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<tr>
<td>AAGDS</td>
<td>Accelerated Agricultural Growth and Development Strategy</td>
</tr>
<tr>
<td>AAM</td>
<td>Associação de Algodeeiros de Moçambique</td>
</tr>
<tr>
<td>ACIANA</td>
<td>Associação Comercial, Industrial e Agrícola de Nampula</td>
</tr>
<tr>
<td>ACP/EU</td>
<td>African Caribbean Pacific/European Union</td>
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<tr>
<td>AEC</td>
<td>African Economic Community</td>
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<tr>
<td>AfDB</td>
<td>African Development Bank</td>
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<tr>
<td>AGRA</td>
<td>Alliance for a Green Revolution in Africa</td>
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<tr>
<td>ASDP</td>
<td>Agricultural Sector Development Programme</td>
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<td>ASDS</td>
<td>Agricultural Sector Development Strategy</td>
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<tr>
<td>AU</td>
<td>African Union</td>
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<td>AUC</td>
<td>African Union Commission</td>
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<tr>
<td>CAADP</td>
<td>Comprehensive Africa Agriculture Development Programme</td>
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<tr>
<td>CAP</td>
<td>COMESA Agricultural Policy</td>
</tr>
<tr>
<td>CDF</td>
<td>Code Domanial et Foncier</td>
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<tr>
<td>CEPAGRI</td>
<td>Centro de Promoção da Agricultura</td>
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<tr>
<td>CFS</td>
<td>Committee on World Food Security</td>
</tr>
<tr>
<td>CILSS</td>
<td>Le Comité Permanent Inter-Etats de Lutte contre la Sécheresse dans le Sahel</td>
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<tr>
<td>COMESA</td>
<td>Common Market for Eastern and Southern Africa</td>
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<tr>
<td>CSOs</td>
<td>Civil Society Organizations</td>
</tr>
<tr>
<td>DSIP</td>
<td>Development Strategy and Investment Plan</td>
</tr>
<tr>
<td>CTA</td>
<td>Confederação das Associações Económicas</td>
</tr>
<tr>
<td>DUAT</td>
<td>Direito de uso e Aproveitamento dos Terras</td>
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<tr>
<td>EAC</td>
<td>East African Community</td>
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<tr>
<td>ECA</td>
<td>Economic Commission for Africa</td>
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<tr>
<td>ECOWAP</td>
<td>ECOWAS Regional Agricultural Policy</td>
</tr>
<tr>
<td>ECOWAS</td>
<td>Economic Community for West African States</td>
</tr>
<tr>
<td>FANR</td>
<td>Food Agriculture and Natural Resources Cluster of SADC</td>
</tr>
<tr>
<td>FAO</td>
<td>Food and Agriculture Organization of the United Nations</td>
</tr>
<tr>
<td>FASDEP</td>
<td>Food and Agricultural Sector Development Programme</td>
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<tr>
<td>F&amp;G</td>
<td>Framework and Guidelines on Land Policy in Africa</td>
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<tr>
<td>FNDP</td>
<td>Fifth National Development Plan</td>
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<tr>
<td>FRELIMO</td>
<td>Frente de Libertação de Moçambique</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>GOM</td>
<td>Government of Mali</td>
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<td>GPRS</td>
<td>Growth and Poverty Reduction Strategy</td>
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<tr>
<td>GRS</td>
<td>Green Revolution Strategy</td>
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<tr>
<td>GSGDA</td>
<td>Ghana Shared Growth and Development Agenda</td>
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<tr>
<td>HODECT</td>
<td>Horticultural Development Council of Tanzania</td>
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<tr>
<td>IBRD</td>
<td>International Bank for Reconstruction and Development</td>
</tr>
<tr>
<td>INCAJU</td>
<td>Instituto de Fomento do Caju</td>
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<tr>
<td>LANDac</td>
<td>Netherlands Academy on Land Governance for Equitable Development</td>
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<tr>
<td>LAP</td>
<td>Land Administration Project</td>
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<tr>
<td>LGAs</td>
<td>Local Government Authorities</td>
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<tr>
<td>LOA</td>
<td>Loi d’Orientation Agricole</td>
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LPI  Land Policy Initiative
MAAIF  Ministry of Agriculture, Animal Industry and Fisheries
MACO  Ministry of Agriculture and Cooperatives
MDGs  Millennium Development Goals
METASIP  Medium Term Agriculture Sector Investment Plan
MINAG  Ministério da Agricultura
NAIP  National Agricultural Investment Plan
NAP  National Agricultural Policy
NDP  National Development Plan
NEPAD  New Partnership for Africa’s Development
NGOs  Non-Governmental Organizations
NRM  National Resistance Movement
OASL  Office of the Administrator of Stool Lands
OAU  Organization of African Unity
ON  Office du Niger
PAEI  Políticas Agrárias e Estratégias de Implementação
PAPA  Plano de Acção da Produção Agrícola
PARPA  Plano de Acção para a Redução de Pobreza Absoluta
PDA  Politique de Développement Agricole
PEAP  Poverty Eradication Action Plan
PEDSA  Plano Estratégico para o Desenvolvimento do Sector Agrario
PFA  Prosperity for All
PMA  Plan for Modernization of Agriculture
PNIA  Programme National d'Investissements Agricoles
PNISA  Programme National d’Investissement dans le Secteur Agricole
PROAGRI  National Program for Agricultural Development
PTA  Preferential Trade Area
RAIP  Regional Agricultural Investment Plan
RAP  Regional Agricultural Policy
RDS  Rural Development Strategy
RECs  Regional Economic Communities
RENAMO  Resistencia Nacional Mocambicana
RISDP  Regional Indicative Strategic Development Plan
SADC  Southern African Development Community
SADCC  Southern African Development Co-ordination Conference
SAGCOT  Southern Agricultural Growth Corridor of Tanzania
SIPO  Strategic Indicative Plan for the Organ
SLM  Sustainable Land Management
SMEs  Small and Medium Enterprises
SNDP  Sixth National Development Plan
TAFSIP  Tanzania Agriculture and Food Security Investment Plan
UBOS  Uganda Bureau of Statistics
UEMOA  Union Economique et Monétaire Ouest Africaine
URT  United Republic of Tanzania
USAID  United States Agency for International Development
VGGET  Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>WLLA</td>
<td>Women’s Land Link Africa</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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<tr>
<td>ZCC</td>
<td>Zambia CAADP Compact</td>
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</table>
Acknowledgements

I thank AGRA for providing me the opportunity to participate in this review. The consultancy would not have been possible were it not for the assistance and support of numerous people within and outside AGRA, to whom I wish to express my deep gratitude. Within AGRA, I benefited immensely from the patient technical guidance and support of Dr. Evelyn Namubiru-Mwaura, the officer in charge of Land, Gender and Environmental Policy, and the logistical backstopping by Aneti Wangkyo, the Program Assistant for the Policy and Advocacy Unit.

Within the three countries that I visited, my meetings were planned and facilitated by partners of AGRA in those countries through the Policy Action Nodes where these exist. In this connection, I wish to recognize in a special way the support and assistance of Sarah Ssewanyana and staff of EPRC in Kampala; Nana Ama Yirrah and Ernest Eshun of COLANDEF in Accra; and Anina Manganhele of the Department of Policy Analysis, Directorate of Economics, Ministry of Agriculture, and Isildo Samuel Nhantumbo, Technical Assistant to the Markets Node, based at National Directorate for Rural Development, Ministry of State Administration in Maputo.

Many people in the three countries provided generously of their time and knowledge to clarify to me the situation in the countries regarding land and agricultural policy formulation and implementation. Their insights were invaluable in helping ground the analysis. Last but not least, I thank the reviewers within AGRA who provided truly useful feedback on the first draft report. I have endeavoured to be faithful to the insights from key informants and feedback from reviewers; but the final responsibility for the analysis and conclusions is entirely my own.
Executive Summary

This report presents a review of national land and agricultural policies and policy formulation and implementation processes in Tanzania, Uganda, Ghana, Mali, Mozambique and Zambia - six out of the sixteen African countries in which AGRA is active. The review was undertaken during the months of June and July 2014 to facilitate provision of high quality policy support to AGRA program countries to develop and implement land policies that will strengthen property rights to enhance investments and innovations by farmers for improved agricultural productivity. The report presents lessons on good and bad practice of agricultural policy formulation and implementation in Africa and recommends strategies to inform the work of AGRA and its partner countries going forward.

The review involved primarily the study and analysis of policy instruments on land administration and agricultural development from the six countries, as well as related regional instruments from the AU, COMESA ECOWAS, and SADC. Three country visits were undertaken to Uganda, Ghana and Mozambique, during which targeted key informant interviews were conducted in Kampala, Accra and Maputo respectively. During the interviews, perspectives of representatives of key stakeholder groups, among them Government officials, the private sector and civil society were solicited.

The six countries are members of the AU and of different RECs, within the framework of which they have engaged with other countries of Africa in articulating policies and strategies for rural development in which issues of land governance are given prominence. Over the years, African countries, as members of first the OAU and now the AU have issued policy positions and statements stressing the importance of agriculture for rural development. But it is particularly since the transformation of the OAU into the AU that developmental concerns have come to the top of their collective agenda. The AU has spearheaded coordination of development of policies, programmes and strategies for promoting economic transformation of Africa, placing emphasis on agriculture and rural development, with a rallying call for the achievement of food security. Two of its initiatives – CAADP and the AU F&G – are of particular significance in this regard.

The overall goal of CAADP is to help African countries reach a higher path of economic growth through agriculture-led development. It is underpinned by two related targets of increasing agriculture growth rates to a minimum of six percent per year; and increasing public investments in agriculture to a minimum of 10 per cent of national budgets. The F&G, which was adopted by the AU to strengthen land rights, enhance agricultural productivity and secure livelihoods, articulates the link between land governance and agricultural productivity. It calls for improvements in the land sector, including clarification of property rights in agriculture to ensure an enabling environment for development of the sector. Implementation of CAADP and the F&G is spearheaded by the RECs, namely: COMESA, SADC and ECOWAS.

Although the AU and the RECs provide platforms for articulation of policy concepts, standards and guidelines, it is at the national level that the opportunity for their implementation exists. National governments hold responsibility for policy implementation, and can, with the relevant political will and appropriate institutional capacities and resources, convert policy prescriptions into strategies and plans that translate into benefits for citizens.

The review confirms that policies in the six countries demonstrate an appreciation of the link between land tenure security and the promotion of smallholder agriculture. The policies recognize that tenure insecurity is one of the major constraints to the growth of the agriculture
sector, and propose policy options to clarify and strengthen tenure security as a strategy for improving smallholder productivity. Land titling and registration feature strongly in the policies as the means for improving tenure security, although actual details of how this is done vary from country to country.

The review also shows that the countries appreciate that improved tenure security alone is not sufficient to address the challenges of smallholder productivity. Associated reforms in agricultural technologies, agricultural extension services, rural credit, rural transport, market access and other building blocks of the rural economy are equally important. In fact, most strategies in the six countries are aimed at improving technologies, infrastructure and markets. Where tenure security in the agricultural sector is at the top of the policy agenda, this is often driven more by the desire to attract foreign investors than for the purpose of securing rights for indigenous smallholders. This is particularly the case where governments have explicitly committed themselves to attracting foreign large scale commercial investors to the agricultural sector, as in Tanzania and Mali.

As regards policy processes, the review reveals that substantial progress has been made in all the six countries in widening the space for stakeholder participation in the formulation of land and agricultural development policies. Governments recognize the need to involve the private sector and civil society in policy formulation processes. However, smallholder farmers are not effectively represented in these processes, largely on account of their weak organization and lack of capacity. The private sector tends to have more capacity and to be better organized, but often get frustrated by the protracted processes and delays associated with policy development.

The review notes a persistent gap between policy development and policy implementation. Some policies are drawn up but never adopted and implemented. In some cases, multiple policy documents address themselves to the same issue at the same time. Moreover, while spaces for participation of stakeholders in policy formulation are increasingly open and clear, policy implementation processes are largely controlled by governments. Even though the private sector, civil society and farmers’ organizations are increasingly effective in influencing policy formulation, they tend to have limited capacity for engaging with and effectively influencing policy implementation processes on an ongoing basis.

The review recommends that AGRA and other actors should focus their support to African governments in the following areas to help them develop and implement appropriate land policies that will improve smallholder agriculture:

1. Provide support for better integration of land and agricultural policy development and implementation; taking inspiration from the F&G and the VGGT.
2. Support the mainstreaming of F&G and VGGT in national policies through support to dissemination of the guidelines within countries, training of government officials and key stakeholders, and providing technical support for their integration into national policies.
3. Support the emergence of strong farmers’ representative groups that are grounded, transparent and accountable to smallholder farmers.
4. Scale up support to improve productivity of smallholder farmers through better targeted value chains analysis and provision of inputs, market information and credit access.
5. Strengthen capacity for monitoring of land and agricultural policy implementation among stakeholders, particularly farmers’ representative groups, so that they may be better able to engage with these processes on an ongoing basis.

6. Support the decentralization of LPI to the countries through the creation of LPI Focal Points that will coordinate capacity building initiatives and support the sharing of experiences across African countries in the domestication of the F&G.

7. Strengthen capacity of governments for policy formulation and implementation so that they are able to formulate and implement better policies for strengthening tenure security of smallholders.

8. Support the piloting of innovative community-based and inexpensive mechanisms of securing tenure and promote exchange visits and experience sharing between countries and projects that are working on this issue.

9. Support research and analysis to articulate better strategies for integrating smallholder farmers into the agricultural modernization agenda in order to reassure smallholder farmers that agricultural modernization is not about denying them access to land for the benefit of foreign investors.

10. Establish closer and stronger linkages between AGRA and civil society, particularly farmers’ representative groups in African countries.
1. Introduction
This report presents a review of national land and agricultural policies, and policy development and implementation processes in six out of the sixteen African countries in which the Alliance for a Green Revolution in Africa (AGRA) is active. The review covered Tanzania and Uganda in East Africa, Ghana and Mali in West Africa and Mozambique and Zambia in Southern Africa. It was undertaken during the months of June and July 2014.

The main objective of the review is to facilitate the provision of high quality policy support to AGRA program countries to develop and implement land policies that will strengthen property rights to enhance investments and innovations by farmers for improved agricultural productivity. In this connection, both the processes of development and implementation as well as the contents of land and agricultural development policies in the six countries have been reviewed with reference to how they support or impede smallholder agriculture. An attempt has been made to deepen understanding of opportunities and constraints to policy implementation in the agricultural sector in Africa, what factors facilitate or impede policy implementation processes, and what makes some policies work better than others. This report thus presents lessons on good and bad practice of agricultural policy development and implementation in Africa and provides guidelines to inform the work of AGRA and its partner countries going forward.

The report is divided into five sections. Following this introduction and presentation of the methodology, section two gives a background and context to the review by presenting pan-African and regional initiatives on land and agriculture. The Framework and Guidelines (F&G) on Land Policy in Africa and the Comprehensive Africa Agriculture Development Programme (CAADP) are the key initiatives in this regard. The section also outlines in brief the roles of Regional Economic Communities (RECs), with a particular focus on the Common Market for Eastern and Southern Africa (COMESA), the Southern Africa Development Community (SADC) and the Economic Community of West African States (ECOWAS). Section three presents the review of policies and laws on land and agriculture in the six countries, in each case analyzing the extent to which they support or impede smallholder farmers. Section four explains the link between land tenure and agricultural productivity, drawing attention to unique characteristics of African land holding systems that should be taken into account in designing tenure reforms aimed at improving agricultural productivity. Section 5 presents conclusions and recommendations.
1.1. A note on methodology

The review involved primarily the study and analysis of policy and legal instruments on land administration and agricultural development from the six countries. Regional instruments on land and agricultural development were also reviewed, with a particular focus on those developed within the framework of the African Union (AU), COMESA, ECOWAS, and SADC.

Three countries were visited in the course of the review, namely Uganda in East Africa, Ghana in West Africa, and Mozambique in Southern Africa. In the course of the country visits, key informant interviews were conducted in Kampala, Accra and Maputo respectively, with representatives of stakeholder groups, among them Government officials working on land administration and agricultural development, private sector actors and members of civil society (List of persons met during the country visits is Annex 1 to the report).

The country visits were quite brief, lasting no more than two working days in each case and limited to the capital cities of the respective countries. However the visits helped in validating much of what had been generated through review of policy and legal documents, and in clarifying some issues that were not sufficiently clear from the reviews, especially those touching on actual experiences with the implementation of policies and laws and associated challenges. Assistance and support from the Policy Action Nodes was critical in ensuring the success of the country visits in each of the three countries.

Two major challenges were experienced in the course of the review. The first challenge arose from the diversity of policy and institutional contexts dictated by national level dynamics. Although regional and even global frameworks may generate ideas, standards and guidelines for policies, ultimately these have to be adopted by countries through national level processes that are subject to local dynamics that vary from country to country. Each of the six countries reviewed here is unique in this regard. Moreover, since only three of the six countries were visited, it is possible that we may have missed some of the local dynamics that shape policy processes and contents. Even for those countries that were visited, the time spent in the country necessarily limited the number and diversity of consultations made, so that a complete understanding of all the local dynamics cannot be assumed.

