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**COMMUNICATION FROM THE COMMISSION  
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT**

**EU Guidelines to support land policy design and reform processes in developing  
countries**

[SEC(2004) 1289]

# EU GUIDELINES TO SUPPORT LAND POLICY<sup>1</sup> DESIGN AND REFORM PROCESSES IN DEVELOPING COUNTRIES

## 1. INTRODUCTION

Rural land is an asset of the greatest importance in many parts of the world, both developing and developed. In the former, a high proportion of income, employment and export earnings stems from agricultural production and other land-based activities. Poverty is also particularly marked in rural areas and control of land is a major issue for peasant societies.

Donor engagement with land reform and land policy has changed over time. In the 1940s and 1950s in East Asia, and in the 1960s and 70s in Latin America, agrarian reforms were supported as a means of defusing radical pressures for political change. The political character and complexity of such interventions has led many donors to withdraw from supporting land redistribution.

Growing land scarcity and concern about land-related conflicts and rising rural poverty, especially in Africa, have brought land back to the fore. This growing interest ties in well with the focus on designing effective policy frameworks for poverty eradication, and promoting good governance, decentralisation, and democratic institutions at local and national levels. At the same time, new experiences in recent years have demonstrated the need for and feasibility of designing diverse types of interventions to suit a range of different settings.

It is against this background that the Commission, alongside other donors<sup>2</sup>, has developed this communication. Attention to land issues flows directly from the overall objective of the EC development policy on poverty reduction, as sustainable land policies are an essential element of rural development and food security. These policy guidelines are a response to requests for support to land policy reforms from developing countries and countries in transition, without being prescriptive they aim to provide a common understanding to facilitate EU collaboration in developing countries and countries in transition where donors are engaging in support to land policy reforms.

This communication results from intensive collaboration with Member States in an EU Task Force which drafted the “EU Land Policy Guidelines”, a set of detailed policy and operational guidelines recently submitted for consultation with civil society and closely reflects the results of both these processes<sup>3</sup>. Operational guidelines (see Commission staff working paper SEC(2004) 1289) which provide an example of a practical application of the policy to assess the situation of land issues at a country level, complement this policy document.

## 2. WHY IS LAND POLICY IMPORTANT?

Land policy lies at the heart of economic and social life and environmental issues in all countries. The distribution of property rights between people has a tremendous impact on both

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<sup>1</sup> See Commission staff working paper, SEC(2004) 1289, for key concepts.

<sup>2</sup> This policy draws extensively on other donors work, in particular WB, FAO, IFAD and EU MS agencies.

<sup>3</sup> Although this paper mainly focuses on rural land, land issues are also crucial in urban/peri-urban areas.

equity and productivity. Inequitable land distribution, land tenure problems and weak land administration can lead to severe injustice and conflict. Changes to legislation, the distribution of property rights, and administrative structures are likely to have long-term consequences, positive or negative, for political, economic and social development and environmental management.

Land tenure structures mirror the distribution of power within society. While access to land is not recognised as a human right as such, it may be considered as a means to achieve fundamental human rights as defined by international conventions and as illustrated by the case of indigenous people.

### *The case of indigenous peoples*

Most indigenous peoples (including “tribal peoples and pastoralists”) have culturally distinctive land tenure regimes based on collective rights to lands and territories. The internationally recognised right of indigenous people to collective identity, survival and self-determination depend upon their access to land and natural resources in their traditional territories. Consequently, some countries’ laws and constitutions, as well as certain international laws and jurisprudence, recognise these peoples’ rights to their lands (including customary use or occupation) as inherent, based on “aboriginal title” or “immemorial possession”. However, effective recognition of these rights and claims is often incomplete, leading to social and political marginalisation, impoverishment and land conflicts. Mechanisms for securing indigenous peoples’ rights to their lands are thus important for their cultural survival and for promoting equity and protecting their immediate environment. Ethnic, religious and linguistic minorities other than indigenous peoples may also experience similar situations. The case of indigenous peoples and minority groups illustrates how land rights are closely related to human rights.

