

# Institutional Harmonisation Processes in the Kenyan Land Sector:

A Case Study of the Time Period 2003–2007



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## **A Case Study of the Time Period 2003–2007**

Prepared for the Global Land Tool Network  
UN-HABITAT





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## Abbreviations

AfDB	African Development Bank
AUC	African Union Commission
CCA	UN Common Country Assessment
CIDA	Canadian International Development Agency
CSOs	Civil Society Organisations
DCG	Donor Coordination Group
DCI	Development Cooperation Ireland
DFID	Department for International Development (UK)
DI	Demonstration Intervention
DPGL	Development Partners Group on Land
FMA	Financial Management Agency
GJLOS-RP	Governance, Justice, Law and Order – Reform Programme
GoK	Government of Kenya
HAC	Harmonisation, Alignment and Coordination donor group
IAB	International Advisory Board
IEC	Information Education Communication strategy
ISK	Institution of Surveyors of Kenya
JICA	Japan International Cooperation Agency
KEPSA	Kenya Private Sector Alliance
KCC	Kenya Country Committee – equivalent to UNCT
KJAS	Kenya Joint Assistance Strategy
KLA	Kenya Land Alliance
LRSP	Land Reform Support Programme
LRTU	Land Reform Transformation Unit
MDGs	Millennium Development Goals
MoL	Ministry of Lands
MoU	Memorandum of Understanding
NDP	National Development Plan
NEPAD	New Partnership for African Development
NLP	National Land Policy
NLPFP	National Land Policy Formulation Process
PBA	Programme-based Approach
Sida	Swedish International Development Agency
SIP	Sector Investment Programme
SWAp	Sector-wide Approach
UNCT	United Nations Country Team
UNDAF	United Nations Development Assistance Framework
UNDP	United Nation Development Programme
UNECA	United Nations Economic Commission for Africa
UN-HABITAT	United Nations Human Settlement Programme
USAID	United States Agency for International Development



## 1. Executive summary

Since the early 1990's aid modalities and their effectiveness have been repeatedly scrutinised with the aim to promote aid and thus development effectiveness through institutional harmonisation, often referred to as Harmonisation, Alignment and Coordination (HAC). HAC processes are under way in a growing number of developing countries. They are based on the consensus reached between donor and recipient countries at high-level meetings on aid effectiveness and guided by the Millennium Declaration (2000) and the Millennium Development Goals (MDGs).<sup>1</sup>

Lessons learnt from these processes are constantly compiled and shared among development agencies, research institutes, government officials and lobby groups. While substantial experiences already exist for HAC processes in sectors like health and education, little information has been gathered about harmonisation work in the land sector.

UN-HABITAT recognises the need for better knowledge compilation and exchange experiences on land sector developments and HAC. Through the Global Land Tool Network (GLTN) initiative UN-HABITAT has commissioned a case study on institutional harmonisation in the Kenyan land sector.

The objectives of the study are to chronologically document institutional harmonisation processes in the Kenyan land sector between 2003 and 2007, to describe challenges experienced, to analyse the roles of different partners as well as the methodologies/ tools used to foster HAC processes. The analysis of tools was carried out considering GLTN core values such as gender, equity, governance, affordability and pro-poor orientation.

The study provides recommendations for future activities in the Kenyan land sector. It also gives options for UN-HABITAT and the GLTN to strengthen HAC processes by partner and in member countries. The research began with a desk study of relevant documents and was followed by interviews with stakeholders active in the Kenyan land sector.

After an introduction on the study's background in relation to UN-HABITAT and the Global Land Tool Network, the report gives an overview on the *new aid architecture* and HAC processes in general. It then describes in detail the institutional harmonisation processes in the Kenyan land sector.

Section 4 first gives a chronological description of HAC from 2003 to 2007, followed by an analysis of stakeholder roles and description of achievements and challenges experienced. Section 5 analyses the different tools and methodologies used in the Kenyan land sector to foster institutional harmonisation.

The final section draws conclusions and gives recommendations for the partners supporting the Kenyan land sector, for UN-HABITAT as well as the GLTN. Recommendations for GLTN are subdivided into short-term, medium-term and long-term activities and outline the human resource and financial implications for supporting HAC processes in partner countries.

## Major findings

The harmonisation and alignment process in Kenya are less advanced compared to those of neighbouring countries due to economic and political framework conditions. The Kenya Joint Assistance Strategy (KJAS) was launched in September 2007 and currently five HAC

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<sup>1</sup> Monterrey (2002), Rome (2003) and Paris (2005).



processes, formalised as Sector-wide Approaches (SWAs) or Programme-based Approaches (PBAs) exist in Kenya, all of them in quite distinct stages.

HAC in the Kenyan land sector is closely linked to the National Land Policy Formulation Process (NLPFP). The political impetus created through the absence of a valid policy framework and the public pressure to overcome this unjust situation, constituted pushing and pulling forces, which carried HAC initiatives forward.

For the purpose of this study, the process is divided into three phases: the inception phase (07/2003–2004), the medium-term phase (2004–2006) and the transition phase (2006–2007 and beyond). Partners in the land sector (DPs, MoL and CSOs) have specified their roles through different tools designed to foster their cooperation and coordination. These include a secretariat, Memorandum of Understanding, and basket fund arrangements. MoL, despite frequent changes in the senior management, successfully provided the leadership for the NLP formulation and the HAC process in general.

DPs have made use of their respective technical skills and experiences and jointly supported MoL and the NLP formulation process. Although interests of DPs in the land sector differ, they have been able to give concerted support and use the DPGL for joint policy dialogue with MoL. CSOs strengthened their advocacy role and have provided valuable technical expertise for the development of the NLP and its implementation framework.

Institutional harmonisation is always a long process, which entails many challenges. The Kenyan land sector faces similar challenges experienced by most HAC processes worldwide (e.g. long and bureaucratic planning and decision-making processes, differing expectations, agendas and approaches hampering consensus building process). However, partners always maintained a constructive and forward-looking working atmosphere.

Two particular challenges have to be underlined. First, only a small number of DPs actively support institutional harmonisation in the Kenyan land sector. This creates a challenge for the HAC process, as the level of support can be insufficient for spreading the risk evenly in a highly political sector. Second, the HAC process in the land sector operates without a comprehensive strategy, including agreed milestones and indicators as well as a budget plan. The Land Reform Support Programme is an important step in the right direction.

Partners in the Kenyan land sector developed several tools to foster institutional harmonisation and used them successfully.<sup>2</sup> These tools are not innovative *per se*. They are conventional methods of organising people and organisations around a matter of joint interest and/or of facilitating decision-making by consensus.

The innovative factor is the diversity of partners, who come together to use these tools in a consultative and successful way. These tools (DPGL secretariat, coordination subgroups on specific technical issues and basket fund arrangement) have potential for application in other countries. Before doing this, a thorough analysis of the specific framework conditions and demand in the country is necessary. The following recommendations specify the way forward.

## Recommendations for Development Partner Group on Land (DPGL) and the Kenyan land sector

Considering the political and administrative conditions in Kenya since the beginning of the

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<sup>2</sup> GLTN describes a *land tool* as the way of doing an administrative procedure and a method to organise people, or a way to make decisions – on land issues.





HAC process, much has been achieved during the last four years. Now that the Land Reform Support Programme (LRSP) is nearly finalised this is a good time for reflecting on achievements to date and discussing next priorities. The DPGL should rank priorities for the land sector reform, priorities for the HAC process and those priorities that offer synergies for both processes. The development of an Information, Education and Communication (IEC) strategy is an activity that creates synergies for both.

LSRP instruments need further development and fine-tuning. Roles and mandates of the committees in the LRSP management structure (e.g. LRTU, FMA and ministerial technical committees) the interfaces and reporting-lines between them, need to be specified.

DPGL can use the LRSP implementation phase to develop a strategic framework for the land sector. This includes developing a vision, mission and objectives, indicators and milestones. Existing documents such as the MoL strategic plan and the Rapid Result Initiative can be used to inform the sector strategy.

The joint review of Sida's and DFID's support initiatives can be used as a tool to further strengthen cooperation and coordination in the DPGL as well as between DPGL and NSAs. The joint review will also support maintaining the reform momentum. DPGL can share information on the joint review with other sector coordination groups, such as the environment and forestry group.

DPGL needs to revisit the basket fund concept. The LSRP budget outline provides a basis document for MoL and interested DPs to discuss sharing costs, and agree on possible arrangements and preconditions for support.

With regard to LIMS, the DPGL should explore opportunities for interested DPs to jointly finance demonstration interventions. Financing arrangements should allow for enough flexibility to accommodate the requirements of different DPs (e.g. Sida, JICA, World Bank).

Finally, DPGL should explore opportunities for providing technical and financial support to NSAs in a more structured way along the LRSP, e.g. covered by a MoU or a basket type arrangement. NSAs will have to play an active part in the implementation of the LRSP.

## **Recommendations for UN-HABITAT**

The importance of harmonisation and alignment processes grows in Africa and beyond. In sectors with relevance for UN-HABITAT's portfolio (i.e. Governance, Decentralisation and Urban Development and Land) HAC processes are particularly challenging due to political context, dynamism and the diverse interest and influences, which accompany them. This underlines the need for objective guidance facilitation and also for regional and international exchange of experiences.

Through its involvement UN-HABITAT and its Land Tenure and Property Administration Section, has gathered valuable insider experience and successfully used tools (e.g. the DPGL secretariat). The agency has proven its capacity in providing strategic guidance for facilitation of HAC processes as well as expeditious technical expertise for backstopping important matters of concern (e.g. land policy peer review).

UN-HABITAT needs to strengthen HAC processes in other partner countries to develop its role as an impartial broker and arbitrator, policy adviser and provider of capacity development.

However, to strengthen its comparative advantages in partner countries where UN-HABITAT's physical presence is not as solid as in Kenya, the agency will have to explore innovative





options. One option would be setting up a task force for provision of rapid facilitation and technical support to HAC processes. Another option would be sourcing of additional funding from bilateral donors similar to the model used by the DPGL secretariat.

UN-HABITAT can contribute to the Kenya Country Coordination Team's (KCC) internal information management by making the Kenyan experience available to other UN organisations. This can be done by organising "brown-bag" lunches and discussion panels on specific HAC issues with experts from within the UNCT and other agencies.

UN-HABITAT's Land Tenure and Property Administration Section can foster participation of the KCC team in existing SWaps/ PBAs in Kenya. It can also guide KCC in spearheading the development of PBAs in areas, which have not received adequate attention, e.g. urban governance and decentralisation.

This allows UN-HABITAT to consolidate expertise in HAC facilitation and puts it in the position of driving the process among UN-organisations.

## Advancing HAC through GLTN

The Global Land Tool Network (GLTN) initiative can use the Kenyan experience as a model for other countries. The GLTN can also strengthen its potential as knowledge broker for members and to advocate for mainstreaming its core values in HAC processes.

**Short-term action** 6 to 12 months GLTN can promote a more structured dialogue with its institutional host UN-HABITAT, on the implications of the HAC process for UN-HABITAT's new strategic and institutional plan. GLTN can raise awareness of its members through initiating discussions on the pros and cons of institutional harmonisation and existing approaches. The GLTN will have to consider the diversity of its members, i.e. their geographical origin, their organisational background and subsequently their differing interests as well as expectations. An excellent springboard for joint initiatives would be a workshop bringing together GLTN members from the East African region to share experiences on HAC processes.

Before initiating sensitisation processes among members in other regions the GLTN will have to assess existing approaches to institutional harmonisation. The GLTN can do this assessment through sending questionnaires to members asking them to describe the situation in their respective countries. The GLTN International Advisory Board (IAB) will be an excellent forum to discuss the outcome of this assessment, as well as to identify priority regions or sub-regions and countries.

The GLTN, guided by the IAB, can prepare a consolidated approach to supporting institutional harmonisation processes, i.e. prepare a proposal document. One approach might start with two to three pilot regions or countries to achieve an efficient use of resources and to select pilots with distinct features. This would enable the GLTN to compile different experiences for knowledge management and sharing.

**Medium-term action** GLTN can support institutional harmonisation processes in selected pilot regions or countries through an assessment of the political and administrative conditions, the stakeholders involved, existing alliances, process bottlenecks and incentives for institutional harmonisation as well as potential for mainstreaming GLTN core values.