The second major challenge was posed by language, given that the consultant does not speak French or Portuguese. This created difficulties particularly with regards to policy documents for
Mali and Mozambique. Since Mali was not visited in the course of the review, most of the documents related to the country were accessed from the internet, a majority of them written in French. During the visit to Maputo, the consultant had to make use of an interpreter in some of the interviews; while a number of key policy documents there were only available in Portuguese. Every effort has been made to mitigate the impact of these challenges on the veracity of findings and conclusions. Where necessary, impressions arising from interviews have been counterchecked, and translations of relevant parts of key texts have been verified, so that findings and conclusions made are authenticated and are based on a thoroughgoing analysis of all the relevant data obtained. In cases where interviews were conducted through an interpreter, key findings obtained through such interviews were counterchecked through informants who were able to communicate with the consultant directly in English.

2. Background: AGRA interest in land policy development and implementation

AGRA is an African-led partnership working across the continent to help millions of smallholder farmers out of poverty. The Alliance works with African governments, international partners, private sector and public institutions to mobilize resources and political support required to invest in projects that address food insecurity while increasing the incomes of smallholder farmers. Its interventions are organized around four program areas, namely: integrated soil fertility management; seed systems; market access; and policy and partnerships. The programs aim to offer practical solutions for boosting farm productivity and incomes of the poor while safeguarding the environment.

Through its Policy and Partnerships Program action plan, AGRA emphasizes the need for urgent action on the policy front to ensure the success and sustainability of its investments. The Program focuses on five priority policy thrusts (see Box 1). This review focuses on the fourth policy thrust on land and property rights. Of concern in this regard are policies specific to the agricultural sector as well as policies in

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<th>Box 1: AGRA Priority Policy Thrusts</th>
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<tbody>
<tr>
<td>1. Seed sector policies and regulations to speed up adoption of improved crop varieties;</td>
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<tr>
<td>2. Soil health policies to improve soil and crop productivity;</td>
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<tr>
<td>3. Markets and trade policies to stimulate and expand markets for staple crops;</td>
</tr>
<tr>
<td>4. Land and property rights policies for equitable agricultural growth; and</td>
</tr>
<tr>
<td>5. Environmental and climate change resilience policies for increased productivity</td>
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other sectors that have a bearing on agriculture and agricultural productivity. Policies on land tenure and administration fall in this latter category.

The link between tenure security and agricultural productivity becomes critical in the transition from subsistence to smallholder commercial agriculture, when the farmer ceases to work the land purely for purposes of food and sustenance, and begins to do farming as an investment. At this point, concerns about getting adequate returns on investment become important. Tenure security, understood as the perception of having secure rights to land and property on a continual basis, free from unreasonable interference from outsiders, and with the assurance of reaping the benefits of labor and capital invested then becomes critical to decisions about investments in land (FAO, 2002; USAID 2010).

Generally, there are three ways in which secure property rights may influence agricultural productivity. Firstly, secure property rights may encourage long term land investment and adoption of new technologies. The contention here is that a land user without secure property rights will hesitate to spend resources on technologies that improve the land, and thus not make optimal productive use of the land. Secondly, secure property rights influence agricultural productivity by encouraging efficient resource use, since it lowers the cost and risk of transferring land, thereby improving factor intensity as land is reallocated to more efficient producers. Thirdly, secure property rights stimulate efficient resource use by reducing land related disputes and may contribute to better access to credit if land can be used as collateral (Hagos, 2012).

AGRA recognizes that policies and institutions are critical for security of land and property rights. It is for this reason that its Policy and Partnerships Program work facilitates national policy support systems to improve the formulation and implementation of agricultural policies through evidence-based policy research and advocacy in its priority countries. It commissioned this review to better understand the opportunities, challenges and entry points for providing effective policy support to strengthen land and property rights in order to enhance productivity of smallholder farmers in Africa. Findings of the review shall establish baselines for national level support to land tenure reforms and inform the design of appropriate interventions to be implemented by Land Policy Action Nodes. The review also identifies cross-cutting issues that may be addressed at regional level within the respective sub-regions as well as at the continental level.
2.1 Continental context for land policy and agricultural development

The six countries the policies of which have been reviewed here are members of the AU and of different RECs. Tanzania, Uganda, Mozambique and Zambia are members of COMESA\(^1\). Tanzania, Mozambique and Zambia are also members of SADC, while Ghana and Mali are members of ECOWAS. At these different levels, the countries are engaged with other African countries in articulating policies and strategies for rural development in which issues of land governance are given prominence.

The AU has succeeded the Organization of African Unity (OAU) which was founded in 1963 to promote the unity and solidarity of the African States; coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa; defend their sovereignty, their territorial integrity and independence; eradicate all forms of colonialism from Africa; and promote international cooperation\(^2\). Although the OAU Charter alludes to developmental concerns\(^3\), it was not until 1980 when by the Lagos Plan of Action and the Final Act of Lagos, the leaders of Africa put economic development on the agenda of the OAU. By the Lagos Plan of Action, the leaders committed themselves individually and collectively, on behalf of their governments and peoples, to, among other things, “achieve self-sufficiency in food production and supply”\(^4\).

The first chapter of the Lagos Plan of Action is devoted to food and agriculture. Noting the decline in agriculture and food production over the two decades preceding its adoption, the Plan of Action acknowledges that the food problem was primarily a function of policy failure\(^5\). In spite of this acknowledgment, the Plan is silent on policy development. The nearest it comes to addressing the policy context for agricultural development is calling for “adequate and realistic agrarian reform programmes consistent with political and social conditions prevailing in the

\(^1\) Tanzania and Uganda are also members of the EAC, but it is their membership of COMESA that is relevant for the present discussions  
\(^2\) Article II (1) of the OAU Charter  
\(^3\) It expresses in the Preamble the consciousness of the leaders about their responsibility to harness the natural resources of the continent for the total advancement of its peoples; aspirations about advancing human progress; and dedication to the general progress of the continent  
\(^4\) Preamble 3(iv)(c), at page 4  
\(^5\) “At the root of the food problem in Africa is the fact that Member States have not usually accorded the necessary priority to agriculture, both in allocation of resources and in giving sufficient attention to policies for the promotion of productivity and improvement of rural life” (paragraph 17 at page 8)
respective countries”6. It does not at all deal with the place of land governance in agriculture and rural development.

The Lagos Plan of Action was concretized into the Treaty Establishing the African Economic Community (AEC), which was signed by the Heads of State and Government of the Member States of the OAU in Abuja, Nigeria on 3rd June 1991. The main objective of the Treaty is to promote economic, social and cultural development and the integration of African economies as a means of increasing economic self-reliance and promoting “an endogenous and self-sustained development”7. Article 46 of the Treaty articulates measures for improvement of agricultural development and food production. To this end, the Member States commit to cooperate in various fields, including the harmonization of agricultural strategies and policies at regional and Community levels, and harmonization of food security policies. The Lagos Plan of Action too does not make a direct link between land policies and agricultural development.

On 11th July 2000, the 36th Ordinary Session of the Assembly of Heads of State and Government of the OAU held in Lome, Togo, adopted the Constitutive Act of the AU, as a means of accelerating the process of implementing the Treaty Establishing the AEC “in order to promote the socio-economic development of Africa and to face more effectively the challenges posed by globalization”8. Objectives of the Union include promotion of sustainable development at the economic, social and cultural levels and the integration of African economies9. Food and agriculture are listed among the areas of common interest for the Member States, regarding which they shall coordinate policy and decision making. To this end, the Constitutive Act establishes the Committee on Rural Economy and Agricultural Matters, as a specialized technical committee.

Over the years, the AU has distinguished itself from the OAU by placing emphasis on developmental concerns. It has spearheaded processes aimed at coordinating the development of policies, programmes and strategies for promoting economic transformation of Africa. In this connection, it has placed emphasis on agriculture and rural development, with a rallying call for the achievement of food security. Two of its initiatives are of particular relevance in this regard, namely the New Partnership for Africa’s Development (NEPAD) and CAADP; and the F&G.

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6 paragraph26 at page 9
7 Article 4
8 Preamble
9 Article 3
2.1.1. **NEPAD CAADP**

NEPAD was first conceived as the New African Initiative at the 37th Ordinary Session of the Assembly of the Heads of State and Government of the OAU held in Lusaka Zambia in July 2001\(^{10}\), at which the Strategic Policy Framework and a new vision for the revival and development of Africa were adopted. The following July, at the inaugural Session of the AU Assembly in Durban, South Africa, the Heads of State and Government mandated the implementation of NEPAD\(^ {11}\). In 2003, the Heads of State and Government adopted a declaration that among other things, formally integrated NEPAD into AU structures and processes\(^ {12}\).

NEPAD is Africa’s collective programme for achieving food security, poverty eradication, sustainable growth and development, and for facilitating their active participation in the world economy and body politic. This is consistent with the objectives of the AU as expressed in its Constitutive Act, which prioritize promotion of economic development, integration of African economies and strengthening Africa to play its rightful role in the global economy. The work of NEPAD is focused on five economic sectors, namely: agriculture, human development, infrastructure, agro-industry diversification development, and environment.

CAADP was endorsed by the AU Heads of State and Government as a NEPAD programme in July 2003. Its overall goal is to help African countries reach a higher path of economic growth through agriculture-led development, which eliminates hunger, reduces poverty and food insecurity, and enables expansion of exports. It is underpinned by two related targets to which African governments have committed themselves, namely: increasing agriculture growth rates to a minimum of six percent per year; and increasing public investments in agriculture to a minimum of 10 per cent of their national budgets. It is envisaged that by meeting these twin targets, it will be possible to create the wealth needed for Africa’s rural communities and households to prosper.

CAADP interventions are organized around four pillars, namely: extending the area under sustainable land management and reliable water control systems; improving rural infrastructure and trade-related capacities for market access; increasing food supply, reducing hunger, and improving responses to food emergency crises; and improving agriculture research, technology

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\(^{10}\) AHG/Decl. 1 (XXXVII)  
\(^{11}\) Assembly/AU/Decl. 1(I)  
\(^{12}\) Assembly/AU/Decl. 8(II)
dissemination and adoption. The four pillars are supplemented by two crosscutting themes, namely: academic and professional training, and support to farmers' associations; and information and knowledge systems. These priority intervention areas were set at the continental level to encourage donors and other partners to focus on issues over which African leaders have reached consensus as being critical for achieving their goals for the sector; but it is at the regional and national levels that the impact of interventions is to be felt most directly.

COMESA, SADC and ECOWAS have spearheaded the implementation of CAADP by convening regional workshops at which regional priorities were set based on the four pillars. In each country, national roundtables have been established CAADP compacts signed between governments and key stakeholders. All the six countries under consideration here have developed CAADP Compacts, and some have articulated investment plans for the implementation of priority projects under the different pillars.

CAADP is a unique programme in at least two respects. It is fully owned by the political leadership of Africa, and it takes a holistic approach to tackling the challenges of agriculture and rural development. Political ownership of the programme was reinforced in the July 2003 Maputo Declaration on Agriculture and Food Security in Africa\textsuperscript{13}, by which Heads of State and Government of the AU resolved, among other things, to revitalize the agriculture sector through “special policies and strategies targeted at small scale and traditional farmers” and to implement CAADP as a matter of urgency. Responding directly to the challenges of the agricultural sector identified in the Lagos Plan of Action, the leaders further agreed to adopt sound policies for agriculture and rural development. They committed themselves to allocate at least 10 per cent of national budgets to the implementation of the policies within five years.

The CAADP approach to agricultural development looks beyond agriculture to other sectors that have a bearing on productivity and exchange of agricultural produce, and seeks to coordinate the activities of the various stakeholders to contribute to the common goal of improved productivity and food security. Explaining this coordination role, the Programme has stated that:

\textit{This means, for example, linking agricultural researchers and extensionists with top officials in the agriculture ministry on the one hand, and smallholder farmers on the other. It means working micro-credit into the mix and getting the national transport department and development partners doing what they can to improve...}

\textsuperscript{13} Assembly/AU/Decl. 7(II)
roads and thus access to markets and agricultural inputs. It means improving nutrition through schoolyard gardens…and working with environmentalists to balance concerns about biodiversity and water conservation with the need to manage crop pests and to irrigate.

In essence, CAADP is about bringing together diverse key players at the continental, regional, and national levels, to improve coordination, to share knowledge, successes and failures, to encourage one another, and to promote joint and separate efforts to achieve the four CAADP priorities\textsuperscript{14}.

2.1.2. The Framework and Guidelines on Land Policy in Africa


The F\&G is subtitled “A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods”, demonstrating acknowledgement by African political leaders of the link between land governance and agricultural productivity. In a chapter entitled “Making Agriculture an Engine of Growth” it argues that a number of improvements in the land sector “will be necessary to ensure that an enabling environment is created for agricultural development”\textsuperscript{15}. Among the changes it proposes in this regard are those that will help clarify property rights in agriculture. The ‘Declaration on Land Issues and Challenges in Africa’ reinforces this by committing African governments to ensure that land laws provide for equitable access to land and related resources among all land users.

Both the F\&G and the Declaration are underpinned by the realization that lack of support for policy development and implementation has stalled the progress and impacts of technical change

\textsuperscript{14}CAADP, undated. Introducing the Comprehensive Africa Agriculture Development Programme (CAADP), page 4

\textsuperscript{15}page 16
on the continent. The lack of coherent policies and supportive institutions has operated as a disincentive to farmers and private sector actors across the agricultural value chain, holding back innovation and enterprise, and undermining prospects for agricultural development and rural transformation.

The link between land rights and land governance on the one hand and agriculture and rural development on the other hand runs through the F&G. One of its objectives is to “promote consensus for shared principles as the basis for securing access to land for all users, enhancing agricultural productivity and sustaining livelihoods” (emphasis added). It emphasizes the important role of land in the agricultural economy, and notes that addressing the challenges of land governance is critical for enhancing agricultural productivity, which in turn is critical for the achievement of sustainable development.

The F&G calls for making agriculture an engine of growth, and in this connection prioritizes the creation of an enabling environment for agriculture, clarification of property rights in agriculture, and promotion of the development of land rights transfer systems and markets. It calls for traditional land management and administration systems to be improved to ensure effective management of land for agriculture. Systems of property rights under which land is held are to be clarified to accommodate the different forms of agriculture (traditional, smallholder, large-scale) and different types of participants (women, local commercial farmers, foreign investors) in the sector. An enabling environment for the transfer and exchange of land rights “either formally through documented transactions or informally through intra-family or community arrangements”\textsuperscript{16} is important in this regard.

The Land Policy Initiative (LPI) that spearheaded the development of the F&G now provides support to national and regional land policy processes, by assisting the AU Member States in developing, reviewing, implementing and evaluating the implementation of land policies using the F&G. In particular, LPI assists Member States to implement the Declaration on Land Issues and Challenges in Africa to achieve socio-economic development, peace and security, and environmental sustainability.

In furtherance of this agenda, LPI has recently conducted a study on the mainstreaming of land governance in the NEPAD agenda, and is working with ECOWAS on a regional framework for

\textsuperscript{16} ibid.
domestication of the F&G in the region. The study was motivated by concerns that land
governance is not being adequately taken into account in the CAADP process, which is focused
on addressing issues of sustainable land use within its first pillar. Yet it is evident that equitable
access to and distribution of land, secure land tenure, effective management of land disputes, and
effective and responsive land use planning are critical for the achievement of the other three
pillars of the Programme (Kagwanja, 2010). The recommendations of the study are being used to
inform the ongoing discussions between LPI, NEPAD, the RECs and national governments on
how to mainstream land issues into the CAADP process (LPI, 2013).

In partnership with ECOWAS, LPI established a Regional Land Policy Task Force to define a
regional strategy for domestication of the F&G and implementation of the AU Declaration on
land in West Africa. The Task Force commissioned a regional consultancy on the framework
and road map for the development of the strategy. The study was presented at a validation
workshop in June 2013, following which a Draft Regional Directive on Land was prepared,
which has been circulated to Member States for consideration and feedback. The initiative builds
on other regional processes that have seen to the development of the CILSS Land Charter and
UEMOA Rural Land Observatory. It resonates at the global level with the Voluntary Guidelines
on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of
National Food Security (VGGT) adopted by the Committee on World Food Security (CFS) in
May 2012 under the leadership of FAO.

In a bid to promote the sharing of experiences of land policy implementation and to keep the
discourse on land reform alive, LPI has launched a biennial Conference on Land Policy in Africa,
the first of which was held in Addis Ababa in November 2014. The conference is to be a policy
and learning event, the goal of which is to deepen capacity for land policy in Africa through
improved access to knowledge and information on land policymaking and implementation.

2.2. Regional context: COMESA, SADC and ECOWAS
The role of RECs is central to the new vision of African economic integration. The Treaty
Establishing the AEC locates the RECs at the centre of its processes, seeing the strengthening of
existing RECs and the establishment of new ones as the foundation on which to build the ultimate
continental Community. Article 6 of the Treaty lists six steps to be followed in realizing the
Community. The first three steps involve strengthening and consolidation of regional and sub-regional integration.

Of more direct relevance to this review is the role of RECs in implementation of CAADP, which has been alluded to above. In this regard, the RECs constitute an important framework for mobilization of countries and other partners for the promotion of agriculture and rural development. In this section, we present briefly the regional policy context for land and agricultural development across the three major RECs that are of direct relevance to this review.

