SEEKING WAYS OUT OF THE IMPASSE ON LAND REFORM IN SOUTHERN AFRICA:

NOTES FROM AN INFORMAL 'THINK TANK' MEETING

Manhattan Hotel
Pretoria, South Africa
1-2 March 2003

CONTENTS

1. BACKGROUND TO THE MEETING

1. The land crisis in Zimbabwe, which has captured so much international attention, is both part of a wider crisis of governance there and has also had major repercussions throughout the Southern Africa region. It has concentrated the minds of some, but has also frightened and frozen the actions of others.

2. Indeed, progress on land reform in the region has slowed rather than quickened in the three years since the Zimbabwean crisis broke in March 2000. Mindful of this continuing impasse in land reform and its implementation across the region, 14 concerned and committed specialists working on land reform in the region from a variety of backgrounds – researchers, trainers, technical advisers, trade unionists, donors and consultants (see Appendix I) – met informally in Pretoria on 1-2 March 2003 at the invitation of the FAO Regional Office in Harare.[1]

3. Our objective was to analyse the constraints to sustainable land reform and to try to understand better some of the common points and specific features of the countries in which we work. Our informal group also sought – not without difficulty - to identify ways and means of moving things forward. These brief notes, written collaboratively since that meeting, set out a synthesis of our discussions and subsequent exchanges, and are designed to be of interest and help to others also grappling with these issues. They are followed by a country by country review (Appendix II) of the status of land reform in each country, and a matrix (Appendix III) providing an overview of current land issues in the region.

4. Our meeting covered the length and breadth of land reform in the region. The events in Zimbabwe and their repercussions, both within the country itself and in South Africa and Namibia, naturally dominated our discussions. In the time available, land tenure reform (as opposed to redistributive land reform) was only touched upon, partly because it is a less immediate issue. However, we recognised that tenure arrangements on land occupied and used by the majority of African farmers – women and men - in the region remain deeply flawed and insecure. Even where good laws are in place implementation is uneven and often tends to favour distinct interest groups.

2. OVERCOMING PROBLEMS AND CONSTRAINTS

5. Many countries in the region face chronic land problems which have clear roots in the dispossession of Africans under colonialism and apartheid, and the powerful legacy this has left both in terms of outright suffering and also in the historical memory. This of course is one reason why the rhetoric of Robert Mugabe resonates so powerfully with the poor. In other countries, problems are more closely related to post-independence policies and an unbalanced approach to land allocation, which has favoured certain groups over others. In all cases, there is a general failure by governments to integrate land policy into either a rural development strategy or a wider social and economic development vision.

[1] This paper does not reflect or represent the opinions of Food and Agriculture Organisation of the United Nations (FAO), but the group is solely responsible for the views expressed in the paper.

6. Governments have also failed to allocate the financial and human resources needed to address land problems. At the same time, donors have found it increasingly difficult to justify the allocation of aid resources to land reform in the region. This reluctance is due to the lack of viable policies and programmes and is also a response to policy trends – in practice if not in rhetorical terms - away from the pro-poor agenda that donors feel should be the focus of land reform policies. Land grabbing by elite groups is evident across the region, even where new legal frameworks protect existing local land rights. The appalling food security impact of events in Zimbabwe may also have frightened off even those who favour a radical approach to land reform.

7. All the Southern African countries face a huge crisis in land access and use as a result of the HIV/AIDS pandemic. Their agricultural sectors are in a moribund state due to unfavourable international terms of trade and the structural constraints facing especially small-scale farmers in the wider context of the global economy. While producers in most countries of the region are vulnerable to rainfall failure, the serious impact of the current drought underlines how a 'drought of good governance' can make a bad situation much worse.

8. There are also signs across the region that problems are due to a failure of governments that are varyingly authoritarian, centralised, and indifferent to human rights issues. Racial and ethnic polarisation has been an unhappy consequence of the crisis in Zimbabwe.

9. Civil society pressure for and in support of sustainable land reform in the region is weak, while weak economies and continuing political uncertainties in several countries undermine capacity and confidence in the ability of African people themselves to address and solve these problems.

Is there a land crisis?

10. Our meeting was a response to a felt need to respond to the perceived 'land crisis' in the region. We were concerned over the lack of real progress with redistributive land reform in South Africa and Namibia and faltering or uneven processes in other countries.

11. We recognised that not all is gloom and despondency. Some progress is being achieved with tenure reform in several countries, which is encouraging. Botswana, although perhaps tarnished by its policy of communal rangeland enclosure, continues to improve the administration of both customary and state land. Land reform efforts continue in Malawi and Lesotho. Mozambique has a progressive and single law for the whole country and is committed to seeing it implemented. Zambia may be in the process of getting to grips with tenure reform and needs to focus on sorting out the state (leasehold) land sector and the associated backlogs and corruption. Swaziland recognises the importance of land reform in the wider context of urgently needed constitutional and governance changes - but does not yet see it as a priority.

12. Angola, emerging from the chaos of several decades of civil war, is at a critical stage, in which government and civil society need to be encouraged to learn lessons from other

countries in the region. Perhaps one key lesson is the wisdom of first developing a clear land policy that has widespread support, and only then proceeding to revise or rewrite the laws to implement it. Land policies and laws that do not have this kind of support will inevitably lead to more conflicts than they resolve.

13. There is no doubt though that Zimbabwe is in the grip of a terrible crisis. Partly a cause and partly an effect, the roots of this crisis in the violent seizure of white commercial farms are not easily unravelled. We discussed not so much the pros and cons of the redistribution models promoted by ZANU-PF but the immediate humanitarian crisis involving some 200,000 farm workers and their families. This could mean that 1.5 million people have lost their livelihood as a result of the violent land seizures. Some of them are still on the farms, but their existence is precarious. The announcement that the Zimbabwean Government has decided to extend citizenship to all SADC citizens who were resident in the country at independence in April 1980 is obviously to be welcomed and should be of some (belated) help to farm workers.

14. The immediate priority is to address the humanitarian disaster and re-establish the rule of law and good governance. Urgent measures must be found to assist displaced farm workers to find shelter and alternative means of livelihood. If resettled small-scale farmers are to bring the land back into production, they will require security of tenure, basic social services, training, agricultural inputs, and reliable access to markets. The ability to provide any of these things will be severely constrained by the costs involved and the scarcity of human resources following the exodus of technical and professional personnel from government and NGOs over the last few years.

15. Once stability has been restored, and violence ended, the competing claims to land by commercial farmers, farm workers, new settlers, and the State must be arbitrated and disputes addressed equitably, impartially and quickly. The international donor community should give generous assistance to efforts to ensure a sustainable settlement to the land question in Zimbabwe. Underlying human rights issues, economic policy, food security concerns, and proposals made in earlier land policy documents, must be brought back onto the table. A concern to redress historical injustices and the racial imbalance in land rights must however continue to be a guiding principle of any programme that seeks a sustainable long term solution.

16. We also debated whether or not there is also a land crisis in South Africa and Namibia. Each country is so different from its neighbour that it could be said that the only common factor is the inheritance of colonially produced ‘white-black’ schism in land access. The result is that ‘the land question’ is mainly (and understandably) addressed in a redistributive context, but we need to draw lessons from the other countries in the region in order to avoid the kind of catastrophic collapse that has occurred in Zimbabwe.

17. There was certainly a feeling that neither South Africa nor Namibia was any closer to finding solutions and that grave consequences could await both countries if the current impasse was allowed to continue. The cost of taking no effective action could be very high indeed. The political will to get to grips with land reform is apparently lacking and perhaps best understood in the context of other, more acute concerns facing these governments.

Cyclical patterns of land reform in the region

18. A cyclical element is evident in land reform policy in the region. An initially strong political commitment to land redistribution or confirming the land rights of local people has been followed by a switch of emphasis to so-called economic goals, rather than the eradication of landlessness and/ or poverty.

19. This cyclical element is recognisable in Zimbabwe, South Africa and Namibia with regard to land redistribution, and in Zambia and Mozambique with regard to tenure reform. Indeed, debates about land reform everywhere have seen a confrontation between those who believe that land reform must be centred on the redistribution of ownership (or land rights over) productive agricultural land in favour of the rural poor, and those opposed to extensive redistribution who wish the reform to focus on measures to raise agricultural productivity and/or create a new class of (black) African commercial farmers.