Begin by mapping out existing power relations and alliances to identify priorities and entry points for harmonisation support. The mapping exercise will take into account perspectives



and demands of different stakeholders in the pilot country/ region. Enough room must be given to the perspectives and voices of stakeholders that are not able to engage as equal partners in institutional harmonisation processes. The GLTN has developed guidelines and tools to support this activity.

The outcome of the mapping exercise could be discussed in a wider stakeholder workshop to achieve consensus on priorities of institutional harmonisation. The workshop will also create an opportunity to select the lead organisation, to agree on the best way of cooperation, assess mutual expectations and contributions to the process.

The GLTN will also have to create alliances with important stakeholders on sub-national, national and (if adequate) regional level. The GLTN should help identify a local liaison office to enable direct cooperation with stakeholders. Support for this can be drawn from UN-HABITAT representatives in partner countries.

The GLTN will have to link its local liaison agent with the wider GLTN knowledge base and especially the GLTN coordination office in Nairobi, e.g. through establishing a pool of experts to serve as facilitators. This group does not necessarily have to be situated in one place but can come together and act as a rapid response whenever the demand for direct intervention and backstopping arises.

**Long-term action** GLTN can lobby among donor organisations for financial and technical support to HAC processes through the network. The GLTN has the opportunity to create a regional or even a global knowledge base on institutional harmonisation processes in the land sector. The AUC/ UNECA/ AfDB-initiative on African land policy formulation creates a platform for the GLTN to advocate for institutional harmonisation processes. Finally, the GLTN needs to participate in other regional and global networks as well as think-tanks that support HAC-processes.

It is difficult to estimate the cost and human resource input needed for the short-, medium- and long-term phases. A distinction must be made between long-term costs and resource inputs (i.e. for facilitation and back-stopping the overall process) and short-term or ad hoc costs and resource input for events and activities (i.e. workshops, consultant assignments). The first group of costs/ resources need to be covered throughout the process. The second can be raised as needed through requesting support from development partners and GLTN members.

If GLTN plans to engage seriously in advancing HAC processes it will need additional human resources at its secretariat. In the beginning a 50% technical staff position might suffice (e.g. Joint Programme Officer or JPO). In the course of supporting the process, the GLTN must consider increasing its human resource input at the secretariat. Other important inputs would be establishing a pool of experts who can rapidly respond to HAC needs in member countries and assigning technical staff to UN-HABITAT liaison offices in partner countries with a specific interest and/ or demand for HAC.

Different strategic and financial considerations need to be discussed and decided in the GLTN IAB. Issues of cost and human resource implications should be brought to the IAB well in advance while lobbying among the funding GLTN members for support of HAC.



## 2. Introduction

UN-HABITAT is mandated by the UN General Assembly to promote socially and environmentally sustainable towns and cities with the goal of providing adequate shelter for all. Its mandate also involves contributing to secure tenure for the urban poor, urban land delivery for housing, and the achievement of the Millennium Development Goals.

To fulfil this part of the agency's mandate, UN-HABITAT cooperates with other development partners to advocate for the establishment of a global network to develop pro-poor land tools (Stren, *et al.* 2005).<sup>3</sup>

### 2.1 The Global Land Tool Network (GLTN)

At present there are insufficient pro-poor land policy tools for the HABITAT agenda. Present land policies tend to focus on description and analysis, rather than implementation and tool development at scale. Although land tool development takes place, lingering core challenges include insufficient consideration of human rights, lack of coordination among different actors and exclusion of grassroots and women.

Recognising the above listed challenges the GLTN was officially launched by UN-HABITAT at the World Urban Forum in Vancouver in 2006. Sweden and Norway are the main funding partners. The initiative aims at facilitating the attainment of the Millennium Declaration and the MDGs, such as poverty alleviation, through improved tools for land management and land tenure.<sup>4</sup>

GLTN core values are pro-poor, governance, equity, subsidiarity, affordability and gender sensitivity. The objectives of the GLTN focus on the development of pro-poor, gendered and large-scale land tools, which currently do not exist systematically at country and global level. It is assumed that these tools, once identified and sufficiently supported, will unblock current development obstacles and enhance the achievement of the MDGs.

The GLTN covers urban and rural land development objectives. The network approaches land related development objectives through consultations and cooperation at the global and national level, while tool development and documentation are realized on national and local level in participating countries.

The partners of the GLTN have identified five core themes, which guide the development of land tools. These themes are:

1. Land rights records and registration,
2. Land use planning,
3. Land management, information and administration,
4. Land law and enforcement,
5. Land value taxation, and cross cutting issues.

UN-HABITAT hosts the GLTN secretariat and provides coordination support to GLTN initiatives and land-related knowledge management at a global level. In return, the GLTN activities also support the work of UN-HABITAT's global campaign in promoting the rights of the urban poor to access land.

<sup>3</sup> Sida and the World Bank supported initiating the network.

<sup>4</sup> MDG 1: Eradication of Extreme Poverty and Hunger (i.e. on food security), MDG 3: Gender Equality and the Empowerment of Women (i.e. on women's inheritance rights) and MDG 7: Ensuring Environmental Sustainability (on improvement of slum conditions).





## 2.2 Objectives and methodology

Since the early 1990's aid modalities and their effectiveness have been repeatedly scrutinised with the aim to improve development performance through institutional harmonisation, often referred to as Harmonisation, Alignment and Coordination (HAC). HAC processes are underway at country level in dozens of developing countries.

Lessons from these processes are compiled and shared among interested parties, including development partners, research institutes, governments of developing countries and lobby groups. While substantial experiences already exist for HAC processes in sectors like health and education, less information is gathered about HAC in the land sector. UN-HABITAT recognises the need for better knowledge compilation and exchange.

Hence, the agency commissioned this case study through the GLTN to capitalise on its tacit knowledge in the HAC process of the Kenyan land sector and through the Global Land Tool Network (GLTN) initiative commissioned this case study.

The study focuses on institutional harmonisation processes in the Kenyan land sector between 2003 and 2007. It documents the various initiatives undertaken by the partners, i.e. the Government of Kenya (GoK), development partners (DPs) and Non-state actors (NSA).<sup>5</sup> It considers other harmonisation processes going on in Kenya during the same period, e.g. the 'Governance, Justice, Law and Order Sector Reform Programme' and its Programme-based approach.

This report describes challenges experienced, methodologies and tools used for HAC, considering GLTN core values. Findings and recommendations will inform future activities in the Kenyan land sector. The report also gives specific recommendations for UN-HABITAT and the GLTN, focusing on their future roles in fostering HAC processes in partner countries. The findings and recommendations will also inform the development of guidelines for institutional harmonisation processes, which will be disseminated by the GLTN among network members.

The methodology applied entailed a desk study of relevant documents, followed by interviews with stakeholders active in the land sector (i.e. representatives from government institutions, civil society, private sector and professional associations).<sup>6</sup>

## 3. Background to the case study and the land sector in Kenya

### 3.1 A new aid architecture enables HAC processes

As a result of the ongoing scrutiny of aid modalities and their effectiveness, many challenges have been identified that jeopardize the impact of development aid. Four such challenges are the unpredictability of aid flows in terms of timing of disbursement and volume; the establishment of structures for implementation, reporting and monitoring/auditing which are parallel to existing recipient government structures; the multiplicity of donor financial reporting and accounting systems; the frequency and multiplicity of donor missions which overburden the recipient government's administration and increase transaction costs (OECD/ DAC 2003).

<sup>5</sup> Non-state actors (NSA) comprise civil society organisations, private sector agents and professional associations.

<sup>6</sup> See detailed list of informants in annex 1.



A new aid architecture has emerged that aims to overcome these challenges. It is founded on a consensus over objectives and on agreement over the way the objectives may be achieved. At global level this architecture is based on the Millennium Declaration (2000) and the MDGs which are a set of prioritised, precise and time-bound development goals. At the national level the framework is based on Poverty Reduction Strategy Papers (PRSPs) and subsequent National Development Plans (NDPs).

The High Level Forum on Harmonisation (Rome Declaration, 2003) and the Paris Declaration of Aid Effectiveness (2005), both originate from the consensus reached during the Monterrey Conference on Financing for Development (2002).<sup>7</sup> Together these set the framework reference points for the international development and donor communities.

The United Nations through its UN Development Group (UNDG) took up its own reform agenda in the late 1990's to become a more effective and efficient institution. The Common Country Assessment (CCA) and the UN Development Assistance Framework (UNDAF) were initiated as the programme management tools for all UN agencies at the country level.

Guided by the MDGs and the universal objective of achieving more aid effectiveness, the UNDAF describes the collective response of the UN Country Teams (UNCTs) to the national development priorities.

The UNDG acknowledges the changes instigated by the new aid architecture as positive challenges at which the UN will aim when adapting its own aid modalities.<sup>8</sup> These challenges are represented through new aid approaches such as Sector-wide and Programme-based approaches as well as subsequent aid modalities, i.e. General Budget Support, Sector Budget Support or Basket Funds.<sup>9</sup>

In response to the growing request for harmonised and coordinated approaches the United Nations Economic Commission for Africa (UNECA) in partnership with the African Union Commission (AUC) and the African Development Bank (AfDB) started a joint initiative to develop a land policy framework and guidelines. The framework includes modalities for its implementation at country, regional and continental levels (ECA/AUC/AfDB 03/2006). The initiative is expected to run for two years. It builds upon experiences from various African countries and includes a series of workshops and consultations with experts and political decision-makers on different levels, including a summit of Heads of States and Government. The first results, a Concept Paper on Land Policy Indicators, have been presented and discussed.

### 3.1.1 Genesis of SWaps and PBAs

Within the new development framework, assistance at country and sector level have gone through different phases to gain more alignment, harmonisation and ownership. Since the early 1990s Sector-wide Approaches (SWaps) have become a preferred approach for financial and technical support on sector level.

A SWAp is a process wherein all significant funding for the sector, whether internal (partner

<sup>7</sup> A consensus was reached between developed and developing countries on the need for mutual accountability, i.e. in achieving sustainable development and poverty reduction in line with the MDGs and along principles of long-term holistic vision and strategy, country ownership and results-based orientation.

<sup>8</sup> See the UNDG Position Paper (2005) and the announcement of the Office of the UN Resident Coordinator in Kenya on alignment with the government budget (UN 2004).

<sup>9</sup> Aid modalities can be distinguished according to (i) the conditionality attached to the funds, i.e. the policy measures the recipient government agrees to implement; (ii) earmarking, i.e. the limitations placed on what the aid must be spent on; and (iii) the disbursement channels and management procedures to use, i.e. how the funds are disbursed, accounted for and audited (Foster & Leavy, 2001).



government contributions) or external (donor contributions), supports a single sector policy and expenditure programme under government leadership. It generally calls for government procedures to disburse and account for funds (Foster, 2000).

SWApS have four main objectives:

1. To broaden ownership by partner governments over decision-making with respect to sector policy, strategy and spending,
2. To improve coordination amongst all relevant policy stakeholders in the sector (harmonisation),
3. To increase coherence between sector policy, spending and results by bringing the sector budget back into the centre of policy-making and unifying expenditure programming and management regardless of the sources of funding (alignment),
4. To minimise transactions costs associated with the provision of external financing.

Experience from different countries shows, however, that there is no SWAp blueprint. Most SWApS, even the advanced ones, are in the middle of a process of broadening support from different sources of funding. The nature of the sector, the composition of stakeholders and the political, social and economic conditions in the respective country determine the structure and shape of the SWAp and the pace of its progress.

The most accurate way to categorise SWApS is to describe them as policy planning and management processes with reform orientation (Evans, *et al.* 2006). Table 1 presents an overview of commonly perceived differences between sector-wide approaches and project approaches.

**Table 1**

<b>Distinction between sector-wide approaches and project approaches</b>	
Sector-wide approach	Conventional project approach
Country holistic view on entire sector	Focus on projects to support narrowly defined objectives
Partnership with mutual trust and shared accountability	Recipient accountable to donor
Coordination and collective dialogue among external partners	Bilateral negotiations and agreements
Increased use of local procedures	Parallel implementation arrangements
Long-term capacity/ system development in sector	Short-term disbursement and success of projects
Process-oriented approach through learning by doing	Blueprint approach

(Source: OECD/DAC 2003)

More recently the concept of the Program-Based Approach (PBA) has been introduced. A PBA is a straightforward extension of the SWAp. It refers to a generic approach based on comprehensive and coordinated planning in a given thematic area under the aegis of a national PRSP or development plan.

