

**EU Task Force on Land Tenure**

**EU LAND POLICY GUIDELINES**

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

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## *Preface*

In recent years, issues of access to land and natural resources have been of growing concern to developing country governments and donors. Much evolution in experience and thinking has taken place over this period, with several multilateral and bilateral donors drawing up new policy papers on land. Given the shared vision and values held by EU member states, these policy and operational guidelines were commissioned by the EU Heads of Rural Development to a Task Force of member states and Commission experts, and are intended to form the basis for a common reference framework to design support to land policy and land reform processes hence contributing to greater co-ordination among EU donors and with bilateral and multilateral donors.

The purpose of this paper is therefore to outline guidelines to be considered by EU donors in the design of their support for interventions in land policy and administration in developing countries<sup>1</sup>. The focus in these Guidelines is on rural land, however much of the discussion will be of considerable relevance to urban areas and can contribute to a national land policy. The document oriented towards generalist and specialist staff, both at field and headquarters with responsibilities directly or indirectly connected with land issues in rural areas.

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<sup>1</sup> We include under 'land' the broad range of natural resources, such as trees, pasture, water, game animals and fish stocks.

# EU LAND POLICY GUIDELINES

## PART 1 – The Policy Framework

### 1 Introduction

1.1 Land issues are of crucial importance to economic and social development, growth, poverty reduction, and governance. Access to land is the basis of economic and social life in both rural and urban areas. Land tenure is a complex problem comprising political, economic, technical, legal and institutional factors. Land tenure closely binds together issues of wealth, power and meaning. Control over land forms a significant part of the identity and maintenance of rural society. Land policies determine who has legal rights of access and/or ownership to certain resources and under what conditions, and therefore how these productive assets are distributed among diverse stakeholders. Land policies therefore express, implicitly or explicitly, the political choices made concerning the distribution of power between the state, its citizens, and local systems of authority. The multiple dimensions to land issues require a careful and well-implemented approach which places current land issues within the broader historical, political economic and social context.

1.2 Political ownership, willingness and commitment are key factors for the definition and implementation of effective land policies and/or land reforms. Land reforms often reflect political compromises between various objectives and interest groups. It is the responsibility of national governments interacting with civil society to make their own land policy choices and craft feasible and effective solutions.

1.3 Donor engagement with land reform and land policy has changed over time. In the 1940s and 1950 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 levels of rural impoverishment, especially in Africa, have brought land to the fore once more. This growing interest ties in well with the focus on designing an effective policy framework, and promoting good governance, decentralisation, and democratic institutions at local and national levels. At the same time, recent years have generated a body of experience with new forms of intervention in land administration which has demonstrated the need for and feasibility of designing diverse types of interventions to suit a range of different settings.

1.4 The paper starts by discussing the importance of land policies and their links with other related issues and policies<sup>2</sup>. It reviews the evolution in thinking regarding land policy and reform, summarising areas of consensus and contested views. It goes on to describe the processes, time frame and institutions associated with different kinds of intervention in land policy and administration, and discusses the role that the European Union, the Commission and the member states, as well as other donors, may play in such a policy field, and the options they can offer for support. It ends with operational suggestions for analysing current land policies and discussing the opportunities for donors to support work on land issues.

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<sup>2</sup> The paper draws substantially on recent strategy documents prepared by several EU member state agencies, as well as the World Bank's Policy Research Report (2002) and associated consultation documents, and policy documents from International Land Coalition, IFAD and FAO.

1.5 This paper is mainly focused on rural land, and its links to agricultural and rural development and economic growth. However, land issues are also clearly of enormous importance in urban and peri-urban situations where they are closely related to demographic changes and migrations. In urban areas, the primary significance of land is as a means of shelter. Most of the urban poor do not have secure tenure and live in large informal settlements. Therefore securing formally recognised rights to land and housing in urban areas generally gives poor people access to basic services. It may also help them to access legal and financial services to raise capital to invest. It is necessary to alleviate poverty in growing towns and cities, and mitigate the problems associated with rapid urbanisation. There is an urgent need for more inclusive policies, which offer people practical means of gaining secure legal title to their assets, within a land administration system which operates in an efficient and accountable fashion. Moreover, most of the issues are common to urban and rural areas, and separate rural and urban land policies often lead to ambiguities for peri-urban land management. Thus, while the focus in these Guidelines is on rural land, much of the discussion will be of considerable relevance to urban areas and can contribute to a national land policy.

## **2 What is land policy and why does it matter?**

### **2.1 Property rights, land tenure and land policy**

2.1.1 **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. In the absence of much economic diversification, access to land and natural resources is of especial importance for improving the livelihoods of poorer groups and providing greater security. Land constitutes an asset and a source of wealth for families and individuals as well as for communities, with strong links to cultural and spiritual values. Ownership and control over land confer very significant political power, particularly where land is becoming scarcer and hence more valuable. Land issues and conflicts are deeply embedded in the long-term social, economic and political history of a country and must be understood in that context.

2.1.2 The interrelated social, institutional and political factors involved in land make it an asset different from all others. Land is never just a commodity. It combines being a factor of production, with its role as family or community property, a capital asset and a source of identity. This mixture of qualities is not necessarily a constraint, as can be seen from the active market in land use rights that exists in many smallholder farming systems operating under customary land regulation.

2.1.3 **Land tenure** should be defined broadly as the “**system of access to and control over land and related resources**”. It defines the rules and rights which govern the appropriation, cultivation and use of natural resources on a given space or piece of land. Strictly speaking, it is not land itself that is owned, but rights and duties over it. **Land rights** are not limited to private ownership in the strict sense, but can be a very diverse balance between individual rights and duties, and collective regulations, at different levels (different levels of family organisation, communities, local governments or state), private or family ownership being one possible case. The rights and duties that individuals or a family hold are themselves embedded in a set of rules and norms, defined and enforced by authorities and institutions which may be those of rural communities and/or of the state. No system of land tenure can work without a body with the power and authority to define and enforce the rules, and provide arbitration in case of conflict. Thus, a **land tenure system** is made up of rules, authorities, institutions and

rights. **Land administration** itself (maps, deeds, registers, and so on) is only one part of a land tenure system.

2.1.4 A **land policy** aims to achieve certain objectives relating to the security and distribution of land rights, land use and land management, and access to land, including the forms of tenure under which it is held. It defines the principles and rules governing property rights over land and the natural resources it bears as well as the legal methods of access and use, and validation and transfer of these rights. It details the conditions under which land use and development can take place, its administration, i.e. how the rules and procedures are defined and put into practice, the means by which these rights are ratified and administered, and how information about land holdings is managed. It also specifies the structures in charge of implementing legislation, land management and arbitration of conflicts.

2.1.5 Land policy is contained in texts issued by governments, and is further developed through legislation, decrees, rules and regulations governing the operation of institutions established for the purposes of land administration, the management of land rights, and land use planning. To be effective, land policy must propose a practical and coherent set of rules, institutions, and tools, which are considered both legitimate and legal, and are appropriate for different context and interest groups.

2.1.6 There are frequent contradictions between formal and informal tenure rules and institutions, which lead to conflicts and inefficiencies. One aim of reformed land policies should thus be to find ways of combining these different systems so as to ensure legitimacy, equity and economic efficiency.

## **2.2 The importance of land policy**

2.2.1 **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 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. Similarly land policy is also crucial for environmental sustainability as it can create incentives for sustainable land-use and environmental management.

2.2.2 Land policy in developing countries has been strongly influenced by former colonial land policies which overlaid established patterns of land distribution and tended to restrict local populations access to good land. Subsequent state involvement in land issues, whether by collectivising land or claiming state ownership to all land, has led in many cases to economic inefficiencies, ineffective bureaucracies and social injustice. In other cases, distortions and failures in the operation of markets have led to the expropriation of small farmers, increased landlessness, growing inequality in land distribution and increased poverty. As a result the rights of farmers to the land they cultivate often remain legally insecure and people may be excluded by government from access to natural resources upon which their livelihoods depend.

2.2.3 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.

2.2.4 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 should be seen as an essential means of securing the broader objectives of social justice and economic development. Drawing up a national 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 also has a key role to play in processes of democratisation, the drive for improved governance, and decentralisation.

### **3 Links between land and other major policy areas**

3.0.1 Land tenure is at the heart of a number of rural development issues. Access to land is linked to some basic economic and social human rights, such as the right to food. Land tenure has strong linkages to poverty reduction and food security, economic development, public administration and local government, private contract law, family and inheritance law and environmental law (to mention but a few). Given the far reaching consequences of land policy reform, an explicitly multi-disciplinary approach is required to ensure that the varied implications of reform programmes are well understood and that the needs of different stakeholder groups, in particular the poor and vulnerable, can be effectively accommodated.

#### **3.1 Land policy and poverty reduction**

3.1.1 The majority of poor people in developing countries still live in rural areas despite growing urbanisation. Secured and increased access to land and natural resources for the landless and land-poor families is a key means of achieving food security and broadening the economic opportunities available to them. Depending on contexts, it may imply land redistribution, local rights registration, regulations in land markets and protection against land grabbing. However, improved access to land alone is not enough to improve rural livelihoods; reforms must be supported by adequate accompanying policies and related measures (access to credit and information, markets, agricultural extension, favourable economic environment).

3.1.2 Legislation all too often hands control over land and other natural resources to government bodies such as forest departments. Acknowledgement that rural people need to have rights to control and manage their territory is a way of guaranteeing their access to these key resources, which they have helped to maintain and preserve. Common property resources<sup>3</sup> are of particular importance to the incomes of poorer groups. Where such rights are clearly recognised and enforced, this control over local resources and their associated economic opportunities contribute to further sustainable management and improved rural livelihoods.