**COMESA**

The idea of establishing COMESA first emerged in 1965, when the ECA convened a ministerial meeting of independent states of Eastern and Southern Africa in Lusaka, Zambia, to consider proposals for a mechanism for the promotion of sub-regional economic integration. In 1978, Ministers of Trade, Finance and Planning from the region agreed to initiate the process with a sub-regional Preferential Trade Area (PTA) to be gradually upgraded over a ten-year period to a common market. The Treaty establishing the PTA was signed at a meeting of Heads of State and Government in Lusaka in December 1981. On 5th November 1983, the Treaty establishing COMESA was signed in Kampala, Uganda. This evolution is in line with the process envisaged in the Lagos Plan of Action by which the economic integration of the continent is to be realized through the progressive strengthening of regional economic communities, leading ultimately to the creation of the AEC.

COMESA has a host of programmes and projects on agriculture, but we focus here on its engagement with CAADP as this is most relevant to this review. COMESA Agricultural Policy (CAP) is in line with CAADP, and aims to achieve the twin objectives of sustainable food security and enhanced regional integration. One of the key strategies of COMESA is to put in place policies, systems, regulations and procedures which are harmonized across the region so as to create a conducive, transparent and facilitative environment for conducting regional agricultural trade with forward and backward linkages across the region from the farmer to the market. It is thus appropriate that COMESA coordinates implementation of CAADP within its Member States.

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17 This constitutes part of the policy shift enshrined in the Declaration of the Second Meeting of the Ministers of Agriculture, made in Nairobi, Kenya on 15-16 October 2004 on, “Expanding Opportunities for Agricultural
COMESA facilitates the development of national policies and programmes and implementation structures for CAADP. This includes support to establishment of CAADP Round Tables, and providing pre-and post-compact support to countries. It coordinates regional planning and policy dialogue processes, and is at an advanced stage in developing a Regional CAADP Compact to reinforce the development of long-term coordinated strategies for agricultural development in the region. It also supports the review of CAADP by facilitating regional policy analysis and dialogue.

**SADC**

SADC groups together 15 countries\(^\text{18}\) of Southern Africa. It started off in 1980 as the Southern African Development Co-ordination Conference (SADCC), and operated as such until August 1992 when the region’s Heads of State and Government signed the SADC Declaration and Treaty transforming it into SADC. While the main focus of SADCC had been to advance the cause of political liberation and establish a joint front against the *apartheid* regime of South Africa, the focus of SADC is on integration and economic development of the Member States and the region.

The Declaration and Treaty of SADC recognizes that agriculture is the backbone of national economies of the region and emphasizes the central role of land, agriculture and food security in the development of the region. It recognizes that the exploitation of land and other natural resources is necessary to realize development. The Treaty identifies areas in which the Member States undertake to cooperate, the first of these being food security, land and agriculture\(^\text{19}\).

The implementation framework for the Declaration and Treaty of SADC is spelt out in the Regional Indicative Strategic Development Plan (RISDP) and the Strategic Indicative Plan for the Organ (SIPO). RISDP, which was adopted and approved by the SADC Summit in August 2003 covers the fifteen year period between 2005 and 2020. It acknowledges land tenure reform as one of the issues pertinent to the improvement of agriculture and food security in the region, noting that a number of Member States are working to resolve inequities in land ownership, access, and use. Although it identifies improving access to land as one of the challenges in

\(^{18}\) The countries are Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe

\(^{19}\) Article 21(3)
current policies and strategies, RISDP does not spell out any strategies and interventions to address land governance concerns.

SADC Heads of State and Government signed the Dar es Salaam Declaration on Agriculture and Food Security in the SADC Region on 15th May 2004 to promote agriculture as a pillar of national and regional economies. The Declaration sets short (2004-2006) and medium to long term (2006-2010) objectives. Among the short term objectives is to “accelerate land policy reform initiatives, share experience of best practices, and ensure equitable access to land by women”.

The designation of land policy reform as a short term objective was clearly unrealistic given the complexities involved. It is thus not surprising that the objective was not achieved in the period specified, and land policy reform continues to be an abiding need in the region. Nevertheless, the region’s leaders did appreciate that land policy reform is integral to the promotion of agriculture and food security. That not much appears to have been done to follow up this recognition within the strategies of the SADC is most likely a function of the politics of land reform, which makes it subject to unique national dynamics within each Member State.

**ECOWAS**

ECOWAS is a regional grouping of fifteen countries²⁰ that has been in existence since 1975. It seeks to “promote co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations among Member States and contribute to the progress and development of the African Continent”²¹. To this end, it prioritizes harmonization and co-ordination of national policies and the promotion of integration programmes, projects and activities in, among other areas, food, agriculture and natural resources. Article 21 of the Treaty of ECOWAS establishes Technical Commissions, one of which is on Food and Agriculture.

Chapter IV of the Treaty makes detailed provisions on cooperation between Member States in food and agriculture. Although there is no specific mention of land policies in the context of agriculture and rural development, by Article 67 of the Treaty the Member States undertake to consult with one another, through appropriate Community institutions, for the purpose of

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²⁰ The Member States of ECOWAS are Benin, Burkina Faso, Cape Verde, Cote D’Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo

²¹ Article 3(1)
harmonizing and coordinating their respective policies in all other fields not specifically covered by the Treaty “for the efficient functioning and development of the Community and for the implementation of the provisions of this Treaty”. This makes it possible for the Community to take up any policy issues relevant to the achievement of the objectives and purposes of the Treaty.

On 19th January 2005 the Heads of States and Government of ECOWAS adopted the Agricultural Policy of the West African States (ECOWAP) as an instrument for implementation of CAADP. ECOWAP responds to regional imperatives at ECOWAS level while providing a framework for implementation of the continental imperatives of CAADP. It pursues pretty much the same agenda as CAADP, its mission being: *a modern and sustainable agriculture, based on the effectiveness and efficiency of family farms and the promotion of agricultural enterprises through the involvement of the private sector.*

The overall objective of ECOWAP is to contribute in a sustainable manner to satisfying the food needs of the population, to economic and social development and to poverty reduction in Member States as well as to address inequalities between territories, areas, and countries. Seven specific objectives are articulated for achieving the overall objective, none of them speaking to policy development generally or land policy in particular. Instead, the focus is on policy reforms in the areas of external and internal trade, taxation, investment codes, regulatory frameworks, industrial and monetary policies, information, etc., and the development of investment programmes.

Although ECOWAP does not directly focus on land policy development, there are efforts within ECOWAS to establish a regional policy framework to deal with land issues in the context of agriculture and rural development. Apart from the partnership between LPI and ECOWAS alluded to above, the region has a long history of efforts to engage with land issues. Such efforts have been spearheaded by regional organizations, particularly CILSS, Club du Sahel and UEMOA, which have organized regional conferences on land at which recommendations have been made for a regional framework. In recent years, these recommendations have concretized into a call for the establishment of a Regional Land Observatory. The partnership between LPI and ECOWAS builds on the joint ECOWAS/CILSS/UEMOA process for harmonization of rural

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22 Regional Partnership Compact for the Implementation of ECOWAP/CAADP, Section 1.3, paragraphs 11 and 12, at p.3
land tenure in the region, and offers an opportunity for making the link between land policy and the promotion of agriculture and rural development.

These pan-African and sub-regional initiatives confirm the relevance of the focus by AGRA’s Policy and Partnerships Program on policy and institutional capacity strengthening for land and agricultural development. From the RECs to the AU, African governments have prioritized the modernization of agriculture, and are designing policies and strategies to that end. They have identified land tenure as a critical issue requiring policy and practical interventions in order to provide incentives for attracting investments into agriculture by guaranteeing security of tenure for investors. The need for support to design appropriate policies, and build institutional capacities for implementation of policy by governments on the one hand and for engagement with policy processes and monitoring of implementation by farmers’ organizations, the private sector and civil society is manifest in these initiatives. These are crucial entry points for AGRA in establishing partnerships with governments and other actors in the respective regions.

3. National land policies and agricultural development

Although policy concepts, standards and guidelines can be articulated at the continental, regional and even global levels, it is at the national level that the opportunity for their implementation exists, and it is thus national governments that hold responsibility for policy implementation. It is national governments that, with the relevant political will and appropriate institutional capacities and resources can convert policy prescriptions into strategies and plans that translate into benefits for citizens. As the Lagos Plan of Action correctly asserts,

*New dimensions of inter-country cooperation are called for, but the primary responsibility for a breakthrough in food and agriculture lies with individual Member States operating in their respective national contexts*.

This reality has traditionally constituted one of the major challenges to the domestication of regional framework policies on land. Land is a major political issue in many African countries, playing a key role in the distribution and exercise of political power, and hence intimately tied to local political dynamics. Thus, how the land question plays itself out in any country is defined by local political dynamics, and in turn those dynamics are often defined by the power and control that competing political interests may hold over land (Kanyinga, 1998). As a result, governments are often unwilling to have land policies

23 paragraph 19 at page 8
defined at supranational levels. They plead the principle of subsidiarity and assert that land issues are national issues over which RECs have no roles (LPI, undated).

However, as the regional initiatives presented in the preceding section demonstrate, it is now accepted that effective responses to the major challenges of the land sector cannot be articulated exclusively at national level, not least because many of the challenges are a function of imperatives that are of a global nature. Even with regards to agriculture and food security, many of the challenges that African countries face such as difficulties in accessing global markets for their produce, cannot be tackled effectively by individual countries, but require mobilization at regional and continental levels. Furthermore, many African countries share trans-boundary natural resources for which regional frameworks offer the most appropriate forums for articulating policies and designing institutions (Ouedraogo, undated). This is the key motivation behind the F&G and the LPI.

In this section, we present the national land and agriculture policies of the countries under review and interrogate the extent to which they contribute to the promotion of agriculture and rural development. In each case, we analyse agricultural development policies with reference to whether and to what extent they recognise land issues as being of relevance to agricultural development, and we interrogate the extent to which land policies facilitate land tenure security and by extension impact on agriculture.

3.1. Tanzania
The United Republic of Tanzania (URT) is a political union of what used to be Tanganyika (now Tanzania mainland) and the Island of Zanzibar. This discussion focuses on the mainland because it is there that AGRA is presently working.

Tanzania is the largest of the five countries comprising the East African Community (EAC)\(^24\). It has a land area of 945,087 sq. km; and a population estimated at just over 45 million people. More than 75% of the population live in rural areas, and derive their livelihoods and incomes from agriculture, making the agricultural sector a central pillar of the national economy. Agriculture contributes up to a quarter of the national GDP and is responsible for 34% of foreign exchange earnings (URT, 2011).

\(^{24}\) Other member countries are Burundi, Kenya, Rwanda and Uganda
The importance of agriculture to the national economy is recognized in Tanzania Development Vision 2025, which is the overall development framework for the country (URT, 1999). The Vision envisages transformation of the agricultural sector and the national economy into a “semi-industrialized economy with a modern rural sector and high productivity in agriculture which generates reasonably high incomes to ensure food security and food self-sufficiency”\textsuperscript{25}.

3.1.1. Vision 2030, MKUKUTA and the Five Year Development Plan

The national strategy for realizing Tanzania Development Vision 2030 is the National Strategy for Growth and Reduction of Poverty, popularly known by its Kiswahili acronym, MKUKUTA\textsuperscript{26}. The county is currently implementing MKUKUTA II that runs from 2010/11 to 2014/15 (URT, 2010). Also of relevance is the Tanzania Five Year Development Plan, the current one being for the period 2011/12 to 2015/16 (URT, 2012). Both strategies reiterate the central role of agriculture as an engine of the economy, although neither the vision nor the strategies identify land rights as an issue to be addressed in order to spur agricultural development\textsuperscript{27}.

MKUKUTA recognizes that competition for access to land for different uses tends to engender conflicts, but attributes this to the fact that land is un-surveyed and undeveloped and sees the solution in increased capacity for land development, specifically surveying and zoning. It does not mention land tenure as a problem.

Governance and property rights are articulated as issues of policy concern only with respect to natural resources, but no details are provided of interventions to address them. Even where reference is made to “undertaking further land reforms” this is said to involve supporting “access and expansion of land for agriculture and livestock development, aquaculture, categorizing and protecting use for the designated activity; while balancing the demands for large scale and small scale land uses”.

The Tanzania Five Year Development Plan recognizes the relationship between land rights and agriculture development; stressing the importance of access and use rights to land for development purposes. It identifies the fact that most of the land is held by communities under customary law and is unplanned and unregistered as a constraining factor for investors in the

\textsuperscript{25} p.22

\textsuperscript{26} Acronym for the Kiswahili title of the Strategy – Mkkati wa kukuza uchumi na kupunguza umaskini Tanzania

\textsuperscript{27} MKUKUTA attributes “the sluggish growth of agriculture” to poor infrastructure, inadequate extension services, and poor technology of production, low value addition, lack of appropriate financing mechanisms for agriculture, unreliable markets, unfair and uncompetitive farm gate prices, and environmental degradation, p.7
sector who have to deal with village governments. It notes that transaction costs for negotiating and accessing such land for extensive agricultural production are quite high, as investors have to negotiate for compensation to villagers then pursue the issuance of title deeds.

With only an estimated 10% of the land in the country surveyed and titled or designated for particular uses, the problem of unplanned and untitled land is a major constraint to the promotion of commercial agriculture in Tanzania. It is the cause of frequent land disputes among rural communities, government agencies, investors and individuals. Such disputes are a disincentive to investors as they increase the risk and cost of doing business. Related to this is the challenge of what the Plan terms an “inadequate land administration system”. The manual storage and retrieval of land information and the dispersal of different bits of information across different government departments, including some in the custody of Local Government Authorities (LGAs) make the processing of land information inefficient and increase the costs of accessing land administration services.

The Plan sets out three operational objectives for the land sector, namely: to promote an equitable distribution of access to land; to ensure land is put into its most productive use; and to develop a national land use plan that reflects development priorities. The strategic interventions it proposes for realizing the stated objectives have direct implications for land rights. At the sector level, the Plan prioritizes the creation of an enabling environment for agriculture, which includes access to land. Among important interventions in this regard is the development of agricultural corridors such as the Southern Agricultural Growth Corridor of Tanzania (SAGCOT).

### 3.1.2. Agricultural development policies

The Agricultural Sector Development Strategy (ASDS) articulates the overall policy framework for the agricultural sector in Tanzania. It is implemented through the Agricultural Sector Development Programme (ASDP). Published in 2001, shortly after the enactment of the Land Act and the Village Land Act, the Strategy acknowledges that land policy has a bearing on agricultural productivity.

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28 p.25
29 The five interventions proposed are: to increase coverage and allocation of land that has been planned and surveyed; to institute and put into operation a land bank authority; to implement land use plan (framework); to promote redevelopment schemes and establish new urban sectors; and to promote affordable housing and research on low cost housing
ASDS prioritizes three interventions in the land sector, namely: sensitization of the public on provisions of the two land laws; streamlining procedures for legal and physical access to land; and monitoring of the implementation of the two land laws “with a view to immediate correction of any shortcomings that may become apparent”\textsuperscript{30}. Consistent with this, the fifth operational component of ASDP on cross-cutting and cross-sectoral issues includes implementation of the land laws.

Tanzania development policies recognize the link between land policies and agricultural development. The country has in place a comprehensive policy framework on land administration and management comprising the National Land Policy and the two implementing laws, the Land Act\textsuperscript{31} and the Village Land Act\textsuperscript{32}. The Policy was adopted in 1992 after a long consultative process that included the work of a Presidential Commission of Inquiry into Land Matters\textsuperscript{33} that traversed the country consulting citizens on land related challenges. The two pieces of legislation were enacted in 1999 and went into force in 2001.

3.1.3: National Land Policy and laws
The overall aim of the National Land Policy is “to promote and ensure a secure land tenure system, to encourage the optimal use of land resources, and to facilitate broad-based social and economic development without upsetting or endangering the ecological balance of the environment”\textsuperscript{34}. The aim is to be realized through the pursuit of a number of objectives, three of which are relevant to our purposes. These are: to promote equitable distribution of and access to land by all citizens; to ensure that existing rights in land, especially customary rights of smallholders (i.e. peasants and herdsmen who are the majority of the population in the country) are recognized, clarified and secured in law; and to ensure that land is put to its most productive use to promote rapid social and economic development of the country.

The Policy articulates four basic land policy tenets with reference to land tenure, namely: all land in Tanzania is public land vested in the President as trustee on behalf of all citizens; land has value; the rights and interests of citizens in land shall not be taken without due process of law; and full, fair and prompt compensation shall be paid when land is acquired. It establishes a dual

\begin{itemize}
\item \textsuperscript{30} p.30
\item \textsuperscript{31} No. 4 of 1999
\item \textsuperscript{32} No. 5 of 1999
\item \textsuperscript{33} Popularly known as the Shivji Commission, as it was chaired by Prof Issa Shivji
\item \textsuperscript{34} p.5
\end{itemize}
system of tenure which recognizes and gives equal legal force to customary and statutory rights of occupancy. It guarantees equal and equitable access to land by all citizens, and provides for access to land by foreigners for purposes of investment. In this connection, the policy stipulates for identification of Special Areas to be allocated to investors by the government for different investments. Allocation of land to investors shall be based on their ability to develop it and subject to safeguards for interests of citizens over the land.