PBA's are intended to support locally owned programs of development. The term programme refers to the programme of the recipient country or organisation, which one or several donors have agreed to support (Lavergne & Alba, 2003). In other words, the concept of PBA offers a higher degree of institutional flexibility by focusing on a policy programme and objectives, which can be multi-sectoral, sectoral or sub-sectoral, rather than a bureaucratic institutional structure.





### 3.1.2 Challenges for processes and instruments of HAC

Recent evaluations and reviews of different SWAp experiences expose a number of common issues and challenges which are summarised in Table 2.<sup>10</sup>

Table 2

#### ***Institutional capacity constraints***

Planning and implementation of complex SWAps impose an extra challenge on organisations and emphasise existing capacity gaps. Driving the SWAp process forward is often the responsibility of few government organisations or departments. The tendency of focusing the SWAp driving force on individual units, which often are externally funded or supplemented, restricts gaining broad based support and reform understanding within the institution.

#### ***Tendency towards re-centralisation of policy processes***

Preparatory processes happen at central level. Doing so often ignores those who are charged with implementing the SWAp at regional and local level. The re-centralisation of planning and decision-making power within the national administration contradicts the decentralisation and devolution processes which are under way in many developing countries. In addition it bears the risk of overloading local structures and implementers without first building their capacity and competencies.

#### ***Limited opportunity for participation of Non-state actors (NSAs)***

SWAps have not overcome the limited genuine participation of civil society and private sector in strategy formulation and implementation. NSAs need their own capacity development support (i.e. technical and financial) to close capacity gaps and to engage as equal partners. Especially in sectors/ areas in which NSAs assume a watchdog responsibility, relations between government and NSAs are prone to conflict.

#### ***Weak domestic accountability***

High attention is paid to accountable and transparent public financial management systems to secure correct utilisation of external funds (upwards accountability). SWAp partners often pay less attention to capacitate the recipients/beneficiaries of SWAp outcomes to claim accountability from below. This weakness needs to be overcome before SWAps can serve as real reform accelerators.

#### ***Lack of coordination between Individual SWAps***

Coordination and information management between different SWAps and sectors are still not adequately organised. Although overlapping areas of interest exist between most SWAps (e.g. Land, Agriculture and Rural Development, Water), there is little pro-active information exchange between them, i.e. at horizontal level. In theory the Ministry of Finance and/ or Ministry of National Planning and Development hold a pivotal responsibility for information management between different sectors, i.e. through sector working groups under the MTEF.

Expert forums at international level (e.g. OECD/ DAC, LENPA, SPA, GDPRD and AFORD) and at national level in the partner countries (e.g. in sector working groups and DPs coordination groups) are working on improvements of procedures and systems to eventually overcome these challenges.<sup>11</sup>

## 3.2 The HAC process in Kenya

The harmonisation and alignment process in Kenya is less advanced compared to the neighbouring countries of Tanzania and Uganda due to economic and political reasons. The Ke-

<sup>10</sup> See Foster *et al.* 2000a and 2000b, SPA 2005 for further reference. Evans *et al.* 2006 give a comprehensive overview on lessons learnt which concur with the consultant's own experiences gathered while working for different SWAps in Kenya. The table was compiled from the different sources.

<sup>11</sup> For further information see also the following websites: Learning Network on Programme-based Approaches <http://www.remote4.acdi-cida.gc.ca/pbas>; Strategic Partnership with Africa <http://www.spa-psa.org/main.html>; Global Donor Platform on Rural Development <http://www.rdxl.org>; Africa Forum on Rural Development <http://www.africaforum.info>



nyan national budget receives less than 10% of its revenue from external funding. Kenya is not eligible for debt relief. Its public financial management system is rated as modestly robust. The introduction of the Medium Term Expenditure Framework, Public Expenditure Management reforms including Public Expenditure Reviews and additional accountability measures brought improvement during the last years. However budget support is so far not common.<sup>12</sup>

SWApS and PBAs have been slowly introduced to Kenya after the change of government in 2002/03. Before, especially in the last decade of the KANU regime, the Kenya Government's lack of commitment to political and economic reform impacted negatively on relations with development partners. As a consequence, external support was reduced as some donors temporarily froze their support or pulled out of the country.<sup>13</sup>

In November 2003 the Government of Kenya (GoK) during the Consultative Group meeting officially requested that development partners take steps to harmonise their activities with the aim of increasing the efficiency and effectiveness of aid and of reducing transaction costs to government.

The Harmonisation, Alignment, and Coordination (HAC) donor group was established shortly thereafter as a subgroup of the existing Donor Coordination Group (DCG), reporting to the World Bank as chair. The number of HAC members has more than doubled since its beginning and now includes more than 17 members.<sup>14</sup> The workload has grown commensurately as a result.

The HAC secretariat was established to serve as a focal point for HAC related matters, to manage the workflow, and coordinate HAC-related activities of members. It played a pivotal role in developing the Kenya Joint Assistance Strategy (KJAS), by coordinating input from development partners and GoK's feedback. It also facilitated consensus building on the final document, which included Civil Society Organisations (CSOs).

### 3.2.1 Kenya Joint Assistance Strategy

The KJAS was launched in September 2007 and presents the core strategy for 17 DPs in Kenya for the years 2007–2012. The strategy is focused on three pillars in support of the government's strategies.<sup>15</sup> These pillars are encouraging economic growth, investing in people and reducing poverty and vulnerability, and strengthening institutions and improving governance.

The KJAS places technical and financial support for policy and administration in the land sector under its first pillar. All sections were elaborated with substantial input from the Development Partner Group on Land (DPGL) and cover current harmonisation and alignment processes. A shared assessment framework for the years 2007–2012 is yet to be completed in consultation with all KJAS partners.

Currently 22 sector coordination groups exist in Kenya, chaired by different line ministries. Sector coordination groups are supposed to meet at least quarterly. Some of these groups have created subgroups, which focus on specific technical issues. For instance, the land sector group

<sup>12</sup> The EU has provided direct budget support in 2005/06, but suspended further disbursement due to repeated allegations of high-level corruption. The African Development Bank (AfDB) has indicated its interest to provide direct budget support.

<sup>13</sup> Norway closed its embassy for several years. The World Bank and IMF temporarily suspended disbursements.

<sup>14</sup> The following Governments and multilateral organisations are members: Canada, Denmark, Finland, France, Germany, Italy, Japan, Netherlands, Norway, Spain, Sweden, UK, US as well as AfDB, EC, UN-Group and World Bank Group.

<sup>15</sup> The Economic Recovery Strategy for Wealth and Employment Creation (ERS) and the Investment Programme for the ERS as well as GoK's evolving Vision 2030.



has created a subgroup on Land Information Management Systems (LIMS).<sup>16</sup> Development partners meet regularly and on demand in between the sector coordination group meetings, but at least every six weeks.

Some sector coordination groups are more active than others, while some are dormant. Reasons given for varying levels of activeness are the capacity and commitment of the convening institution, and the interest and financial/ technical support pledged by donors.

Information exchange and communication between government sector groups is theoretically organised through the different line ministries and the HAC lead ministry, i.e. Ministry of Finance. Development partners are expected to formally share information through participation in the donor groups, their own in-house knowledge management and through informal exchange between individual representatives. The HAC website offers an information exchange platform.<sup>17</sup> A HAC communication strategy is under development.

Currently five SWaps/PBAs, all of them in distinct stages, exist in Kenya.<sup>18</sup> In addition, coordination and cooperation efforts are ongoing in other sectors such as Environment, Forestry, Infrastructure, and Public Service. However, these efforts so far have not resulted in joint written agreements and/or joint financing programmes. The most advanced SWaps/PBAs are the Governance, Justice, Law and Order Reform Programme (GJLOS-RP), the Education Sector Support Programme (KESSP) and the Water Sector Reform. However, the Health Sector and Agriculture Sector Reform SWaps are also progressing.

The UN Kenya Country Team (KCC) had prepared the second UNDAF for Kenya in 2003. It covers the period 2004–2008 and is based on development challenges identified in the second UN Common Country Assessment (CCA) 2001, as well as on lessons learned from the first CCA/UNDAF experience 1999–2003. The UNDAF takes into account the GoK's concerns as reflected in national development plans (Poverty Reduction Papers, ERS) as well as regional initiatives, such as the New Partnership for Africa's Development (NEPAD), to which Kenya is a signatory.

The UNDAF identified four priority areas of cooperation:

- Promotion of good governance and the realisation of rights.
- Reduce the incidence and socio-economic impact of HIV/AIDS, malaria and TB.
- Strengthen national and grassroots systems for emergency preparedness, prevention, response and mitigation.
- Promote sustainable livelihoods and protect the environment.

The United Nations Development Programme (UNDP) represents the KCC in the HAC and KJAS process. In close cooperation with the HAC secretariat UNDP seeks to ensure optimum harmonisation between the UNDAF, i.e. the contributions of individual UN organisations, and the KJAS.

### 3.2.2 Kenyan land sector

Land is critical to the economic, social and cultural development of Kenya. It is crucial to the

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<sup>16</sup> The environment sector group comprises of three subgroups, i.e. the Environmental Organisations Management Act (EMCA) group, the wildlife group and the forest group. All subgroups are chaired by different DPs.

<sup>17</sup> Visit [www.hackenya.org](http://www.hackenya.org), which was launched in 2006 by the HAC-secretariat.

<sup>18</sup> Support to the Land Sector Reform is so far not acknowledged as a full SWAp.





attainment of economic growth, poverty reduction and gender equity. Despite the importance of these objectives, Kenya has not had a clearly defined or codified National Land Policy (NLP) since the era of independence.

The land situation in Kenya is characterised by a multiplicity of tenure regimes (some created in colonial times, others being indigenous) tenure insecurity, major policy gaps in important aspects of land relations and the inability of government to resolve land disputes as well as land related corruption (Adams, 2003). This plethora of challenges puts tremendous pressure on Kenyan society, the environment, and economy.

Since the early 1990s civil society organisations (CSOs) have been demanding that Government protects the land rights of the poor in rural and urban areas and natural resources, especially gazetted forests, and take its trusteeship responsibilities more seriously. The mainly individual CSO initiatives, each with their own sector focus, were combined in 1999 when the Kenya Land Alliance (KLA) was launched. KLA became the umbrella body to coalesce the activities of civil society organizations to push for an all-embracing, participatory land policy and law reform process.

The momentum accelerated through support by professional associations, such as the Institution of Surveyors of Kenya (ISK) and the Law Society of Kenya. The latter is prominent in the field of land reform advocacy.<sup>19</sup>

Government reacted to the rising public pressure and appointed the Commission of Inquiry on Land Laws in Kenya (Njonjo Commission, 1999-2002). The change of Government in 2002/03 created another window of opportunity for preparation of land reforms. A prominent statement on the role of land in the national policy was made in the Economic Recovery Strategy for Wealth and Employment Creation (2003-2007). Following this the Commission of Inquiry into Illegally Acquired Land, also known as the Ndung'u Commission, was initiated.

CSOs engaged with both commissions through their umbrella body KLA and contributed to the respective reports. These initiatives eventually prepared the ground for the National Land Policy Formulation Process (NLFPF), which was officially launched by the Ministry of Lands (MoL) in February 2004 through a first stakeholder workshop.

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<sup>19</sup> ISK published a booklet underlining the impetus of land reforms in 1999.



## 4. Institutional harmonisation in the land sector

Harmonisation, Alignment and Coordination (HAC) processes in the Kenyan land sector are closely linked to the National Land Policy Formulation Process (NLPPF). The political impetus created by the absence of a valid policy framework and, subsequently the public pressure to overcome this unjust situation, constituted pushing and pulling forces, that carried HAC initiatives forward. Hence, the vision of a National Land Policy (NLP) is one of the major driving forces for institutional harmonisation. This holds true for all stakeholder groups such as government, civil society, private sector and development partners.

Partners in the land sector are still reluctant to describe their harmonisation approach as a Sector-wide approach (SWAp).<sup>20</sup> Nevertheless, institutional harmonisation in the land sector shows clear SWAp features; i.e. coordination tools, a MoU and partnership principles, and the joint financing arrangement (basket fund). The fact that the land sector lacks a sector strategy and sector investment programme (SIP) can be seen as the major distinction between the land sector harmonisation arrangement and other SWAps/PBAs in Kenya.<sup>21</sup>

### 4.1 Initiatives and milestones since 2003

This section of the report documents the various initiatives and milestones of institutional harmonisation in the land sector since 2003.<sup>22</sup> The documentation distinguishes between three phases: the inception or preparation phase (07/2003–04/2004), the mid-term phase (05/2004–09/2006) and a transition phase (10/2006–10/2007 and beyond). The final phase prepares the ground for implementing the Land Sector Reform Support Programme (LSRSP).

