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from: Secretary-General of the European Commission,
signed by Ms Patricia BUGNOT, Director

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to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Commission Staff Working document: Annex to the Communication from the
Commission to the Council and the European Parliament "EU Guidelines to
support land policy design and reform processes in developing countries"

Delegations will find attached Commission document SEC(2004) 1289.

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COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMISSION STAFF WORKING DOCUMENT

Annex to the

Communication from the Commission to the Council and the European Parliament

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

{COM(2004)686 final}

- ANNEX 1 Key definitions
- ANNEX 2 Elements of land policy reform and regional overview on trends
- ANNEX 3 Key principles for Governments for successful land policy design
- ANNEX 4 Operational guidelines

ANNEX 1 – KEY DEFINITIONS

1. LAND POLICY

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. 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. LAND POLICY REFORM

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.).

3. LAND TENURE

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.

4. LAND RIGHTS

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.

In many countries, indigenous and tribal peoples as collective entities are holding native title through various forms of sui generis systems. The rights and duties attributed to individuals or other entities within the people holding the native title will often be administered through their own social, economic, cultural and political institutions.

5. LAND TENURE SYSTEM

A **land tenure system** is made up of rules, authorities, institutions and rights. Land administration itself (maps, deeds, registers) is only one part of a land tenure system.

6. COMMON PROPERTY RESOURCES

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.

7. LAND ADMINISTRATION

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,
- land 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.

ANNEX 2 – ELEMENTS OF A LAND POLICY REFORM PROGRAMME AND REGIONAL TRENDS

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.

Although processes differ widely from one country to another, there are some broad trends which include:

- (1) a desire to correct historical inequities or inefficiencies, and to bridge legality and legitimacy, by recognising legitimate informal or customary rights;
- (2) 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;
- (3) 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; and
- (4) recognition of the need to provide more secure rights for women and other vulnerable groups using an approach based on pragmatism rather than ideology.
- (5) 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.

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.

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.

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.

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 from following legal procedures, excluding them from the benefit of the law, and leading to unregistered land transactions and to a rapid obsolescence of land information systems.

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 ¹
Central & Eastern Europe	<p>Privatisation of state and collective agricultural enterprises over last 10 years, by establishing private farms.</p> <p>Restitution of former holdings, grouping of small and fragmented holdings</p>	<p>Strengthen land administration; consolidate holdings through participatory procedures and innovative approaches.</p> <p>Exchange of holdings, use of land reserves.</p> <p>Help set up mortgage systems to enable purchase of land by poorer groups.</p>
Ex-CIS	<p>Privatisation of state and collective farms through issue of shares, rather than division of estates.</p> <p>Growing concentration of shares in some places.</p> <p>Weak incentives to increase productivity.</p> <p>Limited land markets.</p>	<p>Improve understanding of gender roles and prevent rising poverty among women.</p> <p>Encourage installation of young farmers.</p>
Latin America	<p>Large inequities in land distribution, despite longstanding land reform programmes. Failure of market based reforms.</p> <p>High number of landless. Large number of squatters and others with informal holdings, no legal status.</p> <p>Major areas in which indigenous peoples and minority groups claim rights.</p> <p>Shift from deeds to title registration, but widespread failure to keep register up-to-date.</p>	<p>Political will and economic resources needed to pursue land redistribution more effectively.</p> <p>Failures of market-assisted land reform mean new approaches needed.</p> <p>Means sought to formalise land claims of informal sector, minorities groups and indigenous peoples. Support recognition of collective ownership rights.</p>
Africa	<p>Strong customary and colonial legacy, colonial administration, structures and legislation. Very low % of land subject to title.</p> <p>Legal pluralism with many conflicting and overlapping law and systems for land administration, establishing land claims and conflict resolution.</p> <p>Common property resources key to poorer groups.</p> <p>Majority of urban dwellers living in slums.</p> <p>Major disparity within the continent between:</p> <ul style="list-style-type: none"> • E & S Africa where large scale 	<p>Land redistribution and restitution where great inequities remain.</p> <p>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.</p> <p>Address implications of high HIV/AIDS on land issues.</p> <p>Strengthen alternative sources of credit.</p> <p>Establish and protect rights over common</p>

¹ 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.