#### **3.2 Land policy, citizenship, human rights and social justice**

3.2.1 Land tenure structures mirror the distribution of power within society, and reflect the social relations between rural people, other sectors of the population and the state, and social relations within households and rural society itself. 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.

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<sup>3</sup> Common property resources refer to land or other natural resources held in common by a group of people such as a village or a community. Group members normally have defined use rights to the resource and individual members cannot appropriate it individually. Community rules allow the group to exclude non-members from using the resource or determine the rules under which they are allowed to access it.

3.2.2 The case of indigenous people and some minority groups illustrates how, in many countries, land rights are closely related to the fundamental rights of citizens. Most indigenous groups have culturally distinctive land tenure regimes based on collective rights to lands and 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 is often incomplete, leading to social and political marginalisation, immiseration 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 and minority groups may also experience similar situations..

3.2.3 Access to fair legal process represents a legitimate expectation associated with citizenship, yet in many countries people are unable to gain protection of their rights and assets under the law. Democratic states need to guarantee the rights and assets of every citizen, even the poorest. This may imply the need for innovative legal frameworks and institutions to ensure the law is accessible to poor farmers, indigenous people and vulnerable groups, and that their rights are fairly taken into account.

3.2.4 Land rights can be secured in a sustainable way only where women and the poor enjoy basic civil and political rights including freedom of expression and independent media.

### **3.3 Land policy and gender equality**

3.3.1 Equal rights for both women and men to hold and use property are a cornerstone of social and economic gender equality. Women's 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. The main legal requirements are to establish women's rights to hold property and recognition of the principle of spousal co-ownership of land. These are important factors in women's economic and livelihood security, for instance in enabling women to access credit and services which may require evidence of land ownership.

3.3.2 In practice women's actual entitlements to land are often determined by inheritance practices – whether or not surviving female spouses and daughters are allowed to inherit land, and whether or not their rights are circumscribed by those of male relatives. This focuses attention on the need for reform of inheritance laws. The case for addressing gender inequalities in land access is particularly strong in Asia given the growing feminisation of agriculture, and in Africa where women have traditionally played the role of food producers. Asian countries illustrate that legally recognised rights in land are not sufficient. The security of women's land rights depends on whether these rights are socially and legally recognisable and enforceable. Legal and institutional action alone, however, is unlikely to be enough and extension of women's land rights is likely to be a long-term process. Cultural action, together with advocacy and education in support of women's land rights have an important role to play, given the deep-rooted cultural norms and practices which underlie discrimination in land tenure, particularly in the operation of customary tenure systems.

### **3.4 Land policy and agricultural development**

3.4.1 Land policy has strong links with agricultural and economic policy. Making access to land secure is a necessary condition for encouraging investment and improvement in land. An



agricultural policy that strongly supports family farming and farmers' organisations, and provides them with services offers a good way of reconciling growth in agricultural productivity with equity and poverty reduction.

3.4.2 But land issues are rarely the only limiting factor in raising productivity. Reasonable crop prices, access to inputs, availability of credit, and the organisation of markets and processing are important features of the agricultural sector. Working to improve these issues may be a priority before addressing land matters. When there are significant imperfections in related markets (e.g. credit, labour, products), liberalising land markets will not improve efficiency and may be counterproductive, leading to land concentration, exclusion of small farmers and less intensive practices.

3.4.3 Land titling is not always the best way of increasing tenure security, and nor does it automatically lead to greater investment and productivity. In many places, land is held through unwritten, customary means, but it is not subject to insecurity. Formal credit may not be available and much investment in land in small family farms is based on labour effort rather than capital.

3.4.4 The choice of land policy will have important implications for different types of farmers. If, for example, policy aims to support small scale family farmers, it must provide them with secure tenure. This can be done either by protecting legitimate customary rights, or by providing land titles.

### **3.5 Land policy, conflicts, and post-conflict recovery**

3.5.1 Population growth, changing economic circumstances and changes to the environment (e.g. desertification, climate change) can increase competition for access to land. Competition is usually regulated by a society's tenure rules, which have developed in response to shifts in social, economic and political relationships. But this is not always the case. Conflict is likely to grow where scarcity of resources is increasing and access is reduced, where tenure rules are unable to adjust sufficiently rapidly to changing circumstances, and where different and contradictory rules co-exist, allowing people to refer to one or the other depending on where their interest lies. This is particularly the case where there is a large gap between customary or smallholder tenure systems and formal law, when powerful new (often external) economic interests start to invest in land, and where state institutions are unable to ensure a fair system of regulation (rules, arbitration, etc.). Illegal appropriation of land by political elites and forced displacement of rural dwellers (for example as a result of infrastructure development or promotion of large-scale export-oriented farming) can also lead to land conflicts.

3.5.2 Resolution of conflicts over land raises questions of governance and social stability, as well as of tenure security. Addressing conflicting claims will be a pre-requisite for any land registration programme, to avoid repeated challenges and disputes. Frequently, formal conflict resolution mechanisms are weak, overburdened, inaccessible to rural people, and have a poor understanding of local land rights. There is growing appreciation of the need to recognise and strengthen mechanisms for resolving disputes, using alternative dispute resolution techniques that could be based on local structures and practices. The creation of specialised land tribunals, as in the Philippines or Costa Rica, is increasingly being explored.

3.5.3 In those countries which have experienced armed conflict, civil war and major displacement of populations, fair and just handling of land tenure questions will often be a central component of any reconstruction exercise, both to maintain the peace and provide

conditions under which economic growth can be re-established. Major factors within such a reconstruction programme are likely to include redefining the basis on which people can claim rights over land, resolving disputes over land that has been abandoned or taken over by others, and finding ways of providing secure rights for refugees in areas of new settlement as well as security for local/customary rights and common property regimes. The case of Cambodia provides a good example of how the resolution of land claims has supported post-conflict recovery in rural areas.

### **3.6 Land policy, land administration and governance**

3.6.1 Despite constitutional provisions, all citizens are not equal in practice before the law, due to inadequate information, limited resources, and poor contacts within the administrative system. If the poor majority are to be the primary beneficiaries of land tenure reform, the design of institutions for managing land rights must take this into account. Poorer groups will have more effective access to such procedures where they receive clear information about how the system is meant to operate, and where the bodies responsible are located close by, working in local languages, using standard units of measure, accepting oral evidence to support claims, with proper attention paid to publicity of claims before granting title, and operating with low user fees. Effective and responsive judicial and land administration systems which are accessible to poor people and vulnerable groups are therefore crucial components of successful, pro-poor land policy reform. Without such systems, the legality and credibility of land policy reform and ultimately its success would be irremediably undermined.

3.6.2 A land administration system is the set of structures and institutions which implement the land policy, affect rights, deliver titles and deeds, and manage information systems. These structures can be state or local government institutions. Sometimes, customary institutions perform some land administration functions. Proximity, accessibility and accountability of land administration institutions are key issues which are also relevant for traditional authorities.

3.6.3 In many developing countries, there is a gap between formal and local land administration systems. The formal land tenure system has thus limited legitimacy in the eyes of local people because neither the rules (as outlined in statutory legislation) nor the structures or procedures are seen as fitting in with customary or informal ways of managing land. In other cases, gaps may exist between the law and the practices of land administration. The operation of formal structures and procedures may be poorly understood, act along principles which are alien to ordinary people, be subject to corrupt practices, and work in favour of a small elite. As a result farmers cannot exercise their legitimate rights. Given the value of land, the area of land administration provides fertile ground for corrupt practice and political patronage, whether it be in allocating rights to one user rather than another, agreeing to a change of use from farmland to building plot, or deciding in favour of a particular party in a dispute over land claims.

3.6.4 Discretionary authority held by government officials, traditional authorities or elected council members offers room for patronage and rent-seeking. Thus, the design of rules, structures and procedures regarding land tenure must consider how best to minimise such risks. This should be done by establishing checks and balances on how procedures are carried out, through public scrutiny and information dissemination. Such checks will be easier where everyone has information about, for example, the fee to be paid for a given service, and what process needs to be followed. Good land administration practice, as in programmes carried out recently in Central Thailand and in Guyana has sought to provide public access to documents and meetings, ensure publicity about land claims prior to titling, and put in place appeals

systems to contest claims. All these are necessary features of a transparent process. At the least, an equitable system of land administration, whether or not it relies on customary rules, must always include simple procedures for citizens to appeal against local decisions.

### **3.7 Land policy, local government and decentralisation**

3.7.1 Local governments usually have some power over the management of land and natural resources. National land policy needs therefore to be consistent with the powers and responsibility of local institutions, and local government must be involved in the design of land policies.

3.7.2 **Decentralisation** offers a valuable opportunity for shifting towards greater local management of land, bringing resolution of disputes much closer to local stakeholders, and ensuring closer scrutiny of how land and the revenues stemming from it are managed. However, there is also the risk that decentralisation will bring a greater politicisation of land issues, and strengthen the powers of a local elite over natural resources. Moving towards more decentralised systems of government thus opens up new ways for land and resources to be managed, but it does not necessarily provide immediate answers to questions of accountability, or where power and decision-making should be located. The principle of subsidiarity should guide decisions over the distribution of responsibilities in the management of land resources between central, local and communal levels, provided that it takes place within a clear set of rules that prevents abuses of power, and includes procedures for appeal and mechanisms for accountability

### **3.8 Land policy and taxation**

3.8.1 Land has long been considered a key source of revenue for local and national government. Its immobility and visibility make it a particularly easy asset on which to impose a levy, especially in urban areas. The introduction of trade liberalisation has led to a substantial fall for many governments in import and export duties, making land increasingly attractive as a potential fiscal asset to meet broader fiscal policy objectives. 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 by the local government. Local land taxes may be an important source of income for local governments.

