1999	Village	Customary to Courts	Conflict resolution to be customary
South Africa	Draft Communal Land Rights Bill 1999	Community	Customary to Courts with Mediation	First by customary law, community rules, then may be referred to mediation by Land Rights Board (to be an advisory body provided by Government in each homeland), thence to Land Claims Court or a Magistrates Court.
Zimbabwe	Draft Policy 1998/99	Village, District	Customary to Courts	Elected Village Land Court with appeals to District Land Court to High Court
Namibia	NLP 1998, Communal Land Reform Act 2002	Village, Region	Customary to Tribunals	Minister to appoint Regional Appeal Tribunals to be established for appeals decisions by Boards or Chiefs. No provision for mediation or role of Chiefs elaborated but customary by default, tribunal for appeal.
Swaziland	Draft NLP 1999	Village	Customary, Administrative, with Mediation	To be a function of the local land administration authority (Community Development Council), alongside existing traditional courts and proposed cadre of independent mediators; new legislation for this to be drafted.
Lesotho	Draft NLP 2001	Ward, District	Customary to Courts, with Mediation	Local Courts will continue to hear customary disputes with new District Land Courts, then Land Court in High Court with new Office of Mediator as voluntary alternative route. Support to NGO legal advisory services.
Ghana	National Land Policy 1999, Land Administration Project 2003	Village, District	Customary and Courts with ADR development	Dual customary/court system will be improved with Land Advisory Committees at local levels to keep cases out of court and creation of 10 special Land Courts to remove backlog of cases. Justice reform project also underway to limit cases and procedures resulting in repeated setting aside of cases.

5. CONCLUSION

5.1 FEATURES

The analysis provided above shows that decentralising land administration and management is by no means uniform or straightforward and in practice each country case needs to be examined individually. At the same time, there are a range of common denominators. Some of the trends or features overall are identified below.

- Decentralisation in the land sector is in fact quite **substantial**. Efforts to decentralise the way in which land rights are **administered** and land use **managed** are surprisingly widespread and sometimes the anchor of current reforms. Of the twenty countries this paper has examined, only Zambia, Eritrea and Mozambique have not made decentralisation an important thrust of reform. Fourteen of seventeen states make decentralisation a main or even cornerstone approach to improving land rights and their management.

- Decentralisation of land dispute resolution machinery is a **corollary development**, and sometimes integral to administrative decentralisation, although generally less pronounced, with ten of twenty countries introducing more localised land dispute resolution machinery.

- With one main exception (Botswana), implementation of new institutional arrangements or adoption of new norms is still very or even not yet underway in all three spheres of administration, management and dispute resolution and **the practical results are yet to be seen**. Even among those states which gone as far as promulgating new laws and beginning implementation, modifications to strategies are already appearing. This partly suggests a helpful flexibility but also reflects a great deal of uncertainty and often stumbling political-government support. It is highly likely that the coming decade or so will see a great deal of alteration in the intention and process of decentralisation.

Whilst changes made so far largely reflect some retrenchment on originally stated ambitions, it would be premature to conclude that this will necessarily be the lasting picture, or that the will to decentralise land rights management will dwindle. This is because the movement is clearly being encouraged from other sources on the one hand (see below) and because beneficiaries (landholders at the periphery) are being awakened to possibilities to gain greater control over their land rights and will likely be decreasingly willing to surrender.

- Decentralisation in the land sector is not occurring in a vacuum. It is both driven and supported and in turn is effecting **wider alterations** in the official way in which society and its resources are managed. Shifts in the balance of State-people authority are especially pronounced. Changing constitutional norms, governance mechanisms and natural resource management systems are proving most strongly linked to changing land administration and management systems and these are seeing an equivalent degree of legal entrenchment. Developments in the pastoral, wildlife range and especially forest/woodland sector in particular illustrate just how closely decentralised land rights management norms are to changing policies as to who and how these resources should be managed.

- Decentralisation is also very evidently closely linked in planning and practice to changes in **land tenure**, and in particular to the legal recognition and status of rights; sometimes the need to decentralise systems is driving tenure change, sometimes changes in tenure relations are generating the need for decentralised systems.

- The administrative and judicial **recording** of land rights, and the status of **customary** land interests are the two areas most focal and subject to transformation at this time; system change cannot be implemented or discussed without reference to these elements.