20. The policy cycle relates to changes in the balance of influence of the landless lobby on the one hand and that of landowners and commercial farmer organisations on the other. Elite interests – landed or otherwise - tend to obtain ascendancy over the medium to longer term. They lobby governments with arguments about the importance of improving food production, of export-revenue earning, of sustaining farm employment and environmental management. This feeds into a debate in the media about the purpose of land reform and whether the focus should be land redistribution for the landless masses or for fewer people 'who have the potential to contribute to economic growth and national prosperity.' This may again be followed by a reaffirmation of the needs of the poor before the elections, only to be shelved when the votes of the majority are secured and the practical realities of implementation once again dawn on office holders.

Redistributive land reform

21. Below are some of the issues and observations we raised particularly in the context of South Africa, where the land redistribution programme seems to have lost momentum. Some apply with equal force to Namibia.

Land reform, rural development and sustainable livelihoods

22. The South African national government as well as some provincial governments have made several attempts to develop a viable rural development strategy. Yet land reform, particularly redistributive reform, has remained an appendage to these policies rather than the 'central and driving force' envisaged in the 1994 Reconstruction and Development Programme of the ANC.

23. The misfit between land policy and rural development is most evident where land reform is being pursued by a government primarily as a 'quasi-constitutional right' or a means of redressing past injustices, rather than as a basis for sustainable rural livelihoods. Even in the latter case, redistributive land reform is proving to be an extremely difficult process to carry

through. Redressing gross racial imbalances in land ownership and access is one thing; recreating sustainable livelihoods on the land is infinitely more difficult.

24. In South Africa, a systematic review of land restitution and redistribution projects implemented during the last decade is clearly needed, together with a review of the assumptions on which these models were based. A rigorous re-examination of the economic rationale for redistribution is essential. Research work is already underway and results are expected within the year. Hard evidence is required if current dysfunctional policies are to be challenged and alternative paradigms advanced. Linked to this research, a realistic appraisal of the many and diverse livelihood strategies across the region is needed, together with an assessment of what is actually happening on the ground in deep rural areas as well as peri-urban situations.

Questioning assumptions about the viability of small-scale farms

25. There is now a widely received wisdom shared by, amongst many others, the World Bank, Oxfam and Michael Lipton, that small-scale farms are invariably more productive (as well as more equitable) than large-scale one. In the current context of Southern Africa however, the relevance of such assumptions needs to be re-examined. Many of the studies of the comparative efficiency of large and small farms were made on the basis of the use of hired labour on the former as compared with family members on the latter. Over the last ten years, commercial farmers, fearful of the intentions of their employees, and concerned about new laws protecting the rights of farm tenants and the possibility of minimum wage legislation, have responded by fully mechanising field operations which relied on family labour and by hiring a minimum number of seasonal piece-rate workers trucked in by contractors. The result has been a significant increase in returns to management.

26. Where rains are both unpredictable and unreliable, which is over much of the region, the mechanised farmer can readily take advantage of favourable soil moisture conditions for land preparation, sowing and subsequent cultivations. This flexibility is not available to small-scale farmers dependent on borrowed oxen or draught animals weakened by fodder shortages during the long dry season. Systematic studies of the performance of land reform beneficiaries over a long period in Zimbabwe reveals that families resettled from the communal areas in the 1980s on redistributed land remain vulnerable to drought.

27. And even if small farmers *are* more productive, making the switch in a violent and unprogrammed way can have disastrous effects on maintaining the supply of food and export earning crops while the transition takes place. Zimbabwe provides ample evidence of this danger.

28. The efficiency of small family farms in the utilisation of labour does not necessarily translate into the ability to compete in increasingly dynamic and liberalised markets, where ready access to information and capital favour larger enterprises. Maintaining a competitive edge in global markets, particularly for fruit and other high-value exports, requires large inputs in herbicides, fertilisers and chemical pest control. The high cost of credit and the risks involved in this market constitute enormous barriers to small family farms.

Post-transfer support

29. It is now a cliché of agricultural policy that land reform without reforms in support services (farm credit, co-operatives for farm-input supply and marketing, and extension services) will achieve little in terms of redistributive justice and efficiency. However, due to the institutional complexities of the public sectors in Namibia and South Africa, land and agriculture ministries and departments have failed to work together, either at the planning stage or post transfer. Even if cooperation had been better, the knowledge of government extension staff, farm technology and markets for inputs and outputs in South Africa have long been geared towards large farms. If anything has been learned about agricultural development in Africa over the last fifty years, it is that widespread departures from existing systems of production are seldom immediately feasible.

Rural-urban migration patterns

30. In South Africa, but also in countries with similar economic geography (e.g. Botswana and Namibia), there has been a remarkably rapid rise in the population of urban and peri-urban areas. The movement away from small-scale agriculture in Botswana, for example, is startling. In less than forty years, urban population has moved from 3% to 52%. This has profound implications for those remaining behind in rural areas – mostly the young and the old and female-headed households. Labour for herding and for ploughing, weeding and other critical tasks is scarce. Reciprocal relations between neighbours have deteriorated with loss of young people and with increased sickness associated with the onset of HIV/AIDS. Similar but less marked trends can be observed in Lesotho and Swaziland, where production in small-scale agriculture is declining rapidly.

31. The question therefore needs to be asked, especially in South Africa, which is singularly different in terms of demography, economic complexity and sophistication from all its neighbours - do today's young people (say 15- 45 years) want to be farmers? If people were to be given a choice between a job and a house in a town or a piece of land for farming, complete with tools and inputs, what would they choose? People clearly and rightly care about the historical injustice and inequality inherent in the current situation, but is land reform what they really want (or need)? If the answer is that some but not all wish to move to towns, it has implications for land policy and the way in which overall inequality is addressed. And again, the question is especially important if an equally high priority is providing a secure food supply to poor urban and peri-urban residents, even if this food is produced mainly by (white) commercial farmers.

32. As Botswana is finding, the 'land question' is also often located amongst peri-urban and housing issues, not rural farmlands. Secure land rights in these areas are perhaps even more important determinants of overall equity and human rights questions and need to be more fully explored and addressed.

Mobilising support for land reform

33. With the increasing polarisation of government and civil society in South Africa under the GEAR (Growth, Employment and Redistribution) strategy, a more independent labour

movement is emerging. The potency of the Treatment Action Campaign (TAC) and the emergence of the Landless People's Movement (LPM) may presage a new kind of politics. And while it might appear that groups like the LPM are more concerned about urban than rural inequities – the focus of much publicity at the Johannesburg 2002 World Summit – the reality is that rural issues are rarely covered adequately by the media, and closer examination reveals that the LPM and others are trying hard to link rural and urban issues.

34. Over the years, the unions of (predominantly white) commercial farmers in the region (e.g. the Commercial Farmers' Union of Zimbabwe, Agri-SA and the Namibian Agricultural Union) have not been short of advice to governments on how to manage the process of redistributive land reform. The extent to which they could be more actively and practically involved should be explored. There is also need for a constructive dialogue with the private sector, including banks, mining houses and others. In 2001, the influential Business Trust of South Africa commissioned a study to review the options for supporting land reform. This is a possibility worth re-exploring, especially after recent events in Zimbabwe, which have brought most normal business to a complete standstill.

The 'willing buyer, willing seller' principle

35. This is often mentioned as a constraint to land reform by politicians and NGO land reform advocates. British insistence on this principle was undoubtedly a major source of contention in Zimbabwe's independence negotiations at Lancaster House in 1979. The independence constitution allowed for compulsory acquisition only of 'unutilised' agricultural land, provided market value was paid in hard currency. The British Government, right up to Zimbabwe's International Donor Conference in 1998, insisted on this principle as a condition for financial support for land acquisition.

36. Perhaps the harder part of this principle is the 'willing seller' side of the equation, which naturally made it an immediate obstacle to any form of systematic designation of land for redistribution. It was ostensibly for these reasons that the Zimbabwean Government introduced constitutional amendments in 1990 (and passed the Land Acquisition Act, 1992). We heard evidence from several countries however that in fact there is considerable willingness to release land on the part of large scale (white) commercial farmers, especially in the current economic climate, further influenced by developments in Zimbabwe. This would point to promoting dialogue with the commercial farmer lobby, in search of more peaceful and constructive solutions than those now being seen in Zimbabwe.

37. The South African Constitution provides for land expropriation, with 'just and equitable' (as opposed to market-related) compensation, for a public purpose or in the public interest - which specifically includes land reform. Recently the Department of Land Affairs has begun to develop policy on what is being termed a 'proactive land reform strategy' whereby land expropriation could be utilised to obtain suitable land as needed by clearly identified beneficiaries.