3.8.2 The practicality of a rural land tax depends very much on context. Attention needs to be paid to examining ways of classifying land according to quality and productivity, with each class paying a different rate. The likely impacts of such a tax on production strategies and levels of investment must also be considered. In marginal areas with low productivity, the revenue that such a tax might reasonably generate could well be exceeded by the costs of collection. In areas where land titling is underway, imposing a tax on titled land might be a reasonable counterpart payment in return for the advantages conferred through titling. Such a tax would also provide an incentive to put the land to effective use.

3.8.3 Overall, the design of a land taxation system must be coherent with poverty reduction and social equity objectives. Land taxes should therefore be understood as a means to promote social and environmental objectives, discourage underutilisation of land and prevent land speculation.

### **3.9 Land policy and environment**

3.9.1 Land provides for a range of ecological services which a sound land policy can contribute to enhance: 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 and its social and economic costs. 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. Where they exist, customary and common property regimes may allow local land management decisions to prioritise community needs, cultural values and long-term environmental protection.

3.9.2 Certain areas within a country will need protection from use to conserve biological diversity (wildlife, woodlands), reduce risks of erosion (steep slopes, river banks), and provide common public spaces (parks, greenbelt land around cities). Such areas are usually accorded special status by law, with controlled access and use rights.

3.9.3 Having followed a policy of strict exclusion in the past, governments are now realising the need for joint management of many protected areas, involving a collaborative and participatory approach with rural people. Such arrangements usually establish shared monetary benefits and certain use rights (such as collection of non-timber forest products, grazing rights within game parks during certain seasons) in exchange for help in patrolling the area against outside users, and poachers. Thus, the tenure status of protected areas will need to accommodate rights of use for particular communities, conditional on their acceptance of certain obligations.

3.9.4 Apart from protected areas, government legislation may also impose conditions on land rights with the aim of achieving environmental goals, as when farmers must adopt certain soil conservation measures on their land, or where financial incentives are put in place to encourage new forms of land management. Legal measures should take into account the effective ability (political power and financial means) of national/local governments to enforce land use patterns in practice.

### **3.10 Land policy and land use planning**

3.10.1 Expansion of agriculture or rapid urban growth can generate many land-related problems. The consequences of unplanned land use are most apparent in peri-urban areas and those regions receiving a major inflow of migrants or refugees. Changes in population and patterns of land use require some form of direction to minimise adverse impacts from poorly sited buildings, loss of green spaces, the need to set aside land for infrastructural development and service provision. Thus, land policy needs to be coherent with sound land use planning and, in turn, land use planning must comply with land and rural development policies aimed at strengthening poor people's access to land. Expropriation for public interest, land consolidation, land readjustments must be implemented through an established transparent procedure, include prompt and fair compensation, and take into account effects on neighbouring properties. Administrative, legislative and legal procedures should guarantee that there is no resettlement without adequate rehabilitation and compensation.

3.10.2 It must also be recognised that there are limits to what government can achieve in terms of enforcing planning regulations. Government may well find, for example, that people are cultivating land which is not, strictly speaking, appropriate or in accordance with land use planning guidelines. A pragmatic approach is needed whereby land use plans are used as a

platform to debate land use options. Government planners will therefore need to engage and negotiate with local land users, rather than assuming that their plan constitutes a blueprint for immediate application. Equally, local communities should be encouraged to come up with their own planning processes, which build on their desire to improve the management and productivity of the resources within their territory.

## **4 Elements of a land policy reform programme**

4.1 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, regularisation, etc.). This includes changes in policy and legislation and the programmed actions required to direct, implement and manage the reforms. Land policy reform must be based on a clear analysis of the problems to be dealt with, shared agreement amongst the principal stakeholders on aims and objectives and good knowledge of field situations. There is a consequent need to support debate within civil society, to build social and political support to the reform, and promote cross-ministerial discussion and coordination.

4.2 Although processes differ widely from one country to another, there are some broad trends which include: i) a desire to correct historical inequities or inefficiencies, and to bridge legality and legitimacy, by recognising legitimate informal or customary rights. ii) the withdrawal of tight state control over land and establishment of individual or family property rights and associated legal and administrative systems to recognise and manage them; iii) an increasing level of cash-based land transactions with greater attention paid to ways of encouraging tenancy and other forms of enabling access to land; iv) recognition of the need to provide more secure rights for women and other vulnerable groups using an approach based on pragmatism rather than ideology, and v) recognition and/or restitution of native titles.

These trends lead to legal, institutional and technical innovations in the type of rights gaining legal status and in the way to register and manage them. Insofar as common property resources are concerned, their status in law often remains weak, with continued processes of encroachment and privatisation. Many governments are now adopting the principle of subsidiarity and developing decentralised approaches to land administration. While land taxes provide a major source of local government revenue in most OECD nations, they remain limited in many poorer countries.

4.3 Depending on the context and objectives, a land policy reform programme may include one or several of the following elements:

- new tenure legislation and revision of codes, to recognise and regulate new types of rights or forms of transfer (including women’s, small farmers’, pastoralists’, minority groups or indigenous peoples’ land rights);
- land registration and titling of existing rights;
- regularisation (updating formal records to take account of changes and informal transactions) of existing land rights;
- land redistribution;
- the creation of new opportunities for land access;
- restitution of land rights alienated from the original owners or users;

- privatisation of collective or state land;
- improvements to the efficiency and accountability of existing land administration systems;
- establishment of (new) institutions and structures with responsibility for land acquisition, administration and conflict resolution;
- setting up a land-based tax system;
- designing and enacting new land use and planning rules and procedures;

4.4 For each component, there is a broad set of options. Due to this diversity, there can be no blueprint approach to land policy reform: the objectives, the political choices they reflect, and the legal and institutional options chosen are highly dependent on the specific economic, social and political context and its historical background, the institutional framework, the main issues to be dealt with, the type of agriculture and relations between government and people. Effective implementation of the options chosen depends on the institutional capacity of the public, private and community-based organisations involved. An assessment of these capacities must be taken into account in the design of the land tenure system.

4.5 The design of policy and institutions has also significant consequences for equity and fairness, since the choice of technology and institutions for land administration is not just a technical issue. Wrong assumptions on methods for customary registration may lead to the exclusion of youngsters, women and herders. A system of land registration based in the capital city, requiring payment of a substantial fee and based on formal survey techniques, will be much less accessible to more distant, and poorer rural populations than low cost land registration procedures handled at district or village level, and which are based on simple maps. The choices made must be pertinent (i.e. providing answers to the problems faced, and built on a sound knowledge of local conditions), affordable (i.e. coherent with the financial means of farmers, local government and state) and sustainable (i.e. provide a long term framework at acceptable recurrent costs); hence the need to specify political objectives before designing the policy and institutions.

4.6 Land administration is a public good and governments must cover the recurrent costs of land administration, drawing on a combination of public expenditure, donor funds and user fees. The advantages of a fair and efficient land administration system justify public financing. While donor funds are often necessary for preparing, designing and implementing the reform, relying on them for land administration systems would impede sustainability. On the other hand, too heavy a reliance on user fees may discourage poor people to enter legal procedures, excluding them from the benefit of the law, leading to unregistered land transactions, and to a rapid obsolescence of land information systems.

4.7 There is very limited scope for generalising between different land policy reform processes, given the great differences in land relations across different countries and regions of the world. An overview of the differences between regions is given in the table below.

Region	Major issues and trends	Action required <sup>4</sup>
<b>Central &amp; Eastern Europe</b>	Privatisation of state and collective agricultural enterprises over last 10 years, by establishing private farms. Restitution of former holdings, bringing small and fragmented holdings	Strengthen land administration; consolidate holdings through participatory procedures and innovative approaches. Exchange of holdings, use of land reserves. Help set up mortgage systems to enable purchase of land by poorer groups.
<b>Ex-CIS</b>	Privatisation of state and collective farms through issue of shares, rather than division of estates. Growing concentration of shares in some places. Weak incentives to increase productivity. Limited land markets.	Improve understanding of gender roles and prevent rising poverty among women Encourage installation of young farmers
<b>Latin America</b>	Large inequities in land distribution, despite longstanding land reform programmes. Failure of market based reforms. High number of landless. Large number of squatters and others with informal holdings, no legal status. Major areas in which indigenous peoples and minority groups claim rights. Shift from deeds to title registration, but widespread failure to keep register up-to-date.	Political will and economic resources needed to pursue land redistribution more effectively. Failures of market-assisted land reform mean new approaches needed. Means sought to formalise land claims of informal sector, minority groups and indigenous peoples. Support recognition of collective ownership rights.
<b>Africa</b>	Strong customary and colonial legacy, colonial administration, structures and legislation. Very low % of land subject to title. Legal pluralism with many conflicting and overlapping law and systems for land administration, establishing land claims and conflict resolution. Common property resources key to poorer groups. Majority of urban dwellers living in slums Major disparity within the continent between: <ul style="list-style-type: none"> <li>• E &amp; S Africa where large scale alienation of land by colonial powers, commercial farmers, and national parks.</li> <li>• W Africa, where limited white settlement, continued strength of customary powers, overlaid by sequence of legal, political and institutional changes.</li> <li>• North Africa, where a legacy of strong central government control has meant few incentives for local management.</li> </ul>	Land redistribution and restitution where great inequities remain. Gradual formalisation of local land rights through decentralised land administration and more accountable processes. Build bridges between customary & statutory rights, to provide greater security to former. Provide greater security to poor and vulnerable groups Address implications of high HIV/AIDS prevalence on land issues. Strengthen alternative sources of credit. Establish and protect rights over common property. Support negotiation between state and local people to enable consensus re. new rules. Strengthen women land rights in both local/customary and formal systems Reflect land policy in PRSPs
<b>Asia</b>	Continued duality of customary and statutory systems. Relatively little land subject to title. Population pressure, declining size of holding, growing landlessness. Strong centralised systems of land administration. Lengthy bureaucratic procedures and backlog land disputes. Exploitative tenancy arrangements, unresolved indigenous rights claims, conflicts between titling and common property system of regulating access to land	Recognise farmers' rights. Introduce simpler decentralised systems of land administration. Land redistribution in some countries Land tenancy reform Strengthen women land rights in both local/customary and formal systems Develop rental markets for the poor Reflect land policy in PRSPs.