The National Land Policy is implemented through the Land Act and the Village Land Act. The laws restate the fundamental principles of national land policy, and assert that persons exercising powers under the two Acts, applying or interpreting the same shall have regard to the principles. It is evident that the land policy reforms undertaken in Tanzania in the 1990s have created the appropriate policy context for the promotion of agriculture and rural development. The challenge for the country lies in ensuring implementation and enforcement. This is the focus of government strategies and investments in the sector.

3.2. Uganda

Uganda is endowed with good agricultural land and fresh water bodies. It covers an area of 241,038 square kilometres, of which 18.2% is water and 81.7% is land. Up to 42% of the land area is arable, though only half of this is currently under use, mainly in the Southern parts of the country (Republic of Uganda, 2010). The country has a population estimated at 34 million people, and boasts a favourable tropical climate and numerous natural resources.

Agriculture is critical to the economy of Uganda, with more than 85% of the population living in rural areas, more than 70% of them engaged in agriculture. Overall, nearly 66% of the country’s working population is employed in the sector (UBOS, 2010; 2013). Much of the industrial activity in the country is agro-based, with agriculture being a major source of raw materials to local industries, providing the basis for growth in manufacturing and services. The sector is dominated by smallholder farmers producing food and industrial crops, and also engaged in forestry, horticulture, fishing and livestock production. In Fiscal Year 2012/13, the sector contributed 23.2% to total GDP and about 40 percent of the total goods export earnings. Although the contribution of the sector to the national GDP has been declining in recent years, it remains important as the basis for growth in other sectors.
The importance of agriculture as an engine of development and the obligation of the government to develop appropriate policies for its promotion is acknowledged by the Constitution and all key policy documents. The National Objectives and Directive Principles of State Policy commit the State to promote agricultural development by adopting appropriate policies and enacting enabling legislation. To further social justice, the State may regulate the acquisition, ownership, use and disposition of land and other property. The State is also enjoined to ensure that all Ugandans enjoy food security.

3.2.1. Uganda Vision 2040 and the National Development Plan

Uganda’s development priorities are set in Uganda Vision 2040, which envisions “a transformed Ugandan society from a peasant to a modern and prosperous country within 30 years”. The Vision identifies agriculture as one of the strategic opportunities to be harnessed to transform the country, even though it appears at the bottom of the list of opportunities, after oil and gas, tourism, minerals, ICT business, abundant labour force, geographical location and trade, water resources, and industrialisation. The Vision acknowledges the important role of policies and institutions in improving productivity. It commits the government to implement land reforms in order “to facilitate faster acquisition of land for planned urbanisation, infrastructure development, and agricultural commercialisation among other developments”.

The Vision identifies land tenure challenges among the factors that have contributed to the decline of agricultural productivity in recent years. Other factors include high costs of inputs, poor production techniques, limited extension services, over dependency on rain fed agriculture, limited markets, and limited application of technology and innovation. The vision for the sector is to transform it from subsistence farming to commercial agriculture to make it profitable, competitive and capable of providing sustainable food and income security for the country.

Among the interventions proposed by the Vision for addressing the challenges facing the agricultural sector is to ensure that land fragmentation is reversed to secure land for mechanization. It is also proposed to strengthen and harmonise the legal, regulatory and institutional framework. The Vision identifies the problem of accessing land by government and

35 XI(ii)
36 XI(iii)
37 XXII
38 Paragraph 10, p.4
39 Paragraph 235, p.83
investors given the constitutional vesting of land on the people of Uganda. It notes that land holding is currently characterized by multiple land tenure systems and multiple rights for the same land holding. It proposes systematic land demarcation and survey of the entire country to increase the proportion of titled land from the current 20% in order to “ensure that land ownership facilitates development.”

Government will, during the period covered by the Vision, undertake policy reforms “to ensure that land facilities, land use regulation and land development enhance economic productivity and commercial competitiveness for wealth creation and overall social economic development in an integrated and sustainable manner.” It shall computerise the land registration system for more efficient and effective land management. Land reforms shall be implemented to facilitate faster acquisition of land for agricultural commercialization, among other uses.

Uganda Vision 2040 is implemented through the National Development Plan (NDP), the current phase of which runs from 2010/11 to 2014/15. It is the first of six medium terms plans that are envisaged to be implemented over the period of the Vision. The first of the eight strategic objectives of the Plan is increasing household incomes and promoting equity, and progress on this shall be assessed by measuring, among other things, changes in agricultural production and productivity. The Plan views investments in improving agricultural productivity as key to poverty eradication.

The NDP recognizes land tenure as a constraint to improving agricultural productivity. Divergent and overlapping land rights are said to impact negatively on long-term investments in agriculture. The same factors combine with high costs and cultural norms to restrict access to land by many landless potential farmers, particularly women. The fact that approximately 95% of landowners do not have titles weakens their security of tenure and restricts opportunities for productive use of land. In addition, land fragmentation is on the rise as a result of population growth. These factors combine to undermine the transformation of agriculture from subsistence to commercial production.

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40 Paragraph 232, p. 82
41 Paragraph 233, p. 83
42 p.1
Although the land related constraints to agricultural productivity are discussed in the agriculture development section\footnote{5.1 starting at p.77} of the NDP, comprehensive strategies for addressing land sector challenges are enumerated in the land management and administration section\footnote{6.5 starting at p.160}. The interventions proposed in this regard include policy reform and implementation; and land registration and titling.

Two interventions are of direct relevance to this review. First are interventions for completion and implementation of the National Land Policy, including the review and harmonization of relevant legislation. These interventions seek to create an enabling and inclusive pro-poor policy and legal framework for the land sector. Second are interventions that aim to establish and maintain transparent, accountable and easily accessible institutions and systems for decentralized delivery of land services. Among these are systematic adjudication, demarcation, survey and certification/registration of land.

The policy context for agriculture and rural development in Uganda is characterized by a multiplicity of policy instruments. Prior to the adoption of the NDP, the sector was governed by the Plan for Modernization of Agriculture (PMA). Then there is the Rural Development Strategy (RDS), which was formulated in 2005 with the overall objective of raising incomes, with a focus on the sub-county as the unit of planning. Also relevant is Prosperity for All (PFA), which was formulated in 2006 as a vision arising out of that year’s Election Manifesto of the ruling National Resistance Movement (NRM), with the stated objective of improving life for all Ugandans in all aspects. At the same time, the first Development Strategy and Investment Plan (DSIP) formulated as the medium term plan of the Ministry of Agriculture, Animal Industry and Fisheries (MAAIF) for implementation of the PMA was in operation. The current DSIP has been formulated within the framework of the NDP and CAADP. It translates the broad public sector interventions outlined in the Plan into a sector-wide plan with specific sub-programmes, activities and targets, each with a set of clear budgets.

The different policies are spearheaded by different government ministries and departments. Moreover, the transition from one policy to another is not often clear, and in some cases multiple policies are in operation at the same time. For instance, although the first DSIP ended in 2008, the current DSIP was not published until July 2010. The government is alive to this challenge,
and with the adoption of the NDP an effort is being made to create coherence in planning, with the NDP becoming the overall framework for planning and implementing development interventions in the country. A National Agriculture Policy (NAP) being developed by MAAIF shall guide the agricultural sector in contributing to the realization of the goal and objectives of the NDP.

### 3.2.2. National Land Policy and law

The National Land Policy was approved by Parliament following a long process of consultation and engagement with stakeholders, including communities, civil society, the private sector, and development partners. A major justification for the Policy is the need to create coherence in the land sector having regard to competing demands from different land uses. The Policy articulates this rationale thus:

*The need to reduce ambiguity at sector-level by comprehensively integrating scattered and isolated policy statements on different aspects of land use, formulated in response to isolated sectoral demands in agriculture, environment, natural resource management, housing, real estate development, transport, and for private sector development and industrialization policy. A harmonized framework with a common horizontal denominator is necessary to stem sectoral conflict regarding administrative decisions, regulations and laws that often overlap, leading to serious administrative conflicts and bureaucratic competition for responsibility and resources. Regulating use and land development without losing sight of tenure issues requires an integrated policy for the identification of effective inter-linkages between land and other productive sectors*.

The Policy decry the over-emphasis of property rights in land per se, and argues for a balance between an approach to land policy development that aligns the demands for protection of property rights with the need to shape the nature of the land use system so as to ensure harmony between the imperatives of human settlement, production and conservation. This is what the Policy sets out to achieve through its goal, which is stated as “to ensure an efficient, equitable and optimal utilization and management of Uganda’s land resources for poverty reduction, wealth creation, and overall socio-economic development”.

The stated objectives of the National Land Policy do not make specific reference to agriculture. However, they are of direct relevance to agricultural production given that their achievement will address agricultural sector constraints identified in the NDP. Two of the objectives are of

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45 p.5
46 Paragraph 3, p.9
particular significance, namely: to stimulate the contribution of the land sector to overall socio-economic development, wealth creation and poverty reduction; and to harmonize and streamline the complex tenure regimes for equitable access to land and security of tenure.

The Policy recognizes the need to manage access to land for investment purposes in such a manner as not to jeopardize the rights and interests of smallholder farmers. It proposes the promotion of long-term benefit sharing arrangements “rather than one-off compensation for loss of land rights in respect of investment”\(^\text{47}\). This entails support to “alternative business/production models between the locals and investors”\(^\text{48}\) such as contract farming schemes for smallholder farmers, out-grower schemes, equity sharing schemes, leaseholds and joint ventures. The Policy commits government to protect the interests of smallholder farmers in the face of large scale commercial farming. It addresses concerns about land fragmentation with measures that shall set minimum land sizes for purposes of orderly land development.

The Policy statement specific to agriculture emphasizes regulation of agricultural land use in line with a National Agriculture Policy to be formulated. Apart from the formulation of a National Agriculture Policy and a National Soil Policy, other measures proposed by the policy to address land related challenges to agriculture address land use planning, zoning of agricultural land generally and for specific agricultural produce, consolidation of agricultural land to sizes that permit optimal production, and promotion of good land use practices\(^\text{49}\).

The legal framework for implementation of the National Land Policy is the Land Act\(^\text{50}\) which was enacted in 1998 in compliance with Article 237(9) of the Constitution\(^\text{51}\). It provides for the tenure, ownership and management of land, and amends and consolidates the law relating to tenure, ownership and management of land in Uganda. Since the law was enacted before adoption of the National Land Policy, it will now have to be reviewed and revised so that it is aligned with the Policy. The same will have to be done with other related natural resource management laws.

\(^{47}\) p.29
\(^{48}\) ibid.
\(^{49}\) p.45
\(^{50}\) Chapter 122 of the Laws of Uganda
\(^{51}\) The Article stipulated that a law on land would be enacted within two years of the first sitting of Parliament elected under the Constitution
3.3. Mozambique

Mozambique covers an area of 799,380 sq. km with a 2,470 km long eastern coastline. It is endowed with vast tracts of forests and cultivable land with most regions receiving annual rainfall in the order of 800 mm. Over 68% of its estimated population of 26.4 million lives in rural areas, and 70% of the population depends on agriculture as the basis of their livelihoods (Republic of Mozambique, 2010; FAO, 2007).

This huge agricultural potential notwithstanding, the country’s troubled history of nearly three decades of violence combining armed struggle for independence and immediately thereafter guerilla warfare undermined the productive use of the land over a long period. Estimates of the percentage of arable land under cultivation vary between 5% (Jimat Development Consultants, 2010) and 13% (Gemo, 2011); although the official government figure indicated in PEDSA is 10% (Republic of Mozambique, 2010:13).

Agriculture is critical to the economy, contributing close to 24% of the GDP and employing over 80% of the population, the majority of them in small-scale subsistence farming (Republic of Mozambique, 2010). It is estimated that there are 3.8 m small farm families in Mozambique, cultivating 5.4 m ha of land (Norfolk and Hanlon, 2012).

The significance of agriculture to livelihoods security and national economic development is recognized by government policy. Right from the outset in 1975, the independence government led by Frente de Libertação de Moçambique (FRELIMO) party announced that agriculture would be the basis of national economic development (Gemo, 2011). Since then, policy instruments on poverty eradication and economic development have underscored the importance of agriculture and articulated strategies for its promotion. The policies emphasize the importance of agriculture for livelihoods security, rural transformation and overall national economic development.

Gemo identifies three phases of the development of agricultural policy in Mozambique since independence. The first phase was the period between 1975 and 1992. The second phase was between 1992 and 2006; and the final phase, which established the current policy, ran from 2007

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53 ibid
54 The struggle for independence lasted ten years between 1964 and 1974
55 Jimat relies in part on Coughlin (2006), but gives a different figure from the latter’s quoted 10%. Gemo quotes the National Agriculture Survey (TIA, 2008) but the reference does not appear in the Bibliography produced at the end of the paper. The Ministry of Agriculture gives the same figure as Coughlin, but does not indicate the source of the data.
to 2010. Each of these phases is defined by specific policy instruments the evolution of which was a result of both internal dynamics within Mozambique and external dynamics of global and international processes.

The period between 1975 and the Peace Settlement in 1992 saw the implementation of a centralized economy, characterized by the creation of state farms. The period also saw the creation of agro-industrial complexes, capital intensive state enterprises supported by huge state investment in production, transport and processing. These approaches were adopted as a means of revitalizing farms that were abandoned by departing Portuguese farmers, and promoting agricultural production and marketing. The major policy development during this period was the adoption of a new Constitution in 1990.

Between 1992 and 2006, the focus was on development of policies and laws to institutionalize the revitalization of the agricultural sector that had been initiated in the aftermath of the Peace Agreement. The foundational agricultural policy, Políticas Agrárias e Estratégias de Implementação (PAEI)\(^{56}\) was approved in 1996, the same year that a New National Land Policy was issued. PAEI is still in force (Republic of Mozambique, 2010) and its mission statement for the agricultural sector - *to develop agricultural activity with a view to achieving food security through the diversified production of goods for consumption, provisioning domestic industry and export, based on the sustainable use of natural resources and the guarantee of social equity*- continues to underpin policy development and implementation. Among the objectives of PAEI are access to land and planning and developing its use.

The same period saw the formulation and implementation of the first National Program for Agricultural Development (PROAGRI I)\(^{57}\), with a focus on institutional development of the Ministry of Agriculture as the first stage of a long term agriculture development program. It was also during the same period that the Land Law, the Land Law Regulations and Technical Annex to the Land Law Regulations were adopted.

The period between 2007 and 2010 witnessed intense policy formulation activity within the agricultural sector. A major effort was geared towards developing PROAGRI II, but in the end

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\(^{56}\) Portuguese for Agricultural Sector Policy and Strategy of Implementation

\(^{57}\) PROAGRI 1 was implemented from 1999 to 2004, and then extended to 2006
the Program was never approved and implemented. Key policy instruments developed over the period include: the Green Revolution Strategy (GRS) in 2007; Plano de Acção da Produção Agrícola (PAPA)\(^59\) in 2008; and the National Irrigation Strategy in 2010. However, the most definitive policy instrument coming out of the period is the Strategic Plan for Agricultural Development (PEDSA\(^60\)) to be implemented over the 10-year period 2010 to 2019.

### 3.3.1. The Constitution, 1990

The Constitution of the Republic of Mozambique lays the foundation for an appropriate policy framework for agriculture and rural development through its provisions on agriculture and land. It is unique among the Constitutions of the countries reviewed in this paper in making agriculture a constitutional category. Article 103 of the Constitution stipulates that agriculture shall be the basis of national development and provides that the State shall “guarantee and promote rural development in order to meet the growing and diverse needs of the people and for the economic and social progress of the country”. Article 106 secures smallholder production by stipulating that the State shall recognise the contribution made by small scale production to the national economy, and shall support its development as a way of making good use of the capacity and the creativity of the people. The Constitution thus elevates the discourse on agriculture and rural development generally and smallholder agriculture in particular to the highest levels of policy, thus providing a strong basis for the development and implementation of appropriate policies and strategies.

The Constitutional provisions on agriculture have to be read together with those on land and land use. By Article 109 all ownership of land is vested in the State, in order to guarantee to all Mozambican people the use and enjoyment of land for creation of wealth and social well-being. Disposal of land, whether by way of sale, mortgage or attachment is prohibited. The State has the responsibility of determining the conditions under which land may be used and enjoyed, and

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\(^{58}\) The failure to transit from PROAGRI I to PROAGRI II has been attributed to a number of developments within the sector, among them: the decision to extend PROAGRI I to the 2005-2006 period; the restructuring of the Ministry from Ministry of Agriculture and Rural Development (MADER) to Ministry of Agriculture (MINAG), institutional reforms in MINAG undertaken within the framework of PROAGRI I complete with a new leadership, and general dissatisfaction with PROAGRI I for not having adequately addressed production support (Gemo, 2011).

\(^{59}\) Portuguese for Action Plan for Food Production

\(^{60}\) Acronym for the Portuguese title, Plano Estratégico para o Desenvolvimento do Sector Agrario
shall take into account the social or economic purpose of land in granting the right to use and benefit from land to individuals or corporate persons\textsuperscript{61}.