38. Many international donors now argue that the willing buyer, willing seller principle should be dropped as a condition for development aid for land reform. For example, it was not imposed by any of the eight donors who contributed funds to land reform to South Africa in

the period of the Mandela Government (1994-9). Important donors and agencies such as USAID and Agri SA in South Africa do however still insist on the principle being maintained, partly it would seem out of a misplaced fear that dropping it will open the door to arbitrary land seizures.

39. If 'willing seller, willing buyer' has been a constraint in the past, and is now judged to be irrelevant, it should be dropped from the agenda altogether. We felt that there are several issues around this subject that need more investigation, such as the real nature of the constraint it imposes, and whether it is the supply of land or the other conditions (price, who gets land once it is 'redistributed', etc.) that are the real problem.

Land tenure reform in the region

40. The time available did not allow a full discussion of the reform of existing tenure arrangements that are not necessarily linked to redistribution goals. We recognised however that it is a crucial issue not only to assure the land rights of the majority of the population in the region, but also because of the potential link between secure land rights, investment, and economic growth. Effective tenure reform is also an important safeguard against creating land or income inequality and related problems in the future.

41. Cases like Mozambique also show that even where tenure reform has benefited from good policy and enabling legislation, the surrounding institutional and socio-political context are important determinants of how successful the reform will be in practice. Other legislation – for example covering natural resources use such as forests and mining – can also weaken the impact of more progressive land reform measures.

42. In Botswana, there is a longstanding policy of 'tribalising' freehold land in those areas adjacent to freehold farms where tribal land is insufficient for community needs. The land purchased by government is reclassified as tribal land and handed over to the local land board to allocate to citizens either as customary land grants or common law leases (or added to communal grazing) in terms of the Tribal Land Act. Because the law and the gazetted regulations are well understood, the allocation of land on the former freehold farms has been straightforward, simply a case of 'taking down the fences'.

43. For a number of reasons, similar procedures have not been possible in either South Africa or Namibia. Governments in these countries have been reluctant to expand the land available in the communal areas in the absence of a transparent system of land administration and because of the disputes that would arise between tribes and chiefs as to who should benefit from such redistribution of land.

44. One reason why land tenure reform has not progressed in South Africa is that macro-economic agenda place severe limits on the expansion of the public service, in this case the Department of Land Affairs. But the continuing costs of taking no action are very much higher than would be incurred in recruiting, training and deploying the required number of land administrators.

Land rights of women

45. Any discussion of customary land rights raises issues of the unequal land rights of men and women under customary law. Women in rural communities have often been reported as preferring the easier accessibility and lower cost of customary systems, and often have strong rights over specific fields used for food crops and other activities. Nevertheless, what is clear across the region is that, whatever the system, women suffer from strong male bias in relation to land rights, mirrored and exacerbated by male-dominated land administration systems.

46. High-level constitutional commitments to gender equality across the region are not matched by practice on the ground. Formal land administration systems are also out of step with developments on gender issues as well as with some of the more progressive approaches towards recognising and working with customary systems. And, when it suits them, men are adept at choosing to follow whichever system – modern or traditional – best suits their interests. Even women from elite groups face difficulties when enforcing their legitimate property rights.

47. There is general agreement among land advocacy and women's rights NGOs that women should have equal opportunities to men when owning land and exercising control over its products. While NGOs in the region have been very effective in bringing these issues to the attention of the public and to politicians, they have been less than successful in obtaining concrete action in the legislatures or advancing concrete policy proposals. Reconciling the interests of women and advancing their rights within tenure systems based on essentially patriarchal customary principles remains a serious challenge.

48. Although legal reforms still need to be undertaken, the record of Botswana in securing women's land rights is creditable. While the matter has yet to be confirmed in a systematic study, there is evidence that the impact of the HIV/AIDS pandemic on women's land and property rights is less severe than elsewhere, as land boards have been exceptionally sympathetic to the rights of widows and orphans.

49. Notwithstanding these apparent pockets of success, across the region there is not enough attention given to mainstreaming gender concerns into land policy and implementation – whether in a customary or more formal context. This comment applies not only to governments and public and customary institutions, but also to many donor and NGO programmes.

Customary land rights and systems

50. Notwithstanding the issues raised by securing women's land rights, there is widespread agreement that to pursue a pro-poor agenda, governments must pay attention to customary tenure rights and land management systems when addressing tenure reform. The private plots and commons found on customary lands provide subsistence to millions of people and, as Mozambique has shown, even years of civil war can fail to damage the legitimacy and relevance of customary land management systems. Local elites and foreign investors are

however seeking to secure rights over the best land, with good soils and water, close to markets, through whatever system exists, and eroding rights to customary lands and common property resources. This is the case across the region, where corruption plays a big part in the wider land access picture.

51. Many regional land policies fail to adequately address the inherent legitimacy and validity of customary land rights alongside formal or ´modern´ rights, and to integrate them into a single policy framework. Even where policies do take full account of customary rights and land management systems, ineffective implementation continues to create much uncertainty and conflict in rural areas, and marginalize poor villagers who are left to survive on the bits of more marginal land left them by more powerful groups.

52. Our discussion of the lower profile countries – Botswana, Mozambique, Malawi – revealed that there is much to learn from these cases that might be of use in the more polarised and racially divided contexts of Zimbabwe, South Africa and Namibia. Often it is as much about process – who is involved in the policy discussions and subsequent implementation – as it is about the technical content and substance of the resulting programme. Analyses of groups and institutions involved in South Africa revealed this very clearly. A continuing dualism between customary and modern remains a difficult obstacle to overcome in many countries in the region.

HIV/AIDS and land

53. The potentially catastrophic impact of HIV/AIDS on land reform policies and state capacity to implement them, not only at present levels of infection, morbidity and mortality, but over the next decade as mortality levels across the region are set to plunge, is only now beginning to feature in policy-linked research and debates across the region. It is a matter for urgent attention, requiring a re-examination of many basic assumptions underpinning land policy work. While there is a relatively large body of work investigating the impact of the pandemic on agrarian livelihoods, very little work has been done on the impact on tenure systems and the cumulative consequences of the pandemic on land systems in the future.

54. What we do know is that the effects of HIV/AIDS are unevenly distributed and fall most severely on the poorest and most marginal members of society, who are most vulnerable to losing, forfeiting or alienating their land rights as a result of sickness or death within their families and households. Many of the most marginal households (both male- and female-headed) are likely to break up and disappear altogether. The pandemic may encourage shifts to new forms of tenure, e.g. rental or increased land sales, as well as new patterns of cropping and land use. The pandemic is bringing the negative impact of aspects of customary law on the livelihoods of women and children into increasingly sharp focus. Across the region, the land rights of women and children are becoming ever more vulnerable to dispossession by patrilineal kin on the death of male household heads.

Donor support to government land reform programmes

55. Donors in Southern Africa increasingly see assistance to land reform as politically sensitive and complex, likely to result in negative consequences whatever the moral foundation, and therefore best avoided. In addition, recipient governments have become suspicious that donors, by insisting on a range of conditions – a 'pro-poor' focus, the willing buyer, willing seller principle, maintaining economic stability - are using support to land reform as a neo-colonialist 'Trojan Horse', which in some cases is also perpetuating racial imbalances in land ownership.

56. Unlike other sectors (e.g. education, health, water supply), official development assistance to land reform presents particular problems arising from its volatile, cyclical and politically sensitive nature. Assistance is always likely to be needed in the region, but the nature and intensity of support required will vary from time to time.

57. What is clear is that donors should not walk away when things turn sour, but rather tread carefully and maintain a base flow of support. Nor should they give up on promoting a redistribution agenda, notwithstanding the disaster unfolding in Zimbabwe, which seems to have become the reference point in spite of really being the 'very worst case scenario'.

58. Land reform is a long-term iterative process, needing feedback, learning and involvement of many stakeholders. It is also a highly contested one, particularly in the unequal societies of the region. Unequal ownership of land by elites, white or black, is a major cause of poverty and threat to economic development and political stability.

59. It may also help to place land reform and land policy generally in the context of the wider economy and overall distribution of wealth, and to 'deracialise' the issue by applying less direct wealth distributing measures. The funding of land tenure reform and associated land administration institutions is also likely to be less of a minefield than redistributive land reform and will also constitute support to poverty reduction.