## 5 Central issues for the design of land policy and land reforms

5.0.1 Debate on land tenure has been subject to the ebb and flow of intellectual currents for decades and positions have followed familiar lines of thinking, whether strongly pro-market, state-managed collectivism, or based on ideas of social equality.

5.0.2 In spite of a general consensus on the scope of and approaches to land policy reforms, there remain quite divergent views regarding issues such as the appropriate role for

<sup>4</sup> This table can only provide a broad overview of priorities. A more in-depth assessment of regional issues and the resulting policy options goes beyond the scope of this document and will require developing specific regional support strategies identifying priorities and scope for intervention.

government in moderating market forces, conditions that warrant a more vigorous intervention in land re-distribution, and how and at what level land rights should be administered. The most significant of such issues for poverty reduction are analysed in the following chapters.

## **5.1 Securing rights over land and related resources**

5.1.1 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.

5.1.2 There are a wide range of property rights over land and related resources, and a variety of tenure arrangements. Some natural resources, (in many cases those with low value per unit area and irregular or unpredictable productive potential, for example semi-arid rangeland) can be efficiently managed as a collective or common property. In many rural areas, farming societies are based on a mix of individual rights and collective regulations, the combination of which may differ depending on the setting and the resources in question. These informal tenure systems are generally dynamic and evolving, but they can (although not always) be efficient and adaptable, within limits to changing economic and technological conditions. Customary and informal tenure systems, whether based on individual or collective rights, or a combination of these, should not be assumed to be a constraint impeding agricultural intensification. High levels of investment and rising agricultural productivity have been observed on farmland under informal customary regulation, as in Northern Nigeria, the Kenya highlands, vegetable gardens around towns, and other cases.

5.1.3 In other circumstances however (for example in northern Ethiopia, Bihar in India and in the groundnut and cotton cultivation areas of Sahelian countries), customary tenure systems have had opposite results and have contributed to the continuation of unsustainable agricultural practices. Furthermore the efficiency and effectiveness of customary or informal tenure arrangements may be limited in situations with very unequal land distribution and/or unchecked discretionary power over land rights.

## **5.2 Building on existing rights and practices**

5.2.1 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 they might be addressed.

5.2.2 In the past, land tenure systems in rural areas have been considered backward, insecure and a constraint on productivity growth. The aim was therefore to replace them by a formal, state-led system based on private ownership. But, in fact, informal and customary tenure systems have usually proved to be very dynamic. In most cases, there is no major inefficiency in customary land management systems which could justify their replacement. Moreover, tenure changes imposed by the state often lead to conflicts a generation later. Thus, even if the aim of the state is to develop a formal system of individual titles, the focus should be on favouring progressive evolution which builds on existing rights and gives them legal recognition.



5.2.3 When formalising these rights, as in Ghana and Ivory Coast, new participatory land registration systems may be needed, based on the systematic recording of socially recognised rights, through field-based visits and surveys to identify, test and validate the claims made and ensure that no new barriers are being created. New forms of statutory rights may also be necessary, which combine both individual and family rights. But tenure systems are more than just a question of rights, and involve rules and authorities as well. Thus, in formalising local rights, the modes of regulation, norms and values, authorities and arbitration mechanisms must be taken into account. A right for local communities to define the rules of access to and use of resources within their own territory should be recognised, so long as they are consistent with broader legal provisions, including those on gender equality.

### **5.3 Titling may or not be the solution**

5.3.1 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 that changes in land rights alone may not make any difference. Moreover, programmes of land titling in a macroeconomic context which undermines the viability of smallholders can induce distress sales of land causing landlessness for many, land concentration and accumulation for few, and resulting in increased poverty and inequality. Thirdly, while titles had been 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 even against titles to plots of land, which they may find very difficult to sell in case of default.

5.3.2 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. Farmers will only make use of these programmes if they perceive real benefits and if the procedures are simple, inexpensive and perceived to be reliable. Too often, titling programmes have been so costly to maintain that the register of titles falls rapidly out of date. Access, affordability and maintenance of land administration should be the main focus for discussion when choosing whether and how to opt for land titling.

5.3.3 Finally, the implementation of titling programmes particularly in the absence of active local involvement can lead to increased insecurity and inequity where unreliable procedures or oversight of power issues during the surveys allow for political manipulation in favour of wealthy individuals. Titling can bring increased hardship for poorer people where land rights are complex and information about the procedures as well as their cost and accessibility mean that the most vulnerable groups do not have effective access to such processes.

5.3.4 This does not mean that titling and cadastres are never useful. They may play a valuable role in a number of circumstances, such as where there are rapidly evolving land markets, involving many people from outside the local community, where farming systems require substantial amounts of capital at a level that decentralised credit cannot offer, and where urban encroachment is a major threat. However, given the costs and risks involved, a careful analysis has to be made in terms of benefits to a broad spectrum of land users. A broad view of cadastral systems and titling methods is needed, in order to establish reliable and appropriate records of village, family or individual land rights, and register broad sets of rights, at low cost. Innovative systems are being designed and tested, which offer new solutions. Alternative

options also require serious attention, such as providing government recognition to different forms of land transaction, including simple written contracts drawn up locally. These already operate to some extent, as in the case of Burkina Faso and Benin, where those engaged in land transactions take their documents to local authorities for validation.

## **5.4 Land rights administration: lowering transaction costs and securing rights**

5.4.1 Land administration involves a range of different functions: information on rights and transfers, adjudication, and arbitration supported by systems for land survey, mapping, land information, valuation, registration of rights, recording of transactions, issue of title, and collection of fees or rents. These functions can be fulfilled at different levels, by a range of bodies, such as customary and traditional authorities, village level committees, district assemblies, local officials from the national administration, private sector operators, NGOs, and so on, under the supervision and control of national bodies.

5.4.2 The design of the land administration system is a crucial issue: too often, centralised land administration is heavy, inefficient, and costly. The complexity of procedures and the opacity of the practices make access to them impossible 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.

5.4.3 The objective of a land administration system should be to offer effective security to the rights on land and natural resources, held by rural people and to promote sustainable land management. It has to provide people an easy and low cost access to fair and transparent procedures, avoiding transaction costs due to distance, bureaucratic bias and delays. 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. A user-oriented system of land administration could make a significant contribution to securing the rights of the majority, lowering transactions costs, and favouring the circulation of rights, while demonstrating better forms of governance.

5.4.4 Provided that they are seen as tools to further a user-oriented system, new technologies can improve the quality and efficiency of land information systems. GPS and GIS, while they do not solve the issue of the rights to be surveyed, can help to make accurate maps at lower cost as in the Philippines, Peru, Bolivia or Bhutan. 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, as they facilitate agreements on boundaries and provide a better understanding of land use. The combination of geographic, land use and tenure information can help in land use planning, but the gain in productivity needs to be set against questions of cost and financial dependence. There are also important issues of accessibility, in terms of where such facilities are located and whether use of such technology excludes local people from understanding and taking part

in identifying and establishing land claims.

## **5.5 The role of rental market to enhance productivity and access**

5.5.1 Land transactions transfer rights to land between users, enabling those with resources to invest to gain access to land and helping to increase the efficiency and productivity of land use. 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.

5.5.2 By contrast, land rental markets can be more efficient and fair, and there is evidence of fewer problems associated with markets in tenancy and secondary rights. 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, without permanently reassigning underlying rights. When the term of the contract is longer than the time required to provide a return on the investments in land, there are no or few inefficiencies in rental cultivation. Sharecropping arrangements may also be an efficient way to address increased risks or cash shortages. Rental markets facilitate land access for the poor, as cash needs are lower, and offer a means of temporary or partial withdrawal from farming without loss of land as a capital asset. 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, length of contracts), giving access to credit and advice to the poor contributes to encourage the emergence of effective rental markets.

## **5.6 Land redistribution**

5.6.1 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. A very biased distribution of land ownership can rightly be seen as constituting an obstacle to the country's economic, social and political development, as well as providing a constant reminder of historic injustice. It may also impede productivity if large landowners invest little in land and practise very extensive land use. Inequitable land distribution may also spur rural migration of landless farmers into environmentally vulnerable areas. As a result, agrarian reform and land redistribution have long since been seen as a key issue for poverty alleviation and social justice. Redistributive land reforms are ongoing in a number of countries although they do not currently receive strong emphasis in donor policies due to their political risks, high financial cost, and concerns about limited opportunities for the poor in agriculture.

5.6.2 As a result of more effective utilisation of labour and lower costs, production in small and medium-sized farms can be more efficient than in large ones; there are therefore limited economies of scale in agriculture. On the other hand, there are economies of scale in processing, distribution and marketing of goods in competitive global markets: large-scale mechanised farming frequently benefits from greater access to and integration with commercial supply chains. Research shows that the redistribution of land from a situation where 80-90% of the land is held by a few, to one where there is a much larger number of small- to medium-size farms will result in a considerable increase in output and productivity if such a process is accompanied by proper support for the new landholders and adequate agricultural policies.