#### 4.1.1 Inception phase (07/2003 – 04/2004)

Institutional harmonisation processes began as early as 1999 when several CSOs active in the land sector created the Kenya Land Alliance (KLA).<sup>23</sup> The objective was to strengthen their voice and lobby influence by establishing a coordinating body, to represent their interests, bundle their inputs and ensure efficient information exchange. KLA, once it became recognised as an umbrella organisation, effectively sourced technical and financial support.

Development Partner support for institutional harmonisation started in 2003. Representatives from UN-HABITAT, Sida and DFID joined efforts and invited all DPs with an interest in the land sector to a first formal information exchange meeting. This idea was influenced by an earlier meeting between UN-HABITAT and the Minister of Lands, who had requested a more formalised framework for donor interventions and dialogue with the Ministry.<sup>24</sup>

UN-HABITAT facilitated a first meeting, which was attended by a wide range of DPs. Most of them receive regular updates on the developments in the land sector, whether they are actively involved in the NLPPF or not. The initial meeting had three major outcomes:

- A mapping exercise showing DPs interest and ongoing initiatives in the land sector di-

<sup>20</sup> Interview partners did not use the definition SWAp to describe the HAC process. They described the process as “moving towards a SWAp”.

<sup>21</sup> The GJLOS-RP as well operated for nearly 1.5 years on a short-term priority programme. The process of developing a medium term strategy for GJLOS-RP took two years.

<sup>22</sup> See Annex 3 for detailed overview of different activities.

<sup>23</sup> The Kenya Land Alliance was modelled after the Uganda Land Alliance.

<sup>24</sup> According to UN-HABITAT notes from the donor coordination meeting at UN-HABITAT (17/09/03) Hon. Amos Kimunya had issued this request in a meeting on 18 July 2003.



vided into thematic areas (i.e. technical services, legal aspects, LIMS, policy and planning, capacity development).

- A joint decision to carry on with the formalised information exchange.
- The election of a chair to coordinate the information exchange.

UN-HABITAT was elected as the Chair of the Development Partner Group on Land (DPGL) due to its technical expertise, close engagement with the land sector and its reputation of being a neutral stakeholder in a politically sensitive sector. The role of the Chair includes leading the coordination of policy dialogue on sector-specific issues, leading the coordination of donor assistance within the Land Sector, providing information and technical advice and leading monitoring of donor performance in the Land Sector (DPGL ToRs 2006).

The Development Partner Group on Land (DPGL) was formally initiated in 07/2003 as a mechanism development partners to coordinate their engagement in the land sector. This was the first milestone in the institutional harmonisation process. A first effort of the DPGL was the preparation of a joint statement on the land sector for the Consultative Group meeting in 11/2003.<sup>25</sup>

Further consultations among DPs were necessary to set the institutional harmonisation process in motion. Similar to HAC initiatives in other sectors, DPs encountered “teething problems.” Some DPs needed more time than others to align their own interests with group decisions.

MoL instigated two development processes, that fostered cooperation among DPs. First, the development of the MoL strategic plan (2004–2009), launched in March 2004, and second, the preparation of a concept note, outlining the National Land Policy Formulation Process (NLPPF). The concept note was discussed in the first national stakeholder conference on the NLP in February 2004 and launched in May 2004.

In April 2004, MoL and members of the DPGL signed a joint declaration on their interaction in the land sector. The declaration, a second milestone in the institutional harmonisation process, listed 17 members and distinguished three different categories of development partners in the DPGL:<sup>26</sup>

- a) DPs that provide non-earmarked funds through a joint-funding arrangement, managed by a Financial Management Agent.
- b) DPs that provide earmarked funding with specific account of tracking mechanisms for their contribution.
- c) DPs subscribing to the general principles agreed to by the group and the MoL.

The core group of the DPGL consists of five agencies; UN-HABITAT, Sida, DFID, DCI and USAID. The latter four DPs have entered into a basket funding arrangement with MoL. Ireland’s financial contribution to the Kenyan land sector is administered through DFID. The core group supported the NLP-formulation process through financial and technical support paid from the basket fund (see section 4.2.2). The World Bank and JICA<sup>27</sup> focus their support for MoL on technical aspects through different approaches within the Land Information Management Systems. However, both organisations are members of the DPGL.

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<sup>25</sup> The Joint Statement was submitted to the World Bank Resident Representative in October 2003.

<sup>26</sup> The following DPs are named: DFID, Embassies of Belgium, France, Finland and Italy, EU, FAO, GTZ-STDP, IDRC, IFAD, JICA, Sida, UNDP, UNEP, UN-HABITAT, US/AID and the World Bank.

<sup>27</sup> JICA seconded a long-term technical adviser to Survey of Kenya at MoL.





#### 4.1.2 Mid-term phase (05/2004 – 09/2006)

The mid-term phase of the institutional harmonisation process was guided by the joint vision of delivering a comprehensive and pro-poor oriented National Land Policy. Parallel to the NLP-formulation process, the overall HAC process and the KJAS formulation took shape and promoted institutional harmonisation.<sup>28</sup> The HAC secretariat played a pivotal role in the development of the KJAS, whereas the DPGL secretariat was the focal point for development partners and cooperated closely with the HAC secretariat, providing technical expertise on land issues.

Other stakeholders in their respective sections developed tools to foster synergies and focus cooperation. Civil society and professional associations, represented by KLA and ISK, joined forces and combined their comparative advantages (i.e. activism and professionalism). They signed a MoU in 2006.<sup>29</sup>

During this period, the Kenya Private Sector Alliance (KEPSA) set up a land sector board.<sup>30</sup> The objective was to organise information exchange among its members and to coordinate technical input to the NLP-formulation process. MoL set up a National Land Policy Secretariat comprising six seconded officers, including one coordinator. The NLPS was responsible for coordinating and facilitating the consultation process. Each secretariat member was assigned to coordinate a technical committee.<sup>31</sup>

Development partners with ongoing land sector initiatives, which included support to policy reform, had started discussions concerning a basket fund in early 2004. An MoU covering the basket fund was signed by MoL and the respective DPs in June 2004.<sup>32</sup> The signing of the MoU signifies a third milestone in the institutional harmonisation process.

Consultations around the NLP turned out to be more time consuming and complex than anticipated. The transfer of the Hon. Amos Kimunya, from the Ministry Lands to the Ministry of Finance in January 2006, also slowed down the process. The MoU had to be extended several times (until 30/09/2007) to allow for continued funding of the NLP formulation process.<sup>33</sup> The MoU was accompanied by an action plan and budget approved by MoL and DPs. This action plan does not represent a strategic plan, but rather a list of activities and milestones.

A Financial Management Agent (FMA) was selected through an open tender process and began work in August 2004. The contract for the FMA, a private accounting company, was extended several times due to the delay of the NLP-formulation process.<sup>34</sup> The latest contract issued covered the time period January–September 2007.

Simultaneously to setting up pooled financing arrangements, activities among DPs intensified on the NLP and KJAS formulation work. UN-HABITAT assigned one officer to run the DPGL secretariat.<sup>35</sup> This additional technical support boosted the process, allowing more follow up of activities and preparation of harmonisation tools.

28 See Ministry of Finance paper presented to CG meeting in 04/2005 on 'Donor harmonisation and alignment in Kenya'.

29 A second MoU, which will cover their cooperation in the 'transition phase' until the NLP is adopted, is currently under preparation.

30 KEPSA was created in 2003. Its Land Sector Board has approximately 20 members, i.e. companies providing finance, development and/or technical services in the land sector.

31 In the course of the NLPF 6 technical committees were assigned to elaborate recommendations (i.e. issue papers) on specific aspects of the policy, e.g. LIMS, gender etc.

32 DFID, Ireland Aid, Sida and USAID signed the MoU.

33 Reference is made to the MoU amendment, which by all basket partners and including MoL.

34 The company acting as FMA for the land sector basket fund is PriceWaterhouseCoopers.

35 Junior Professional Officer with 50% of the time assigned to working on DPGL coordination.



Meetings by DPs and MoL are held bimonthly. DPs schedule a planning meeting prior to the meeting with the Ministry, held every six weeks. The meeting is structured around a standing agenda. MoL holds an additional quarterly meeting on the NLP process. A subgroup on Land Information Systems (LIMS) was established, which meets every six weeks. In between the meetings DPs meet to exchange information on a general level, but also when urgent land sector issues need to be addressed.

There has been an increase in time and human resources spent on coordination meetings among DPs and GoK, elaboration of ToRs, discussion of funding requests as well as consultations about NLP formulation progress. This is normal for all HAC processes and has been noted in many SWAp/PBAs around the world.

In 2006, the DPGL produced Partnership Principles and Terms of Reference documents to guide their cooperation and coordination. These documents, which define milestones in the institutional harmonisation process, are also tools for harmonisation and will be described in section 5.

Furthermore, DPGL contributed intensively in the drafting process to outline the KJAS, especially sections concerning land, environment and gender. Land and environmental concerns feature prominently in the KJAS. This is attributable to the input of the DP coordination groups on those two topics.

### **4.1.3 Transition phase (10/2006 – 10/2007 and beyond)**

Due to political conditions in 2005 and 2006, the constitutional referendum in November 2005 and political agitation around land rights and inheritance rights, DPGL and other stakeholders realised that the final adoption of the NLP would slow down. Hence, with the NLP formulation process well on its way, DPs focus shifted to maintaining the momentum after the NLP formulation process is finished.

DPGL members started discussing how existing and future technical and financial support could be even more harmonised through the development of a joint implementation framework. In contrary to other HAC processes in Kenya, support to the land sector up to now is not based on a sector strategy and a Sector Investment Programme.<sup>36</sup> Subsequently the NLPS (with DPGL basket fund support) commissioned a study to map out a joint implementation framework. The study was completed in 10/2006, marking the fourth milestone in the institutional harmonisation process.

The NLP-formulation process, which included extensive and participatory consultation among various groups of Kenyan society ended in early 2007.<sup>37</sup> DPGL facilitated a final quality check on the draft NLP and asked land experts from outside Kenya to peer review the document.<sup>38</sup> A national stakeholder forum (April 2007) validated the NLP with minor amendments. The NLP was presented to cabinet thereafter and the Ministry of Lands already outlined a Sessional Paper, to be discussed in Parliament.

DPGL, in close consultation with NLPS, identified areas with potential to keep the reform

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<sup>36</sup> The GJLOS-RP first prepared a Short term Priority Programme (2004–05) followed by a Medium Term Strategic Plan (2005–09) each with accompanying budget plans.

<sup>37</sup> The consultation process gave voice to minority and religious groups, grassroots, professional associates, private sector and CSOs. The public was continuously informed through the media and repeatedly invited to participate and comment in public hearings.

<sup>38</sup> The peer review was coordinated through the DPGL secretariat, with the NLP-Secretariat and Sida as direct counterparts, with strong support from the rest of the donor group. It commended the policy document for its progressive thinking on issues of gender equity, pro-poor orientation, environmental sustainability and good governance..



momentum and to prepare the ground for implementation of the NLP. They engaged a second expert team, which - based on the earlier study on a joint implementation framework - developed a proposal for the Land Reform Support Programme (LRSP).

The LRSP-framework was presented to MoL in September 2007. It is due for approval by the Ministry and funding partners and will then become a further harmonisation milestone. The LRSP-framework is the cornerstone for a Sector-wide Approach in the land sector. DPGL is currently preparing a new MoU for the basket fund.

## 4.2 Roles of different stakeholders

### 4.2.1 Ministry of Lands

Ministry of Lands (MoL), despite frequent changes in senior management and high turnover of technical personnel, provided leadership and successfully completed the NLP formulation process.<sup>39</sup> MoL also assumed ownership to carry the institutional harmonisation process forward. The Permanent Secretary chairs the DPGL meetings and guides the coordination.

Apart from the formal interface with the DPGL, the Ministry has bilateral relations with all DPs active in the land sector. These are either formal agreements for technical support, or informal exchange of information on specific matters of interest.

Although this situation is common in most countries and has not jeopardised the institutional harmonisation process in Kenya, it may become an obstacle if bilateral arrangements have conflicting approaches to matters of overlapping interest.<sup>40</sup> Furthermore, in an ideal execution of the HAC process, the MoL and DPs will cooperate formally through the DPGL, if only for the sake of efficiency.