The Constitution thus prohibits privatization of land, and land cannot be bought or sold, although land use rights assigned by the State are private and exclusive, and can be transferred for value or inherited (Republic of Mozambique, 2010). A major challenge for land administration and agricultural development is how to balance the prohibition against privatization of land with the quest for increased private sector investment in agriculture and rural development. The Land Policy and the Land Law provide strategies for keeping such a balance.

\textbf{3.3.2. National Land Policy, 1995}

The National Land Policy was approved by the Council of Ministers in September 1995. Its mission is stated as to “safeguard the diverse rights of the Mozambican people over land and other natural resources, while promoting new investment and the sustainable and equitable use of these resources”. The goals to be pursued in support of this mission include: increasing national agriculture production, stimulating private investment by securing land rights, promoting land access rights of rural populations, guaranteeing customary and traditional land rights, preserving important ecological areas, and creating an effective land tax system.

The development of the policy was underpinned by two main imperatives, namely: the desire to encourage private investment in rural land, and a commitment to secure and protect the rights of communities and smallholder producers consistent with the requirements of the Constitution. This is reflected in the basic principles of the National Land Policy, which include: guaranteed access to land for the population including women on the basis of equity; recognition of customary land systems and rights allocated through them; promotion of both national and foreign private investment with guaranteed secure rights; active participation of nationals as partners in private enterprises; well defined and regulated transfer of land use rights allocated by the State; and sustainable use land and natural resources that guarantees the quality of life for present and future generations.

The Land Policy recognizes customary rights over land, including the system of transmission and inheritance. It also recognizes the role of local leaders in the administration and management of land and in conflict management and dispute resolution. It proposes consultation and dialogue

\textsuperscript{61} Article 110
with communities as part of the process of introducing new investments, with communities as partners, entitled to share in profits and otherwise benefit from investments in their land.

The Policy articulates political commitments with regard to private investment, customary rights protection and rural development. It envisages that rural development shall promote food security; create conditions for the growth of smallholder agriculture that is sustainable; and promote private investment without harming local interests. It calls for the promotion of domestic and foreign private investment without harming the resident population, and ensuring benefits for them and for the national economy.

The Policy recommended that the land law be revised so as to adapt it to the new economic reality and in order to simplify administrative procedures. It called for a flexible law that would not be prescriptive but facilitative, providing legal recognition and sanctions to permit the prevailing cultural system in each region to function effectively. In this way, the Policy established an enabling environment for keeping the proper balance between promotion of private sector investment in agriculture and rural development on the one hand and securing the land rights of rural communities on the other hand.

3.3.3. The Land Law, 1997

The Land Law of Mozambique is widely acknowledged as one of the most progressive land laws in Africa. Its development marked a critical turning point for the promotion of rural development. The law was developed through a process acknowledged by many observers as presenting an exemplary model in democratic and participatory law making (Tanner 2002). It demonstrated the importance of a decentralised and inclusive process in policy making and legislative development; which approach ultimately proved invaluable in generating citizen buy-in for the Land Law when it came into force (de Wit et al., 2009).

The Land Law broke new ground in granting customary rights the same legal status as other land rights irrespective of formal titling, and providing for mandatory consultation of communities before their land is alienated for investment and other purposes (Alden Wily 2011; Vorley et al. 2012). It reinforces the provisions of the National Land Policy on the importance of smallholder production by recognizing customary rights of access and management as being equivalent to the
State-allocated right of use and benefit of land\textsuperscript{62}, conferring legal validity upon indigenous systems of transferring and inheriting rights, and recognizing the role of local communities in the prevention and resolution of conflicts. It empowers local communities by mandating them to protect and manage their natural resources and makes them key actors in decision making over investments by outsiders on their land.

The Land Law makes innovative provisions on tenure, the most important of which include: establishment of a single form of land tenure right, the DUAT, irrespective of the means through which it is acquired; recognition in law of DUATs obtained through customary and good faith land occupation, and their protection without the need for formalization and registration; provision of a flexible approach to proving and spatially defining DUATs acquired through customary and good faith occupation; and establishment of the right (and obligation) of local rights holders to participate in land and natural resources management and land rights allocation processes (Norfolk and Tanner, 2007).

Legal recognition of customary land rights and of the role of customary institutions combined with decentralization of land administration has opened up possibilities for local control of decision making over the use of land, and strengthened the hand of communities in negotiating with investors. The system explicitly recognizes and facilitates the implementation of legal pluralism in land administration, combining customary and statutory law of land.

Because the Land Law is perceived by communities as validating their traditions and customary laws on land, it has found easy acceptance and gained legitimacy with communities. Since it is not prescriptive, the Land Law builds on the existing customary law of respective communities, bringing what communities are familiar with into the realm of state law. That it makes use of customary institutions has also made it easy for communities to embrace it and incorporate its imperatives into their legal structures (Knight, undated).

Implementation of this innovative and inclusive policy and legal framework has not been without its challenges. Community consultations are a critical feature of the policy framework aimed at securing the interests of the community and ensuring that they benefit from investments in their land. But effectiveness of the consultations are undermined by a number of challenges, among them: lack of awareness about the policy framework and weak capacity for negotiations among

\textsuperscript{62} Often referred to by its Portuguese acronym, DUAT, which stands for Direito de Uso e Aproveitamento dos Terras
community members and local government officials; limited legal literacy on the part of community members; weak local organizational and entrepreneurial capacity; weak governance of the costs and benefits of outside investment at community level; investors’ failure to comply with their commitments and inability of communities to hold them to account; power imbalance between investors and local communities and; higher-level project approvals that reduce community consultations to mere formalities.

It has been noted that the private sector prefers to have recourse to the statutory system, while communities prefer using the customary system, leading to forum shopping that undermines the policy objectives of facilitating fast and efficient dealings in land. Community consultations stipulated in the policy and law as prerequisites for allocation of rural land to investors is often perceived as a constraint by government officials keen to fast-track large scale investments in the land sector (Tanner, 2011). This creates incentives for government officials to circumvent the procedure and allocate land before consultations are held with communities. While communities ultimately retain the right of refusal, it has been observed that “in practice it becomes difficult to refuse the combined weight of both investor and government” (Bechtel, 2001:12). Capacity imbalances between communities and investors on the one hand and corruption and ignorance on the part of low level local officials on the other also undermine the potential of the policy to deliver the full range of envisaged benefits to communities (Hanlon, 2004, Knight, undated).

However, whatever the challenges and difficulties in implementation, the concept of partnership and contractual relations between investors and communities is now entrenched in the land policy framework of Mozambique. Thus, although challenges persist, government is duty bound to take measures to address the challenges and difficulties so that the communities are able to enter into effective sustainable partnerships with investors. It is this imperative that informed the adoption of the Land Law Regulations and the Technical Annex thereto.

The Land Law Regulations provide detailed procedures for implementation of the Land Law and the National Land Policy. The Regulations set out procedures for, among other things, acquisition of rights and titling and alienation of land for public infrastructure. They provide for the role of the National Cadastral Services, and specify rights and obligations of land users. The Regulations specified that clear rules for identifying “a community” and delimiting its borders be
included in a technical annex, which would also cover the delimitation of land occupied by nationals in “good faith”, and the demarcation of land for purposes of titling.

The Technical Annex to the Land Law Regulations describes in detail the procedures for community land delimitation. This process, which can be initiated by a local community or an investor, makes possible the delimitation and registration of land over which a local community has a DUAT acquired by customary occupation. A key feature of the community land delimitation process is participatory rapid appraisal through which local people, drawing on their own knowledge of their history, land use and socio-political organization, are able to define their community. The delimitation procedure was written into the Technical Annex after piloting in 21 different locations by over 120 field officers drawn from a cross section of stakeholders (de Quadros, 2003).

3.3.4. Agricultural policy and practice
The policy framework for the agricultural sector in Mozambique is defined by the Strategic Plan for Agricultural Development (PEDSA). The Strategic Plan articulates a medium to long term vision for the sector based on national objectives and priorities that have been aligned to sub-regional and regional policy imperatives. These include the CAADP framework, the SADC Regional Agricultural Policy (RAP), the Lagos Plan of Action, the Abuja Declaration and the Maputo Declaration.

PEDSA takes a system-wide and holistic approach, providing a framework for integration of other strategies that have relevance for agriculture and rural development. It is informed by Mozambique’s Vision 2025 of creating an integrated, prosperous, competitive and sustainable agriculture sector. Its overall objective is to contribute towards the food security and income of agricultural producers in a competitive and sustainable way, guaranteeing social and gender equity.

Two of the five specific objectives of PEDSA are of direct relevance to the current review. These are: to use land, water forests and fauna resources in a sustainable way; and to establish a legal framework and policies that are conducive to agricultural investment. The other three objectives address production, productivity and competitiveness, marketing infrastructure and services, and the strengthening of agricultural institutions.

63 p.x
PEDSA identifies three land-related challenges to agricultural development in Mozambique, which in turn define the priorities it sets for land. These are: to improve the use of land with potential for agriculture, forestry and pasture; guarantee the legally recognized rights of communities and beneficiaries to land and natural resources; and increase the amount of land that has legally recognized forms of ownership.

In order to improve security of land ownership and land administration, PEDSA proposes eight strategies, namely:

i. To ensure that land rights acquired are adequately protected by the official land registry;
ii. To encourage the delimitation and certification of land community land;
iii. To simplify the procedures for obtaining land titles and clarify the role of each actor at different stages of registration;
iv. To raise the awareness of landowners about their rights and responsibilities;
v. To simplify and speed up the process of resolving land conflicts;
vi. To increase the capacity of the public sector to provide land related transaction services, including the acquisition or ceding of land and resolution of land conflicts;
vii. To improve women’s access to and ownership of land, paying particular attention to the needs and interests of female-headed households;
viii. To improve the security of land ownership through revising and implementing the legal framework and regulatory instruments with the aim of guaranteeing individual and community rights and the resolution of conflicts

PEDSA is to be implemented in close partnership with the private sector and civil society, including through the creation of public-private partnerships. The private sector is to be contracted to provide public services directly to producers where appropriate. Civil society will be depended on to organize producers into associations and cooperatives and train them to better take advantage of the opportunities opened up in the implementation of the strategy. The role of universities in conducting studies and policy analysis is also underscored.

The institutional framework for implementation of agriculture and rural development policy in Mozambique is under the coordination and guidance of the Ministry of Agriculture (MINAG)\(^6\), which has the overall responsibility for policy analysis, formulation, implementation and

\(^6\) Known by its Portuguese designation, Ministério da Agricultura
monitoring with respect to land and agriculture. The fact that MINAG has responsibility for land administration is a unique arrangement that puts the discourse on land rights at the centre of agricultural production and rural development. Mozambique is unique among the countries considered in this review for not having a separate Ministry responsible for land. Instead, MINAG hosts the Directorate of Land Administration. This arrangement ensures that the formulation and implementation of land policy in the country is closely linked to agricultural development imperatives.

Promotion of private sector investment in agriculture is a particular focus of agricultural policy. Promotion of farmers’ organizations is considered critical for this purpose, although such organizations are still generally weak (Gemo, 2011). Farmer groups facilitate knowledge sharing and access to resources, leverage bulked harvests, and create a platform on which to lobby for favorable policies (Jimat Development Consultants, 2010). In 2009 the Council of Ministers approved the creation of the Commercial Agriculture Promotion Centre (CEPAGRI)\(^{65}\) in response to a request from the private sector for improved coordination. For its part, the private sector created the Confederation of Mozambican Economic Associations (CTA)\(^{66}\) as a mechanism for engaging with the government. The private sector has also created specific associations such as the Association of Cashew Industries (INCAJU)\(^{67}\), and the Mozambique Ginners Association (AAM)\(^{68}\) for the cashew and cotton sub-sectors respectively, and the Mozambique Industrial Association, which also deals with issues touching on the sugar sub sector. Provincial level associations such as the Commercial and Industrial Association of Nampula (ACIANA)\(^{69}\) in Nampula Province are aligned to CTA (Republic of Mozambique, 2010).

### 3.4. Zambia

Zambia covers a total land area of 75 million hectares (752,000 square km), of which 58% (42 million hectares) is classified as medium to high potential for agricultural production, with rainfall ranging between 800mm to 1400mm annually. It has a population of more than 13 million, about 40 per cent of which live in rural areas. The land is suitable for the production of a

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\(^{65}\) Acronym from the Portuguese name, Centro de Promoção da Agricultura  
\(^{66}\) Acronym from the Portuguese name, Confederação das Associações Económicas  
\(^{67}\) Acronym from the Portuguese name, Instituto de Fomento do Caju  
\(^{68}\) Acronym from the Portuguese name, Associação de Algodoeiros de Moçambique  
\(^{69}\) Acronym from the Portuguese name, Associação Comercial, Industrial e Agrícola de Nampula
broad range of crops, fish, and livestock; but only 14% of it is currently being utilized (Republic of Zambia, 2004).

The Government of Zambia recognizes the important role of agriculture in national economic development, seeing it as the engine of growth for the country. The Sixth National Development Plan (SNDP) asserts the role of agriculture in addressing poverty and promoting rural development, and proposes strategies for stimulating agricultural productivity and promotion of agro-businesses. It denotes agriculture a priority growth area, and commits government to investment in agriculture infrastructure and rural finance to promote crop diversification and improve marketing systems, harness the value chain and increase productivity to ensure national food security, employment creation and increased income from exports (Republic of Zambia, 2011:9).

Agriculture generates 18-20 per cent of the GDP, contributes about 35 percent of the country’s total non-traditional exports\textsuperscript{70} and about 10 percent of the total export earnings. It provides livelihoods for more than 80 per cent of the rural population and more than 50 per cent of the total population, and employment to 67 percent of the labour force. Because it is the main source of income and employment for rural women who constitute 65% of the total rural population, investing in the sector to improve rural incomes is a critical means of reducing poverty and enhancing food security (Zambia Development Agency, 2011; Republic of Zambia, 2004, 2011).

The commercial agriculture sector was well developed in Zambia during the colonial period, providing the food surplus that fed the country’s highly urbanized population and work force. But in the years leading to and immediately after independence, large numbers of expatriate farmers emigrated from the country, some returning to Europe and many others moving into Zimbabwe and South Africa. In reaction to this, the independence government introduced various reforms in the sector leading to a rapid expansion in the number of smaller "medium-scale" and "emergent" commercial farms. Today, the agricultural sector is characterised by a dual structure, in which a small number of large commercial farms, concentrated along the railway line, co-exist with scattered subsistence smallholders and few small commercial farmers (Bonaglia, 2008; Roth et al, undated). Nevertheless, smallholder agricultural production, comprising mainly of subsistence farmers continues to be the dominant agricultural production

\textsuperscript{70} Meaning exports other than copper and cobalt
system. It is estimated that nearly 40 per cent of rural households are engaged in subsistence farming.

3.4.1. Land policy framework

The Lands Act of 1995 is the operative legal framework governing land in Zambia. It was enacted as part of the economic liberalization reforms introduced by the new democratic government in 1991. The Act abolished the various categories of land that existed in Zambia since colonial times and replaced them with just two - state land, and customary land. State land is defined as that land which is not situated in a customary area.

The bulk of the land in Zambia is customary land, constituting 96% of the land area of the country. State land covers only 6 per cent of the land, and is mainly urban land and land situated along the railway line that is rich in nutrients and mineral deposits, and was tsetse fly free during colonial times. This is the land that was favoured by colonial settlers, and which benefited from the development of infrastructure to support colonial exploitation of resources (WLLA, 2010).

Customary land is held and used in accordance with customs and traditions of local communities. Though based on common fundamentals, customs and traditions governing land differ in particular details from one community to another. Generally speaking, customary land rights are not based on any documentation, but claims and entitlements derive from membership of the respective communities. It is possible in Zambia to obtain a title deed for customary land through a village head or chief.

An attempt to put in place a national land policy has been held up for more than two decades now. A national land policy formulation process was initiated in 1993, and a Draft Land Administration and Management Policy issued by the Ministry of Lands. The same remains in draft form to-date. The latest draft of the policy obtained in the course of this review is dated October 2006. It is said to be “a working document and not a formal policy document” that it “should not be quoted and interpreted as the policy of the Government of Zambia or any other government ministry or department until it has been finally agreed and adopted” (Republic of Zambia, 2006:1).

The draft policy does however provide indications of the direction of government thinking regarding critical land issues in the country. It states that the vision of the Government is to have an efficient and effective land administration system that promotes security of tenure, equitable
access and control of land for the sustainable socioeconomic development of the people of Zambia. The reference to socio-economic development clearly includes agriculture.

The draft land policy focuses largely on delivery of land services and land management. Although it mentions agriculture as a major land use, it does not dwell on the link between land tenure and agricultural development. It calls for planning, survey and the provision of services before land is allocated for agriculture. It notes that the 1995 Lands Act failed to take into account the provisions of the Agricultural Lands Act, thereby creating confusion. This lack of harmony between different pieces of legislation touching on land is attributed in large measure to the absence of a national land policy.

3.4.2. Agricultural development policy
Zambia’s National Agricultural Policy (NAP) was adopted in 2004 and is stated to cover the period 2004 to 2015. Its overall objective is to facilitate and support the development of a sustainable and competitive agricultural sector that assures food security at national and household levels and maximizes the sector's contribution to the national GDP. It provides the overall vision and policy framework for the agricultural sector. It assigns the private sector a key role in service provision, with the Ministry of Agriculture and Cooperatives (MACO) expected to focus on policy formulation, enforcement and regulation, while creating strategic partnerships with other stakeholders. Donors are expected to provide financial, technical and other support in the implementation of agricultural policies and programmes and capacity building for stakeholders (Bonaglia, 2008).