5.6.3 Land redistribution is a clear policy choice where inefficient large farms co-exist with

small farms and landlessness. However, land redistribution by itself is not sufficient and may produce a temporary decrease in productivity if there are insufficient economic incentives and 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 particularly if land is redistributed to landless people with no experience of farm management and of the local ecology. Land redistribution should thus take place within a sustainable agricultural policy that supports family farming and allows it to prosper and express its potential.

5.6.4 Historically, land reforms have been implemented by governments, 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. Experience, however, is not very conclusive: due to shortages of land on the market, it can slow the pace of land reform. Both traditional and market assisted land 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. In a number of cases large land holdings have been created through violence or illegal appropriation, and should not therefore be eligible for compensation or disposal on the free market. 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 expropriation. 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. Political will, national consensus on the legitimacy of land redistribution, support from rural social organisations and from urban population are thus political conditions. Strong financial and technical support from donors is also needed. Given the political implications of land redistribution, independent monitoring and evaluation should be put in place to ensure transparent and equitable procedures and avoid political manipulation.

5.6.5 Where land redistribution by the state is not politically or financially feasible, outstanding problems concern how such a transfer of land ownership is to be achieved, the extent to which it must rely on a market-based process and the principles of willing buyer/willing seller, or whether the state is justified in taking a more interventionist approach. 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. Thus, to be equitable and successful such processes require transparent procedures, the political will to enforce them and strong donor support. In cases it may not be possible to correct extensive inequality 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.

## **5.7 Key principles for successful policy design**

5.7.1 Most countries have been engaged in various land-related measures, both to address perceived weaknesses of existing systems, and to establish new mechanisms for land management believed to be necessary to encourage greater growth, equity or environmental sustainability. Certain key lessons can be drawn from this varied experience.

**5.7.2 Long term processes.** Processes of land policy reform, changes to legislation, land rights registration and establishment of new structures with responsibility for land management and administration are likely to be long-term, complex and highly political. The choices made today will have long term consequences for the distribution of economic and political power, and access to economic opportunity for decades to come. Consequently, governments, donors and other groups involved in supporting these processes must be willing to take a long-term strategic approach, and make a commitment to see it through.

**5.7.3 Promote inter-ministerial work, with in-depth analysis of current situations.** Land issues are multidisciplinary, and involve different ministries and institutions. Constructing a common framework of analysis, based upon field research, is necessary to achieve a consensus on the reforms needed, achieve a shared diagnosis of the causes of the problems, and work towards relevant and effective solutions. The range of sectoral policies having a bearing on land needs harmonising to avoid fragmentation and contradictions.

**5.7.4 Promote a participatory approach to policy making.** There are many stakeholders in the land tenure debate. Governments need to listen to and engage with different actors, and understand the diverse range of interests at stake, providing them with a platform for discussion of policy options. If tenure policy is to be effective on the ground, it needs to respond and be “owned” by the many land users which it will affect. Strong political support for the reform is needed which has to be built over time. Supporting the interest groups campaigning for reform can contribute to build ownership and political backing. While such a consultative approach is essential to providing a voice to different constituencies, it is ultimately the duty of the government to make the political choices necessary.

**5.7.5 Take into account the distance between statutory law and local practice.** In many countries there are substantial gaps between what the law states and what actually happens on the ground. Such gaps can be the source of conflicts. Legal changes are more effective when they recognise and support broader social changes as in this case they can guide behaviour in directions sought by government. Hence, new legislative provisions need to take into account the broad range of current land practices, aiming at their progressive adaptation rather than their mere replacement.

**5.7.6 Identify key principles and allow for diverse solutions within them.** Different situations require solutions appropriate to their specific circumstances. Land issues differ widely within a single country, as regards the pattern of land use, population density, strength of local structures and systems for regulating land rights. This argues for a focus on priority areas, where land must be tackled with urgency, and a readiness to tailor interventions to suit local circumstances, while conforming to the key principles formulated in the policy.

**5.7.7 Take implementation costs into account in the design of land tenure reform measures.** The costs involved in establishing new structures and procedures can be very substantial. A balance needs to be sought between designing a comprehensive set of structures and processes for managing land, and a minimalist approach, which is affordable. It may be better to opt for building on existing institutions, where possible, and establishing pilots to test out approaches for later replication. Similarly, it makes more sense to focus on areas of greatest priority rather than try for universal coverage. When titling or registering programmes are involved, costs of maintenance must be built into the calculations, as well as costs of the initial registration process. Similarly, the choice of technology will have to consider accessibility, effective use, the level of capacities needed, and the recurrent costs that it will generate.

**5.7.8 Carefully craft the rules and tools.** As is wisely said: “The devil lies in the detail”.

Rules, tools and procedures have to be carefully discussed, designed and tested, to avoid loopholes that could make the reform collapse or lead to unintended negative effects. Simple and robust methods are the key, while remembering that different stake-holders are likely to try to manipulate procedures to further their own interests.

**5.7.9 Recognise that the impact of reform depends on changes in practices and not on the legal texts alone.** A change in legislation is not in itself sufficient to achieve the broader objectives sought by many reforms to land policy. For example, where land is redistributed to the landless, there may be a need for considerable financial and technical support for some years to enable new landowners to take advantage of market and other opportunities. Equally, the population needs to be familiar with new laws and procedures, if they are to benefit from them. This argues for the dissemination of texts in a form which is comprehensible and relevant to people's needs.

**5.7.10 Ensure widespread dissemination of information on the scope and content of the reform as well as on the policy, legislation and procedures.** Failure to disseminate information properly about such laws negates the whole purpose of the reforms. The language and terminology of legal texts can be a major hurdle; therefore help is needed to translate the new provisions into the appropriate local languages and terms. However, given the high level of illiteracy among rural populations and particularly among women, non-written means of communication (radio, workshops, and extension work) will be required to inform all stakeholders of changes in their legal rights and associated implications.

**5.7.11 Gender issues need a careful approach.** Despite broad agreement in principle on the equality of men and women in land laws and policies, few countries have translated this into legislation and even when laws exist (as in Uganda) they have not been easily enforced. Reforms to the rights of women are unlikely to change the position they face in rural areas without parallel measures to promote awareness of these legal changes and to support those who stand up for their rights. While legislation makes it possible in theory for those who feel aggrieved to claim rights with judicial sanction, not everyone will gain by pursuing their formal rights in this way. Typically, women and men uphold traditional gender roles and relationships rather than formal rights and women lack the confidence, information, experience and resources to get what they are entitled to by law. Although the knowledge that they can ultimately turn to the law may help strengthen their negotiations.

**5.7.12** In some customary tenure systems women only have access to land, housing and property as daughters, mothers or wives. Many women therefore face the constant insecurity of losing their homes, land and livelihood if their relationship ends. Policy provision to increase access by women must be accompanied by the necessary support mechanisms (e.g. credit, information, training) to enable them to access, control and utilise land successfully.

**5.7.13 The rights of minorities and indigenous peoples are to be adequately recognised.** Measures to secure the rights of minority groups and indigenous peoples must be based on the respect of their own laws and tenure regimes. Capacity building measures maybe required to overcome entrenched prejudices in national administrations and to allow effective participation of these groups in the design and implementation of policy and legal reforms.

**5.7.14 Land policy has to include sound land use planning.** Land is hugely variable, whether in quality, value, location or vulnerability to degradation. Land policy needs to take such diversity into account, in terms of tailoring rules and procedures for particular settings. A land use planning approach is sought which offers a consultative process, allowing provision for change of use, alienation of land for infrastructural needs in exchange for compensation, and

incorporation of environmental principles and objectives.

## **6 Implementing land policies: the role of different stakeholders**

6.0.1 New land policies must fit within the reality of states establishing more democratic forms of governance at national and local levels, and should offer all citizens a guarantee of their rights and ways of addressing the problems they face. Given the current socio-economic context in rural areas, and the diversity of people and interests, policy should aim to provide a broad set of solutions, which can be tailored to the needs of different stakeholders and local circumstances.

6.0.2 It is government's responsibility to provide a system of land administration which is accountable, transparent and cost-effective, and responds to the diverse needs and characteristics of the population. It is a public good that warrants public investment. The system of administration needs to be especially oriented towards ensuring that the rights of poorer and less powerful groups are respected and confirmed since it is these groups which usually suffer during periods of growing land scarcity and land registration if land distribution is left to market forces alone.

6.0.3 Given the multisectoral implications of land policy, land policy reforms cannot be addressed in isolation. Poverty Reduction Strategy processes provide a key opportunity to highlight the links between access to land and poverty and initiate reform where necessary. Land policy reform can make substantial contributions to poverty reduction, in removing obstacles on access to land for the poor, in giving them legal rights and access to credit through collateral, in giving people access to assets and economic opportunities linked to agriculture or natural resources, in forbidding land grabbing, encroachment and other processes of exclusion. Such mechanisms can strongly influence the poverty patterns in medium term. Part 2 of this document provides detailed guidelines to support land policy and land reform implementation in developing countries.

### **6.1 The role of central and local government**

6.1.1 It is the right and duty of government to draw up policies, and establish the legislation, structures and procedures for the protection of rights in property for all the population, as well as civil rights more generally. But the property rights protected by the State should not result in the exclusion of people from access to basic needs and rights. The Constitution of the country sets out the distribution of power between different branches of government, the safeguards and appeals against abuse of power, provisions to maintain accountability and representation through regular elections at national and local levels, and the fundamental principles governing relations between citizens and state. Land and property rights constitute a plank of central importance in the construction of good governance for any government. Ensuring a fair and secure distribution of rights to land lies at the heart of economic, social and political life. Decisions taken today regarding changes to land policy will have long-term ramifications for how power is exercised and the opportunities and life chances available to those yet to be born. The existence of a gap between many formal statutory provisions and how land rights are managed in practice constitutes a persistent problem for the legitimacy of government action in this field.