MoL, through the Permanent Secretary, with support of the (future) Land Reform Transformation Unit (LRTU), will spearhead institutional reforms as foreseen in the LRSP. MoL will need capacity development to implement reforms and to achieve the necessary institutional changes in the Ministry and beyond. At the moment, the NLPS, which will constitute the future LRTU, is an entity for policy development rather than a reform coordination unit. It will have to acquire a new role and make itself known to other units in the Ministry.

### 4.2.2 Development partners

The Paris Declaration, with its principles of harmonisation, ownership and alignment, guides the role of development partners in the institutional harmonisation process. DPs describe their role as policy dialogue partners, facilitators of change and providers of expertise and capacity development (including technical and financial resources).

The spectrum of DPs in the DPGL is not homogeneous and their areas of interests differ. Some DPs focus more on the provision of specific short- and long-term technical expertise (JICA). Others try to embrace a more holistic approach, which includes support to CSOs and GoK on different levels (i.e. national, regional and local). DFID, Sida, and UN-HABITAT directly support several advocacy CSOs that have been actively involved in the NLP formulation process

<sup>39</sup> MoL had no substantive minister for 1,5 years. The Permanent Secretary changed several times.

<sup>40</sup> Currently a number of DPs support 'Land Information Systems (LIMS)' or have signalled their interest to support LIMS. The rationales of their approaches differ and are at times even conflicting. DPGL provides a platform to harmonise the different approaches. however, further efforts and consultations are necessary.





(KLA), or provide technical expertise and advocacy for the development of pro-poor land tools (Pamoja Trust, Shelter Forum).

Through DPGL, members also comment on different policy documents (e.g. NLP, N'dungu Report and Eviction Guidelines) and engage in strategic dialogue with MoL on the NLP formulation process and implementation. The latter includes reaching consensus on future technical and financial support to the NLP implementation process.

DPGL is also a platform for policy dialogue between DPs and MoL on contentious issues, such as the launch and implementation of the N'dungu Report. DPs also provided technical expertise to the different task forces. They financed participation of national experts and resource persons and facilitated the NLP peer review by international experts.

As mentioned, the DPGL is the formal interface between MoL and DPs. It will continue to be the only formal interface for coordination during the implementation of the LRSP. While DPs in other HAC processes in Kenya, for example the GJLOS-RP, participate in committees, which oversee the implementation of the SWAp/PBA and approve budgets and work plans, DPs in the land sector will not be involved in the LRTU steering committee.<sup>41</sup> However the LRSP document (2007) foresees some linkages of interaction.

Only a few DPs, such as JICA, have additional direct formal interfaces through seconded experts working in MoL.<sup>42</sup> JICA actively supports the Ministry through long-term technical cooperation focusing on setting up a framework for spatial data collection, the National Spatial Data Infrastructure (NSDI).

### 4.2.3 Non-state actors

Civil society organisations, private sector organisations and professional associations, (collectively referred to as Non-state actors or NSAs) have been actively involved in preparing the National Land Policy. They contributed through technical input and expertise as well as through advocacy and awareness creation among their own constituency and among the general public. They facilitated countrywide feedback on the policy document through stakeholder workshops in the provinces. The workshops included minority and religious groups and other interest groups, e.g. women, slum dwellers and youth.

Their roles in the NLP formulation process entailed provision of technical services and expertise, mobilisation and advocacy for awareness creation as well as monitoring government procedures. Despite these important roles, which are acknowledged and appreciated by all parties, NSAs so far have not been formally included in the HAC process. Cooperation between NSAs and DPs happens between individual CSOs and DPs (e.g. DFID and Sida) while professional associations and private sector working in the land sector do not have formalised partnerships with individual DPs.<sup>43</sup>

Cooperation between NSAs and MoL in the National Land Policy formulation process was outlined in the concept paper on the NLP formulation process (MoL, 2004), but not formalised through a MoU or similar contractual arrangement. Formal relations between MoL and NSAs existed through technical committees, which were guided by ToRs and stakeholder workshops.

Several CSOs have working arrangements with individual MoL departments (e.g. Department of Physical Planning) and cooperate in the implementation of initiatives on decentralised

41 It will be the mandate of the LRTU steering committee to oversee the progress of the LRSP implementation.

42 JICA has seconded a long-term adviser to the Survey of Kenya (SOK).

43 Sida's financial contribution to CSO support in Kenya is administered by UN organisations such as UNIFEM and UNICEF.



level, e.g. upgrading of slums. Professional associations such as the Institution of Surveyors of Kenya also have working relations with different MoL departments.

The NLP formulation process ended in May 2007, and technical committees were dissolved in 2006. At the moment, no formal agreement for NSA, DP and MoL cooperation exists. The LRSP envisages participation of NSAs in the LRTU steering committee as well as in technical committees. The final draft LRSP document makes no mention of the roles and mandates of NSAs in the management structure. Nevertheless, NSAs see their own role as provider of technical expertise and as watchdog of government commitment to reform.

### 4.3 Achievements and challenges

Institutional harmonisation has made good progress in the Kenyan land sector. This has had positive impact on the NLP formulation process and on drafting the final policy document. Experts commend both NLP and the formulation process, as exemplary due to their comprehensiveness and inclusiveness.<sup>44</sup>

The DPGL encountered several challenges. Some were procedural or administrative in nature, such as the hard work of accommodating different administrative requirements in one joint agreement. Because most agreements on procedures could only be reached after detailed consultation with the respective head offices, another decision-making loop was inserted. This slowed down the progress and hampered smooth implementation of joint initiatives. However, such troubles are common to all HAC processes in Kenya and elsewhere.<sup>45</sup>

Other challenges are rooted in the multiplicity of expectations. Development partners all have their own priorities depending on their mandates, normative approaches and historical inter-relationships with the partner country. The level of risk (or trust) preparedness differs between Development partners. This obviously impacts on consensus building among DPs and between DPs and Government institutions. DPGL experiences these challenges in the same frequency that other HAC processes do.

Nevertheless, by maintaining an atmosphere of openness and constructive partnership, DPGL members (GoK and DPs) can overcome these bottlenecks. The sector group has been able to use the diverse spectrum of members, their networks and comparative advantages to mediate conflicts and advocate for sector interests.

The core group of active DPs in the land sector is relatively small compared to other DP sector groups. This simplifies consensus and decision-making, which is easier to achieve in smaller groups.<sup>46</sup> On the other hand, a limited number of DPs reduces the opportunity of spreading the political risk evenly between members and the land sector is highly political. Fewer DPs creates a higher risk of losing the vital support in the event members disengage in the course of the KJAS process.

Although the five DPs that signed the MoU are guided by a holistic approach to strategic support of land sector development and change management, other DPs (JICA, World Bank) focus their support on specific technical issues. This situation creates the challenge of harmonising differing perspectives and interests and creating consensus on support priorities and policy dialogue directions.

<sup>44</sup> The consultant spoke to various stakeholders, who had participated in the NLP formulation process. All of them unanimously commended the process and the document.

<sup>45</sup> The GJLOS-RP needed similar amount of time to prepare for its basket arrangement and MoU.

<sup>46</sup> The GJLOS-RP was at times supported by more than 17 DPs. The Health Sector SWAp receives funding from an even bigger number of donors.



Historically, the land sector lacks a systematic strategy as donor attention has concentrated on the NLP formulation process. Continued strategic support and financial resources are needed to complete the reform process and DPGL has recognised this challenge. The development of the Land Reform Support Programme (LRSP) started just in time. Challenges remain regarding expediting implementation to maintain the reform momentum.

Information exchange among partners in the DPGL is effective. Formal meetings of the main DPGL group and its LIMS subgroup offer efficient discussion platforms (i.e. with detailed minutes and an effective follow up system). In between formal meetings, DPGL maintains a regular exchange of information through less formal channels such as e-mail, luncheons, or telephone. The NLP formulation process also improves communication by bringing stakeholders together regularly.

However, information exchange between the land sector coordination group and other sector groups needs improvement. DPGL addresses this challenge by inviting the chairs of other donor coordination groups with overlapping interests to their meetings (e.g. environment, forestry).

Weak horizontal information exchange is typical in HAC processes. Different line ministries are often reluctant to share information with counterpart ministries. This creates problems for effective and efficient support to areas of common interest for different line ministries.<sup>47</sup>

The HAC process in the land sector has focused on government and donor organisations. Although NSAs were part of the NLP formulation process, so far no formal platform exists that brings NSAs, GoK and DPs together to discuss the reform progress. Technical and financial support of NSAs was provided by individual DPs.

The LRSP anticipates that NSAs should play a more active role in the implementation of land reforms. The proposed LRSP management structure foresees participation of NSAs in the LRTU steering committee and technical working groups.<sup>48</sup> The document however fails to mention provision of resources to NSAs to enable their effective participation. The DPGL subsequently started exploring how to enhance participation of NSAs, such as through a joint funding programme.

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<sup>47</sup> Information systems are currently established in different line ministries, e.g. MENR (forestry, natural resources) MoA, MoL. There is need to foster information exchange on different existing approaches.

<sup>48</sup> Five working groups are foreseen, e.g. land management, education & awareness, LIMS, legal and institutional.





## 5. Tools for HAC

### 5.1 Definition of tools and tool criteria by the GLTN

Considering the diverse range of its partners and their expectations, the GLTN does not provide a final definition of a tool. Nevertheless, GLTN generally considers that a tool is a practical method to achieve a defined objective in a particular context. A tool can facilitate informed decision-making processes to move from principles, policies and legislation to implementation.

More specifically the GLTN describes a **land tool** as an administrative procedure and a method to organise people, or a way to make decisions, on land issues.<sup>49</sup> Scalable land tools are therefore those which are suitable to be scaled up to regional or national level in cooperation with relevant government institutions and multiple-stakeholders.

This section describes and analyses the tools used in the institutional harmonisation process in Kenya by applying the following criteria: efficiency and effectiveness, affordability, ownership and subsidiarity, sustainability, equity, gender sensitivity.<sup>50</sup> The analysis focuses on those tools which can be scaled up and used in other countries. Part of the documentation has been to estimate, as far as possible and where applicable, the cost implications for the tools and toolboxes.

### 5.2 Description and analysis of tools

The analysis will look into administrative and organisational procedures and methods for organising stakeholders and making institutional harmonisation decisions. A distinction will be made between individual tools and an organised conglomeration of tools, or a toolbox.

The tools and toolboxes used in the institutional harmonisation process in the Kenyan land sector are not innovative *per se*. They are fairly conventional methods of organising people and organisations around a matter of joint interest and/or of facilitating decision-making by consensus. The innovative factor is rather constituted by the diversity of partners, who come together to use these tools in a consultative way.

#### 5.2.1 DPGL secretariat and individual tools

The DPGL secretariat is housed by the Chair of the land donor sector group, i.e. UN-HABITAT,<sup>51</sup> and located in the UN complex in the offices of UN-HABITAT, i.e. the Land Tenure and Property Administration Section. The secretariat is responsible for the day to day coordination of joint land sector activities and of taking a strategic overview thereof, i.e. addressing urgent matters, enabling contact and supporting collaboration between partners for example in preparations for joint activities. In addition, another major task relates to disseminating pertinent information of various sources that relate to the land sector nationally and globally that is important and useful for a wide range of stakeholders (DPGL ToRs 2006). The secretariat is responsible for maintaining an accurate contact list of stakeholders involved

<sup>49</sup> These definitions are taken from an unpublished Frequently Asked Questions (FAQ) brochure for the GLTN dated 16/08/07.

<sup>50</sup> Some criteria seem more applicable than others, e.g. the criteria of gender sensitivity and equity might not always be applicable. The list of criteria are derived from GLTN's core values.

<sup>51</sup> UN-HABITAT has been elected as Chair until April 2008. DFID and Sida are co-leads. According to the DPGL ToRs one of the agencies will take over the responsibilities.



in the land sector group, for preparing the meeting agenda in cooperation with the Chair, to disseminate the agenda and call members of the wider land sector group to meetings, for preparing minutes of the meetings and to disseminate them promptly.

The actual working time spent on coordination support for the DPGL secretariat varies and might increase substantially during weeks prior to events (e.g. stakeholder conferences relating to land in Kenya, joint position papers or statements, preparing for and attending meetings of DPGL, HAC and DCG). UN-HABITAT applies a flexible approach and meets the varying demand on time and input through sharing responsibilities among different substantive and senior officers if the need arises.