The NAP has five specific priority objectives, namely: to ensure national and household food security; contribute to sustainable industrial development; increase agricultural exports; generate income and employment through increased agriculture production and productivity; and ensure that the existing agricultural resource base is maintained and improved upon. The objectives focus on modernization of production, increasing productivity, and improving access to both local and export markets.

None of the specific priority objectives speaks directly to concerns of land administration in agricultural development. The nearest the Policy comes to addressing issues of land is in the

71 For example, the Agricultural Lands Act still recognizes freehold land tenure, which was abolished by the 1995 Lands Act
sectoral strategy that speaks of facilitating availability of and accessibility to land for agriculture and development of infrastructure in potentially productive agricultural areas. But this strategy is more about land use planning and provision of infrastructure than it is about clarification of tenure and rights. It addresses concerns about the poor state of infrastructure especially in some of the agricultural areas, and proposes rehabilitation of infrastructure such as feeder roads, bridges, storage sheds, dams, canals, etc.

Land tenure and rights do not appear to be a major concern for agricultural development policy in Zambia. Even where land tenure is mentioned, the focus is on promoting better land use. This may be explained by the perceived availability of land for agriculture, given that the country is highly urbanized, and only a small portion of potentially productive agricultural land is actually in use. Consequently, policy concerns relate more to the development of supportive infrastructure within agricultural areas to provide incentives for attracting private investors to invest in agriculture and to promote sustainable land management practices.

The SNDP identifies limited access to land as one of the constraints to economic growth and poverty reduction, but explains this in terms of land administration and management challenges, which have been compounded by unreliable land information management systems, lack of a decentralised land registration system and inadequate collaboration among different stakeholders (Republic of Zambia, 2011). Indeed, in its diagnosis of constraints to the growth of the agricultural sector, the SNDP does not list land issues. Instead, it lists inadequate extension services, high cost of financing, inadequate infrastructure, livestock diseases, over fishing and poor functioning agricultural markets; and low competitiveness as a result of poor road network, inadequate storage and limited access to electricity.

Nevertheless, among the policy statements that will guide the development of the agricultural sector during the SNDP period is the commitment by government to facilitate equitable access to land for agricultural purposes.

In discussing the challenges associated with land husbandry, the NAP states that in order for land to be utilized optimally, it will be necessary to change land tenure and farming practices in

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72 Thus within the natural resources chapter of the SNDP (chapter 19) measures proposed for promotion of sustainable land management practices include erosion control, water management and soil fertility management; development of an investment frameworks for sustainable land management; formulation of an integrated financing strategy for sustainable land management; and promotion of agronomic soil conservation measures.

73 12.1 at p.108

74 p.111
addition to increasing public investment in basic infrastructure such as feeder roads and bridges. The objectives and strategies proposed in this regard are tailored wholly towards the promotion of good land use practices, land use planning and provision of infrastructure.

The government initiated the Commercialization of Agricultural Lands (Farm Blocks Development) in its drive to commercialize agriculture. The initiative aims to open up new farming blocks measuring up to 100,000 ha in each of the 9 provinces of the country for commercial development and expansion of agriculture. Interventions target provision of necessary infrastructure such as feeder roads, bridges, storage sheds, electrification, dams and canals to attract investments in agriculture.

Each of the 10,000 ha blocks constitutes the core large-scale farm for a core venture around which there shall be several commercial farms of 1,000 to 5,000 ha and small farm holdings of between 30 to 3000 ha preferably under out-grower arrangements. They provide local and international investors ready access to surveyed land for agro production purposes. It is intended that the core investor shall develop the infrastructure within the farm block and manage the appropriate agro-business activities. Through an out-grower scheme, the core venture will support the small, medium and large scale farms to produce and market their produce. Every core venture is expected to establish processing plants for value addition targeted at both the local and international markets (Zambia Development Agency, 2011).

Under the sectoral strategy of reviewing and realigning institutional and legislative arrangements, the policy proposes to build the capacity of farmer groups including cooperatives to service their members efficiently through the provision of education, training and other support services. This is in line with the vision of the policy of government playing its role in agriculture through partnership with farmers, the private sector, NGOs and Cooperating Partners. The government sees the cooperative movement as a strategic means of empowering smallholder farmers to share in the benefits of liberalization of the agricultural sector. The policy thus prioritizes the development of “a strong and vibrant small-scale enterprising sector both in rural and urban areas with special emphasis on production, marketing and processing”.

75 3.3 at p.23
76 2.1.14 at p.13
NAP recognizes the need for linkages with regional and global initiatives on agriculture and rural development, particularly in the context of promoting trade in agricultural produce. It mentions NEPAD and CAADP; COMESA; SADC; and even the African, Caribbean and Pacific/European Union (ACP/EU) Cotonou Agreement and the World Trade Organization (WTO) as frameworks that Zambia shall actively engage with. The Policy does not mention the AU F&G or the VGGT as these were developed after it came into effect, but the commitment to regional and global linkages clearly encompasses these two.

To facilitate the implementation of CAADP in the country, the Zambia CAADP Compact (ZCC) was adopted in 2009. It is intended to strengthen, support and facilitate effective implementation of the NAP within the framework of the five-year National Development Plans that are the means for achieving Zambia’s Vision. Although adopted during the period of the Fifth National Development Plan (FNDP), the ZCC anticipated the transition to the SNDP, of which the NAP is considered the agriculture chapter. The investment programmes under the ZCC are thus consistent with the NAP, contributing to the realization of the country’s Vision 2030, as well as the Millennium Development Goals (MDGs), particularly the first MDG of reducing extreme poverty and hunger by half by 2015.

ZCC deals with land issues within the context of asserting Zambia’s commitment to the four pillars of CAADP. The Government commits to develop and implement policies and programmes that support increased productivity and sustainable land and water management; and to facilitate equitable access to land. Just as in the SNDP, the ZCC concerns around land are focuses on sustainable land management practices. It does not address itself to land tenure and land rights concerns.

There is a clear recognition of the need for partnerships for agricultural development in Zambia. Policy aspirations for the sector revolve around animating partnerships with key stakeholders in particular the private sector, civil society and development partners, with MACO playing a coordination role in policy development, implementation and monitoring as well as institutional capacity development. The government is keen to see the agribusiness and farming communities, input suppliers, traders, producers, financial institutions, Civil Society Organizations (CSOs) and the development partners playing the central role in the agricultural sector. The ZCC asserts that
the private sector will drive the development of the agricultural sector with the civil society and farmer organizations (including medium and large scale farmers) as partners. Zambia also sees regional cooperation as key to the attainment of its policy and strategic objectives for the agricultural sector. In this connection, it is an active player in the discussions regarding agriculture and rural development within SADC, COMESA and the AU. It is also keen to build on its comparative advantage within the region and beyond by taking advantage of its rich agricultural land potential to strengthen a niche for agricultural produce that can be exported to the rest of Africa and beyond.

3.5. Ghana
Ghana covers an area of 238,540 square kms, and has a population estimated at 25 million people. It is an agricultural country, and thus both livelihoods of the people and the national economy are defined by agriculture. The agricultural sector contributes the largest share of the GDP, even though the contribution has declined in recent years, varying between 35.8% and 37% since 2000. It is estimated that 56.2% of the population is rural, and 50.6% of the population is actively engaged in agriculture, with the bulk of the production in the hands of smallholders, who produce nearly 80% of Ghana’s total agricultural output (Ministry of Food and Agriculture, 2007, 2008).

The importance of agriculture is fully recognized in national policy. The Constitution of the Republic of Ghana, in its Directive Principles of State Policy provides that the State shall take appropriate measures to promote the development of agriculture and industry. The strategic objective of the government of Ghana for the agricultural sector entails promotion of modernization and commercialization of the sector to enhance production. These objectives are set out in key policy documents such as the Food and Agricultural Sector Development Policy (FASDEP) and the Growth and Poverty Reduction Strategy (GPRS). To the same end, Ghana is an active participant in regional processes such as NEPAD and CAADP.

Land governance has a direct bearing on the realization of these policy objectives for agriculture in Ghana, especially in the context of rapid changes that are putting strains on customary institutions and systems. The situation is exacerbated by the fact that the policy, legal and

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77 p.8
78 Article 36(3)
institution framework for land governance in Ghana is comprised of a complex mix of constitutional, legislative and customary sources; which tends to result in overlapping claims that impact on investment decisions.

Increasingly, it is becoming difficult to access land in the more densely populated areas. Tenure security challenges are rampant in areas where paramount chiefs control land transactions. Questions have been raised about the equity of transactions involving the acquisition of large tracts of rural land for commercial agriculture investments. Rising population pressures and growing commercial pressures on land have resulted in the rise of land values, leading to significant reinterpretation of traditional chiefs’ rights to administer communal land (Hughes et al. 2011).  

The customary land tenure system in Ghana is pretty well developed and integrates a complex system of rights and interests in land. The main interests are the allodial title, the customary freehold, the common law freehold, sharecropping and leaseholds. The allodial title is the highest interest in customary law, and is held or vested in stools or skins. The right is acquired either by being the first to cultivate the land or by succession from the first owning group. Stool or skin ownership is corporate and does not vest any individual interest in the ruler.

Customary law freehold is the right held by subgroups and individuals as part of the larger group that holds an allodial title. It is a “usufructuary title” that may be held on a corporate status by the sub-stool, lineage, family or individuals. The title exists in perpetuity as long as the superior title of the stool (the allodial title) is acknowledged. Common law freehold is an interest in land acquired through a freehold grant made by the allodial owner, either by sale or gift to another person out of his interest. The grant is contingent on the parties agreeing that their obligations and rights will be regulated by common law.

Sharecropping arrangements are of two types, *abunu* (a half share) and *abusa* (a third share). As the name suggests, they involve the sharing of crops in that the tenant tills the land and, at harvest, gives a specified portion of the produce to the holder of permanent use rights.

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79 Reports abound about chiefs alienating land under their jurisdiction to accommodate urban expansion, granting long-term leases to investors and other outsiders, and approving the conversion of farms into building plots. Chiefs are also accused of appropriating the economic benefit of such land transactions, prompting the dislocation of smallholders from their land and fragmenting community structures.

80 This is title to land where the owner has an absolute title, free from any obligations to a superior landlord. It is often distinguished from a feudal title in which the landholder owes obligations to a monarch or chief.

81 A title that provides the holder with the right to use the land subject to the over-riding rights of the owner.
Leaseholds are rights granted to a person to occupy specified land for a specified term. They are derived from the common law, not customary law, but may be granted either by the holder of the allodial title or a customary freeholder. The lessee may create a sublease or assign the unexpired term of the lease, subject to the consent of the lessor.

### 3.5.1. The Constitution of Ghana

The Constitution of Ghana makes land a constitutional category, and makes provisions regarding its place in the national economy. The Directive Principles of State Policy underscore the social functions of land. Article 36(8) of the Constitution enjoins the State to recognise that ownership and possession of land carry a social obligation to serve the larger community and, in particular, that the managers of public, stool, skin and family lands are fiduciaries with the obligation to discharge their functions for the benefit respectively of the people of Ghana, of the stool, skin, or family concerned and are accountable as fiduciaries in this regard.

Chapter 21 of the Constitution makes provisions about lands and natural resources. It provides for the administration and management of public lands, establishes the Lands Commission with branches in each region (Regional Lands Commissions), specifies restrictions on ownership of land by non-citizens and provides for the administration and management of stool and skin lands and property.

Functions of the Lands Commission include: managing public lands; advising the government, local authorities and traditional authorities on the policy framework for the development of particular areas of Ghana to ensure that the development of individual pieces of land is coordinated with the relevant development plan for the area concerned; formulating and submitting to government recommendations on national policy with respect to land use and capability; and spearheading a comprehensive programme for the registration of title to land throughout Ghana. These functions effectively place the Lands Commission at the centre of land use planning and development, with direct implications for agriculture and rural development.

Article 266 of the Constitution prohibits the creation of any freehold interest in favour of a person who is not a citizen of Ghana, and limits interests that can be created in favour of foreigners to leaseholds of a maximum of 50 years at a time. This provision has not deterred the quest for land for agricultural investment by foreigners in Ghana. Instead, Ghana has been a prime target of

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82 Articles 257 to 269
large scale commercial land acquisitions by commercial investors prompted by rising demands for biofuels and fears about volatile global food prices. To manage these demands, the Lands Commission has proceeded to develop guidelines to apply the VGGT to Ghana.

The place of customary land law and the role of customary institutions are institutionalized in the Constitution by Article 267 which vests all stool lands in Ghana “in the appropriate stool on behalf of and in trust for the subjects of the stool in accordance with customary law and usage”\(^{83}\). The importance of customary land law and institutions in land administration in Ghana derives from the fact that up to 80% of land in the country is administered and otherwise governed by customary rules and authorities, most of it falling under a particular stool or skin, the symbol of chiefly territorial control (Hughes et al., 2011).

The Office of the Administrator of Stool Lands (OASL) is established to administer stool and skin lands, taking responsibility for collection and disbursement of rents, dues and other payments from such lands. Regional Lands Commissions oversee the disposition or development of stool lands ensuring that such disposition or development is consistent with the development plan drawn up or approved by the planning authority for the area where the stool land is situated.

The Administrator of Stool Lands and the Regional Lands Commissions are enjoined by the Constitution to “consult with the stools and other traditional authorities in all matters relating to the administration and development of stool land” and to make available to them all relevant information and data\(^{84}\). The Lands Commission and the Administrator of Stool lands are further enjoined to “coordinate with all relevant public agencies and traditional authorities and stools in preparing a policy framework of the rational and productive development and management of stool lands”\(^{85}\).

### 3.5.2. National Land Policy

The National Land Policy was adopted in January 1999, climaxing a formulation process that started in 1994. The Policy addresses challenges to the land sector such as weak land administration; conflicts over land; and expropriation of large tracts of land by the state without adequate consultation with landowners. Among the challenges it identifies are: tenure insecurity and difficulties in accessing land for agriculture and other development purposes. The Policy

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\(^{83}\) Article 267(1)  
\(^{84}\) Article 267(7)  
\(^{85}\) Article 267(8)
attributes the former challenge conflicts of interests between and within landowning groups and
the state, land racketeering, slow disposal of land cases by the courts and a weak land
administration system. The latter challenge is said to be caused by conflicting claims to
ownership, and varied outmoded land disposal procedures.

The Policy articulates 13 Guiding Principles, three of which are of relevance to the present
review. These are the principle of fair access to land and security of tenure; the principle of
private sector as an engine of growth and development subject to national land use guidelines;
and the principle of optimum usage for all types of land uses, including agriculture, in the long
term national interest.

A number of objectives that the National Land Policy seeks to achieve have relevance for
agriculture and rural development. It seeks to ensure that every socio-economic activity is
consistent with sound land use; facilitates equitable access to and security of tenure of land;
instills order and discipline into the land market; minimizes, and eliminates, where possible, the
sources of protracted land boundary disputes, conflicts and litigations; creates and maintains
effective institutional capacity and capability for land service delivery at all levels; and promotes
sustainable land management and development practices.

To facilitate equitable access to land, the government shall, among other things, review the
phenomena of landlessness and migrant farmers and deal with the causes of migration and
encroachment; collaborate with traditional authorities to streamline customary practices, usages
and legislations governing land; and encourage landowning entities to create land banks for
present and future generations. To improve security of tenure, government shall undertake tenure
reform to documents and recognize the registration and classification of titles under different
tenure systems; speed up titling and registration to cover all interests in land throughout Ghana;
and take steps to manage land disputes in a more comprehensive manner.

The National Land Policy is implemented through the Land Administration Project (LAP), which
is now in its second phase. The first phase (2003 – 2011) had as its objective the development of
land administration pilots to lay the foundation for a sustainable decentralized land administration
system that is fair, efficient, cost effective and decentralized. It had four components, namely:
harmonizing land policy and regulatory framework; institutional reform and development;
improving land titling, registration, valuation, land use planning and land information system; and project management, human resource development and monitoring and evaluation.

Although its adoption marked a critical threshold in land administration in Ghana, the National Land Policy has been criticized for not offering a clear pro-poor vision of enhancing land rights and thus failing to lay a sound foundation for growth with equity. In particular, the Policy does not directly deal with the difficulties faced by the economically and institutionally poor in securing their land rights, and its thrusts are diverse and by no means consistent. Its overall strategic direction points to an expansion of existing land registration procedures in order to quickly facilitate investment. It seems to assume that titling procedures structured around the requirements of investors will ultimately benefit the majority, and does not address itself to the real possibility that they could in fact exaggerate tenure insecurity for the poor and heighten poverty (Alden Wily and Hammond, 2001).