6.1.2 Given the centrality of land rights and policy, government needs to set out its proposed agenda for change in this field by proposing a timetable for consultation and review of policy

and subsequent legislative, structural and procedural provisions. While it is the government's duty to specify its priorities and make a choice among them, such decisions will benefit from broader public debate, such as offered by the drafting and review of a national land policy document. Receiving inputs from a wide range of interested parties should help government to gain a clearer idea of priorities, and the nature of the choices faced.

6.1.3 Given that “you cannot please everybody all of the time”, government must decide on the trade-offs between different objectives. National land policy documents often fail to make such choices explicit, and provide an undifferentiated list of everything the government might wish to achieve. However, clear choices need to be made, such as between a tenure system geared to securing the ownership rights of large-scale commercial farmers, as opposed to securing the use and access rights of smallholders, landless poor and vulnerable groups. If governments are truly to espouse the principle of poverty reduction before all else, this will have major implications for the design of rules, structures and procedures to ensure the land tenure system operates in favour of the majority of its users and particularly the poorest among them.

6.1.4 Furthermore, current processes of decentralisation create new roles for local government in supporting participation in policy formulation and implementing systems for low-cost land administration. To address land issues constructively and minimise conflict requires adapted responses at the local level and a legal framework flexible enough to deal with the heterogeneity of local situations. This makes local government a 'natural' partner in land policy to both central government and other stakeholders. However, legislation needs to establish and enforce adequate controls to ensure the impartiality of local authorities and the consistency of their decisions with national policy.

6.1.5 In designing and implementing the new policy, a government has to ensure the co-ordination between the different Ministries and public departments involved in land issues. It has to remove incoherence between sectoral policies. It is also government responsibility to provide efficient institutions for land administration and maintenance of land information.

## **6.2 The role of private sector, civil society groups and local communities**

6.2.1 There are a wide range of groups with an interest in land, whether as direct users, those seeking access, or those representing a professional interest, such as surveyors. Government needs to engage with them to benefit from their views, by providing a platform to discuss proposed changes to policy and interventions, identify priorities and think through the longer-term implications of a particular course of action. Government should be encouraged to see such inputs as a valuable element in any process to review policy and legislation, even though it is likely to involve criticism and generate a wider array of options than considered feasible.

6.2.2 On a subject as important as land, it is vital that policy and changes to the land tenure system be seen as the outcome of a broad political process that has gathered views in a representative fashion. Getting the process right, and demonstrating its transparency, will be essential to provide the emerging policy with greater legitimacy and avoid accusations that the process has been captured by a particular set of interests. Private sector and civil society groups have differing powers to influence the policy process and ensure its transparency. This may be more to do with informal personal networks than the excellence of arguments and size of group membership. While economic interests have their own ways of lobbying, pressure from civil society may be a crucial factor in initiating reforms or accelerating their pace and overcoming the resistance of those groups opposed to land policy reform.



6.2.3 Participatory consultation processes are now widely used in many countries, (e.g. to draw up national environmental action plans, or to review new policy proposals). But often these exercises are largely empty due to limited commitment by government to respond to the comments received, and uncertainties regarding how to incorporate in practice the diverse observations and counter-proposals that such a process can generate. Government may therefore find it easier politically and practically to rely on a small group of experts and consultants to formulate its plans. But experts cannot replace public debate and the knowledge and experience of stakeholders who can greatly contribute to identify key issues and innovative solutions. Moreover, strengthening public debate with people supporting the reform is the best way to build ownership and to ensure that the reform is not drifting away from the interests of small farmers.

6.2.4 Organisations and movements of poor landless and land insecure people should be considered as primary stakeholders in policy development and implementation, and extra efforts (including resources) should be dedicated towards supporting their participation, in order to ensure that land policy reform brings about poverty reduction. The example of Senegal shows how a participatory process run by farmers' organisations with the help of local facilitators can lead to very accurate design. Ensuring the active participation of both men and women, either jointly or separately, in the design and implementation of land policy reforms should favour a more detailed understanding of local tenure systems including issues related to gender and the gender-specific imperatives and consequences of transforming tenure systems.

6.2.5 Similarly the case of the Philippines' agrarian reform has shown how effective alliances with autonomous peasant organisations are essential for the implementation and, to some extent, the design, of agrarian reforms. Farmers' groups are now engaged in facilitating the provision of support services, and have provided a successful model for community development, including capacity to negotiate for communities needs. Such experiences show that decentralised approaches involving civil society action are effective in increasing people's bargaining power and advocacy in land reform processes.

6.2.6 Private sector, civil society groups and local communities should not only contribute to designing and implementing policy, they must also be closely involved in monitoring and reviewing the way the new rules, structures and procedures are performing. External monitoring and evaluation, associating research, civil society, private sector and beneficiaries can be a powerful instrument for ensuring independent assessment and improving the effectiveness of the policy by monitoring its implementation.

## **6.3 The role of donors**

### **6.3.1 Lessons learnt and key principles**

**Past experience suggests some key principles for donor engagement:**

- ▷ Land policy reforms are extremely case specific. Donor should support tailor-made solutions, strongly linked to 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 the 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 of 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

In the past, many donors, including the EC and EU Member States, have been reluctant to get involved in the politically highly sensitive field of land policy reform. Most of the time their support, as with other donors and multilateral agencies, has 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 often lead to choices unable to fit local realities, thus excluding the poor. In the meantime, policies and approaches have evolved and there is now greater recognition among donors of the importance of addressing land issues. 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 the 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 (government departments, land administration bodies, local government bodies, farmers' organisations, etc.) and monitoring and evaluation of the processes.

### 6.3.2 Role of the EU

6.3.2.1 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 co-ordination among Member States and the European Commission. 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.

6.3.2.2 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 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 agencies' 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 reforms and land policy reforms.

6.3.3.3 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, 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.

## **PART 2 - Operational Guidelines to assess national policies and design an EU response strategy**

*This section intends to guide the user, in a logical sequence, through a comprehensive check list of questions/issues to be considered when assessing national policies/strategies and devising an EC/EU response. These guidelines should be read in conjunction with Part 1 to which they provide an operational framework.*

### **1 Situation analysis. Land and natural resources and key development challenges**

*Land policy and reform programmes do not exist in a vacuum. This section is intended to provide the background and information required to understand how land is related to wider development issues and objectives, and the constraints which problems of land tenure or land access may impose.*

1.1 Identification of the main land issues in terms of forms of land tenure, mechanisms for land access, structure of land ownership and land holding, responsibilities for land management and management of the associated rights, proportion of land subject to formal title deed and registration, public land ownership, and the development of land markets. In addition the presence of customary or traditional forms of land tenure and management, tenure and other problems faced by different social/ethnic groups in securing access to land, and the factual background highlighting gender and other social disparities and regional differences in access to land and security of land rights. Identification of the most vulnerable groups, their claims and the specific problems they face.

1.2 What is the relation between **land tenure and poverty**? What are the main development challenges being faced by the country, how and to what extent are they related to questions of land tenure and access?

- In political terms: interests in questions of land policy, access, security and equity in government, amongst political parties and other political forces in society; current and recent political debate about land policy and law; existence and nature of conflicts, social, ethnic and regional disparities involving land, and potential risks of wider (possibly violent) conflict where the land issues involved are not dealt with.
- In economic terms, how land issues relate to productivity, investment and employment: what changes in land policy may be needed to improve productivity and investment, such as greater security of land rights, improvements in land distribution, easier access to land, land-based opportunities to access credit and to facilitate the operation of land markets etc. A particularly important issue is whether or not land scarcity can be offset by agricultural diversification and creation of non-agricultural employment opportunities.
- In relation to equity, social justice and poverty: extent of landlessness, evictions, land tenure or access problems faced by particular social groups including women, pastoralists, minority groups and indigenous people or regions, land grabbing and illegal appropriations of natural resources, degree of landownership concentration, share of idle land.

- In terms of environmental sustainability: the role of land policies and laws, planning and regulation of land use and other natural resource use, land management.

**1.3 Fiscal and financial issues:** Value of land and property, taxation either by (local) government or customary rulers, role of land purchase and rental markets in the economy, cost of agrarian debt.

**Physical characteristics.** Land quality assessment and land use planning. Trends in land use and land degradation.

**Existing research and documentation.**

## **2 Policy, legislation and institutional framework**

*New land policies should be integrated into efforts by states to establish more democratic forms of governance at national and local levels, and should offer to all citizens, a guarantee of their rights together with ways of addressing land related problems they face. A genuine and inclusive participatory policy design is a condition of broad acceptance of a new policy which must respect the rights of minorities and provide equal rights to men and women.*

### ***Historical Background on Land Issues and Policies***

2.1 What has been the past experience with land issues, legislation and interventions concerning land in the more distant past as well as over the last 10-20 years? Is there analysis available of how such interventions have affected actual practice in different areas? What impacts have these interventions had on vulnerable groups and gender equality? What implications does this provide of policy design and implementation?

2.2 How have major areas of policy changed over the last 10-20 years, especially economic strategy, and tenure policy? How have these changes affected the role of central and local government, and the various institutions responsible for administering land? How far have policy measures been able to address the main recent/current economic challenges? Have these policy measures contributed to combat hunger and poverty, to improve gender equality and environmental sustainability?

2.3 What have been the State policies and practices concerning indigenous land ownership and possession?

### ***Policy and Legislative Framework***

2.4 *The national land policy, content and process:* Has the government formulated a land policy and strategy to reform land tenure and natural resource management? If so, have environment, gender, HIV/AIDS issues and their impact on social relations and agriculture, been taken into account in the design of the policy? Has due account been taken of indigenous peoples' land rights and land claims?