Donor support to civil society initiatives

60. A good understanding of the emerging situation is important if donors are to respond readily to requests for assistance. Civil society organisations (research and training institutes, land reform advocacy alliances, legal/paralegal service providers and field-level service NGOs) can be a major source of knowledge and information as well as being effective partners in implementation. The strengthening of civil society during periods of government inaction can have important consequences for later policy development and implementation, as in the recent example of Kenya.

61. Civil society can also be vitally important in giving a kick-start to a new government initiative – as it did in South Africa in 1994. The Land Campaign in Mozambique, responsible for disseminating key principles of the 1997 Land Law across the country at local community level, also underlines this role, and also the way in which civil society can

redress imbalances in official implementation programmes that are there either by omission or by design.

62. The encouragement provided by Oxfam GB to the emergence of land rights advocacy and South-South interchange (in Zambia, Angola, Kenya and Uganda) is an example of what can be achieved with a modest input of funds and access to information and technical support networks.

63. The move by bilateral donors to programme aid, partly to avoid the administrative costs of managing many budget lines, has resulted in a significant cut in the income of NGOs. In this context it was proposed, in a regional consultation in Johannesburg in May 2001, that a multi-donor 'Land Reform Fund' be established. It was envisaged that, either on their own initiative or at the request of national governments, civil society organisations from within the Southern Africa region would apply to a fund manager for resources to promote and assist the process of land reform.

64. Assisted activities would have included: applied research; advocacy, training (formal and non-formal); capacity building; implementation of local-level land reform projects involving small-scale producers; community facilitation, mediation and conciliation; legal advice and assistance; ad hoc technical assistance for land reform including technical assistance to governments for policy analysis of pro-poor strategies to inform the debate as well as implementation. Unfortunately, these proposals ran into political quicksands and power struggles between different regional institutions.

3. PROPOSED FOLLOW-UP TO THE MEETING

65. We unanimously agreed that informal discussions in a small meeting were highly conducive to the frank exchange of views so necessary to explore complex and contentious issues. Obviously, many important issues remain to be followed up and further information exchanged and views canvassed. We agreed that efforts would be extended to expand participation in our process to make it more representative, inclusive and dynamic.

66. We would decide whether or not to hold another similar meeting through a process of consultation. A decision would be reached in twelve months whether to meet again or disband the group.

67. In the meantime we decided to initiate a quarterly electronic newsletter, providing news of land reform developments within the region. We agreed that responsibility for its compilation would be rotated.

68. We also discussed a variety of other follow-up actions and took note of various important initiatives already underway elsewhere, through which further debate, analysis and action could be taken forward.

Appendix I: Participants in the Pretoria 'Think Tank' Meeting [2]

Name	Organisation/Affiliation	E mail
Martin Adams	International Land Policy Consultant, UK	madams@mokoro.co.uk
Michael Aliber	Researcher, Human Sciences Research Council, South Africa	MAliber@hsrc.ac.za
Hella Alikuru	Regional Secretary, Africa; International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Worker's Association	halikuru@yahoo.com
Ben Cousins	Director, Programme for Land and Agrarian Studies (PLAAS), South Africa	bcousins@uwc.ac.za
Scott Drimie	Researcher, Human Sciences Research Council, South Africa	sedrimie@hsrc.ac.za
Kaori Izumi	Land Tenure and Rural Institutions Officer, Food and Agricultural Organization of the United Nations (FAO) sub-regional office for Southern and Eastern Africa, Zimbabwe	Kaori.Izumi@fao.org
Simphiwe Mini	Researcher, Human Sciences Research Council, South Africa	Smini@hsrc.ac.za
Adebayo Olukoshi	President, CODESRIA, Dakar, Senegal	adebayo.olukoshi@ codesria.sn
Robin Palmer	Land Policy Adviser, Oxfam GB, UK	rpalmer@oxfam.org.uk
Lloyd Sachikonye	International Development Studies, University of Zimbabwe	sachi@zol.co.zw
Chris Tanner	Food and Agricultural Organization of the United Nations (FAO), Senior Land Policy Adviser to the Government of Mozambique	tanner@tropical.co.mz
Cherryl Walker	Research fellow, Human Sciences Research Council, South Africa	Cwalker@hsrc.ac.za
Wolfgang Werner	Land Policy Consultant, Namibia	wwerner@iway.na
Shaun Williams	International Land Policy Consultant, Malawi	advyz@bigpond.com.kh

[2] The logistical arrangements for the meeting and the costs of travel, board and accommodation of the participants were partly covered by the Southern African Regional Poverty Network programme (SARPN) of the Human Sciences Research Council (South Africa) and by the FAO. We gratefully acknowledge this assistance.

Appendix II:
STATUS OF LAND REFORM IN COUNTRIES IN THE SOUTHERN AFRICAN REGION

Angola

1. Emerging from several decades of civil war with a huge population of internally displaced people, Angola clearly needs a land policy that will help contribute to the recovery from conflict. In the first instance, such a land policy should deal with the immediate chaos of property destruction and population displacement caused by the civil war. Returning refugees will require shelter and incentives to return to their original areas. In towns, disputes over remaining housing stock will need to be minimised. Records relating to land should be collected and restored. A functioning system of land administration needs to be re-built. All these issues require urgent attention, not simply to provide humanitarian relief and allow economic reconstruction, but to prevent a new round of land transactions causing further conflicts.

2. Secondly, land policy must work to create institutions and laws to meet claims for land restitution. Such claims will come from returning refugees, those who acquired lands under previous regimes, and those who lost them. Without resolution of claims, investment will be deterred, reconstruction slowed, and social and political stability put at risk. Yet resolving property restitution claims will present a host of difficult and complex issues. Because land is life in countries suffering from violent conflict, thoroughgoing consultation and community acceptance and political support are essential components of a viable system of land administration.

3. Aside from war and huge inequalities, Angola has a long history of cynical, corrupt, highly centralised, and top-down governance - and spectacularly callous indifference to the poor. In many areas displaced people have occupied former Portuguese-owned *fazendas*. Some former owners are returning and trying to reclaim old land, in some cases from officials who have grabbed it. Land grabbing is common knowledge, with UNITA's land grabbing being part of the peace deal. Government seems to think land is not an issue as there is an abundance of it, echoing the opinions of conservative policy makers in many other countries when land rights issues are raised.

4. Civil society, even by contrast to most other countries in Africa, is weak and inexperienced but has established a toehold with international community support. A Land Forum (*Rede Terra*) was formed officially in August 2002 after a land conference. It was originally Luanda-based, but is now expanding into the provinces. Donors are willing, because of strategic interests, to continue to channel resources through NGOs.

5. A draft land law (*Lei de Terras*) has emerged from a curious political process, amid strong rumours and suspicions that in the immediate post-war phase the elite is merely trying to secure by law its past illegal land grabbing. In his new year address, the

President pushed for an early end to discussion, but at a meeting on 5 February 2003 *Rede Terra* appealed for continued discussion on the draft bill with communities and other interested parties; for the law to recognise the rural community, rather than only individuals, as a legal entity able to hold title to land; for a clear definition of the concept of rural community; for the definition of the nature of state land title; and for the creation of a regulatory mechanism for the law itself, once it is approved.

6. As in Mozambique, FAO has been involved with both technical assistance and in the highly strategic work of lobbying to safeguard and secure historical community land rights and to have these affirmed by government – a process which is helped by the 'deconcentration' of resources and responsibilities to provincial governments, which now have great autonomy. Securing customary rights at this level is likely to prove more effective than focussing all attention on the new land law, given the government's limited capacity to implement it.

Botswana

7. Like other countries in the region, Botswana inherited a dual system of statutory and customary tenure at independence. Despite the contrasting characteristics of these two systems, it has developed a robust land administration, which has greatly contributed to good governance and economic progress. Botswana continues to adapt its land administration, based on customary rights and values, to a rapidly urbanizing economy and expanding land market. Its approach is of interest because it is finding solutions to problems that continue to elude many of its neighbours. Systems of land administration cannot be exported wholesale to other countries, but lessons can be learned from their experience with different types of tenure, land institutions and the harmonisation of statutory and customary law. In no other country in the region has land been so judiciously administered as an essential component of good governance. Notable exceptions are issues relating to the land rights of the San and other minorities and the related problem of privatisation of the commons by the elite.

8. Botswana has succeeded where others have failed partly because of the consultative and systematic policymaking processes that it follows in the various sectors, including land. This process of policy development and change is in stark contrast to that played out elsewhere in some countries of the region where it is difficult to detect a linear relationship (or any kind of systematic relationship) between the analysis of a problem or opportunity and the assessment of the evidence, the formulation of recommendations and the announcement of the policy change.