The DPGL secretariat's work benefits from its physical location within UN-HABITAT offices. This enables easy access to the UN-HABITAT knowledge base, i.e. experts with tacit knowledge in various land sector matters and in different countries. The DPGL secretariat can draw from the expertise harnessed in UN-HABITAT networks such as the GLTN and the AUC/UNECA/AfDB initiative on Africa land policy framework development.

The permanent pool of experts functions as a soundboard for discussing and strategising harmonisation efforts in the Kenyan land sector and constitutes a valuable tool in itself. It can be assumed that GLTN criteria such as gender-sensitivity, subsidiarity and equity are considered during consultations. However, UN-HABITAT still needs to explore how access to its knowledge base and soundboard can be made available quickly and affordably in other countries.

The DPGL secretariat is the official interface between the donor land sector group and the HAC secretariat. It continuously provides the HAC secretariat with updates on the progress of institutional harmonisation in the land sector, assists with reviews of current HAC documents and with documents for the HAC website. In brief, the DPGL secretariat is a toolbox of methods to support harmonisation efforts. Some methods focus on DPGL meetings and procedures and others focus on development and fine-tuning of tools for harmonisation such as ToRs, Partnership Principles and joint statements.<sup>52</sup>

Tools like the Partnership Principles and MoUs are essential. Their development entails comprehensive consultations between all stakeholders to specify and agree on the individual expectations and conditions of partnership.

The DPGL secretariat functions as the coordinator for this consensus building process and plays a pivotal role between the HAC secretariat and the wider land sector group to ensure that tools like MoUs and Partnership Principles are compatible with the requirements of the wider HAC process in Kenya. These tools elaborated in the course of the harmonisation process consider relevant GLTN criteria, such as equity, subsidiarity, ownership and affordability. They can be regarded as the cornerstones for institutional harmonisation processes and as such can be considered for scaling up.

The DPGL secretariat furthermore drew from its knowledge base and networks and asked internationally renowned experts to realise the requested peer review on the Kenyan National Land Policy draft.<sup>53</sup> The ToRs for the policy review were elaborated among the development partners in the land sector donor group, considering the GLTN objectives and the principles linked to the reform process on land policy in Africa. The land policy peer review was carried

<sup>52</sup> The DPGL ToRs mention in detail the secretariat's functions, e.g. "maintaining a contact list of stakeholders involved in the land sector group, preparing the meeting agenda in cooperation with the chair, disseminating the agenda and inviting the members of the land sector group to meetings, preparing minutes of the land sector meetings and to disseminate them promptly after the meeting."

<sup>53</sup> A group of three experts compiled a joint feedback paper on the NLP. They also provided direct comments to the policy document. See Quan, J. *et al.* 2007.



out and provided valuable input to the final NLP document. It can be regarded as a tool, which fulfilled the GLTN criteria and bears potential to be used in other countries.<sup>54</sup>

The DPGL secretariat has proven to be an excellent toolbox providing efficient and effective support to institutional harmonisation processes in the Kenyan land sector during the last four years. DPGL members unanimously appreciate its support.

Considering the situation in the Kenyan land sector after the change of government in December 2002, the decision to establish a secretariat in the donor chair's office was justified. The secretariat was able to exert adequate pressure to support the institutional harmonisation process. Nevertheless, maintaining the secretariat in its current form and setup entails substantial costs.<sup>55</sup> Here, the criteria of affordability and sustainability are only partially fulfilled.

The HAC process presumes that support is provided through secretariats located in the responsible line ministry (i.e. MoL) to underline the partner country's ownership of the harmonisation process.<sup>56</sup> Placing the DPGL secretariat in the office of the donor chair is only justified (as a trade-off between the criteria of effectiveness and efficiency on one side and of ownership and sustainability on the other) as long as a capable structure (i.e. a LRTU) does not exist in MoL.<sup>57</sup>

### 5.2.2 DPGL meetings and LIMS subgroup meetings

The DPGL, chaired by the Minister or the Permanent Secretary of the MoL, meets bimonthly to discuss joint activities and initiatives as well as to monitor the progress of institutional harmonisation. In addition MoL invites DPs to NLP-meetings on a quarterly basis, focusing on NLP formulation process only. The meetings are carried out in a time efficient and effective manner.<sup>58</sup> They provide an open space for MoL and DPs to raise their concerns and to find solutions in a consultative way. DPGL meetings are an adequate tool to support harmonisation and show potential for up-scaling. They are efficient, effective and affordable and also fulfill the criteria of gender-sensitivity and equity.

The group introduced technical subgroup meetings on LIMS due to its increasing importance for institutional harmonisation. Several DPs support land information systems using different approaches.<sup>59</sup> However, alignment of the approaches needs to be enhanced as the LIMS subgroup constitutes the platform for harmonisation issues. The subgroup, supported by consultants, carried out a mapping exercise to illustrate the relations and interfaces of existing approaches (LIMS road map 2006). This road map outlines the harmonisation process for the existing individual support approaches, and has potential to become a tool.

The LIMS subgroup has achieved substantial knowledge building and awareness creation among its members. Despite this awareness, understanding of the objectives of LIMS still varies and it will take more time and consultation to foster consensus. Nevertheless, the LIMS

<sup>54</sup> The ToRs of the peer review considered the GLTN criteria where applicable. The review itself was expeditious and affordable, i.e. organised as a desk study review via e-mail.

<sup>55</sup> Costs for the position of the JPO alone accumulate to an estimated 100,000 USD per annum. In addition costs for office infrastructure have to be considered.

<sup>56</sup> Ownership is one important principle of the Paris Declaration.

<sup>57</sup> The lead donor (Sida) in the GJLOS-RP maintains a similar office structure. However this structure focuses on donor coordination and is complemented by a well functioning SWAp coordination office in Ministry of Justice, and Constitutional Affairs.

<sup>58</sup> This is confirmed by detailed minutes, which state the duration of the meetings and their agenda points.

<sup>59</sup> According to information gathered during the study at least four different support approaches exist in Kenya. These are: the Sida supported LIIS (Land Information for Informal Settlements), the JICA supported NSDI (National Spatial Data Infrastructure), the World Bank supported TCIP (Transparency, Communication and Information Programme, E-Government) and FLSTAP (Financial and Legal Support and Technical Assistance Programme).





subgroup is a valuable tool for consensus building on an important, yet at times contentious, issue.

Due to its nature the group has a restricted membership and is composed of DPs and MoL alone. The perspective of LIMS end-users and beneficiaries is not presented in the group discussions. Therefore, the LIMS subgroup tool does not fully comply with GLTN criteria i.e. it does not include CSOs and professional associations. The subgroup is aware of this shortcoming, but has not resolved the issue. However, the LRSP foresees establishing a technical committee on LIMS, which will be more inclusive.

DPGL meetings and LIMS subgroup meetings function as platforms for consensus building and have obvious potential for replication in other countries.

### 5.2.3 Land Reform Support Programme (LRSP)

The LRSP is an important step towards a Sector Investment Programme (SIP), which will guide the Land Sector SWAp. It outlines the way forward on land sector reforms and identifies priority areas where implementation can start. The LRSP foresees several tools which will support HAC processes. For this study on institutional harmonisation three tools are of particular interest due to their innovative nature for the land sector. These are demonstration interventions, joint reviews and the LRSP communication and information strategy.

*Demonstration interventions* are foreseen in different areas of joint interest. The areas will be identified through a consultative process using stakeholder interviews and workshops. Planning and organisation of their implementation will be participatory. The demonstration interventions can be used to maintain the reform momentum due to their potential of generating quick wins. Selection of demonstration interventions should be guided by GLTN criteria.

*Joint reviews* have been absent in the land sector and a joint implementation framework and programme therefore needs to be prepared. DFID and Sida held a joint review of their support programme in November 2007, which was used to prepare for the LRSP implementation. The LRSP also foresees a joint review in the second half of its implementation.

A joint review is a tool through which stakeholders in a respective sector carry out a joint appraisal of a SIP. Joint reviews are normally supported by consultant teams. Representatives from all stakeholders actively participate in the mission. ToRs for the joint review are prepared jointly and costs are shared through the common basket fund. The joint review provides an opportunity to apply GLTN criteria to the ToRs, the mission timetable and field trips and the review team composition and stakeholder workshops. Depending on its complexity a joint review can be expensive. This needs to be considered in case of tool up-scaling.

The LRSP requires a *communication and information strategy* to support the reform momentum. The LRSP proposal, however, does not give an outline or structure. Other HAC initiatives in Kenya (e.g. GJLOS-RP) have already developed Information, Education and Communication (IEC) strategies. IEC strategies normally contain a carefully selected toolbox (website, newsletter, newspaper advertisements and billboards). If adequately used, IEC strategies can accelerate institutional reforms. However, IEC strategies are expensive and complex. Their implementation needs additional technical expertise to be successful.<sup>60</sup> GLTN tools can guide the development of an IEC strategy for the LRSP.

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<sup>60</sup> The GJLOS-RP employed an IEC officer, a Kenyan expert who is financed through the joint basket fund.



#### 5.2.4 Joint financing arrangement (basket fund)

Currently there are at least six different types of basket fund in Kenya.<sup>61</sup> Although they have some similarities, there is no blueprint for a basket fund arrangement. Structures and programs depend on the number of DPs involved and the conditions they apply.

DPs established a basket fund for the land sector in June 2004 as a first step to align their financial support to MoL budget procedures. The basket fund mainly provided financial support to the NLP formulation process. An MoU between DPs and MoL covers the basket fund arrangement and distinguishes between two types of basket donors:

- 1) DPs that provide non-earmarked funds, managed by a Financial Management Agent (FMA) and
- 2) DPs that provide earmarked funding with specific tracking mechanisms for their contribution.

An action plan and budget, prepared for the NLP formulation process, guides the disbursements from the basket fund. Sida provides non-earmarked funds and directly uses government structures and procurement systems, meaning the financial support is advanced and MoL accounts retrospectively. This approach encountered challenges due to frequent delays, accounting irregularities and non-transparent, overpriced procurement of goods and services.

The earmarked funding group includes DFID, and DCI and USAID. The first two use DFID's procurement and disbursement standards and procedures.<sup>62</sup> USAID also provides direct support to specific activities.

DPs cooperating in the basket arrangement have contracted a private accounting company as the Financial Management Agent (FMA).<sup>63</sup> The FMA team includes one full-time accountant situated in MoL and closely working with NLPS and the finance department, a fund manager (six days per month) and a fund director (two days per month). The FMA has two main responsibilities. The first is quality control for budget and procurement plans of individual initiatives under the action plan. The second task is capacity development for relevant MoL departments (e.g. finance and procurement).

The FMA is carrying out a capacity assessment. This will provide the baseline for capacity development support. The basket fund and the FMA are toolboxes containing different tools, e.g. MoU, capacity assessment and on-the-job-training of MoL officers. Whether or not GLTN criteria of gender sensitivity and equity have been applied to the selection of activities funded from the basket is unknown.

The basket fund meets the criteria of sustainability and affordability because it strengthens ownership and responsibility of partner structures. However, these criteria do not apply to the FMA. The FMA might be justified for a limited period of time and evidently fulfils the criteria of efficiency and effectiveness. However, it does not fulfil the criteria of sustainability, ownership and subsidiarity. Finally, it might not be an affordable option for some partner countries.

<sup>61</sup> Basket funds exist in the SWAp of GJLOS-RP, Agriculture, Education, NCEP II and Water.

<sup>62</sup> DFID procured experts and resource persons for technical committees directly through direct contracting and payment.

<sup>63</sup> DFID has covered the costs for the FMA.



## 6. Conclusions and recommendations

### 6.1 Conclusions for development partners in the land sector

Much has been achieved during the last four years considering the political and administrative conditions in Kenya. Despite the changeability of senior managers in MoL, the limited number of DPs supporting the sector and the highly political context of land in Kenya, the foundation for continued land sector reforms has been successfully developed.

With the LRSP in place, partners in the land sector have a guiding document, which can be used to foster HAC processes, prepare a sector strategy and comprehensive budget plan.

During recent years the DPGL tested several tools for institutional harmonisation. Those tools, described in the previous section, have potential for up scaling and use in other countries. Nevertheless before they can be applied a thorough analysis of the political and administrative conditions and challenges should be commissioned. Results of the analysis will inform on how to best adapt the tools to the specific requirements in the country or region of implementation.

#### 6.1.1 Recommendations for development partners

Land sector harmonisation took an important step forward with the development of the LRSP document. DPGL should use this opportunity to reflect on the achievements and to discuss future priorities. It needs to distinguish between priorities for the land sector reform, priorities for the HAC process and those priorities that offer synergies for both processes.