Equal rights for both women and men to hold and use property are a cornerstone of social and economic gender equality. Women’s human rights require strengthening under both formal and informal systems of tenure, and constitutional and inheritance law has a role to play alongside land law and institutions as well as family and marriage law.

Population growth, changing economic circumstances and changes to the environment such as desertification and climate change, can increase competition for access to land. Conflict is likely to grow where scarcity of resources is increasing and access is reduced, where tenure rules are unable to adjust sufficiently rapidly, and where different and contradictory rules co-exist. Illegal appropriation of land by political elites and forced displacement of rural dwellers can also lead to land conflicts. Addressing conflicting claims will be a pre-requisite for any land registration programme, to avoid repeated challenges and disputes. In countries coming out of conflict, fair and just handling of land tenure questions will often be central to reconstruction, both to maintain peace and provide conditions under which sustainable economic growth can be re-established.

Land policy has strong links with agricultural and economic policy. Securing access to land is a necessary condition for encouraging investment and improvement in land. However land issues are rarely the only limiting factor in raising productivity. Working to address constraints in prices, inputs, credit, markets and processing may be a greater priority than addressing land matters.

Land has long been considered a key source of revenue for local and national government. It is a particularly easy asset to tax, especially in urban areas. Local land taxes may be legitimate in the eyes of local people when they are accompanied by more effective and secure rights and by effective provision of public services.

Land policy is also crucial for environmental sustainability as it can create incentives for sustainable land use and environmental management. Land provides for a range of ecological services which a sound land policy can contribute to enhancing: water retention, pollution mitigation, soil and coastal protection all depend on the sustainable use of natural resources. Therefore, land policy has a role in preventing environmental degradation. Clear and protected rights, effective rules defining access and regulating use of land, water and other natural resources are essential means of ensuring long-term management of land and resources.

In the absence of trade and agricultural policies to support the small farm sector the predominance of export-oriented agriculture, the liberalisation of agricultural imports and governments' withdrawal from the provision of rural extension services, have often resulted in land re-concentration and in exclusion and/or deprivation of vulnerable groups. Addressing these legacies and promoting both equity and productivity is thus a key issue.

Hence, land policy reform is an essential aspect of the policy and institutional reforms required to empower the poor and promote equitable and sustainable development; it is an essential means to secure social justice and economic development objectives. Drawing up a land policy is the responsibility of the state, but will need to build on and respond to the concerns of many non-state actors. Land policy reform has a key role to play in processes of democratisation, the drive for improved governance, and decentralisation.

### 3. DIFFERENT TYPES OF LAND POLICY REFORMS<sup>4</sup>

In its broadest sense, **land policy reform** can involve deliberate changes to the distribution of land resources or the forms of tenure under which they are held (land tenure reform), the rules regulating land use, and the institutions which administer and manage land and regulate land use. It may include an action on the distribution of rights itself (agrarian reform).

Land redistribution is a major issue wherever land rights are highly polarised and access is very unequal, land is underused by large owners, or historical injustices are to be addressed. However, land redistribution by itself is not sufficient and may produce a temporary fall in productivity if there are insufficient economic incentives, institutional support and inadequate financial and technical measures to help new farmers develop their holdings and get access to markets. Furthermore, intensification of cultivation in highly fragile lands may be accompanied by environmental degradation in the absence of adequate land use planning. Land redistribution should thus take place within a sustainable agricultural policy that supports family farming.

Historically, governments have implemented land reforms by expropriating large owners. This type of land reform has been criticised as being politically difficult and creating conflicts. "Market assisted land reform" has then been tested, on the principle of willing buyer/willing seller. Both these types of reforms can encourage price escalation, inflated demands for compensation and the disposal of marginal land by landowners, which can in turn lead to significant debt burdens for beneficiaries or high costs to the state.