9. Land tenure reform in Botswana has been both flexible and gradualist with regard to the role of traditional authorities. Because widespread departures from existing systems are rarely immediately feasible, successive governments have moved in a measured way to reduce the powers of undemocratic traditional leaders. Botswana's experience with district-level land boards has been of interest to other countries in the region, but more work has still to be done in Botswana to devolve responsibility for land rights management to local people.

10. Some would argue that Botswana has little to offer in the way of lessons to the region because it is unrepresentative. Its population is modest in size and ethnically relatively homogeneous. By comparison with neighbouring countries, it is relatively wealthy and has no impairing legacy of colonial settlement. These points have some validity. But it should be noted that Botswana set out to democratise its land administration shortly after its independence in 1968, when it was still one of the poorest countries in Africa. The costs of Botswana's land administration are modest. In current 2002/03 prices the combined recurrent expenditure of all the institutions in the land sector grew from P51 million in 1989/90 to P165 million (c.£20m) in 2002/03. This represents 0.8% to 1.2% of total annual government expenditure over the period.

11. Some ten years after the last government paper on land tenure policy and the amendments to the Tribal Land Act, a team was appointed in April 2002 to conduct a comprehensive review of land policy and do the groundwork for a government paper on the subject. Stakeholders from all over the country energetically debated the conclusions of two draft reports on land policy by the team in the last quarter of 2002. The review covered the length and breadth of both land administration and land management. It once again drew the government's attention to the concerns that have been raised on the privatisation of the commons by sectional interests in the cattle industry and the likely negative impact on the livelihoods of the poor.

12. The review concluded that Botswana's overall land policy and institutional framework are fundamentally sound and that, despite the profound changes witnessed by Botswana in the last two decades, the 1983 strategy of careful change, and responding to particular needs with specific tenure innovations remains valid. Nonetheless, some important adjustments to the policy are called for. Government is studying the Land Policy Review, with the intention of placing a draft White Paper before Parliament during 2003.

Lesotho

13. The development of land policy and land law in Lesotho has had a long and chequered history. Lesotho provides a microcosm of the difficulties of tenure reform on over-crowded and depleted communal lands, chronic poverty, rapid urbanisation, a large (but declining) migrant labour force and very high incidence of HIV/AIDS. The sustainable management of Lesotho's mountainous and fragile natural environment is dependent on the development of a coherent land policy that embraces both administration of customary and leasehold land in urban areas and both peri-urban and rural land management.

14. The land policy process was restarted with a Land Policy Review Commission appointed by the Prime Minister, which reported in 2000. The Commission's report is currently under review by government. By the end of 2003 a draft land policy and draft land code are due to be tabled for Cabinet and Parliament and for public consultation, together with a study of the institutional and financial implications for implementation. Technical assistance for this purpose is being provided by DFID within the framework of the jointly funded Agricultural Policy and Capacity Building Project (APCBP) to which the World Bank and GTZ are also providing assistance.

Malawi

15. In January 2002, the Government of Malawi published its National Land Policy following a countrywide consultation process. The government is preparing a Sector Wide Approach (SWAP) to the implementation of the policy to which the World Bank, EU, DFID and USAID are contributing. Component projects under design include land acquisition and resettlement on under-utilised land to relieve landlessness.

16. Important aspects of the land policy are: the clarification and strengthening of customary land rights and formalizing the role of traditional authorities in the administration of customary land which covers some 80% ofthe country; providing for all customary land to be registered and protected against arbitrary conversion to public land; encouraging all customary landholders (entire communities, families or individuals) to register their holdings as private customary estates in ways that preserve the advantages of customary ownership but also ensure security of tenure; allowing private leases to be created as subsidiary interests out of any private land, including registered customary estates, without relinquishing the underlying ownership of the customary landholder; the strengthening of the land rights of women and orphans; and the regulation of land access by non-citizens.

17. The new treatment of foreign owned land is worrying some people. Existing land holders have to convert their freeholds into 50 year State leaseholds, and future investors are subject to a series of restrictions. The 50 year period is considered by many to be too short for investment, and there are concerns that the new policy will undermine investor confidence and impact badly on rural development in general.

18. A land code incorporating these and other measures is under preparation. In the process, it is hoped that various policy ambiguities will be clarified, especially those relating to the conditions for the alienation of customary land. A major programme to train land clerks (e.g. for land registration) is also underway.

19. Among the major impediments to implementation are the high incidences of natural disaster (floods and drought), the HIV/AIDS pandemic, the very weak state of the economy and the long running political uncertainties, which have caused the withdrawal of some donor funds. Civil society pressure for and in support of sustainable land reform is weak.

Mozambique

20. Like Botswana, the National Land Policy (1995) and 1997 Land Law of Mozambique were developed after a period of empirical research and consultation with a wide range of stakeholders. The Law retains the principle that land is the property of the State and cannot be sold or mortgaged, but it attempts to adjust this legacy from the socialist past to the reality of a market economy. Thus the State and its agents are the only bodies able

to authorise a Land Use Right, but this right is now privately held, inheritable, and transferable between third parties, akin to state leasehold.

21. Research also showed clearly the continuing relevance and validity of customary land management systems and the Policy accordingly accepts that they must be integrated into the overall land management and administration system. The new law was drafted only after such key policy points were agreed.

22. The Land Policy and Land Law provide a progressive and innovative framework for decentralised rural development and poverty alleviation. The legal framework recognises customary land allocation as one of three ways in which a state-allocated Land Use Right is acquired. With this simple device, the Land Law in effect restores all pre-colonial customarily acquired land rights, except those in the public domain (former state farms, National Parks, public infrastructure, etc.) and provides for a single, integrated legal structure that covers a range of different tenure systems and situations.

23. Private investment is seen as essential for initiating rural development. The Land Law allows for new investors to request a Land Use Right anywhere in the country. It requires that the local population is consulted and agrees that the state can allocate what is effectively 'their land' to the newcomer. Thus the Land Policy and Land Law are core components of a broader rural development strategy. Uneven implementation is however undermining the potential for promoting development, and allowing a *de facto* land grab of the best resources by elite and investor groups.

24. While the Land Policy and Law set the basic conditions for land access and use, other new laws (Forests and Wildlife, Environment, Mining etc.) determine how natural resources should be allocated and used. The separation of resources from the land has created dissent amongst both pro-community and investor groups, who argue that holding a Land Use Right also gives one a right over the resources on the land. The issuing of logging licences appears to bypass these concerns and is fuelling conflicts over resources rather than land *per se*. In all cases where a project occupies local land, the community should be able to negotiate the terms by which it cedes its rights.

25. The Land Law leaves open the forms of contract that can be used, and thus sets the stage for a flexible form of development that is mutually acceptable to the various interest groups that negotiate and agree over resource access and use. This mechanism is still at an early stage however, and is not widely tested. An important recent step forward has been the provision that local communities will receive 20 percent of all public revenues from commercial forest and wildlife activities.

26. Where the State decrees that land must be found for large-scale projects, just compensation should be paid to dispossessed rights holders. Yet in many instances, scant attention is paid to local rights and negotiated agreements to date are still a long way from achieving the equity goals of the Land Policy. The manner of relocating people to make way for new large-scale projects is in places reminiscent of colonial forms of land dispossession.

27. In spite of these problems, the political and economic climate is largely favourable to negotiated processes, based upon the principles of the new legislation. The Government is also committed to improving implementation of the Land Law. NGO campaigns have been very effective in taking the new law out into the countryside and in areas where they have continued to support development initiatives using the new framework, people's awareness of their new rights *vis-à-vis* the State and outsiders is very high.

28. Nevertheless local people lack the capacity to engage effectively as stakeholders in land development initiatives. Laws relating to natural resources and land administration place too much power in the hands of land professionals (land administrators, land surveyors). Civil society has not yet managed sufficiently to empower local people to benefit from these policies. NGOs – the major 'pro-community' agent in Mozambique to date – have seen their funding fall dramatically as donors shift support to programme assistance and budgetary support to central government.

29. Looking ahead, with elite groups seeking access to valuable resources and land administration services both overstretched and mostly serving the needs of the 'private sector', land conflicts between local people and new investors are common and are likely to increase. Mozambique does not have a white/black issue, but there are signs of a class struggle emerging over the means of production as new investors and urban groups pay scant attention to local rights in their rush for the best land and resources.