This criticism highlights an abiding challenge for dealing with land issues in agriculture and rural development. Even where the role of land in agriculture and rural development is acknowledged in policy documents, policy definitions of poverty that focus on economic poverty end up paying little attention to socio-institutional disadvantage or factors that drive or sustain poverty, such as insecure access to land resources that are so central in an agrarian economy (Alden Wily and Hammond, 2001). In the absence of clear articulation of the linkages between tenure insecurity and economic poverty, the national economic development framework cannot offer structural remedies, and instead operates on the assumption that the promotion of private sector led commercial production will automatically improve the resource position of the poor. The possibility that this strategy may lead to more widespread inequality and further weaken the position of the poor is not adequately considered. Thus, while land policies may rightly identify tenure insecurity as a policy concern, policy commitment and resources to address this problem are undermined by the priorities set by the overall national economic development frameworks that determine government priorities and the allocation of resources.

3.5.3. **Agricultural development policy**

Ghana’s policy framework for the agricultural sector is FASDEP. It is now in its second phase, the first FASDEP having been formulated in 2002 as a follow up to and building on the Accelerated Agricultural Growth and Development Strategy (AAGDS) of 1996. It is informed
by the national development objectives spelt out in the Ghana’s national economic development blueprint, GPRS\(^{86}\), which seeks to achieve accelerated and sustainable shared growth, poverty reduction, gender equity, protection and empowerment of the vulnerable and excluded within a decentralised and democratic environment. GPRS II prioritizes reform of land acquisition and property rights among the interventions for modernizing the agricultural sector.

The key thrust of agricultural policy since FASDEP I is modernization of agricultural production, with the private sector as the key engine driving agricultural growth\(^{87}\). Access to land is identified as one of the cross-cutting constraints to agricultural productivity. The concern in this regard is the decline in availability of agricultural land due to population pressure and urbanisation. Insecurity of tenure is also a concern, which is linked largely with the absence of legal titles in customary land tenure systems. Communal land ownership is viewed as a constraint to agricultural productivity as it “invests rights in all but gives responsibility for management to none”\(^{88}\).

The position of FASDEP regarding communal land ownership seems to be at variance with that of GPRS II, which is the national economic development blueprint, the agricultural component of which FASDEP II sets out to implement. The latter makes a more nuanced analysis of land related challenges to agricultural productivity, and recommends interventions to address them. Among the interventions it recommends include re-examination of existing variations in access and control over land in different communities to promote easy access and ensure equity to all, especially to holders of user rights; improving the system of land registration to protect the interests of small holders; establishment of agri-business zones and land banks; review of the LAP to recognise the importance of property rights to Small and Medium Size Enterprises (SMEs); and enforcement of the Land Title Registration Law of 1985 to ensure security of tenure of small land holders, especially women and the youth.

GPRS II came to an end in 2009 and was succeeded by the Ghana Shared Growth and Development Agenda (GSGDA) 2010-2013. The new development blueprint maintains the focus on agriculture and rural development through the thematic area on accelerated agricultural

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\(^{86}\) Also currently in its second phase (GPRS II)

\(^{87}\) The national vision for the food and agriculture sector is stated as “a modernized agriculture culminating in a structurally transformed economy and evident in food security, employment opportunities and reduced poverty.

\(^{88}\) FASDEP II p.12
modernisation and natural resource management. GSGDA does not speak to the issues of land acquisition and property rights in the same manner as GPRS II did, even though it too is to be implemented in the agricultural sector through FASDEP II and the Medium Term Agriculture Sector Investment Plan (METASIP) 2011-2015.

FASDEP II does not propose any specific interventions directed at issues of land rights. Its interventions on land are focuses on promoting sustainable management of land and environment. Reference to land and property rights is found in a summary in Appendix 1 of cross-cutting policies that have a bearing on food and agriculture. Land Policy is acknowledged here as important for agriculture and food security; as security of land tenure is a constraint to agricultural investment. Mention is made of an agricultural land policy that will complement the land policy by promoting sustainable land management (SLM) practices within the sector.

It may well be that the lack of detailed treatment of the land issue by FASDEP is informed by the fact that the land issues are being addressed by the relevant Ministry in its implementation of the Land Policy. However, this may constitute a lost opportunity. The failure to analyze the tenure constraints to agricultural productivity may explain the absence of interventions to address land tenure in the context of agricultural production. In the absence of such interventions in the FASDEP II document, it is not surprising that METASIP does not have any investments aimed at dealing with the problems of property rights in land and tenure in so far as they are a constraint to agricultural productivity.

Ghana is actively engaged in regional processes at ECOWAS and AU levels that have a bearing on agricultural development. An ECOWAP/CAADP Compact was signed in October 2009 with the aim of strengthening and adding value to FASDEP II and METASIP processes and initiatives. The Compact confirms the commitment of the government to work in partnership with key stakeholders in the agricultural sector. The Compact was signed by the Minister for Food and Agriculture and the Minister for Finance and Economic Planning on behalf of the Government, as well as by representatives of AU/NEPAD, ECOWAS, Development Partners, Civil Society, National Farmers’ Association, the Private Sector, Agricultural Trade Unions, Parliament and Traditional Rulers.

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89 Through the Agriculture Select Committee
3.6. Mali
Mali is the largest country in West Africa, covering an area of 1,240,192 square kms, but sparsely populated with an estimated 16.5 million people\textsuperscript{90}. It is a landlocked country about 65% of which is desert or semi-desert, extending into the Sahara. River Niger with its annual flood cycle that occurs between August and November defines life in Sahel region that covers the central part of the country. Rainfall and rivers to the southwest of the country make the region marginally greener than the rest of the country.

Although a great and flourishing civilization in the ancient past, Mali has had a troubled recent history, with a combination of droughts and both internal and external conflicts that have rendered it one of the poorest countries in the world. After the 1990s it experienced rapid economic growth with the introduction of multiparty democracy, resulting in relative social stability. However, in early 2012, the state lost control over the north of the country to Islamist fighters, followed by an inconclusive coup as the Islamists threatened to advance south to Bamako. French military intervention restored relative order, and civilian rule was re-established but the situation is yet to fully stabilize at the beginning of 2015.

Agriculture plays an important role in the economy of Mali, although less than 5% of the land is arable. The contribution of agriculture to the GDP stands at 38.5%. Agricultural production is concentrated in the riverine area irrigated by the Niger River. It is estimated that about 80% of the population is engaged in agriculture and fishing, while 10% are nomadic pastoralists.

Although blessed with considerable potential for agriculture, pastoralism and forestry, these sectors have remained underdeveloped due to the country’s extreme poverty and the decrease of development assistance to agriculture and rural development (Djire \textit{et al}, 2012). This explains the push in recent years by the government of Mali to attract investors into the sector.

The country has 12.2 million ha of arable land, 30 million ha of grazing land, 3.3 million ha of wildlife reserves and 1.1 million ha of forest reserves (Ministry of Agriculture, 2008). Irrigation potential is substantial at 2.2 million ha of land and 2600km of rivers. It has considerable biological diversity, substantial forest and wildlife resources and large numbers of diverse, adapted livestock - 7.1 million cattle, 19 million sheep/goats, 0.6 million camels, 25 million poultry (Ministry of Agriculture, 2006; 2008).

\footnotesize{\textsuperscript{90} 2014 estimate per \url{www.cia.gov}, accessed 25\textsuperscript{th} August 2014}
Modernisation of agriculture is a critical policy imperative at all levels of government. It is one of the three main objectives of the Rural Development Master Plan, which was adopted in 1992 and updated in 2000\(^91\). Provisions of the Plan are integrated into other sector specific policies and strategies. The Framework Law on Agriculture is the instrument for actualizing the modernization ideal.

The dream of modernizing agriculture and optimizing the potential of the sector in Mali rests on realizing the irrigation potential of the Niger through the scheme operated by the Office du Niger (ON) in Segou Region of the country. ON is one of the oldest and largest irrigation schemes in West Africa, dating back to colonial times. It was set up in 1932 by the French government with the objective that it should become the main supplier of colonial France’s textile industries, the rice bowl for West Africa and a place of technical and social innovation. The planned development involved irrigation of over a million hectares over a 50-year period. The scheme currently covers more than 87,692 hectares, in which land is irrigated to produce rice, vegetables and sugarcane (Djire et al, 2012).

3.6.1. **Land policy and land tenure**

The land tenure system in Mali is based on two major legal systems, customary and statutory law. The customary law governs most rural land. It is informed by certain principles that are common to all communities, but with certain specificities based on local dynamics as well as social and historical factors within particular communities. Customary rights originate from the right of first occupancy (the first person to clear the land) or a right of conquest. Immigrants may access land within communities through gifts or loans.

Traditional chiefs hold overall authority over customary land and are responsible for allocation and general oversight and administration. The land is owned communally. Users exercise usufructuary rights, although the pre-eminence of certain families and social groups over certain categories of land is recognized and given effect by customary law. The functioning of the customary system of land governance has also been impacted upon in fundamental ways by the operations of state law and its institutions.

Statutory law has since colonial times vested all land in the state. The land is classified into three categories - public state land; private national lands; and land belonging to particular

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\(^91\) The other two objectives are environment protection and sustainable natural resource management
communities. State land is available for citizens to make use of for livelihoods support and economic gain. Land that is not under current use and land that is not registered is deemed to be public state land.

The Land and Property Code is the national law governing tenure. Mali’s land legislation follows the principle of ‘domaniale’, which gives the state a central role in land management by establishing a presumption of state ownership of land over which no person holds a title. The state owns both the land expressly registered as belonging to it, as well land classified as ‘vacant and unclaimed’ and land held by virtue of customary rights. The Code does however protect customary rights, as no individual or group may be forced to relinquish such rights except in the public interest and subject to prior and fair compensation. Nevertheless, since the lands are formally held by the state, it is the state that has the legal authority to decide on and negotiate transactions affecting them; and the rights of customary land users are thus subject to the overriding interest of the state.

The state can allocate part of its private estate by way of grant of rural concessions, allocation, long-term lease, and leasehold with the promise of sale or title deeds. Rural concessions involve the right of temporary use and development of a piece of land on the terms set out in the concession deed and attached specifications. Long-term leases involve the grant to the lessee of a long-term use right that can be mortgaged, against payment of an annual fee. Title deeds are permanent and cannot be challenged.

Customary land rights are formally recognized and protected by law, but decrees setting out the procedures for their formal registration have not been adopted. This renders the land legislation incomplete in important respects. Customary land holders that wish to formalize their rights can only do so through the procedure provided for rural concessions, which is costly and cumbersome, and not appropriate for recording customary rights.

The existence of pluralistic land tenure systems and the weak and poor enforcement of statutory laws undermine the effective regulation of the tenure dimension of agricultural development.

92 Code Domanial et Foncier (CDF)
93 Article 28
94 Article 43
95 Comprised of land explicitly registered as belonging to the state and land classified as ‘vacant and unclaimed’ and land held by virtue of customary rights
96 Article 35
97 Article 169
Even though legislation exists to promote investment and regulate its social and environmental impacts, it has not been effectively enforced to provide safeguards for local people. Indeed, there is a widening gap between the land law as it appears in the books, and the way governance of land actually occurs in practice (Diawara et al., 2014). Part of the problem in this regard stems from the fact that many provisions of state law are “incomplete, ineffective and out of touch with the local socio-economic reality” of communities; a situation which leads to confusion, engendering conflicts and abuses resulting in tenure insecurity and poor land governance (Djire et al, 2012).

This legal framework is not conducive to the tenure security of rural producers. Although customary tenure predominates in rural areas, the values underpinning state law are based on French legal tradition, which is often not consistent with customary tenure, and is in some cases even contradictory to it. The customary system and the state law have their different institutional frameworks. Links between the institutions responsible for land management are poor and land governance is generally weak (Djire, 2006). In rural areas, this results in two different systems of authority claiming legitimacy.

The fact that land held under customary tenure is deemed to be part of the private land estate of the state undermines the security of tenure of the majority of rural people. Though they own and work the land they have little decision making or management authority over it. Customary land holders who wish to formalize and register their titles cannot do so given that the implementing decree for the process has not been adopted. The contradictions and tensions between customary and statutory law have the potential to engender conflict when large-scale investments are introduced in rural areas. This situation undermines the potential of agriculture and rural development as smallholders and agro-investors are reluctant to increase their investments in the sector (USAID, 2010).

But factors that cause tenure insecurity in Mali extend beyond just the pluralistic legal regime. Other factors include: demographic growth, unsustainable land use practices, climate change, lack of public awareness of legal frameworks, lack of good governance and competence within the land administration system, slow decentralization, land expropriation, and poor land market performance.
The prevalence of land disputes and conflicts affirms tenure insecurity in Mali. Disputes occur within sedentary communities; between them and nomadic pastoralists, and across generations. Conflicts occur, when a family that lent land to another attempts to retrieve it, or when the borrowers start to invest on the land, which is land holder considers an attempt to appropriate the land. Struggles over access to land between young or landless members within family groups can also generate conflict. But the most violent land conflicts tend to occur between herders and farmers. The expansion of land under cultivation can obstruct routes for livestock and waterholes and cause increased tension between the groups. Such is the prevalence of land disputes that it is estimated that 80% of the case in courts are about land (LANDac, undated).

In recent years the government of Mali has initiated efforts to harmonize the legal system by measures that include establishing a mechanism for recognition and recording of customary land rights. Key policy instruments introduced for this purpose include Politique Foncière (générale), the Code Domanial et Foncier (CDF), the Loi d’Orientation Agricole (LOA), and the Charte Pastorale. These policy changes are still at an early stage and incomplete, so that their overall impact is yet to be determined. In any case, the political sensitivity of land issues and the vested powerful interests that have an interest in maintaining the status quo tend to undermine the political will needed to make the far reaching changes envisaged in the policies (USAID, 2010).

New legislation introduced in the wake of the wave of large scale land acquisitions have been focused on creating incentives for investors through tax breaks and other financial incentives, and addressing the social and environmental impacts of investments. Land rights issues have not required any specific interventions, probably because the state control over land serves the interests of investors. While the policy framework in Mali may be conducive for large scale investors, it is doubtful that it can, without significant reforms support the strengthening of smallholder agriculture.

**3.6.2. Agricultural development policy**

In 2006 Mali adopted the Law on Orientation of Agriculture (LOA) with the objective of guaranteeing the country’s food security and making the agricultural sector the driving force for the national economy. The Law prioritizes modernization of family farming and agri-business to foster the emergence of a structured, competitive agro-industrial sector integrated within the sub-
regional economy\textsuperscript{98}. It seeks to institutionalize the role of the private sector in production, transformation and commercialization of agricultural inputs, and refocus the role of government to policy development and implementation, coordination, capacity building and monitoring and evaluation. A key concern is to ensure that modernization of agriculture is achieved in a manner that integrates smallholder farmers and family farming systems.

Apart from the LOA, the government has articulated its vision and strategies for agriculture and rural development in a number of policy instruments, among them: the Strategic Framework for Growth and the Reduction of Poverty II 2007-2011; the Strategy for Accelerated Growth 2008-2012; the National Food Security Strategy; Agricultural Development Policy (PDA) the National Program for Agriculture Sector Investment (PNISA); and the National Program for Agricultural Investment (PNIA). PNIA is important for our purposes as it reflects Mali’s commitments and adherence to the CAADP Compact signed between the government and key stakeholders in October 2009.

The country is also implementing a decentralization policy which has important implications for planning and implementation of development activities. Within the framework of the Plan for Transition to a Sectoral Approach to Rural Development, the Government of Mali (GOM) commits itself to, among other things, prioritization of agricultural development, coordination of relevant development efforts, monitoring of progress, and planning for investment in the sector.

While policy documents indicate a commitment to the promotion of smallholder agriculture, in practice, the emphasis has been on promoting large scale commercial investments. Government officials tend to be pessimistic about the prospects of smallholder agriculture providing the food security and making the sector the engine for rural transformation as envisaged in national policies (USAID, 2010). The GOM has aggressively solicited private investment in agriculture, consistent with an approach that sees the private sector as the engine for agricultural modernization. It looks to the private sector to provide capital, technology, infrastructure, and market access that will catalyze economic development in rural areas. Yet, at least for now, it is smallholders who produce most of the food in Mali. With the right policy environment and support, smallholders can assure food and income security while using the land, soil and water resources in a sustainable manner.

\textsuperscript{98} Article 3
The institutional framework established by the GOM for the agricultural sector reflects the seriousness given to agriculture and rural development, and the land tenure issues associated with agriculture. The President and the Prime Minister work in collaboration with the Council of Ministers and the High Council on Agriculture which comprised five Ministers heading key production, social, economic and infrastructure ministries. A specific Secretary of State oversees land tenure issues within the ON zone. However, the large number of institutions has at times been a problem, as their coordination has proved difficult with adverse impacts on the overall governance of land tenure issues.

In line with its prioritization of agricultural modernization, Mali has been closely associated with regional and pan-African initiatives on agriculture and rural development. It is one of the countries that have surpassed the CAADP 10 percent target on budgetary allocation to agriculture, and among those that met or surpassed the 6 percent agricultural growth rate target. It signed the CAADP Compact in October 2009, establishing a framework for partnership with AU/NEPAD/CAADP, ECOWAS, and local stakeholders including the private sector, trade unions, civil society and development partners. The Compact integrates the imperatives of PNISA and other key agricultural sector policy instruments.

4. Land tenure and agricultural productivity: making the policy linkages
This review set out to examine the extent to which land policies facilitate land tenure security and thus impact positively on agricultural development. In doing this, the review has explored an issue that has exercised the minds of policy analysts and development practitioners for many years. Policy debates about the link between land tenure and agricultural productivity in Africa dominated the discourse on rural development in Africa during the last quarter of the 20th century.