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<sup>4</sup> Reform processes differ widely between countries and there is limited scope for generalisation. Commission staff working paper, SEC(2004) 1289, provides an indicative list of components and an overview of issues prevailing in different geographical regions.

### *The case of Zimbabwe*

The Zimbabwean land reform illustrates well the linkages between land, governance and productivity. Poor design of the land reform coupled with political motives, have led the Government to enforce a land redistribution scheme which, as much as it may have been necessary, has greatly affected the country's agricultural production capacity.

Lack of participation in the design of the reform led to breakdown of dialogue between parties. Violence and forced evictions have followed in a climate of insecurity and lawlessness which left free rein to the most extremist factions. Government intervention and piecemeal legislation has created a sentiment of insecurity where private property is no longer secured

Reasonable compensation corresponding to the value of improvements to the land and its productive use and potential should be the leading principle in the case of expropriations. Such measures should however never lead to the eviction of indigenous and local peoples from their traditional land or restrain their access to vital resources. Where large land holdings have been created illegally, they should not be eligible for compensation or disposal on the free market. Political will, national consensus on the legitimacy of land redistribution, support from rural social organisations and urban population are thus political conditions. Strong financial and technical support from donors is also needed. Independent monitoring is also necessary to ensure transparent and equitable procedures and avoid political manipulation.

While market-led reforms avoid some of the risks and difficulties of forced acquisition and redistribution, the availability of land for sale and funding constraints greatly limit both the speed and impact of such reforms on the poor. If extensive inequality cannot be corrected through market-based mechanisms, state led agrarian reforms may still be necessary. Other means to influence the distribution of rights may however be explored: land taxation, negotiating long term leases for the landless, regulating land sales markets giving priority to local farmers, subsidised credit for land purchases targeted towards the poor, are all alternative ways to discourage the accumulation of idle land in the hands of few and to favour access for smallholder farmers.

Commission staff working paper, SEC(2004) 1289, provides a set of principles which can help to ensure the sustainability of land policy reform processes.

## **4. ELEMENTS OF AN EU APPROACH TO SUPPORT LAND POLICY IMPLEMENTATION**

### **4.1. Securing rights over land and related resources**

To improve equity and promote agricultural productivity, policy must improve access to land and security of land-related rights. Rights are secure if they are not contested without reason and if, in case of contestation, they can be confirmed by the legal or arbitration authorities (whether these be customary, or governmental or both). Securing land rights is thus largely a question of having effective institutions and enforcement of rules for the management of land rights, and not merely a question of the formal legal nature of the rights themselves.

Informal tenure systems are generally dynamic and evolving, but they can (although they may not always) be efficient and adaptable, within limits to changing economic and technological conditions. Customary and informal tenure systems should not be assumed to be a constraint impeding agricultural intensification.

#### **4.2. Building on existing rights and practices**

Land policy reform aims to change land use practices, but the diagnosis is often poorly informed, so that the policy misses its objective. In-depth qualitative analysis of local practices and regulations over land, problems of insecurity, type of conflicts, and modes of transfer are required to understand the nature of the problems faced and how to address them.

#### **4.3. Titling may or may not be the solution**

Land registration or titling was thought necessary to achieve security of rights, increased productivity, and access to credit, but experience shows that titles may be neither necessary nor sufficient to achieve these aims. Firstly, land rights are the product of recognition by both government and local community. Informal land rights may not be insecure if they are locally recognised and not contested.

Secondly, investments in land depend on a favourable economic context, so changes in land rights alone may not make any difference. Moreover, programmes of land titling in a macroeconomic context which undermines the viability of small holders can induce distress sales of land causing landlessness for many, land accumulation and concentration for few and resulting in increased poverty and inequality.

Thirdly, while titles were once considered essential as collateral for accessing official sources of credit, in practice banks, in the absence of a functional market, have been in most countries unwilling to lend money in rural areas. Moreover, land registration programmes are reliable only if the registry is regularly updated. This involves considerable costs that have to be covered by either government or land users.