- Decentralisation is predominantly focused upon the **rural sector,** where with exceptions the majority of populations reside. Not just the farm is being affected, but also properties that rural people use and/or hold in common.

- Diverse positions and strategies exist as to the appropriate role of **technical decisions and expertise** in land administration and management. New decentralised institutions, divide into those that are conceived primarily as technical institutions (e.g. Niger, Botswana) and those conceived as primarily decision-making organs (e.g. Tanzania, Ghana).

- The failures of a century of centralised land administration and management, more than local demand, appear to be the stronger driving force to change. In the main, the decision to decentralise remains a **top-down decision**, although encouraged by commitments to democratisation. With each new policy planning process on the continent, popular consultation is (mostly) increasing. Localised participatory planning to arrive at workable new systems is not. No country has yet risked adopting a genuinely evolutionary approach to localised land rights management, although the potential for this is quite high in the Ethiopian regional states, where national law has been very general in its instructions. The cost to workable and socially legitimate paradigms is high, with many states finding their ideas not as workable or acceptable as they had assumed and regular return to the drawing board being made. In this respect, the land sector as a whole falls well behind several other sectors (agriculture, forestry) that have long ago concluded that meaningful progress will elude them for as long as genuinely bottom-up participatory planning and action is avoided. The historical deep entrenchment of land relations management in law makes this particularly hard for land planners to absorb. Finding the right balance between providing ***just enough new law*** to allow area-specific and evolutionary community based approaches to emerge, is proving difficult and is in fact not even a conscious objective in most states, with the possible exception of policy designs in Swaziland, constrained to move forward however for political reasons. There are signs that this could also become a working principle in South Africa, where it is becoming evident to Government planners that they may never get the legal framework for land rights management in the former homelands 'just right' without trying out some developments of the ground, and building models and lesson learning.

- Taken as a whole, **specific drivers** to decentralisation by State administrations are largely benign, but also more to do with extending the hand of the State than empowering the local level. This is seen in this mix of objectives commonly articulated to localise land administration and management in order to -

  – extend the outreach of existing land related services and systems
  – increase the number of land parcels that are registered and the number of formal system users
  – capture the greater proportion of land interests within a more easily regulatable regime
  – increase 'efficiency' in the land sector and limit corruption
  – facilitate a regulated market in land
  – reduce disorder and confusion by enabling mass adoption of clarified rights and rights management systems, and -
  – widen or reshape legal and administrative norms to limit land deprivation by vulnerable sectors and women in particular.

- Decentralisation is far from a uniformly supported direction. There are **many forces acting against this development**. These have different origins; sometimes they arise from technical concerns such as a reluctance to lower the standards of survey that should be required for land entitlement or a fear that too much diversity and unreliability may result from a plethora of devolved land registers. Sometimes they derive from private sector interests which perceive that decentralised land administration will hinder easy access to land; sometimes from a view that agrarian states should copy the models of industrial states, towards single, centralised land administration regimes, or from repugnance for the messy plurality that tends to go hand in hand with decentralised regimes. Pressures against decentralised land administration regimes may be expected to increase as the difficulties associated with getting these up and running present themselves. As noted above, designers of these regimes have often not helped their case, by failing to develop models from the bottom-up with the real level of interest and ownership needed to carry them through the difficult establishment period, or by failing to realistically cost and plan implementation accordingly.

- **Costs** of decentralisation in practice range from the prohibitive to the low. **Replicability** and coverage range from the minor to the comprehensive. Local support and **acceptability** of new regimes, their utility, **workability** and **sustainability** all vary widely.

The key **determinants** of these attributes, and of main strengths and weaknesses in emergent decentralised systems overall, are identified shortly. First some conclusions are drawn as to main strengths and weaknesses that can be seen from the case study countries.

5.2 STRENGTHS

Certain general benefits or strengths show promise of being delivered: these include, and *for many* of the cases reviewed -

– The nature of rights and their statutory legitimacy is being clarified through the process (or in the planning) of decentralisation, if not always comprehensively or to everyone's satisfaction.

– More attention is being paid to majority land interests.

– Social responsibility in the administration of land relations is being heightened if still unevenly delivered, mainly in respect of the land interests of women and children, and pastoralists.