The joint review in November 2007, mainly prepared by Sida and DFID, can be used as a tool to further strengthen cooperation and coordination in the DPGL and between DPGL and NSAs. DPGL should bring different stakeholders together to carry out a participatory joint review. The joint review can also support maintaining the reform momentum.

First steps are to discuss the composition of the review team in the DPGL, to jointly develop the ToRs of the review, to agree on a time line and on field visits. Also consider how the review can provide preparatory value for the implementation of the LRSP. Possibilities for this would be through advising on priority demonstration interventions, for example a LIMS audit.

In addition to the joint review, the DPGL should identify priority activities/ tools and support reform thinking in the land sector. The development of an IEC strategy can be a priority.

The LSRP is in itself a toolbox for strengthening institutional harmonisation. However, some of the instruments need further development and fine-tuning. Committees in the LRSP management structure need clarification of their roles and mandates (e.g. LRTU, technical groups, FMA, ministerial technical committees, Technical Advisers.) Also the interfaces and reporting-lines between them need to be described and agreed. Furthermore, the members of the different committees need to be selected according to agreed standards, for example, with GLTN criteria as a guideline.

The LSRP is a programme to bridge the gap until the NLP will be adopted. Therefore, it is not a sector strategy, although it comes with a tentative budget plan. DPGL should use the planned LRSP implementation phase to develop a strategic framework for the land sector. This includes developing a vision, mission, objectives, indicators and milestones. Existing documents such as the MoL strategic plan and the Rapid Result Initiative can be further used to





inform the sector strategy.

DPGL should revisit the basket fund concept. The LSRP budget outline provides a basis document for MoL and interested DPs to discuss cost sharing, and agree on arrangements and preconditions for support. With regard to LIMS, the DPGL should explore opportunities for interested DPs to jointly finance demonstration interventions. Financing arrangements should be flexible enough to accommodate the requirements of DPs (including Sida, JICA, World Bank). Therefore, they should provide a framework to harmonise the different approaches and provide opportunities for joint implementation.

When supporting harmonisation and coordination between the land sector coordination group and other sector groups, DPGL should also share information on the joint review with the environment and forestry group. Invite the chairs of these groups to workshops.

Non-state actors (NSAs) will play an active part in the implementation of the LRSP. The DPGL lacks a formal approach towards cooperation and coordination with NSAs. The group needs to discuss this issue and agree on more formal cooperation with NSAs. Signing a joint statement of intent, partnership principles or a code of conduct are all starting points.<sup>64</sup> DPs should explore opportunities for providing more structured technical and financial support to NSAs. So far, technical and financial support has been the responsibility of individual DPs. A joint approach among DPs in the land sector is vital considering the additional roles NSAs will take up in the course of the LRSP implementation.

## 6.2 Conclusions for UN-HABITAT

UN-HABITAT was instrumental in initiating the institutional harmonisation process in the Kenyan land sector. It has continuously supported HAC processes since 2003. Through its involvement UN-HABITAT gathered valuable experience (tacit knowledge), successfully used new tools (i.e. the DPGL secretariat) and has proven its capacity in providing strategic guidance for facilitation of HAC processes and technical expertise for backstopping important concerns such as land policy peer review.

The findings of this study underline UN-HABITAT's comparative advantage in HAC processes in Kenyan land sector. These are manifested in the combination of two competencies: process facilitation and technical backstopping expertise. DPGL partners appreciate UN-HABITAT's twofold competence.

The importance of harmonisation and alignment processes grows in Africa and beyond. Sectors with relevance for UN-HABITAT's portfolio (i.e. governance, decentralisation and urban development, ENR and land) are not typical SWAp/ PBA sectors. However, during recent years, harmonisation processes in these sectors increased substantially (SPA Secretariat 2005). Experiences from different countries show that the development of SWAps/ PBAs is particularly challenging in these sectors due to the political context, dynamism and the diverse interest and influences that they bring to the table. This underlines the need for objective guidance and facilitation and for regional and international exchange of experiences.

UNDAF guidelines, outlining the general framework in which UN organisations will engage in a country, recommend that UN programming be guided by the framework of a SWAp/ PBA when its own priorities relate to a sector where a SWAp/PBA exists. The guidelines further highlight that the UN can help make SWAps/PBAs more effective by acting as an impartial broker and arbitrator, helping to manage negotiations, and providing solid, evidence-based

<sup>64</sup> In the Health Sector SWAp the GoK, DPs and CSOs have jointly signed a Code of Conduct.



policy advice that incorporates UN-principles in the SWAp/PBA (CCA and UNDAF guidelines 2007).

UN-HABITAT and the Land Tenure and Property Administration Section have proven their capacity to provide skills and expertise for the land sector. They will now have to consider how the knowledge, expertise and approaches can be scaled up to other countries. This case study is a first step in that direction.

### 6.2.1 Recommendations for UN-HABITAT

HAC processes differ from country to country depending on the political and administrative conditions for the sector, the stakeholders involved, the priority the sector receives on national level as well as the external support it attracts. UN-HABITAT should commission a comprehensive overview and understanding of HAC processes in countries and sectors, which are relevant for its own portfolio as well as strategic and regional priority setting.

A possible first step can be to carry out an overview on HAC processes in partner countries using UN-HABITAT experts/ focal points in the UN Country Teams (UNCT). The results of these overviews will enable UN-HABITAT to take informed decisions on the strategic approach. The next section describes in detail how support to HAC processes can be achieved through the GLTN.

Parallel to compiling information on HAC processes, UN-HABITAT can contribute to the Kenya Country Coordination Team's (KCC) internal information management and learning process by making the Kenyan experience available to other UN organisations. This can be done by organising "brown-bag" lunches and discussion panels on specific HAC issues with experts from within the UNCT and other agencies

In this way, UN-HABITAT through its Land Tenure and Property Administration Section can support the KCC's participation in existing SWAps/ PBAs in Kenya. It can also guide KCC in spearheading the development of PBAs in areas which have not received adequate attention, such as Urban Governance and Decentralisation. This allows UN-HABITAT to consolidate its expertise in HAC facilitation while helping to drive the process forward among UN organisations. These actions will strengthen UN-HABITAT's voice in the decision-making process about responsibility allocation within the KCC.<sup>65</sup> UN-HABITAT must use its experiences in the Kenyan land sector to improve information management by UNCTs in other partner countries.

Beyond contributing to UN knowledge management, UN-HABITAT can use the Kenyan experience to further explore and develop its comparative advantages, identified as follows:<sup>66</sup>

- The role of an impartial broker and arbitrator for facilitation of HAC processes, who can provide advocacy and evidence-based policy options, drawing on normative work and best practices. The Kenyan example shows that - particularly early on in HAC processes - there is often need for convening and managing processes and critical meetings. UN-HABITAT takes this pivotal role in supporting MoL and in helping national partners to verify that the emerging SWAp is accessible to less advantaged people.
- The role of a policy adviser and capacity development provider, who makes available best

<sup>65</sup> The guidelines for CCA and UNDAF development (2007) underline that the "UNCT will need to organize its participation in SWAp policy discussions carefully and effectively to speak with one strong voice. The designation of lead agencies - with a clearly defined Terms of Reference and accountability to the rest of the UNCT - often helps to do this." (p.7)

<sup>66</sup> The identified possible comparative advantages are in line with the UNDG Paper on "The Role of the UN System in a changing Aid Environment: Sector Support and Sector Programmes (2005)".



practices from HAC processes; provides access to international experience and normative and human rights-based work to shape the purpose, boundaries and scope of SWaps/PBAs.

- Providing technical back-stopping, facilitating access to technical expertise beyond the partner country's boundaries. Through its location within UN-HABITAT the DPGL secretariat was able to access the UN-HABITAT knowledge base, its expert pool and expert networks.

When exploring ways to make these comparative advantages available in other partner countries, UN-HABITAT must maintain capacity to fulfil its role as the Chair of the Kenyan land sector donor group. The ability to provide support and services as outlined above, depends to some extent on the infrastructure provided through the UN-HABITAT head office in Nairobi.

Successful and sustainable use of the comparative advantages will be a challenge in other partner countries where UN-HABITAT's physical presence is not as solid as in Kenya. If UN-HABITAT decides to use the Kenyan experience to strengthen its role in HAC processes in partner countries, it will have to explore innovative options. Two options are setting up a task force for provision of rapid support to HAC processes in partner countries and seeking funding from bilateral donors similar to the model used by the DPGL secretariat.

### 6.3 Advancing HAC processes through the GLTN

The GLTN can build upon the Kenyan experience using lessons learnt in the land sector as a model for operations in other countries. The GLTN can also strengthen its role as a knowledge broker for network members and to advocate for mainstreaming its core values in HAC processes (i.e. pro-poor, equity, affordability, sustainability and gender). The network may function as a platform to discuss particular challenges arising in the process of institutional harmonisation. The following recommendations are divided into short-term, medium-term and long-term strategies.<sup>67</sup>

#### 6.3.1 Short-term activities (6-12 months)

First, the GLTN can promote a more structured dialogue with its institutional host UN-HABITAT, on the implications of the HAC process for UN-HABITAT's new strategic and institutional plan.

GLTN can raise the awareness of its members and other partners through initiating discussions on the pros and cons of institutional harmonisation and existing approaches. GLTN can use this early opportunity to highlight the necessity of mainstreaming GLTN core values such as pro-poor, governance, equity, subsidiarity, affordability and gender sensitivity.

The GLTN will have to consider the diversity of its members, i.e. their geographical origin, their organisation background and differing interests and expectations. Because harmonisation processes differ among countries and regions,<sup>68</sup> GLTN should facilitate a structured discussion process that allows for regional groups to engage in knowledge management. A workshop bringing together GLTN members from the East African region to discuss experiences with HAC processes is an excellent springboard for such discussions.<sup>69</sup>

<sup>67</sup> The months indicated are tentative and meant to give an idea on the phasing of GLTN engagement in HAC support.

<sup>68</sup> While SWaps and PBAs are commonly found in Africa (i.e. Southern and East Africa), and are frequent in Asia, they are not the most common approach to institutional harmonisation in other parts of the world.

<sup>69</sup> Harmonisation processes in Uganda and Tanzania are well on the way. A regional workshop would also benefit from UN-





Before initiating sensitisation processes among members in other countries, the GLTN will have to assess the existing approaches to institutional harmonisation. The assessment could be done through sending questionnaires to members asking them to describe the situation in their respective countries, the stakeholders involved, challenges experienced and the applicability of GLTN core values. Members should also be asked to indicate their area of concern.

The GLTN International Advisory Board (IAB) is an excellent forum to review the outcome of this initial assessment and to identify priority regions and countries.

The GLTN, with guidance of the IAB, can then prepare a funding proposal outlining time-frame, financial and technical resource input as well as the envisaged objectives, milestones and progress indicators. It is better to start with two to three pilot regions or countries to make more efficient use of resources. Select pilots with distinct features and framework conditions so that the GLTN can compile different experiences for knowledge management and sharing.

### **6.3.2 Medium-term activities (12 to 24 months)**

After completing the initiatives outlined above the GLTN can start supporting institutional harmonisation processes in the selected pilot regions or countries. A first exercise will be a thorough assessment of the situation at hand, i.e. the political and administrative framework conditions, the different stakeholders involved, existing alliances, process bottlenecks and incentives for institutional harmonisation as well as potential for mainstreaming GLTN core values. The GLTN can draw from its members' expertise and knowledge to put together a team of experts for this assessment.

Begin by mapping existing power relations and alliances to identify priorities and entry points for harmonisation support. Various approaches exist already, which can inform the mapping exercise and support the GLTN's future approach. For example, DFID, in cooperation with other research institutes and think-tanks, has developed a comprehensive approach to manage change in governance processes in developing countries.<sup>70</sup>

The mapping exercise will take into account perspectives and demands of different stakeholders in the pilot country/ region. Adequate room must be provided to the perspectives and voices of stakeholders, especially those which can not engage as equal partners in institutional harmonisation processes. These stakeholders can be national CSOs, grassroots organisations and minority interest groups. The GLTN has developed guidelines and tools to support this.<sup>71</sup>

It is recommendable to discuss the outcome of the mapping exercise in a wider stakeholder workshop with the aim to achieve consensus on the priorities of institutional harmonisation, options for entry points, the stakeholder roles and mandates, technical and financial resources needed and the timeline and milestones. The Kenyan experience with the NLP formulation process shows how important it is to identify pulling and pushing forces which can carry the institutional harmonisation process forward.