Was the design participatory? If not are there calls to do so within government or society or from outside agencies?

Is there or has there been any sort of structured process, such a formally constituted Commission of Enquiry into land issues and how they are to be addressed?

Have different groups, in particular women, been consulted? Where they part of the formal consultation process (e.g. the Commission of Enquiry)? Are people (particularly in rural areas) aware of and informed about the content of the new policy? Is it broadly accepted across society? Have the views of minorities and marginal groups been requested? Are they reflected in the policy?

*2.5 Land and development strategies:* How does tenure policy link to other broad development policies and strategies, such as development policy, poverty reduction strategies, policies on gender equality, agricultural policy and land use planning at local and regional levels? Is there a mechanism to achieve these linkages? Are land issues reflected in the PRSP? Are there contradictions between land policies and other policies?

*2.6 Land legislation:* What is the content of current or planned legislation relating to land rights, land tenure, land and natural resource management, land markets and land institutions? Are they coherent with each other? More specifically:

- *Land rights:* What range of rights is covered by legislation on land tenure and natural resource management? What status is accorded to local/customary rights within the legal framework and how do these relate to statutory provisions? Is it possible to register joint ownership of land and natural resources, e.g. at community level? Do the poor have effective access to the information regarding legal procedures for the registration of rights and/or transactions? How are secondary rights protected under the new regulation? To what extent are land rights of indigenous peoples and minorities recognised and effectively protected?
- *Laws and socio-political rights:* Does legislation meet the expectations of different key actors as regards providing secure rights and access to land? Does the land policy and legislation guarantee the land rights of the poor (whether these are established formally or informally through transactions or relationships with other land users) and assist them to access fundamental rights of citizenship, and means of shelter and livelihood? Is there provision for joint spousal ownership of land and property or are the rights of wives restricted and subordinated to those of husbands or male relatives? Do government policies or actions undermine existing access to land of vulnerable groups? Does government protect vulnerable groups of being deprived of their access to land by third parties (male relatives, companies, landlords, etc.)? Does government give access to land to the landless?
- Are there sufficient incentives for investment in land improvements, including for tenants and sharecroppers? How do law and practice deal with the rights of typical disadvantaged groups – women, widows, migrants, herders, indigenous peoples, minorities? To what extent does legislation enable or restrict land transfers and transactions, in particular rental markets, as a means for people to access land, gain income and adjust their holdings of land assets?
- *The application of the law:* To what extent is this legislation and associated decrees easy to apply in practice? Is there a large gap between legal provisions and what actually happens? Why? Does government have the institutional capacity to implement the law? What is the role of the judiciary and the courts in resolving land disputes, settling land claims and how do they respond to these in practice? Are farmers' organisations allowed to play a role in resolving land conflicts?

## ***Institutional Framework and Land Administration Practices***

2.7 *Central government:* Are responsibilities for carrying out land policy combined under one Ministry or distributed amongst various sectoral Ministries? Which different sectoral ministries play a role in dealing with land issues and delivery of land related services? How are these powers exercised in practice? Are there a number of different specialist agencies responsible for e.g. land administration, survey, land use planning, urban and rural or other categories of land? How do the different land agencies relate to one another? Are the approaches taken by different parts of government coherent, or do they operate in contradiction?

2.8 *Land administration:* How is the land tenure administrative system structured? What are the principal functions and activities undertaken and by which bodies: issue of title, management of land information, register of changes, adjudication, arbitration, and conflict resolution, etc.? How effective and efficient are such bodies in practice? Can they respond to the needs of different kinds of land rights holder, in terms of accessibility, cost, appropriateness, etc.? What are the major limitations and problems experienced with the delivery of land administration services?

2.9 *The roles of local government and traditional rulers:* Has government administration been decentralised and to what level? Is local government involved in land management? Are their roles clearly defined? Does it have adequate financial and human resources? How are customary rights managed? What is the role of customary rulers, traditional authorities and institutions? Are they reliable, impartial and non-discriminatory? Are they likely to respect the interest of the majority? What incentives do they have to manage land in the interests of the local population and to respect their rights? Are there checks and balances (e.g. through peer pressure, social accountability or formal legislation) on the actions of customary or traditional authorities?

2.10 *Financial aspects of reform:* Do land policy and tenure reform feature in the government's budgetary planning and what are the expected financial implications of carrying through the proposed measures and interventions relating to land? Have different options been assessed/costed?

## **3 Opportunities for changes in land policy**

3.1 *In order to identify possible donor interventions it is necessary to assess the entry points beforehand and identify any ongoing processes where specific opportunities can be seized:*

- *Ongoing reform processes:* Is there currently any government project or process related to land policy, legal, institutional or tenure reform? If so, who is responsible for it and what is the focus? What stage has the process reached? Have clear objectives been defined?
- *Stakeholder participation:* Are there processes of policy debate currently underway aimed at changing the way in which land tenure or other aspects of land policy are handled? What are the main issues emerging in the debate and what is being proposed to address them, in particular by government? Who is leading the process and what broader constituencies are involved? What role are national stakeholders (state bodies, NGOs, farmers' and women's organisations, researchers, private sector) and international actors (donors, World Bank, UNDP, IFAD, FAO, private sector) playing in this process?

- *Emerging pressures:* What pressures are emerging from different social and economic groups regarding changes to land distribution, land tenure and administrative provisions? Do civil society organisations focus on land issues? Particularly, do farmers/herders' organisations have their own views on land issues and policy? What are the main positions and perspectives and which groups are leading this process? Do indigenous peoples' organisations have policy proposals for land restitution, titling, demarcation?
- *Political factors:* How does the process of reforming land policy and legislation fit within the broader political context and associated timetable (electoral cycles, political tensions and conflicts, re-formulation of other major related strategies, etc.)? Does government promote or suppress debate and possibilities for change? Is the political climate favourable for achieving changes to land policy and interventions? Are land issues considered to be too sensitive politically and too loosely bound up with risks of conflict to accommodate change? Is the process geared to strengthen access to and control over land to the most vulnerable groups?
- *Government commitment:* How far is the government committed to achieving significant changes in land policy, access, tenure and administration, and in favour of which social and political groups? Which political pressures are driving changes or, alternatively, hampering implementation of agreed measures?
- *Donor support:* What donor programmes or support measures are currently underway in the field of land tenure and administration? On which issues and aspects and in what regions? Is land policy and land administration a focus for other donors?
- On which topics do field projects/NGOs work in the field of land tenure, land access and land resource management? Are there innovative frameworks or methodologies that are experimented on the field and which could feed back policy debate? Is there any assessment of these works? Is there a mechanism for donor coordination? Is it Government-led? How effective is it? Are other stakeholders involved?
- *Available research:* Has there been recent research carried out on land issues in the country? Is there a means to track changes in important social, economic, political and environmental variables relating to land? Is there any research on or analysis of the impacts of land reforms and policy change? Are there (national/international) researchers, consultants capable of providing relevant insights and expertise?

## **4 Adequacy, affordability and sustainability of land interventions**

*4.1 Analysing the **economic sustainability** of the policy implies looking at the cost and benefits of implementing the reform or other interventions which policy intends. In putting in place or reforming land administration – on which successful reforms to land tenure, distribution or resource management all partially depend, the greatest chances of success lay in the establishment of a reliable system, cheap, easily accessible to users. The information provided must be easy to update and remain reliable over time.*

- What are the additional costs and benefits that the reform will generate? To what extent they can be sustained in the current macro-economic framework? How do they compare to the costs of not undertaking a reform?



- To what extent are constraints such as market failures in input/output marketing or the lack of infrastructure considered when assessing the productivity of land? In this light, have the constraints that may be imposed by land tenure or other land problems, and therefore the economic returns from the proposed reforms, been realistically assessed? Are the sequencing and timeframes for reform appropriate?
- Is the government monitoring and evaluating impact of the reform based on an agreed set of indicators and regular data collection? Is there a base for comparison (baseline data)? Do the results of M&E feed back into the assessment of economic impact?

**4.2 Financial sustainability** deals with the cost of land reforms and the land administration system and the capacity for Government and users to cover the recurrent and investment costs incurred

- Is the system proposed adequate to the needs of the users? Is there a demand for the “product”?
- What approach has the government adopted to cost recovery for land services? Is it implemented effectively? Are resources collected accounted properly and do they result in decreasing budgetary allocations? Is it affordable for the poor?
- In programmes of land access or redistribution, is finance available for land acquisition or to provide compensation to land owners facing expropriation or compulsory purchase? How is land acquired for redistribution, by the state, by intermediary bodies or directly by beneficiaries? To what extent can costs be recovered? Are land acquisition credit or rental payments affordable? Is donor financial aid or other forms of concessionary finance available?
- How is government dealing with taxation of land? If it is not in force, are there plans to introduce one? Is such a tax (or will it be) pro-poor (i.e. will it penalise highly concentrated land ownership and/or inefficient utilisation of land by large landowners)? If a land tax is in force, what is the extent of tax evasion?
- Is government addressing problems of corruption and rent seeking in land administration land reform programmes, and any mismanagement of associated funds and revenues? When culprits are identified are they brought to justice? Are land agencies subject to regular independent audits of their accounts?