– Common property tenure is seeing useful development, not demise.

– Natural resource conservation and sustainable management is gaining through more localised approaches to land management and better provision for recognition of common rights.

– Customary forms of tenure, if less so their traditional systems of operation, are gaining higher legal status, less diminishment.

– Existing rights are seeing improved security, registered or not.

– Participation by land holders in decisions of land administration, management and dispute resolution is generally increasing.

– Recognition of the need to simplify procedures for cheaper and wider use is growing and often being delivered (in plans or in practice).

– Simpler alternatives to formal cadastral survey are being considered, explored and put in place.

– Even though development has almost everywhere been through blueprint and top-down development, implementation confronts realities that render it necessarily more flexible in the practice, with policy and legal modifications accordingly.

– Issues of land tenure are being put on the public agenda and vigilance against wrongful land grabbing, corrupt practices and unjust actions is certainly being awakened.

– Decentralised approaches will make it easier to implement incrementally, to adopt a piloting learning by doing approach, to deal with problems on a manageable scale, to allow for local differences. Given that pilots also need legal support to cover their status, the need to devise legislation that can do this is becoming important, rather than offering comprehensive blueprints from the outset.

5.3 WEAKNESSES

Dis-benefits or weaknesses of decentralisation also show signs of variously emerging. On the whole, these are more country specific. Some represent drawbacks that may be temporary, are symptomatic of the changes in social relations which may have been unleashed and/or which could lead to positive change. Others are weaknesses in the structural design of intentions, or in the processes adopted. These include the following -

– Roles and powers of traditional authorities are coming under the microscope and being challenged, at times generating heated dispute or delays [Ghana, South Africa, Lesotho, Swaziland].

– Rent-seeking and land-grabbing seems to be enhanced with changes in administration and management norms or actors as people scurry to secure what they have [Ivory Coast, Burkina Faso, Mozambique].

– Competition among different land user groups is visibly stimulated, and generating its own brand of instability. This is being seem between chiefs and their people (South Africa, Ghana), citizens and non-citizens (Ivory Coast, Burkina Faso), migrants/settlers and indigenes (Ghana), landlords and tenants (Uganda), large and smaller livestock owners (Namibia), men and women (Tanzania, Uganda, South Africa, Malawi), arable and pastoral farmers (Tanzania, Mali, Burkina Faso, Niger, Ethiopia), pastoralists and hunter-gatherers (Botswana), tribes (Rwanda, Ghana). In the process of seeking change or clarification, unfair or unworkable distinctions may be drawn among groups, most notably between local and migrant land holders (Ivory Coast, Ghana). Serious contention is sometimes resulting.

– Investors, including foreign interests, may challenge and destabilise new systems and norms as they pressure to secure their interests (Tanzania, Mozambique).

– Disputes and tenure insecurity may increase as a result of all the above (Uganda, Mali, Niger, Burkina Faso, Ghana, Mozambique).

– Over-attention to rights recordation may render too little attention to allocation, transaction and resource management norms [Ivory Coast, Mozambique, Tanzania, Uganda].

– The development has been insufficiently underwritten with participatory design or opportunities to develop locally distinct systems; and related insufficient attention to implementation costs [Uganda, Rwanda].

– Reluctance to bring all tenure forms under decentralised administration may give rise to unsatisfactory duality in rural tenure administration, and promote polarisation among land holding groups [Ghana, Lesotho, Namibia, Ivory Coast].

– Administration and management functions may be insufficiently integrated, generating conflicting decision-making and powers [Burkina Faso, Namibia].

– Devolution is often truncated with insufficient empowerment of bodies endowed with duties and responsibilities [Eritrea, Burkina Faso, Mali].

– Incorporation of traditional leaders as local level helpers to higher bodies may be based on uncertain, unsatisfactory or contested division of labour and powers and make the system unreliable [Niger, Burkina Faso, Ghana, Namibia].

– Decentralisation may be inadequately localised to community levels, limiting real accessibility, raising costs, and constraining workability [Uganda, Amhara, Namibia, Mozambique, Rwanda].

– Decentralisation may be to bodies that operate in competition with other bodies, prompting conflict and uncertainty [Burkina Faso, Eritrea, Ghana].