The World Bank report on land reform (IBRD, 1974) set the tone for a large body of literature that would issue over the period for and against its proposition that indigenous tenure systems are static constraints on agricultural development. Indigenous tenure systems were said not to provide sufficient tenure security to induce farmers to invest in measures that would improve the productivity of their lands. The World Bank report asserted this position, and in so doing followed in the footsteps of a long line of colonial anthropologists and administrators as well as nationalist idealists who viewed indigenous tenure systems as antithetical to Western property
rights systems. They viewed the communal character of indigenous tenure systems as denying individual farmers the security of rights that would guarantee them the full benefits of returns on their investment in land (Migot-Adholla et al, 1991).

On the other hand, there were those who asserted the dynamic nature of indigenous tenure arrangements, drawing attention to the fact that they were continually evolving in response to changes occurring in indigenous societies. Proponents of this position argued that such evolution leads to “a spontaneous individualization” of land rights over time, which sees farmers increasingly acquiring transfer and exclusion rights over their land, particularly in contexts of increasing population pressures and agricultural commercialization (Cohen 1980, Bruce, 1988).

Over time, this argument seems to have been won by those who argued for communal land rights. Widespread land and agricultural reforms informed by imperatives of individualization of land tenure failed to deliver the promised transformation of Africa’s rural and national economies, and the continent entered the 21st century still struggling with increasing poverty and natural resource degradation, while most of the land continued to be held under communal tenure. This situation forced a recasting of the discussions about the link between tenure and agricultural productivity. Even the World Bank shifted its position, acknowledging that land reforms in pursuit of privatization and individualization, which ignored the traditional modes and institutions of land and natural resource governance, had failed. The Bank has become more sympathetic to policy options that accommodate communal land tenure norms (World Bank, 2003, 2006).

The shift does not mean a rejection of the link between land tenure and agricultural productivity, but rather a caution against simplistic “one size fits all” arguments and conclusions. Experience has shown that land tenure reform is a necessary but not sufficient precondition for improving agricultural productivity. Land tenure reform cannot alone lead to improvements in agricultural productivity.

A recent comprehensive review (Lawry et al., 2014) has clarified the link between land tenure and agricultural productivity, and explained the different impacts of tenure reform in developing countries. It presents a systematic analysis of 20 studies and literature focusing on the impact of land rights recognition or formalization from Asia, Latin America and Africa. The reviewers sought to understand the specific impact of two types of land rights interventions, namely: conversion of communal or non-demarcated rural land to freehold title and registration of such
rights in an official registry, and statutory recognition and codification of customary or communal rural land rights, and registration of these rights in an official registry.

The review confirms that land rights, whether formal or informal, “are key to improving the conditions of the poor in developing countries in terms of economic growth, agricultural production, food security, natural resource management, gender-related inequalities, conflict management and local governance processes more generally”\(^\text{99}\). Secure tenure over agricultural land is essential for attracting farm investments to foster productivity and increase farm incomes. In recent years, tenure concerns have been exacerbated by growing investor interest in farmland and changing rural contexts. Rural land rights have come under increasing threats from population growth, changing settlement patterns, political conflict, environmental degradation and climate change.

While tenure security can be ensured by conversion from informal tenure to freehold title, this is not the only option, and is not necessarily the optimal approach in all contexts. Tenure security can also be delivered by “extending greater legal recognition to informal or customary tenure arrangements”, an approach that is said to be especially relevant to Sub-Saharan Africa. The review concludes that changes in patterns of land ownership will not automatically lead to an increase in output or technological change in agriculture. Rather such increases will only come about if adequate provision is made for provision of inputs, services and other support systems to land users.

The reviewers highlight the different impacts of tenure reform between Asia and Latin America on the one hand and Africa on the other. They ascribe the improvement of productivity arising from tenure reform in Asia and Latin America to the fact that in those settings title is the dominant means for securing rights. The situation in Africa is different, due to what the reviewers characterize as the “Africa effect”. This is “the fact that most farms in sub-Saharan Africa are held under customary tenure arrangements, which generally provide long-term tenure security to qualified members of land-holding families, groups or communities”\(^\text{100}\). Thus, unlike what obtains in Asia and Latin America, customary tenure “may provide a level of pre-existing tenure security without formalization”\(^\text{101}\), meaning that the tenure insecurity that formalization

\(^{99}\) p. 14
\(^{100}\) p. 59
\(^{101}\) ibid
seeks to remedy “is often not present to the degree that designers of reform programs assume”102.

Instead, agricultural productivity in Africa is undermined by other factors, among them small farm sizes, the role that off-farm income plays in rural households, high opportunity costs of agricultural labour, and high incidence of rural-urban migration.

The reviewers also draw attention to the “multi-tenure” character of African landholdings, whereby different land uses are underpinned by different types of tenure. In this connection, it is possible to distinguish between strong household-based rights to residential and cropping land, and community-based rights to grazing land and other natural resource harvesting land. This co-existence of tenure types poses a challenge to registration of formal property rights, given the difficulty of “disentangling the ‘nested’ character of different entitlements that flow from membership of a community, many of which reside with the group and group-based systems of natural resource, rather than with individuals”103.

Greater appreciation of these distinct characteristics of African land holding systems have resulted in more nuanced approaches to tenure reform in African countries. As the reviewers demonstrate with examples from Botswana and Kenya, reforms in a number of African countries are now focused on recognition and codification of communal rural land rights, informed by the conviction that communal systems are not inherently insecure and that the vulnerability of customary rights lies more in the absence of statutory recognition. These reforms seek to ensure that customary land rights enjoy the same legal protection as freehold tenure and public land.

The reviewers affirm what this review has demonstrated, namely that although security of tenure over agricultural land is important, the impact of reforms in land property rights will depend on effective policy attention to a number of moderating factors. These include governance, social norms and practices, land use patterns and planning, and availability of credit and markets. The challenge to productivity of African agriculture is not land tenure as such, but rather the fact that customary land rights lack adequate constitutional and legal recognition, rendering them vulnerable to arbitrary taking by state agencies, increasingly as a result of land deals with large-scale outside investors. Tenure reforms that aim to improve agricultural productivity must thus appreciate and address this complexity.

102 ibid
103 p.61
5. Conclusions and recommendations

This report is based on a review of land and agricultural development policies and policy development and implementation processes in Tanzania, Uganda, Ghana, Mali, Mozambique and Zambia, all of them AGRA Programme countries. The review sought to establish the extent to which the policies in these countries support or impede smallholder agriculture. It also sought to analyze and present the factors that facilitate or impeded policy implementation processes, and to identify lessons and good (and bad) practice of agricultural policy development and implementation in Africa.

The review confirms that there is clear policy understanding across the six countries about the link between land tenure security and the promotion of smallholder agriculture. The policies recognize that tenure insecurity is one of the major constraints to the growth of agricultural sectors. They express the desire to clarify and strengthen tenure security as a strategy for improving smallholder productivity. In this connection, land titling and registration is seen as the most appropriate pathway to tenure security in all the countries. What is entailed in registration may vary (from individual to group titles), but the need for some form of registration as a means of affirming security of tenure runs across all the policies reviewed.

However, the countries appreciate that while improved tenure security constitutes a key foundation for greater food production, it is not sufficient on its own to address the challenges of smallholder productivity. Associated reforms in agricultural technologies, agricultural extension services, rural credit, rural transport, market access and other building blocks of the rural economy are seen as equally important. In fact, most strategies in the six countries are aimed at improving technologies, infrastructure and markets.

Where governments are taking steps to strengthen tenure security in the agricultural sector, the review finds that this is often driven more by the desire to attract foreign investors than for the purpose of securing rights for indigenous smallholders. This is particularly the case where governments have explicitly committed themselves to attracting foreign large scale commercial investors to the agricultural sector, as in Tanzania, Uganda, Mali and Ghana. The focus on attracting foreign investments tends to trump other considerations, particularly those relating to conservation and natural resource management. In some case, this has created tensions within governments, between imperatives of conservation and those of development. This emphasizes the need for integrated policy formulation processes with respect to land, bringing together
government Ministries responsible for environment and forestry to work with those responsible for land, agriculture, rural development and investments in order to ensure that due consideration is given to the concerns of all stakeholders to guarantee sustainable development.

It is noted that the perception that governments are more interested in securing land tenure for the benefit of foreign investors affects the way AGRA is viewed in these countries. In both Uganda and Mozambique, civil society and farmers’ representatives groups appeared to view AGRA support as being aimed at facilitating foreign investors rather than strengthening smallholders. In this connection, it was evident that campaigners against large scale commercial investments in the agricultural sector are shaping the debate around land reforms for agricultural development in a manner that may be inimical to the good intentions of African governments and AGRA. There is need to counter this by articulating more strongly the commitment to support smallholders.

All the six countries are actively engaged with regional processes geared at improving agricultural productivity as a means of ensuring national food security and spearheading rural transformation and national economic development. In this connection, COMESA, ECOWAS and SADC are the most active RECs. This is particularly the case with reference to CAADP. Indeed the Member States of ECOWAS and SADC used the respective sub-regional agricultural policy frameworks as the platform for preparing their CAADP Compacts.

The CAADP process appears to have gained more traction with the six countries than the AU F&G process, even though most of the countries make reference the F&G in their national policy discussions about land and rural development. This may explain, at least in part, why national agricultural policies and strategies are stronger on land management and planning than they are on land tenure and land rights issues, as the CAADP pillar touching on land is more about the former.

It is noted that of the six countries, it is only in Mozambique (and to a lesser extent Mali) that the government department dealing with land issues is part of the Ministry of Agriculture. All the other countries have separate Ministries responsible for Lands and for Agriculture. One consequence of this is that even though the Ministry of Agriculture may recognize the need to address land rights issues in the context of agricultural development, it does not have the mandate or resources to address the matter. Moreover, at regional and pan-African meetings on land policy, it is the Ministry of Lands that tends to be invited (or in some cases, the Ministry of
Coordination of strategies for domesticating regional and pan-African commitments remains a major challenge in such situations.

With regards to policy processes, the review reveals that substantial progress has been made in all the six countries in widening the space for stakeholder participation in the formulation of land and agricultural development policies. Governments recognize and have demonstrated commitment to the need to involve the private sector and civil society in the formulation of policies on land and agriculture. However, this has not necessarily ensured that smallholder farmers are effectively represented in these processes, largely on account of their weak organization and lack of capacity. The emergence of farmer organizations that are truly representative of smallholders continues to be a challenge in all the countries. The private sector tends to have more capacity and to be better organized, but get frustrated by the protracted processes and delays associated with policy development.

There continues to be a gap between policy development and policy implementation. Although much progress has been made in the formulation of policies, implementation remains problematic. Policy formulation processes tend to proceed independently of policy implementation. Some policies are drawn up but never adopted and implemented. In some cases, multiple policy documents address themselves to the same issue at the same time.

Furthermore, while spaces for participation of stakeholders in policy formulation are increasingly open and clear, the same cannot be said of policy implementation processes, which are largely controlled by governments. Although the private sector, civil society and farmers’ organizations may be increasingly effective in influencing policy formulation, they tend not to have capacity for engaging with policy implementation processes on an ongoing basis. Yet these stakeholders need to monitor policy implementation and hold governments accountable for commitments they make in at national, sub-regional and regional levels in order to ensure that farmers benefit from those commitments.

On the basis of the foregoing, the review recommends that AGRA and other actors should focus their support to African governments in the following areas so that they may develop and implement appropriate land policies that will improve smallholder agriculture:

1. **Greater integration of land and agricultural policy**: The tendency has been to discuss land tenure reform and agricultural development at different times and in separate forums, and to
develop separate policies through separate processes, and to entrust the implementation of the respective policies to different government ministries. Even though there are efforts made at coordination, more needs to be done to better integrate land and agricultural policy development and implementation. At the pan-African and global levels, a serious effort has been made in this regard through the F&G and the VGGT, which should provide the basis for developing appropriate strategies at the national level.

2. **Support the mainstreaming of F&G and VGGT in national policies:** through support to dissemination of the guidelines within countries, training of government officials and key stakeholders on them, and providing technical support for their integration into national policies.

3. **Build organization and capacity of farmers’ representative groups:** that are grounded, transparent and accountable. AGRA is already engaged in this regard, but as feedback from Uganda, Ghana and Mozambique during the review demonstrated, it needs to do a much more thorough work of identifying and working with groups that are truly representative of smallholder farmers. Care should be taken in this regard to avoid capture of this agenda by urban-based elites.

4. **Scale up support to improve productivity of smallholder farmers:** through better targeted value chains analysis and provision of inputs, market information and credit access. In this connection, more creative ways of credit provision beyond the traditional use of title deeds as collateral should be explored.

5. **Strengthen capacity for monitoring of land and agricultural policy implementation among stakeholders, particularly farmers’ representative groups:** so that they may be better able to engage with these processes on an ongoing basis. The F&G presents appropriate strategies in this regard, which should be better disseminated at the national level. In this connection, linkages should be established between such national groups and the LPI for ongoing capacity development, exchanges and information sharing.

6. **Support the decentralization of LPI to the countries:** through the creation of LPI Focal Points that will coordinate capacity building initiatives and support the sharing of experiences across African countries in the domestication of the F&G.

7. **Strengthen capacity of governments for policy formulation and implementation:** so that they are able to formulate and implement better policies for strengthening tenure security of
smallholders. In this regard, more creative strategies for tenure security beyond the traditional titling should be explored. The experience of Mozambique with community land registration should be shared more widely with other African countries and the lessons and good practice there integrated into national policies.

8. **Support the piloting of innovative community-based and inexpensive mechanisms of securing tenure:** and the scaling up of experiences in this regard by promoting exchange visits and experience sharing between countries and projects that are working on this issue.

9. **Support research and analysis to articulate better strategies for integrating smallholder farmers into the agricultural modernization agenda:** in order to reassure smallholder farmers that agricultural modernization is not about denying them access to land for the benefit of foreign investors. In this regard, more work needs to be done on how to interface foreign investments in the agricultural sector with improving the productivity of smallholders and securing their livelihoods.

10. **Establish closer and stronger linkages between AGRA and civil society, particularly farmers’ representative groups in African countries:** to correct the perception that AGRA work threatens smallholder producers. In Ghana and Mozambique, it was explicitly stated that AGRA needs to do a better job of selling its agenda to non-government actors. It was also pointed out that AGRA needs to enhance its capacity and presence in the countries.
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Annex 1: List of Person Met During Country Visits for Review

Uganda
1. Dr. Sarah Ssewanyana, Executive Director, EPRC, Makerere University
2. Dr. Swaibu Mbowa, Senior Research Fellow, EPRC, Makerere University
3. Odokorach Shanty Francis, Associate Country Director, Oxfam, Uganda
4. Mugaino Baker, Senior Land Officer, Uganda Land Commission
5. George Asiimwe, Advocacy Officer, East and Southern Africa Farmers Federation (ESAFF)
6. Edmond Malilo Owor, Executive Director, Uganda Land Alliance
7. Benjamin Mutambukah, Coordinator, Coalition of Pastoral Civil Society Organizations (COPACSO)

Ghana
8. Edmond Kojo Jack-Vesper Suglo, Senior Policy Fellow and Hub Coordinator, AGRA (Science and Technology Policy Research Institute – STEPRI)
9. Samuel Yao Adzivor, Head, Ghana Seed Inspection Division, Directorate of Plant Protection and Regulatory Services, Ministry of Food and Agriculture
10. Sarah Antwi–Boasiako, Social Development and Gender Specialist, Land Administration Project, Ministry of Lands and Natural Resources
11. Nana Ama Yirrah, Executive Director, Community Land and Development Foundation (COLANDEF)
12. Alhaj Hamidu Ibrahim Baryreh, Technical Director (Lands), Ministry of Lands and Natural Resources
13. Marcus Amos Tabil, Surveyor, Lands Commission
14. Ernest Ershun, Programme Manager, COLANDEF
15. Lena Otoo, Agricultural Economist, Policy, Planning, Monitoring and Evaluation Directorate, Ministry of Food and Agriculture
16. General Manager, WIENCO Agriculture
17. Christie Esi Bobobee, Administrator of Stool Lands, Ministry of Lands and Natural Resources

Mozambique
18. National Union of Farmers
19. Anina Manganhele, Policy Analyst, Department of Policy Analysis, Directorate of Economics, Ministry of Agriculture
20. Eulalia Macome, Head of Hub
21. Fernando Songane, Executive Director, Centro Terra Viva (CTV)
22. Berta Rafael, Programme Officer, CTV
23. Rene Machoco, Land Use and Conservation Officer, Justica Ambiental (JA)
25. Elisa Adelia Timana, Head of Seed Department and AGRA Seed Node Hub, Ministry of Agriculture
26. Samuel Chirrico, President, FENAGRI, and member, CTA
27. Mauro Ferrao, Agri-Business Assistant, Confederation of Economic Associations of Mozambique, (CTA)
28. Joao Jeque, Member, CTA
29. Salvador Jossias, National Directorate of Land and Forests (DNTF)
30. Yacimto Tualufo, DNTF
31. Odete Mugumela, DNTF