30. The challenge is to re-orient the focus and coverage of the land administration and reinvigorate the commitment to partnerships between rights holders and those who have the capital and know-how to open up areas for the benefit of all. New debates are however also emerging, over land privatisation, the transmission of rights, how to admit to and regulate the *de facto* land market. Poverty and existing rights often seem to take a back seat, with the emphasis on improving conditions for would-be investors (particularly large foreign investors), rather than supporting the more equitable model outlined above.

Namibia

31. Namibia has vast areas of semi-arid rangeland, generally infertile soils and a low population density. Agriculturally usable land is subdivided into the commercial farming area (c. 36.2 million ha) mostly subdivided into freehold ranches, and the so-called Communal Areas (c. 33.5 million ha) on state land. Land reform presents very different challenges than in higher potential agricultural areas of the sub-region. Yet, in common with South Africa, there is a basic disjuncture between the renewed public commitment of the Namibian Government to land redistribution, the financial and administrative resources available for realising them, and the reality of the 'pro-poor' rhetoric that accompanies the historical case for redistribution. Namibia has been unable to devise technical solutions to land use problems arising from the high costs of resettling small-scale farmers in a sparsely populated semi-arid pastoral environment.

32. Namibia has the usual policy dilemmas (e.g. economic production versus poverty alleviation) in the communal and commercial areas and of deciding what the role of

stakeholders (national, regional, traditional leaders, local users and occupiers) should be. These policy differences are played out in tensions between the highly politicised Ministry of Lands (MLRR) and the more technocratic Ministry of Agriculture (MAWRD). Weak leadership, management and chronic incapacity in the former have been a major constraint. This has been reflected in the comparative performance of two different types of land redistribution programme: MLRR's land settlement programme for the landless, which has been a dreadful failure; and MAWRD's affirmative action loan scheme (facilitated by the Land Bank) for emerging black commercial farmers, which seems to have been a success in terms of its stated objectives. A third element of the land reform programme is the development of 'unused' land in non-freehold or communal areas.

33. Five years after independence, the Commercial (Agricultural) Land Reform Act was passed in 1995. In 1998, the National Land Policy was published. The law provided for the acquisition by the government of large, under-utilised and foreign owned farms for resettlement, and grants the government the right of first refusal on farmland offered for sale. Compensation has to be at market prices. By the end of 2002, government had purchased 118 farms totalling 710,000 hectares. Most of these farms have been allocated to beneficiaries, but the land allocation process lacks transparency.

34. Relatively little progress has been made over the last decade, but the events that unfolded in Zimbabwe in March and April 2000 resulted in a renewed interest in land reform in Namibia. In December 2000, the President announced that land redistribution would be greatly accelerated. Government committed itself to the redistribution of 9.5 million ha in five years, which is approximately 25% of the farmland in private hands and five or six times the area redistributed since 1991. Donors are being asked to contribute to the resolution of the problem and both EU and GTZ have expressed their willingness to help. In a very recent development, the Namibian Agricultural Union has engaged in consultations with its members around the country, finalised in mid-February 2003, with the purpose of coming with their own proposals for land redistribution.

35. Recent government efforts have focused on developing a tax on commercial farms to encourage farmers to dispose of unutilised land, despite the lack of evidence of the feasibility of taxes for this purpose. The long-awaited Communal Land Reform Act was passed in 2002, which provides for the recording and registration of all land rights in communal areas, either as customary rights or rights of leasehold. The Act also provides for the administration of customary rights along similar lines to those adopted in Botswana. Whether the necessary funds for setting up the land administration will be forthcoming remains to be seen.

36. In a trend that is evident across the region, the lack of practical policy and a real commitment to equitable implementation in practice is being exploited by national elites who have enclosed large areas where customary land rights prevail but are not surveyed and lack effective legal protection. A class of emerging black commercial farmers might redress (slightly) the skewed racial access to land, but will do little to address underlying issues of poverty and a real redistribution not just of land but also of wealth in other forms.

South Africa

37. The comprehensive but painfully slow land reform programme in South Africa shows no sign of picking up speed, despite events north of the Limpopo. It is evident that land reform is not a priority in the wider macro-economic framework of the ANC government.

38. The emergence of the critical phase of the land crisis in Zimbabwe closely coincided with the change of leadership in the Ministry and senior management in the Department of Land Affairs (DLA) in mid 1999. This was followed by a suspension of the land redistribution programme and draft tenure reform legislation, a haemorrhage of experienced professionals and changes in policy direction, resulting in a critical loss of time.

39. The gap between government promises and the capacity to deliver land to the landless grows ever larger. Although progress was made in the period of the Mandela presidency (1994-9), intractable problems of policy and implementation were apparent long before the hand-over to the new Minister in 1999. Institutional fragmentation and divided responsibilities between the DLA and provincial agricultural departments compound the problems and hinder effective progress.

40. As in Zimbabwe, the lack of a comprehensive rural development strategy, complete with practical and sustainable support programmes, means that an essential precondition for an improved land redistribution and land reform effort is absent. Without this, any kind of land redistribution programme – even a well regulated and non-violent one – will have little real impact on poverty and quality of life issues for the 'beneficiary' population.

41. Notwithstanding progress in the formal settlement of restitution claims, the three principal legs of the land reform policy (Land Restitution, Land Redistribution and Land Tenure Reform) set out in the 1997 White Paper look increasingly wobbly. The measures announced in the Budget speech of the Finance Minister in February 2003 indicate that the Department has no coherent long-term plan for sustainable land reform. The DLA's hard-pressed bureaucracy is under great pressure to deliver, but morale is low. Effective M&E systems have not been in operation since early 2000. National statistics are not reliable and it is no longer clear how much land is being transferred and to whom.

42. The recently announced budget for the land sector of R1.9 billion is for two years 2003/4 and 2004/5, doubling this year, but levelling off for the remainder of the Medium Term Expenditure Framework (MTEF). While the increase in the budget for the land sector is welcome, it is not clear how this relates to the plans for land reform. Most of the budget (R854 million) for 2003/4 will be to meet the cost of land restitution claims, many of them urban, probably in cash rather than restoring the land. The failure to make substantial headway against the large number of outstanding rural claims (reported as

10,040 by the Minister in her budget speech of April 2003) is a growing cause for concern because this is where grievances are most likely to spill over into violence.

43. Land Redistribution to provide land for the landless in rural areas has been very slow and falls far below the government's target of transferring 30% of agricultural land by 2015. At the current rate, it is unlikely to reach 5% by that date. The general failure to deliver post-transfer support services to land reform farmers emerges as a fundamental issue. And despite the evident need to give more dynamism to redistribution *and* provide effective follow-up programmes, the budget allocation to redistributive land reform is a plan for failure.

44. The latest draft of the Communal Land Rights Bill (CLRB) has been under preparation for more than 5 years but, in its present form, it is not expected to secure the land rights of those occupying and using the communal areas (the former homelands comprising 13% of the land and accommodating about one third of the population). The real thrust of the CLRB is apparently to divest the State of its current responsibility for land administration in these historically deprived areas through a process of transferring land ownership to 'communities'.

45. Land reform activists (both researchers and NGOs) in South Africa are currently reviewing the status of all three land reform programmes with a view to learning lessons and seeking alternative ways of moving forward, but relationships with government are often poor. Efforts are also being made to design and implement training programmes.

Swaziland

46. Swaziland is remarkable in the sub-region for its successful repossession of land alienated by whites. During the latter parts of the 19th century, two thirds of the land held by the Swazi people came into the possession of white settlers. Following the Anglo-Boer war, a central objective of the Swazi monarchy was the repossession of the lost lands. In the early 20th century, many of the settlers' concessions were converted into freehold. The remainder of the century was largely spent in recovering this land into the ownership of the Swazi Nation, repossessed with funds raised by taxes on Swazis and with grants from the UK. Today, the chiefs administer almost two thirds of the country, but the arbitrary manner in which some of them do this is an increasing cause for concern and, unless changes are made, will surely bring about their downfall.

47. Swaziland embarked on a land policy process in 1996 (assisted by DFID), which progressed fitfully until the beginning of 2001, when the land debate was enlivened by high profile evictions of peasant households by traditional leaders. This was followed by a national land conference in February 2001 when civil society organisations reviewed the draft Swaziland Land Policy and began to grapple with the issues. In 2002, Swaziland was wracked by disputes between the High Court and the government over the constitutional powers of the monarchy. Constitutional changes, spurred by the feudal tenure arrangements, could result in requests for urgent assistance for tenure reform on Swazi Nation Land.