– The unproven linkage between registration and flow of credit to majority smallholders may be inappropriately advertised as an incentive to registration [Ghana, Mozambique, Malawi].

– Information about new policies and legal paradigms may be inadequately disseminated [Tanzania, Eritrea, Rwanda].

– Already over-burdened local leaders may be unable to cope with new responsibilities for functions previously held by Government [Tanzania, Lesotho].

5.4 COUNTRY SPECIFIC STRENGTHS AND WEAKNESSES

Paradigms for decentralised land administration and management are ultimately individual to each state. **Table 21** lists strengths and weaknesses for selected countries.

Table 21: Overview of Main Strengths and Weaknesses of Operating or Proposed Decentralised Land Administration & Management Regimes

COUNTRY & BASIS OF ASSESSMENT	MAIN STRENGTHS	MAIN WEAKNESSES
ERITREA As laid out in Land Law 1994 & 1997	• Law provides for uniform administration system involving both rural and urban areas • Strong emphasis upon women's right to acquire land independently • Strong emphasis upon equity in landholding • Houses may be freely bought and sold, and mortgaged • Usufruct on land may be leased	• Over-emphasis upon cadastral titling with no evidence that the resources for this exist • Abolish all community based forms of land management, existing and customary, without clear replacement at local level of alternatives; this includes abolition of informal dispute resolution machinery • De-recognition of village boundaries that were operating, losing highly viable basis for localised administration and integrated administration & management • Although originally administration proposed at village and ward level, has ended up at sub-zoba and zoba level [district and province] • All existing rights made permissive only, pending entitlement • Top-down control and decision-making despite fact that community level bodies exist which could have taken on functions [village councils] • Lifetime Usufruct highly vulnerable to cancellation and reallocation for relatively small failures
SOUTH AFRICA As proposed specifically for former home-lands under Draft Communal Land Rights Bill 2002	• Provides for community level land administration & management • Is flexible as to how community is defined and how it defines its institution (but see weaknesses) • Provides amply for property to be owned collectively • Provides for chiefs to be part of institution if community wishes • Formation of administration bodies ('Structures') is entirely voluntary • Existing occupancy secured by law, even if not registered	• In a situation where incremental learning by doing is likely to be essential, and too little willingness on the part of the State to allow this, through providing a simple short legal regulation placing certain selected areas under pilot development • Does not provide an immediately registrable entitlement but requires conversion into existing private ownership form, with accompanying high cost & technical requirements • Unclear where the support for mobilising and facilitating process will come from • Had not overcome fears of chiefs that they will be excluded • By not establishing that administration and management should be at most local level possible, has opened way for paramount chiefs to claim the community is the whole tribe and to secure all ownership in trust • Applications for land is to be voluntary, is expensive and opens way for stratification of registered/unregistered owners by wealth

Table 21 continued

COUNTRY & BASIS OF ASSESSMENT	MAIN STRENGTHS	MAIN WEAKNESSES
BOTSWANA As per operating system under Tribal Land Act and taking into account recommendations for new National Land Policy (Policy Review 2003)	• Immediate post-colonial adoption of decentralised system; long history and development • Pragmatic & incremental approach to changes; means that most are tried out • Customary rights (mostly) integrated into statutory regime [exception is communal development] • Procedures quite simple for registration • Incremental registration through mainly transactions/deeds development • Systems is relatively corruption free • Government support to local administrations is high	• Longstanding failure to develop common property constructs with majority loss of pasture • Failure to recognise all customary land uses, with massive loss of land by hunter-gatherers • Land Boards more accountable to Minister and Ministry than client landholders • Land Board system highly dependent upon state funding and technical support; reinforces technical sophisticating, makes it difficult to ever devolve to community level • Has never considered area/community based approaches and consequent vacuum in development of integration land use planning, management and administration in village context (which provides ideal socio-spatial framework for this) • Land Boards • Customary entitlements have not been sufficiently developed as private tenure, fully useable as collateral • Wealth may be dividing rural society into those with leases and those with customary grants • Does not provide easily for co-ownership of primary household property
GHANA As laid out in National Land Policy 1999 and as per implementation proposals 2003	• Incremental approach to change proposed, with pilot developments • Strong support for customary tenure regimes and even without clear vision [see weaknesses] possible that this will take on more powers as main rural source of administration and management over time • Clear commitment to reform state land agencies	• Decentralisation much proclaimed but reality is deconcentration of state service delivery for entitlement • Failure to develop customary land system with capacity to register rights at local level or to operate in definitively more inclusive and transparent ways • Limited attention to outstanding land relations between migrants and indigenous occupants • Landlordism by chiefs, misusing their roles and land trustees is not being directly addressed • No provision for commonhold, other than entitlements to chiefs as trustees which does not fit the bill for joint ownership requirements • Inattention to gender issues • Over-commitment to classical entitlement approaches; no plans to simplify procedures for mass use
NAMIBIA As laid out in Communal Lands Reform Act 2002	• Provides for (some) customary rights to be registrable • Formal survey and mapping for these rights is not required • Addresses inheritance of land	• Establishes a dual regime of right holding in same rural areas for same types of land which will create two classes of landholders • Fails to develop community based property right to establish local group ownership of commons • Fails to ensure that widows are first in line to inherit property • Does not elaborate dispute resolution