The stakeholder workshop will also create an opportunity to select the lead organisation. In some pilot countries/regions a lead organisation might exist already. The lead organisation and the GLTN will then have to agree on the best way of cooperation, mutual expectations

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HABITAT's substantive presence in the region, i.e. logistic and infrastructure support.

70 For further information see Institute of Development Studies/DFID "Drivers of Change" (2005).

71 See respective GLTN publications and guidelines for grassroots participation in land tools and gender sensitive land tools at [www.gltm.net](http://www.gltm.net). For example: 'Designing A Grassroots Mechanism for the Global Land Tool Network (GLTN 2007)' and 'Mechanism for Gendering Land Tools (GLTN 2006)'.



and contributions to the process.

The GLTN will have to create alliances with important stakeholders on sub-national, national and (if adequate) regional level. The GLTN may help identify a local liaison office to enable direct cooperation with stakeholders. The Kenyan situation underlines the advantages of having a well-resourced and competent local backstopping office. Support for this can be drawn from UN-HABITAT representatives in partner countries.

Options to link between the local GLTN liaison agent, the GLTN knowledge base, and especially the GLTN coordination office in Nairobi need exploring. Such an option can be to identify a group of experts, which can facilitate the institutional harmonisation process. This group would not necessarily have to be situated in one place but could come together as the demand for backstopping arises.

### **6.3.3 Long-term activities (beyond 24 months)**

A next step will be to develop a strategic approach to institutional harmonisation, considering the outcome and recommendations of the stakeholder workshop mentioned above. The GLTN through its group of experts can support this process. The GLTN can utilise its network to lobby among donor organisations for financial and technical support to the strategic approach.

The Kenyan experience shows that developing a strategic programme for institutional harmonisation is a long process. The development of the LRSP has taken more than one-and-a-half years. The consensus building process on the final programme document, its management structure as well as its financing and support programmes are not yet complete at the time of finalising this report.

The GLTN needs to apply a long-term approach to effectively support institutional harmonisation in its member countries. The guidelines for institutional harmonisation, developed in the course of this study, will inform the GLTN's approach.

The initiative has the opportunity to create regional and global knowledge bases. The network should engage with other initiatives to create synergy effects, to foster information and knowledge exchange and to strengthen its recognition as an information broker. The AUC/ UNECA/ AfDB-initiative on African land policy formulation creates a platform for the GLTN to advocate for embedding its core values into institutional harmonisation processes.

Finally, the GLTN needs to participate in other regional and global networks as well as think-tanks that support HAC-processes. Several initiatives exist which have a regional or sector-specific focus. For instance, the Learning Network on Programme-based approaches, the Strategic Partnership with Africa, the Global Donor Platform on Rural Development and the Africa Forum on Rural Development.<sup>72</sup>

### **6.3.4 Cost and human resource implications for GLTN**

It is difficult to estimate the cost and human resource input needed for the short-, medium- and long-term phases. A distinction must be made between long-term costs and resource inputs (i.e. for facilitation and back-stopping the process as such) and short-term or ad hoc costs and resource input for events and activities (i.e. workshops, consultants assignments).

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<sup>72</sup> For further information see footnote 12.



The first group of costs/ resources need to be covered throughout the process. The second can be raised as needed through requesting support from the DPs and GLTN members.

If GLTN plans to engage seriously in advancing HAC processes it will need additional human resources at its secretariat. In the beginning a 50% technical staff position might suffice (e.g. JPO). In the course of supporting the process, the GLTN must consider increasing its human resource input at the secretariat. Other important inputs would be establishing a pool of experts who can rapidly respond to HAC needs in member countries and assigning technical staff to UN-HABITAT liaison offices in partner countries with a specific interest and/or demand for HAC. The financial support available for GLTN's engagement in supporting HAC will determine the number of pilot countries in which HAC will be supported through GLTN.

In summary, different strategic and financial considerations need to be discussed and decided in the GLTN IAB. Issues of cost and human resource implications should be brought to the IAB well in advance, while lobbying among the funding GLTN members for HAC support.

## 6.4 Concluding remarks

The new aid architecture and HAC processes are changing the way aid is delivered and development efforts are coordinated. Much has been achieved since the early 1990s in terms of harmonisation, alignment and coordination. Many challenges still need to be tackled.

HAC is a learning-by-doing process but requires engagement and commitment as well as flexibility and courage of all partners involved. Mutual trust is essential for HAC processes but will only grow during the process and cannot be taken for granted.

The more diverse the partners are and the more political the sector, the more sensible and sensitive the advisory and facilitation support has to be. This support needs to apply a holistic approach with a long-term perspective. Institutional harmonisation will not be achieved over night, therefore partners who engage in the process need to be prepared to face frequent setbacks. Enduring these stumbling blocks will eventually lead to success. Achieving consensus on realistic objectives and on how to achieve them will help partners such as DPs, Government and NSAs to monitor the HAC process together.

The Kenyan land sector provides valuable experiences for HAC under politically charged conditions. In addition to the different tools described and analysed in this report, it bears repeating that institutional harmonisation in the Kenyan land sector benefited from the hands-on facilitation support and technical expertise provided by UN-HABITAT. Certainly the good personal relations and understanding among DPs, between DPs and MoL officials, contributed to the success of the process.

Up-scaling lessons learnt from the Kenyan experience offers an opportunity to share these lessons with interested partners and to help them avoid reinventing the wheel. However, this endeavour must consider the cost, human resource and time implications. Strengthening South-South exchange of experiences on institutional harmonisation is without doubt an important endeavour and the GLTN provides the ideal platform to succeed.<sup>73</sup>

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<sup>73</sup> *South-South exchange* in this respect means know-how exchange between developing countries, be it in a region or across continents.



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### Annex 3. Major events in the Kenyan land sector: 2003 - 2007

Inception Phase	Year	Event
	1999	Kenya Land Alliance (KLA) is established as the umbrella body to coalesce the activities of civil society organisations to push for an all-embracing, participatory land policy and law reform process.
	1999 – 2001	Institute of Surveyors of Kenya advocates for a National Land Policy to provide a comprehensive framework for land issues. ISK publishes a respective booklet which later informs the constitutional review process and respective chapters of the Bomas draft.
	1999 - 2003	Commission of Inquiry into the Land Laws and Systems of Kenya (Njonjo Commission). Subsequent submission of report in 05/2003.
	06/2002	KLA hosts a national conference on the land question and focuses attention on the Njonjo Commission and the Constitution of Kenya Review Commission on issues of land.
	2003	The Economic Recovery Strategy for Wealth and Employment Creation (IP-ERS 2003-2007) underlines the importance of land for economic development and the Governments commitment to develop a NLP (chapter 9).
	2003	NARC government promises to deliver a new constitution within 100 days. Bomas draft is prepared in a consultative process. It covers issues of Land and Property in chapter 11.
	07/2003	Development Partners Group on Land (DPGL) initiated as the mechanism through which development partners coordinate their engagement in the land sector.
	10/2003	DPs Joint Statement on Land for the Kenya Consultative Group meeting is issued.
	12/2003	MoL issues a Concept Paper (I), which outlines the roadmap for formulating the National Land Policy. The process was initially meant to last for not more than 1.5 years.
	06/03 – 06/04	Commission of Inquiry into Illegally Acquired Land (Ndungu Commission) is established in 2003 and submits its report a year later.
	02/2004	MoL facilitates a first stakeholder workshop to discuss and validate the Concept Paper. This forum is used to amend the Concept Paper and to further outline the way forward for the policy development process. A consultation and refinement process follows the workshop.
	03/2004	Concept Paper (II) is eventually accepted in an amended form.
04/2004	National Land Policy Secretariat established.	

### Annex 3 continued

Midterm Phase	Year	Event
	04/2004	DPs and GoK agree on the basis for mutual cooperation in a joint declaration.
	2004	DPs establish a basket fund to jointly support the NLP formulation process and procure an FMA; respective MoU (2004/05) is signed between DPs funding the basket and GoK/MoL and ToRs for FMA are elaborated.
	2004	National Land Policy Secretariat issues public announcements on the Land Policy formulation process in various Kenyan newspapers.
	08/2004	General stakeholder meeting to launch the Technical Committees. Technical Committees benefit from participation of CSOs, private sector and professional associations. ISK had representatives in each TC.
	2004/05	Preparation of Kenya Joint Assistance Strategy starts.
	03/2005	Launch of the Integrated Inception Report on the NLP.
	03/2005	Ministry of Lands and Housing Strategic Plan (2004 – 2009) is launched.
	08/2005	Technical Committees submit the Issues and Recommendations Report
	11/2005	Referendum on the draft constitution (Bomas draft). Subsequently constitution is not adopted and consultation process ends.
	10-12/2005	MoL engages in countrywide awareness creation campaign on NLP and facilitates 13 stakeholder meetings in 8 Provinces with representatives from relevant line ministries, Office of the President, Local Government Authorities, religious groups, unions as well as interest and lobby groups. Technical Committees recommendations are used to sensitise the public in these meetings. Workshops with strategic groups (e.g. pastoralists, ethnic minorities) were carried out. CSOs support awareness creation among disadvantaged groups, i.e. landless people and squatters. Comments were fed back to thematic groups and discussed.
	2004-2005	Several documents were developed during the National Land Policy Formulation Process (NLPFP), e.g. Issues and Recommendations Report of 2005, the KNLFPF Cost and Revenue Implications Report of 2005 and the Budgetary Implications and Feasibility Assessment and the Strategic Plan of the Ministry of Lands 2004-09. LIMS report by McLaren
	11/2005	Cabinet discusses the draft NLP.
	01/2006	First draft of National Land Policy made available in the public domain, i.e. MoL distributed draft to stakeholders, KLA posted draft on its website.
	01-10/2006	Further refinement of the NLP draft.
05/2006	DPs formulate Partnership Principles, which guide their cooperation and coordination and a set of ToRs for the DPLG, Sector Strategy and ToR.	
10/2006	MoL issues amended NLP draft and asks public to send its comments to NLP Secretariat (deadline 12/2006); Newspapers are used for announcements.	





### Annex 3 *continued*

Transition Phase	Year	Event
	10/2006	Implementation Framework for the Land Reform Support Programme published (first version).
	10-12/2006	Stakeholders consult with their constituencies, i.e. KLA holds public meetings in all 8 Provinces, KEPESA discusses NLP among members and MoL holds workshops with thematic stakeholder groups.
	11/2006	National Land Policy Conference. CSOs present five Land Position Papers on: women and land rights, public land tenure and land management, community land tenure and land management, institutional framework and land administration management systems, historical wrongs, urban land use (still to be published).
	Early 2007	Cabinet endorses the NLP draft.
	01/2007	Amendment to the MoU between GoK/MoL and DPs supporting the basket fund (2004-07). Basket Fund is operational until 10/2007.
	1. Quarter 2007	KEPSA submits position paper with comments on NLP to MoL.
	03/2007	NLP is disseminated in national newspapers in form of pull-outs.
	04/2007	National stakeholder forum on the National Land Policy with representation from CSOs, KEPESA, DPs and other stakeholders.
	05/2007	Cabinet Memo is issued, which incorporates issues raised during the national stakeholder forum. A session paper is prepared to be presented to parliament.
	05/2007	Final draft of the NLP document published.
	08/2007	Final draft of the Land Reform Support Programme circulated (second version).
	08 – 10/07	New MoU for LRSP and basket fund under preparation.
	09/2007	Final KJAS document is officially launched.

## *About this publication*

UN-HABITAT recognises the need for better knowledge compilation and exchange on land issues and harmonisation alignment coordination (HAC). Through the Global Land Tool Network initiative UN-HABITAT commissioned this case study on institutional harmonisation in the Kenyan land sector.

The objectives of the study were to chronologically document institutional harmonisation processes in the Kenyan land sector between 2003 and 2007, to describe challenges experienced and to analyse the roles of different partners as well as the methodologies and tools used to foster HAC processes. The analysis of tools was carried out considering GLTN core values such as gender, equity, governance, affordability and a pro-poor orientation.

The study provides recommendations for future activities in the Kenyan land sector. It also gives options for UN-HABITAT and the GLTN to strengthen HAC processes in member countries. The study's findings and recommendations also inform the development of guidelines for institutional harmonisation processes, which will be disseminated by the GLTN among network members. For copies of these guidelines, please contact the GLTN secretariat or visit our website (see below).



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