Zambia

48. At independence in 1964, Zambia inherited four categories of land: State Land (formerly Crown Land), Freehold Land, Reserves and Trust Land. Under the socialist-leaning United National Independence Party (UNIP), Zambia became a one-party state in 1973. Only small-scale private property was permitted and large-scale enterprises, whether industrial, commercial, agricultural or financial had to be undertaken either by the state or by institutions controlled by the state.

49. The Land (Conversion of Titles) Act 1975 confirmed and completed the land nationalisation programme by vesting all land in Zambia in the President, to be held by him in perpetuity on behalf of the people of Zambia. Freehold land held by commercial farmers was converted into leaseholds for 100 years and unutilised tracts of land were taken over by the state. In the 1960s, some 75% of white commercial farmers left Zambia for what was then Rhodesia and South Africa, leaving only about 300 remaining on state leases.

50. Since the current land crisis in Zimbabwe, the government is reported to be sympathetic to helping farmers who left Zambia and have now lost their farms in Zimbabwe, to return. This willingness to receive expelled farmers from Zimbabwe is also echoed in Mozambique, where some 50 ‘farmeiros’ have been allocated land and are now contributing with varying degrees of success and local acceptance to the development of Manica Province.

51. Zambia, nonetheless, does have chronic land problems, which are the subject of a current land policy review. A Draft Land Policy was published for public comment on 21 November 2002. The Zambia Land Alliance, an initiative of Zambian NGOs, supported by Oxfam GB, is seeking funds to facilitate more grassroots participation. USAID provided technical assistance for policy development to the land sector in the early years (1992-95) of the MMD government, but since then donor assistance has faded. DFID, in its current review of possible support to the agricultural sector, has been looking at the impact of land problems on agricultural production.

52. Many current land problems arise from the dual system of tenure inherited from the British, from attempts by UNIP to resolve them by nationalising all land and placing it within the gift of the President, and from attempts by the Chiluba MMD government to provide for a climate for foreign investment and development through the Land Act of 1995, which repealed the Land (Conversion of Titles) Act. The policy review process is in grave danger of being under-funded and rushed. Legislative changes that emerge from it could also create problems if there is not adequate consultation as was the case in 1995.

Zimbabwe

53. The price paid for failing to take timely and adequate action to redistribute land in Zimbabwe has undoubtedly been huge. More money may now be spent on food aid than

was ever to be spent on land reform. The long-term costs of foodaid dependency (crowding out food trade) must also be considered. Long-overdue land redistribution has now taken place in an anarchic and violent manner with immense damage to the economy, and indifference to human rights and the rule of law. This process has resulted in an unprecedented humanitarian crisis and widespread hunger.

54. Specific attention needs to be given to the serious situation facing the estimated 200,000 farm workers who are threatened with eviction from occupied farms. Some continue to stay on the farms or live around the edges, others have moved away entirely, but all are facing impoverishment, a lack of shelter, and the total disruption of their lives. Together with their families, the numbers affected could be as high as 1.0 - 1.5 million people.

55. The irony now is that thousands of farms and millions of hectares of productive land are lying idle, while the best of the 'redistributed' land has been handed out to elite figures in a wave of cynical cronyism. New conflicts are emerging between some of the new elite owners and those settled on the land in the 'fast track' programme. The wider economy is in a shambles, offering no prospects for employment or relief, and indeed it is this wider collapse that has contributed to the urgency and the anarchy of the land occupations. Even where land is now in the hands of new small farmer occupants, there are no support measures to help them get going, and there is no rural development programme of any kind that will provide an adequate framework for this kind of peasant or small scale agriculture.

56. In the longer term, some form of reconciliation and consensus must be achieved if Zimbabwe is to reap positive benefits from the hardship and suffering of all of its citizens over the last few years. Comprehensive policies will be needed, new skills must be learned, and new institutions created to promote a productive and equitable model of land occupation and resource use. The consensus building approaches adopted in countries like Mozambique serve as a good example, while lessons can also be learned from other countries such as Swaziland where land repossession has resulted in something more akin to a feudal situation with little to offer the poor. The donor community must be ready to provide support when the moment for moving ahead arrives.

Appendix III: OVERVIEW OF CURRENT LAND ISSUES IN SOUTHERN AFRICA

ISSUES	ANGOLA	BOTSWANA	LESOTHO	MALAWI	MOZAMBIQUE	NAMIBIA	SOUTH AFRICA	SWAZILAND	ZAMBIA	ZIMBABWE
Land Policy	None at present but civil society and donors pushing for it	Thorough review 2002. Draft White Paper due 2003. Tribal Land Grazing Policy failed.	Draft land policy due end 2003	Adopted January 2002 but critically ambiguous	National Land Policy 1995	National Land Policy published 1998	Constitution 1996 White Paper 1997 Ministerial statement 2000	Land policy review in 1987. Draft National Land Policy 1999; approval awaiting constitutional review	Current land policy review. Draft Land Policy published November 2002	Adopted May 2002
Property laws	Land Law (21/C) 1992 Regulations 1995 Draft land law (*Lei de Terras*) recently emerged from curious political process	1992 White Paper and Tribal Land (Amendment) Act 1993	New land act being drafted, due end 2003 Women legal minors without property rights of their own	Land Code under construction	Land Law 1997 integrates customary & 'formal' land access as means of securing a State land use right, with role for local people in land management. Regulations and Annex completed 2000. Forest and Wildlife Law 1999 weakens local rights over resources. New Mines Law 2002 can override land rights	Commercial (Agricultural) Land Reform Act 1995 Communal Land Reform Act 2002	Constitution of 1996 plus a wide range of laws dealing with land claims, extension of security of tenure to farm workers and tenants, the acquisition of land for redistribution purposes, and development facilitation and planning	Land Act 1979 Farm Dwellers Control Act. Swazi Administration Order 1998 reinforces link between land ownership and jurisdiction. Women as minors without property right of their own. In practice unmarried adults may not hold land.	Land Act 1995	Section 5 (Preliminary Notice Of Acquisition Order) and section 8 (Compulsory Acquisition Order) of Land Acquisition Act 2002

ISSUES	ANGOLA	BOTSWANA	LESOTHO	MALAWI	MOZAMBIQUE	NAMIBIA	SOUTH AFRICA	SWAZILAND	ZAMBIA	ZIMBABWE
Implementation strategy	Participatory approaches and empowerment of local communities supported by FAO in partnership between CSOs/ NGOs and Land Directorate of the Government. Resettlement of IDPs Delimitation and titling Decentralised land management	Democratic, flexible and gradualist	Concurrently developed with the land policy and land law	Under construction	Skewed application favours private sector, with NGOs mainly responsible for community rights	Excessively technical approach by MAWRD Introduction of land tax by MLRR to acquire land for redistribution but at slow pace	Bogged down. Land sector budget R1.9 billion 2003/4 and 2004/5, levelling off	Gradual adjustment of existing land tenure		
Capacity building	Rebuilding of land administration Training in participatory delimitation and basic GIS. Far from sufficient	District-level land boards	Declining capacity Capacity building should be part of implementation strategy	Started but only on small scale	Priority issue but not adequately addressed as yet	MLRR weak leadership, management, capacity	Attempts to design and implement new training programmes; institutional fragmentation, divided responsibilities hinder progress	Needs to develop institutional coherence and efficiency	Need to examine capacity of land administration and efficiency	Loss of government personnel and declining capacity
Civil society engagement in land reform	Land Forum, an NGO coalition formed 2002, recently appealed for more consultation Increasing engagement by international and national	Mostly involved in displacement of San	Broad consultations during the policy review process Need for more engagement in new land law and sensitisation	Weak pressure for and support of sustainable land reform	NGO campaigns have been very effective in creating awareness of new rights *vis-à-vis* the State and outsiders Very reduced resources for NGOs to continue their support	Weak pressure by NGOs for protecting land rights of the vulnerable. Namibian Agricultural Union devising own proposals for land redistribution	Strong in the past but relations with government have deteriorated in recent years	No civil society participation in 1999 Draft National Policy. 2001 civil society began to engage in land issues, subsequently	Consortium of Zambian NGOs, seeking funds	Widespread disengagement and depletion of resources