Table 21 continued

COUNTRY & BASIS OF ASSESSMENT	MAIN STRENGTHS	MAIN WEAKNESSES
IVORY COAST As laid out in Rural Land Law 1998 and under implementation	• Drafted law only after some years of trial piloting • Provides fully for collective as well as individual and family titling	• Has helped generate civil strife by preventing non-citizens of even very long residence to own land, in spite of many already doing so; their tenure status unclear • Has provoked • Rights have been over-simplified and secondary rights have especially been lost or undermined • Requires in effect conversion of certificated rights into full ownership thus losing customary attributes of the entitlement • Has provoked high competition for land rights and land grabbing, due to over-focus on titling, compulsion with time limits, and diminishment of existing migrant rights
MALAWI As proposed in National Land Policy 2002	• Thoughtful process towards policy development and trial implementation prior to finalisation of land laws • Devolves currently strong Government authority over communal lands to traditional authorities [TA] • Overcomes problems with TA capacity and that not elected by imposing elected committees to be the framework with Headman as ex officio member • Protect occupancy whether registered or not • Provides for customary rights to be registered as is • Cadastral mapping for customary registration will not be required • Localises registration to district/traditional authority area level • Civil education on land rights built into proposals • Law strongly emphasises trusteeship function of TA • Full protection provides for common property, with registration possible	• No plan of action to deal with large number of HIV/AIDS orphans • Possibly too many layers of decision-making: village, ward, district
NIGER As per implementation of the Rural Land Code 1993 & supplementary legal provisions	• Brings State land administration to more local level (District) [but see weaknesses] • Recognises customary land rights and makes these registrable • Administration and management functions well integrated • Procedure for identifying owners, boundaries etc. is practical and straightforward	• Composition of Commissions is too heavily technocratic and effectively government agencies • Locus of Commissions is too remote from communities • Procedures for entitlement are expensive and over-sophisticated, and take too long periods to fulfil • As a consequence, Chiefs have taken up documentation roles, charging heavily for this and resulting testimonies have no legal weight • Over-attention to active use combined with narrow interpretation as to legitimate land uses means that commons, pastures and undeveloped areas at high risk of reallocation by Commission