**4.3 Institutional sustainability.** *A sound land policy requires appropriate institutions to i) enable and monitor its implementation, ii) provide security to land users, allocate and deliver land rights, and provide services required to facilitate and record transactions iii) regulate land use and iv) act as a honest broker in the case of conflicts. The implementation of land policy must often rely on local institutions and reinforce their role to ensure beneficiaries’ participation in the management of land rights.*

- Has government reviewed the role and function of land related institutions (land use department, land registration and titling office, local government, parastatals) as well as community-based, private sector and civil society organisations? How well does the reform refocus government activities on its core functions?
- What progress is government making in implementing agreed institutional reforms? What about training/upgrading for staff? Does the Ministry have a staffing plan matching human resources with tasks and activities?
- Do local administrations have adequate capacity? If not, what remedial action is being

taken by government? Is posting in local administration attractive to civil servants, to both men and women? Is there a deliberate policy to encourage posting of staff to provinces and districts?

- Do monitoring agencies and judiciary bodies dealing with resolution of land conflicts have adequate capacity and independence? Are staff members well acquainted with the land rights of the poor and human rights law?
- Is the technology (e.g. for land information and cadastral systems and for land survey) appropriate for the existing/planned capacity? Is it too costly or ambitious for what can realistically be achieved, or do limitations in available technology create bottlenecks in realising policy objectives?

**4.4 Social impact.** *Given the importance of land as a productive asset, land reform can have massive impact on social relations both at the level of the communities (by modifying relations amongst land users, between land owners and workers or tenants, and between traditional rulers, national/local administrations and individuals) and at the level of the household (by modifying relations between men and women or between generations).*

- To what extent the reform process allows to bridge the gap between legacy, legitimacy and practices and to provide effective support and legal protection to the rights of farmers and herders? Does it provide for a gradual transition from traditional tenure to private ownership? How will the provision of the law secure the rights of the poor?
- Will the land policy reform effectively rule out forced evictions? Is the land policy reform sufficient to effectively protect the land rights of vulnerable groups from threats by third parties? If not, what complementary measures are needed? Will the land policy reform stop land grabbing and illegal appropriation of natural resources? Are complementary measures needed? What benchmarks have been set for land redistribution? What kinds of policies have been implemented for land redistribution? To what extent the reform process allows to overcome landlessness?
- How does the land policy take into account the specific needs of women? Are women allowed to own land and acquire a title? Are they consulted on the content and involved in the implementation of the reform? Are informally determined secondary rights, on which many women and poor households depend, protected or not? Are indicators and data collection disaggregated by gender?
- Does the reform respect the rights of ethnic minorities and indigenous peoples? Does the reform adequately cater for the needs of landless people and the poor?

**4.5 Environmental sustainability.** *Land reforms are powerful tools to improve natural resource management and reduce soil fertility decline. However, for land reforms to contribute meaningfully to improved natural resource management, objectives relating to environmental sustainability must be built into the reform programme from the start and trade offs such as those between agricultural productivity and land management must be openly addressed.*

- What measures have been taken to ensure that land reform will lead to a more sustainable use of natural resources? Has a Strategic Environmental Assessment been carried out? Have recommendations been put into practice?
- Do land use regulations treat land productivity from an environmental point of view, (incorporating questions of soil fertility) as well as from an economic perspective?

- How does the government address illegal exploitation of natural resources on common land (e.g. forestry, fisheries)? Is existing legislation adequate and enforced?
- Have regional issues, such as the shared management of common resources between neighbouring countries, been discussed/addressed?

## 5 Defining a response strategy and a set of interventions

5.1 *The range of donor intervention is very broad. The choice should consider Government priorities, main development challenges, issues raised by civil society, other interventions planned or already underway, donor capacity and strategic policy directions. Capacity building in civil society organisations and public institutions should be an integral part of all donor support programmes.*

### Key principles for donors' engagement:

- Land reforms are extremely case specific. Donors should support **tailor-made solutions**, strongly linked to local social and institutional context and avoid blueprints.
- Land 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 developing programmes and approaches that are appropriate to the local social and institutional context.
- Donor support must be **accompanied with an in-depth dialogue** with the state at the highest level, and must encourage large inter-ministerial co-ordination and debate.
- **Land 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 the 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 to understand and inform national processes. Donors can be instrumental in accompanying policy debate, design and implementation with research and encouraging feedback and debate of 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 territory they traditionally occupy.

5.2 Possible interventions include:

- *Research and analysis*: to improve knowledge and understanding of land policy, land rights and ownership, and maximise impact on the poor.
- *Policy formulation*: participatory processes for policy formulation, public debate with stakeholders, provision of expertise, exchange of experiences and best practices (local/national/international), facilitation. Pilot testing of innovative approaches. Supporting the capacity of marginal groups to participate and voice their interests. Support government role as mediator among conflicting interests between stakeholders. Support the engagement of farmers' organisations and other civil society groups in the public debate.
- *Legislation*: Support to the development of new tenure legislation and revision of codes, to recognise and regulate new types of rights or forms of transfer. Gender sensitive revision of inheritance law. Balancing short term legal reforms to address urgent problems, with longer term legislative development. Support to the judicial system to resolve land disputes. Capacity building in the judiciary and support for legal assistance for marginalised groups.

- *Land administration:* Improvements to the efficiency of land administration systems, specifically:
  - *Registration and titling:* Establishment of systems for land registration and titling of existing rights, cadastral services, land surveying, capacity building in local communities to support identification and management (including registration) of customary rights.
  - *Formalising and securing land transactions, regulation of land markets:* Establishment of simple and fair procedures for land transactions and their formal registration; mechanisms for regulation of land markets (giving priority to farmers, allowing local bodies to define rules about land sales outside the community, etc.); maintenance of land information systems; regular land valuation exercises
- *Land Management:*
  - *Land redistribution and resettlement:* Land purchase and redistribution, by government, directly by beneficiaries or by land trust funds or other intermediary bodies; funds for compensation of landowners facing expropriation; provision of rural infrastructure, support to services and productive support in newly settled areas.
  - *Restitution:* Restitution of land rights alienated from the original owners or users; support to judicial and negotiation processes. Restitution of lands to indigenous peoples according to their ancestral rights.
  - *Privatisation:* Privatisation of collective or state property (land condominiums, etc.), infrastructural development.
  - *Resolution of land disputes and land adjudication:* in land registration programmes or following land reforms, restitution or privatisation processes.
  - *Institutional development:* Establishment of new institutions and structures with responsibility for land acquisition, administration and conflict resolution.
- *Taxation:* Designing, testing and setting up a land-based tax system.
- *Land use and planning:* Provide support to develop and disseminate appropriate land use plans as a basis for a sustainable use of land and water.
- *Environmental impact:* Impact assessment of reform processes and projects; development and application of environmental and land use regulations.
- *Monitoring and evaluation:* development of M&E systems, expertise for the identification of indicators on policy relevance and impact. Support civil society engagement in participatory monitoring of land policy reforms.

*An appropriate strategy will combine the above activities in a logical sequence and an adequate timeframe. It would set out realistic objectives and outcome/impact indicators. It would foresee systematic testing of reform options in pilot projects.*

**5.3 Coordination and collaboration.** As most land reform programmes will contain one or more of the above activities, the execution of which falls substantially within Governments' responsibilities, land reform programmes are ideal candidates for Sector Programme-type of approaches and provide good opportunities for budgetary support.

*5.4 Integration with broader development planning:* Analytical work on the place of land in poverty reduction strategies and programmes, and horizontal and vertical integration with sectoral policies and programmes: e.g. for agricultural development, including production and marketing, investment promotion; housing and urban development; service delivery; natural resource management and utilisation; decentralisation; regional and local economic development; programmes for good governance, gender equality and access to justice.

## **6 Monitoring and evaluation.**

*6.1 Indicators are a powerful tool to measure the extent to which the new policy is meeting agreed objective. They are by nature very case specific. The list provided below is not exhaustive and is intended only to serve as a guide to define a specific set of indicators relevant in the national context. "Outcome indicators" which provide information on how the policy is performing should be preferred to "input indicators" which detail inputs such as finances and human resources.*

### **6.2 Indicators of tenure security**

- Trends in land ownership, access and utilisation by both men and women. Size of plots. Equity of land distribution (Gini coefficient). Number of landless and related trends.
- Share of land (number of parcels and total area) registered individually and communally.
- Cost of registration (time and money) to land owners/communities and duration of registration process.
- Level of protection of rights of indigenous peoples, pastoralists, minorities.
- Number and extent of land conflicts, localisation. Number of new conflicts over the year. Prevalence of forced evictions, land grabbing and illegal appropriation of land
- Existence and effectiveness of conflict/dispute resolution mechanisms. Existence of appeal mechanisms.

### **6.3 Trends in land market**

- Development of a land market: number and volume of transaction
- Relative price of land for different categories. Comparison with agricultural profits. Differences between rural and urban land.
- Evidence of land fragmentation, average size of plots.
- Availability of information on land prices
- Equity of inheritance laws/regulations in particular to women.
- Level of informal land transactions
- Restrictions to land sales both administrative and on price.

- Cost (time and money) of a land transaction.
- Existence of mortgage financing for the purchase of land. Interest rates.

#### **6.4 *Environmental impact and Natural resources management***

- Trends in land degradation/desertification. Hectares of degraded land. Agricultural productivity in marginal lands.
- Size of protected areas. Extent of encroachment. Protected areas under sustainable community management.

#### **6.5 *Regulatory framework***

- Tax rates on land. Collection and use of taxes. Collection efficiency (share of taxes actually collected). Information on the use of taxes.
- Existence and timely availability of cadastral/registry information/maps.
- Cost of cadastral service to user and as a percentage of the actual cost of the service.
- Number and duration of court cases.

### **Selected bibliography**

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MAE, 1998, *La dimension foncière du développement rural en Afrique de l'Ouest*, 17 p.

World Bank, 2003, *Land Policy for Growth and Poverty Reduction*

### **Tool box**

Terms of reference, Useful links, online sources