ISSUES	ANGOLA	BOTSWANA	LESOTHO	MALAWI	MOZAMBIQUE	NAMIBIA	SOUTH AFRICA	SWAZILAND	ZAMBIA	ZIMBABWE
	NGOs/CSOs, but limited resources							contentious battles in courts over role of the monarch		
Land grabbing	MPLA and UNITA elites as part of the peace agreement	Land grabbing and eviction of AIDS widows and orphans in peri-urban/ urban areas	Immigrant Chinese business community arbitrarily taking over peri-urban land for industrial construction	Across border into Mozambique	Significant problem in best resource areas and coast though land taxes and consultation process had curbed worst excesses	Local elites	Policies favour elites over the poor in practice	2001 high profile evictions of peasant households by traditional leaders	Nationalisation 1966 Land around Copperbelt given out as political reward to Kaunda supporters	War veterans and political elite
Land occupations	Not an issue at the moment, but some IDP encroachment on former colonial plantations		Encroachment into prime agricultural land in urban/peri-urban areas for housing. Ongoing court actions and demolitions' Campaign to stop land encroachment	Isolated cases	An issue in ex-state farms and contested ex-colonial farms now being given to new 'owners', where local people have settled over years	October 2002 by100 SWAPO youth as protest against eviction of farm workers	Reports of land encroachment in commercial farming areas, plus land invasions in peri-urban areas for housing and settlement purposes			Started in February 2000 and still continuing

ISSUES	ANGOLA	BOTSWANA	LESOTHO	MALAWI	MOZAMBIQUE	NAMIBIA	SOUTH AFRICA	SWAZILAND	ZAMBIA	ZIMBABWE
Land utilisation	Much land abandoned during decades of war. Limited utilisation. Mining sector a bottleneck. Lack of basic instruments for small farmers. Some animal recovery in Huila, Huambo	Large parts of country extremely arid.	Low settlement densities in urban and over-utilised and poor conservation of arable land in rural areas. Revocation of underutilised land a concern for HIV/AIDS affected households	Low, many foreclosed mortgages and large areas of under- utilised customary land	Very low percentage of potential area is effectively used by communities and by private occupants (hence push by government to attract investors)	Unused land tax introduced but vast areas of semi-arid rangeland, generally infertile soils 50% of HIV/AIDS affected households leaving part of land fallow	Well-developed & extensive commercial sector, with areas where utilisation is low, alongside dense settlement and very low productively and poor land utilisation in former reserve areas	Extensive soil erosion due to excessive cattle grazing	Large rural areas with low population densities	Extensive productive lands idle Contracts between previous (white) owners to continue farming and share profits with new (black) owners
Landlessness	Limited IDPs prefer not to go back to original place	Rapidly urbanising population	Diminishing arable land is leading to landlessness	Significant	No 'landless' class yet, but current trends could lead to this in medium term	MLRR's land settlement programme for the landless has failed	Difficult to quantify. High levels of land hunger in former reserves; intense pressure to secure land for settlement in peri-urban areas.	Serious landlessness (25% of the rural population land less)	Government may help ex-Zambian white farmers evicted from Zimbabwe to return	0.5 million farm workers and families and youth
Land conflicts	Limited as IDPs acquiring land through customary authorities, avoiding confrontation with the elite over land Foreseen conflict as land shortage increases in future. Likely to be overlapping claims as people resettle land abandoned during war	Fencing of common grazing lands.	Between different rural communities over grazing land, government and settlers in arable land or land reserved for development, traditional leaders on allocation powers. Demolition of illegal settlement by government	Most common form of civil action	Between locals and new investors, due to inadequate application of law and contradictions with Forest Law	Racial and ethnic divisions inherited from the colonial and apartheid past	Tensions over slow pace of delivery in rural restitution and redistribution Conflict along borders between commercial and communal areas	Boundary disputes between chiefdoms	Around Copperbelt	Violent

ISSUES	ANGOLA	BOTSWANA	LESOTHO	MALAWI	MOZAMBIQUE	NAMIBIA	SOUTH AFRICA	SWAZILAND	ZAMBIA	ZIMBABWE
Land redistribution	Not relevant		Expected to be stimulated by introduction of land market under the new land law	Resettlement projects under design	Land Law in principle restores and protects extensive local rights, but 'redistribution' now taking place to private sector interests	By end 2002 government purchased 118 farms totaling 710 000 ha. Most farms allocated to beneficiaries, but process lacks transparency	Continuing but slow target of redistribution of 30% of agricultural land by 2015 is likely to be less than 5%, M&E breakdown	Land purchase programme with mixed results. In some cases targeted landless did not benefit	Needs efficient and fair market for existing State Lands	Chaotic and arbitrary, no post transfer support services
Land tenure	Lack of land policy a bottlenetck. Implementation of land law will be difficult due to limited knowledge on tenure regimes. Attempts to recognise customary claims	Transforming freehold land tenure into customary	Phasing out of customary tenure under the new law Discriminatory against women Sub-division Revocation of underutilised land	Improving administration of customary land	Law integrates customary and formal tenure into one structure over whole country in progressive system that requires stronger implementation and capacity building Legal framework recognises customary land allocation as one of three ways a state-allocated Land Use Right can be acquired	Illegal fencing Unused communal land can be leased to promote agricultural development	Strategy of transferring whole farms to fairly amorphous groups has been principal cause of difficulty Draft Communal Land Rights Bill criticised by NGOs but also rejected by traditional leaders	'Swazi Nation Land' held by the state (the King) administered by chiefs. May not be sold but in practice this happening in peri-urban areas. Arbitrary administration by chiefs	Conversion of customary lands to state titled lands chaotic and corrupt Tenure insecurity of women, HIV/AIDS affected, retrenched mine workers, the poor	Multiple processes: legitimisation of settlers, eviction of settlers, reversal of land acquisition; uncertain tenure

ISSUES	ANGOLA	BOTSWANA	LESOTHO	MALAWI	MOZAMBIQUE	NAMIBIA	SOUTH AFRICA	SWAZILAND	ZAMBIA	ZIMBABWE
Land administration	Serious lack of institutional and technical capacity both in Government and CSO/NGOs. Neither really functioning cadastre nor registry system	Adapting land administration based on customary rights and values to rapidly urbanising economy, expanding land market	Need for administration of both customary and leasehold land in urban, peri-urban and rural areas Involvement of local authorities under Local Government Act	Decentralisation of very low central capacity. Innovative programme to train land clerks (e.g. for land registration) underway	Natural resources and land administration laws place too much power in land administrators, land surveyors; decentralised services will help, but training in new approaches needed	Administration of customary rights similar to Botswana	Chaotic and conflicting systems in former reserve areas	Chiefs administer almost two thirds of the country	Chiefs in theory have absolute rights to give away customary land	No current records Attempt to set up land information systems
Donor/financier support	Donors willing, because of strategic interests, to continue channeling resources through NGOs. Limited funding. Limited recognition on the importance of agricultural sector for national recovery	Needed much less than elsewhere in the region	DFID (land policy and law) GTZ (land use planning) World Bank via APCBP Need for data capture support	DFID, EU, USAID/World Bank long running political uncertainties have caused withdrawal of budget support	Donors support achievements to date and willing to continue, but budget support model has reduced NGO funding (and thus support to communities)	EU and GTZ coalition of the willing FAO on valuation and land tax	USAID (linking white commercial farmers and emerging black farmers) EU (post transfer support, local economy development) Belgian support for restitution	DFID assisted drafting of land policy in 1996	Past policy assistance from USAID Potential support by DFID OXFAM supporting civil society	None

ISSUES	ANGOLA	BOTSWANA	LESOTHO	MALAWI	MOZAMBIQUE	NAMIBIA	SOUTH AFRICA	SWAZILAND	ZAMBIA	ZIMBABWE
Impediments	Top-down governance. PRSP yet to be presented by government to donors. Oil revenues not included in GDP	Land rights of marginal groups	HIV/AIDS epidemic, retention of qualified staff, weak civil society High land pressure (less than 9% of land arable). Conflicting land uses	Frequent natural disasters HIV/AIDS pandemic Weak economy	Conservative attitudes amongst technical staff Collapse of inter-sectoral coordination mechanisms Corruption	Lack of practical policy or real commitment to equitable implementation exploited by national elites enclosing large areas where customary land rights lack legal protection	No comprehensive rural development strategy and practical and sustainable support programme Weak civil society organisation in rural areas	Population growth, acute shortage of arable land, HID/AIDS. Overgrazing	Lack of resources and limited administrative capacity in GOZ	Drought, food and humanitarian crisis HIV/AIDS Economic meltdown