Table 21 continued

COUNTRY & BASIS OF ASSESSMENT	MAIN STRENGTHS	MAIN WEAKNESSES
NIGER continued		• Over-emphasis on land to the tiller has meant many farmers have withdrawn rights of tenants to cultivate for fear they will be named the owner • Insufficient provision for ownership of pastoral areas to be defined; pastoral rights in general ill-defined, and no constructs for common property ownership
TANZANIA As laid out in Village Land Act, 1999	• Devolves tenure administration & management directly to community level • Devolves to existing institutions • Institutions are fully elected bodies and directly accountable to landholders • Provides clear manual of guidance for operations in the law • Provides for existing rights to be registrable in fully diverse forms • Provides fully for common properties to be registered owned private property • Profoundly integrates administration and land use management functions • Provides for a recordation system that is cheap, immediately local, can be operated locally by the local level with the Register in the village • Transaction likely to be recorded over longer term given that Register in the village • Strong social protection measures, beneficial to women and children • Explicit provisions for pastoralists • Gives strong priority land rights to community residents and provides protective measures against invasive land seekers • Makes Land Manager directly accountable to community members • Elaborate provisions for compensation if land be compulsorily acquired	• Not considered investor friendly, with consequent antagonism to terms of the rural land reform programme, with risk of destabilising reform • Power of President to appropriate village land is high given definition of public purpose; real risk of commons in particular being appropriated • Excess of form filling in the proposed administration procedures • Ability of wealthier individuals to demand spot adjudication ahead of systematic registration is too easily available • Law is written in too complex a manner for the necessary mass readership given decentralised management approach to community level • Implementation requires substantial competence on the part of District Land Officers as facilitators, not always available • The Village Land Council should have been court of first instance in all cases; the ability for a villager to go straight to the Ward or District Tribunals will undermine the Village Land Council • The powers of the Commissioner of Lands to dictate to villages is somewhat too high in a society where top-down regulation has been very freely used to date
UGANDA As laid out in Land Act 1998 and early imple-mentation	• Recognises all existing tenure regimes and in current forms and as having equal legal weight and status • Provides fully for registration of all tenure forms • Devolves land administration fully out of Government and to local level (District) • Provides a rigorous spousal and family consent clause for all land transfers • Provides for a local Register (Sub-County level) for customary rights • By not making registration compulsory has enabled a more incremental approach to registration possible • Law was clearly donor-driven and lack of Government enthusiasm for implementation is clear	• Opens door to continued lower status of majority customary rights by allowing registered customary rights to be converted to freehold • Made localised institutional development a statutory obligation with Government funding implied; proved too costly to be workable • To reduce costs chose to remove crucial Parish level land committees in favour of more remote decision-making instead of making parish land committees voluntary and self-funding, and selected at levels of choice; this would have appeased certain groups demands for different forms of decision-making • Land Board members not elected and their accountability unclear

Table 21 continued

COUNTRY & BASIS OF ASSESSMENT	MAIN STRENGTHS	MAIN WEAKNESSES
RWANDA As proposed in Draft National Land Policy 2002 and Draft Land Bill 2003	• Attempts to develop a uniform system for administering land • Fully integrated administration and management functions • Strong provision for family consent to transfers • Provision for presumption of spousal co-ownership or family title	• Represents an over-ambitious plan with no sign that implementation capacity (or funds) exist • Fails to provide a ready construct for family, clan, group or community property to be held as private property • Designs a system that will have enormous cost implications, especially including compulsory formal cadastral mapping • Shows no sign of having clearly thought through the composition and powers of proposed District Land Commissions • No provision for lower levels to be involved • Fails to integrate vision with the on-going villagisation programme • Top-down approach to planned implementation indicated • Adopts classical titling approach and seems inattentive of failures of the approach elsewhere in the region • Clear that costs will be passed on to landholder, highly likely to stratify the society, which it can ill afford following years of civil strife • At same time as requiring formal survey and mapping to title, proposes a process that seems to be without that input; a muddled plan • Policy development has been too slow in a situation of acute tenure security failure • Minimal real consultation • Seriously flawed approach to consolidation; good reasons for plots at different altitudes
MOZAMBIQUE As laid out in Land Law 1997, Regulations since, and early implementation	• Adopts unitary land right which may be established by any person • Equivalent legal weight automatic given that only one right, although obtainable through different routes • A basis for acquisition includes simple occupancy for 10+ years as well as occupancy by customary norms • Provides for an interim delimitation process to help protect occupants against invasive external applications • Tenure security of occupants in principle guaranteed even without registration [but see weaknesses] • Law founded upon significant public consultation and implementation has directly involved civil society groups • Provides for collective entitlement	• Fails to provide support for any kind of localised land administration, assuming customary systems can develop without assistance • Administration and management in formal sense is highly centralised • Protective measures for rural majority against investor applications are too meagre and proving ineffective • Process of entitlement is cadastrally based, extremely expensive and only obtainable by the rich or through donor assisted means • No provision for spousal co-ownership, widow inheritance

5.5 DETERMINANTS

What is clear from the foregoing is that the decentralisation movement is highly dynamic (and somewhat volatile). In this development there seem to be a range of fairly common concrete factors that most influence the shape of the system being put in place. These are listed below.

Village, Parish, District or Province?