A broad view of cadastral systems and titling methods is therefore needed to establish reliable and appropriate records of village, family or individual land rights, and register broad sets of rights, at low cost. Innovative systems offer new solutions and alternative options (e.g. official recognition of written contracts drawn up locally) require attention.

#### **4.4. The need to establish sustainable land administration systems**

Land administration involves a range of different functions (see Commission staff working paper SEC(2004) 1289) which can be fulfilled at different levels, by a range of different bodies, therefore the design of the land administration system is a crucial issue: too often, centralised land administration is heavy, inefficient, and costly and inaccessible for farmers. Clearly, some degree of subsidiarity helps to achieve more effective land and natural resource management, since more relevant and detailed knowledge regarding land rights is held at local level. The key to any devolution of authority is to ensure that the chosen system includes adequate checks, balances and accountability, including oversight by higher bodies, given the risk of corruption and patronage coming to dominate local land administration.

The objective of a land administration system should be to offer effective security to the rights to land and natural resources, held by rural people and to promote sustainable land management. Key aspects to consider in land administration include removing contradictions between norms; offering simple, accessible procedures, with well known rules that address the problems faced by farmers; promoting efficient arbitration systems which are accessible to

people; removing inefficiencies in land administration and ensuring accountability; maintaining an open public record of land claims; ensuring effective publicity of land claims prior to their registration and conversion to title; avoiding opportunities for corruption presented by difficult and complex procedures; and providing avenues for appeal.

Provided that they are seen as tools to further a user-oriented system, new technologies (e.g. GPS and GIS) can improve the quality and efficiency of land information systems and reduce costs. Similarly, communal/village participatory mapping combined with customary land administration systems can significantly cut costs while providing a useful tool for land use planning and the management of local disputes.

#### **4.5. The role of rental markets to enhance productivity and access**

Land transactions transfer rights to land between users. However, land sales markets may be inaccessible to those with limited purchasing power and are distorted by imperfect information and lack of financial services in rural areas. As a result, land sales markets can lead to greater inefficiency and inequality through speculation, acquisition of rural land by urban or outside entrepreneurs, and distress sales by the poor.

By contrast, land rental markets can be more efficient and fair. Rental markets, given adequate guarantees of security for the transacting parties, provide flexible means whereby users can increase or decrease land holdings according to changing needs. Sharecropping arrangements may also be an efficient way to address increased risks or cash shortages. Procedures for legal validation by local authorities of written contracts by farmers can help in securing land rental agreements, as attempted in Bangladesh.

However, these solutions are limited in case of high asymmetry between owners and tenants. Therefore, clarifying the rules (e.g. level of fees, duration of contracts), giving access to credit and advice to the poor contributes to encouraging the emergence of effective rental markets.

### **5. THE ROLE OF EU DONORS**

In the past, many donors, including the EC and the EU Member States, have been reluctant to get involved in the politically highly sensitive field of land policy reform. Donor support has often been limited to promoting titling and land information systems, non-contentious activities believed to be technical, neutral and universal. This neutrality is only apparent, and this position has often led to choices unsuited to local realities, thus excluding the poor.

While land policy reform is a long and complex process, requiring broad political debate inside the country, donors can make a major contribution, if they play a cautious role. They can facilitate public debate, support processes without forcing the pace, and offer to fund the costly parts of preparing and implementing land policy reforms, including in particular the purchase of land for redistribution, without taking over from government. They can contribute to research, institutional and capacity building for the different actors involved (local/central government, farmers' organisations, etc.) and monitoring and evaluation.

**Key principles for donor engagement drawn from experience:**

Land policy reforms are extremely case specific. Donors should support **tailor-made solutions, strongly linked to the local social and institutional context and avoid blueprints.**

Land policy reforms are complex undertakings which require **firm political commitment** by the state and support from society at large. Donor support must be non-dogmatic, non-intrusive and well informed on the situation prevailing locally. Programmes must be appropriate to the local social and institutional context.