The ***level of society*** to which decentralisation is taken; on the whole, the more localised to community level, the more promising the effect, success and sustainability - subsidiarity is confirmed as an important principle.

Chief, Council, Commission, or Government Agent?

The ***character*** of the institution into which responsibilities are located; with generally more expectation of success where the institution is downwardly accountable to landholders rather than upwardly accountable to Government; and where the body is constituted by community will and through democratic and fully inclusive procedures, rather than formed through appointments.

Build Upon What Exists or Build Anew?

Building upon ***existing institutions and norms*** is obviously much faster and cheaper than creating new institutions, especially where the choice of the form is open and posed from the outset as institutions that will be created and run at local rather than Government cost. Allowing for differences by area is also helpful. Social and other costs involved where reconstruction of the existing agency to make it more effective and more accountable may however be almost as great as instituting an entirely new regime in its place. Overloading may also be problematic. Duplication of functions has also be shown to be problematic.

Deconcentrate or Devolve?

The level of ***empowerment*** endowed upon the local land bodies or actors will be especially powerful in determining its vigour, and thence workability and sustainability. Empowerment may be expressed in giving local administration bodies adequate flexibility to adapt or even design, set up and operate a system that is most tailored to their local circumstances, requirements and level of expertise. An opposite extreme is where the processes to do with land administration, management and dispute resolution are localised but remain in the hands of external actors, not landholders, or where the actors are local but serving merely as agents of the State. Empowerment within the community will also be a determinant of the nature and success of the model; where chiefs for example do not (or are not required) to adopt inclusive procedures or make their decisions accountable to community members, local ownership and support for land-related administration may be limited. This is not to say that locally-led or operated administration, management and dispute resolution will is problem-free. Generally, the more empowerment to the community level, the more teething problems in developing a workable system may be expected but the more lasting the effect and cheaper to run.

Outreach or New Approach?

Closely related to the above, where decentralisation is designed mainly to extend the reach of existing Government institutions or systems for land management and administration, less real effect may be expected, than where the objective is to develop ***a fresh system if necessary*** around what landholders themselves perceive as steps and systems that will most quickly and fairly enhancing their security. Although costs in terms of sophistication result, workability, coverage and sustainability are enhanced.

Legalise, Reframe or Abolish the Customary?

How ***customary regimes and rights*** are handled is central to the character, level and social legitimacy of the decentralised regime put in place. Abolition runs a high risk of creating confusion, low uptake, high user relearning costs, and uneven support. In the conversion of interests that follows, significant rights and arrangement of rights may be lost. The regularising of rights will generally take more time. Disputes may soar.

At the same time, simply legalising the customary may prove confusing in other ways and entrench rather than remove unfair or ineffective norms and procedures, and particular those associated with the roles and powers of unelected traditional authorities. Acceptability of the customary system may be limited especially among groups

which have felt their land interests under-catered to in the past, and where alternative means of securing property are made available (such as acquiring statutory leaseholds), users of the customary regime may continue to decline.

Highest chances of success appear to lie in focusing upon **community based norms** rather than specifically customary norms, and providing people the right to and opportunity to absorb as much that is customary into community based regimes as they (the majority) find useful. The single most crucial feature of customary norms is sustained; community reference, in the sense of community consensus providing the decision-making environment;

Technical Service or Governance?

A main determinant of cost, coverage and pathways for State intervention is the extent to which land administration and management are conceived of as technical functions and that are considered to work better in direct proportion to the number of professionals and technicians provided to operate it. Developing devolved land administrations as ***primarily governance organs*** whose key function is to make fair and wise decisions and to be able to record these satisfactorily, will help keep technical requirements in perspective. Classically, Government land administrations have felt themselves excused from the demands of devolutionary development on the grounds that the procedures involved are too complicated for local level actors to master and too dependent upon legal parameters for them to understand. This is a form of bureaucratic elitism and holding onto power of which the land sector has proven master. It is also demonstrably self-reinforcing and self-defeating, for the aspiration to see mass adoption of modern land administration norms can never occur. These constraints tend to be most easily overcome where law and procedures is designed around specifically around what can work at the local level and in the hands of local actors, and even better, designed through participatory process with them. New legal and procedural norms result.

The Masses or the Minority as Target?

Related again, regimes for land administration that shape their operations around the investor or other minority groups will accordingly limit utility and adoption by the majority.

Security for Stability or Collateral?

Making change to tenure norms, institutions and their systems primarily to provide security for loans may prove meaningless to many and perhaps most land holders, and unnecessarily sustains or raises costs, technical demands, and complexity of procedure in order to fashion tenure security around the needs of bankers. Investments seems to be better spent acknowledging the existence of alternatives to credit for smallholders on the one hand and to ensuring more legal certainty in ***simpler forms of evidence of land ownership,*** on the other. Improved legal certainty is the key to providing a basis upon which banks in turn may rely. Developing that legal certainty in ways that majority populations may adopt, use and sustain, will in turn make it easier for lenders to adjust (simplify) their terms upon which loans are made.

Target the Individual or the Community?

Recognising collective elements in both the decision-making and land holding patterns that exist within sub-Saharan agrarian societies appears to go far in helping design systems and institutions which can encompass whole elements of existing land holding which have in the past been neglected, and to the cost of the sound management and conservation of millions of hectares of primary resources.

Blueprint or Learning by Doing?

Finally, developmentally sound process is proving as important in arriving at sound and sustainable land related systems as for any other development, although not well absorbed as a principle in the land sector, which has historically taken legal regulation and its enforcement as its starting point. Providing just enough starting law to be ***enabling*** of evolutionary and therefore incremental development of institutions and procedures, is generally a more lasting route to change. So far, top-down blueprinting has not been very successful.

In summary, at the end of the day, there is evidence to suggest that a decentralised system that is community-based, community-operated, community-controlled, and is the result of real empowerment to this level of society, will probably produce the most adoptable, cheapest, most owned and therefore most lasting administration and man-

agement regime. Simplification of procedures relating to rights recordation and entitlement and transaction management, and provision for tenure norms that give direct legal recognition to existing tenure norms, within the limits of natural justice and protection of vulnerable rights, are logically integral to this approach. A community based regime will generally be more applicable to the majority and therefore more useful in bringing complex rights in often the greater part of the country's land area under conscious, known, assessable and client-accountable order. In such systems, the role of the State and higher level local governments as facilitators, technical advisers and watchdogs of effective and transparent practice, is an essential and natural complement.

Among those countries reviewed, the approaches being adopted in Tigray and Tanzania rank high in these terms, as does the strategy being developed in Malawi. Developing policies and laws in Lesotho, Swaziland (and Zimbabwe, currently in abeyance), suggest similar strongly community based regimes. Developments in Francophone States also appear to have important ingredients of success in these terms, but often contradicted by insufficiently consistent development either institutionally (Burkina Faso) or in terms of empowering local level bodies to actually register the entitlements they administer (Ivory Coast).

There is also an important range of developments emerging which build upon district level developments, and of which Botswana's Land Board is a well-established system and which seems to be working efficiently and fairly. Where such regimes (Niger, Namibia) lose through not being located at community level, they demonstrably gain in the more technically sophisticated services they are able to render; an attribute that has its advantages. What all these and other examples illustrate is a very powerful force of decentralisation in the land sector. In the main it is still young, awkward and experimental, but showing strong signs that its evolution will balance towards the positive. Watching and understanding this process will be important.

Key issues that will need to be closely monitored are numerous and inherent in much of the discussion above. A general watch point will be see how far declamatory policy and even law is implemented and how far norms alter as they move from plan to practice. Identifying what is changing in this process and why will be useful. Are modifications being made because of unanticipated cost (stemming from poor planning), faltering political will, civil service reluctance to give up existing powers? Once implementation gets underway, it will be important to assess progress in terms levels and costs of uptake, determination as to whether more rights are in fact being secured and identification of rights that are being lost or downgraded in the process. Investigating whether decentralised systems really are cheaper, more efficient, transparent and effective in ordering and securing rights will be crucial, and if not, analysing why this is the case. What among determinants listed above prove to be the most powerful? And is democratisation in practice being served through decentralising land administration, land management and dispute resolution? Are ordinary landholders really gaining a larger and more effective share in managing their own land relations? And to whom are the systems that they participate in accountable? Themselves or the State? And is this a reformist movement which is laying a useful path for democratisation overall?

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