Donor support must be accompanied by an **in-depth dialogue** with the state at the highest level, and must encourage large inter-ministerial coordination and debate.

Land policy reforms are **long-term processes**, going through a series of successive phases requiring an iterative approach. Donors should stand ready to accompany such processes over a long period. Sector approaches can provide some safeguards against the risk of one or the other donor discontinuing support.

**Gender-aware legislative reforms** are essential, though not sufficient to secure enforceable access to, control over and use of, land resources by both women and men.

**Information and awareness** are key. Donors must contribute to the understanding of different stakeholder interests and strategies and should encourage the search for consensual solutions.

**Research** can be a powerful tool for understanding and steering national processes. Donors can be instrumental in accompanying implementation with research and encouraging feedback and debate on emerging issues.

Donor support for land reform should in no case result in **further deprivation for women and poor people** from access to and control over land nor in the **dispossession or eviction of ethnic minorities or tribal and indigenous peoples** from the territories they traditionally occupy.

The growing importance of land policy reform processes, and land issues in general, for rural development and poverty eradication provide strong grounds for enhanced engagement by and coordination among Member States and the EC. Given Europe's experience and substantial funding in land policy, land management, support to family farming and regulation of land markets, the EU has a major role to play in international debates and in development policy regarding land tenure and land regulations. Such a role needs to take a balanced approach, recognising that markets are not the only means to achieve social ends.

The EC has a comparative advantage in initiating and accompanying the creation of flexible donor consortia drawn from EU Member States to tackle land issues in partner countries. More generally, options to be considered include:

- initiating a *common approach* to land policy and tenure reform, encouraging the sharing of experience between the EC and Member States and supporting greater coordination and common understanding of land issues;
- advocating for a *more balanced approach to land policy reforms* by multilateral institutions and for stronger integration of land tenure issues into national development processes (PRSPs, national/rural development strategies, etc.);
- actively encouraging coordination and collaboration of other donors in particular within the UN family (FAO, IFAD and UNDP), in support to national reform processes in line with each agency's comparative advantage, specific field of expertise and in-country presence;



- developing initiatives for *applied research and development* on the linkages between land, equality and social development, land agricultural development and poverty and between land tenure and the environment, as well as for independent monitoring/evaluation of land policy reforms.

More specifically the EC and the EU Member States can strongly improve the impact of land policy reforms by jointly supporting national reform processes and, in particular, by:

- *supporting debate and sharing of experience* on land issues and land policy, in relation with economic policies in particular at the regional level;
- contributing to make the *design of land policy and reforms a truly participatory endeavour* by encouraging government to stimulate the participation of civil society, minority groups and indigenous peoples and local communities in the debate and supporting their participation, and making available to them the results of knowledge and international experience;
- supporting the *design and implementation of sector approaches* to implement participatory land policy and land tenure reforms which take into due account institutional development and are attentive to issues of sustainability and recurrent costs implications;
- supporting *land reform and land redistribution*, in particular where high inequality persists. This may involve, where conditions allow, the funding of transparent and accountable land acquisition schemes by the state, or the beneficiaries, or other agencies on their behalf depending on what is most appropriate in local circumstances.
- supporting *capacity development* in land administration at all levels, including local communities;
- supporting *monitoring and evaluation* of the impact of the reform and encouraging proper dissemination and discussion of research findings, so as to make land policy reform a dynamic process.

## 6. CONCLUSIONS

With this Communication the Commission outlines a new reference framework to support land policy reform in developing countries. It is expected that this will facilitate support to national reform processes and enhance coordination and collaboration with MS and other donors.

The Commission adopts the present Communication and transmits it to Council and Parliament for endorsement. It further notes that the operational guidelines (see Commission staff working paper SEC(2004) 1289) provide a practical tool to guide the Commission and Member States in designing and implementing programmes in support of land policy reform processes in developing countries and countries in transition.