	<p>alienation of land by colonial powers, commercial farmers, and national parks.</p> <ul style="list-style-type: none"> • W Africa, where limited white settlement, continued strength of customary powers, overlaid by sequence of legal, political and institutional changes. • North Africa, where a legacy of strong central government control has meant few incentives for local management. 	<p>property.</p> <p>Support negotiation between state and local people to enable consensus re. new rules.</p> <p>Strengthen women's land rights in both local/customary and formal systems.</p> <p>Reflect land policy in PRSPs.</p>
Asia	<p>Continued duality of customary and statutory systems. Relatively little land subject to title. Population pressure, declining holding size, growing landlessness.</p> <p>Strong centralised systems of land administration. Lengthy bureaucratic procedures and backlog land disputes.</p> <p>Exploitative tenancy arrangements, unresolved indigenous rights claims, conflicts between titling and common property system of regulating access to land.</p>	<p>Recognise farmers' rights. Introduce simpler decentralised systems of land administration. Support recognition of collective ownership rights.</p> <p>Land redistribution in some countries.</p> <p>Land tenancy reform.</p> <p>Strengthen women's land rights in both local/customary and formal systems.</p> <p>Develop rental markets for the poor.</p> <p>Reflect land policy in PRSPs.</p>

ANNEX 3 – KEY PRINCIPLES FOR GOVERNMENTS FOR SUCCESSFUL LAND POLICY DESIGN

Experience of land reforms across the world leads us to identify some key principles that Governments and national administration should consider when designing and implementing land policy reforms so that such reforms may enhance growth, equity and environmental sustainability of land policies.

- (1) **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.
- (2) Promote **inter-ministerial work**, with in-depth analysis of current situations. Land issues are multidisciplinary, and involve different ministries and institutions.
- (3) Promote a **participatory approach** to policy making. Governments need to listen to and engage with different actors, and understand the diverse range of interests at stake.
- (4) Take into account the **distance between statutory law and local practice**. 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) Identify **key principles** and allow for diverse solutions within them. Different situations require solutions appropriate to their specific circumstances.
- (6) Take **implementation costs** (investment and recurrent) into account in design of land tenure reform measures. Costs of new structures and procedures can be very substantial
- (7) Carefully **craft the rules and tools**. Rules, tools and procedures have to be carefully discussed, designed and tested, to avoid loopholes. Procedures to resolve land claims must be established.
- (8) Recognise that the impact of reform depends on **changes in practices** and not on the legal texts alone.
- (9) Ensure **widespread dissemination** of information on the scope and content of the reform as well as on the policy, legislation and procedures.
- (10) Carefully address **gender issues**. 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
- (11) Adequately recognise the **rights of minorities and indigenous peoples**. Measures to secure the rights of minorities and indigenous peoples must be based on respect for their own laws, customs, practices and tenure systems. The lands

that these peoples traditionally occupy must be identified and their rights of ownership effectively guaranteed.

- (12) Include **sound land use planning** in land policy. Land policy needs to take the diverse quality of land into account and tailor rules and procedures for particular settings.

ANNEX 4 - OPERATIONAL GUIDELINES TO ASSESS NATIONAL POLICIES AND DESIGN AN EU RESPONSE STRATEGY

These operational guidelines are intended 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.

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.
- 1.4. **Physical characteristics.** Land quality assessment and land use planning. Trends in land use and land degradation.
- 1.5. **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 all citizens a guarantee of their rights together with ways of addressing the 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 to 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 impact have these interventions had on vulnerable groups and gender equality? What implications does this have for 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 combating hunger and poverty, to improving 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 for this 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? Were 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 and 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

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.

- 3.1. *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?
- 3.2. *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, ethnic minorities and tribal and indigenous people) and international actors (donors, World Bank, UNDP, IFAD, FAO, private sector) playing in this process?
- 3.3. *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?

- 3.4. *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?
- 3.5. *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?
- 3.6. *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?
- 3.7. 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 tried and tested in practice which could feed back into policy debate? Is there any assessment of such work? Is there a mechanism for donor coordination? Is it government-led? How effective is it? Are other stakeholders involved?
- 3.8. *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? Is there documented research on land claims made by/with indigenous peoples' organisations? 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 lie in the establishment of a reliable system which is cheap and 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 the 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 the resources collected properly accounted for 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 it? 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 and 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 a posting in a local administration attractive to civil

servants, to both men and women? Is there a deliberate policy to encourage the 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 community level (by modifying relations amongst land users, between land owners and workers or tenants, and between traditional rulers, national/local administrations and individuals) and at household level (by modifying relations between men and women or between generations).*

- To what extent does the reform process help to bridge the gap between legacy, legitimacy and practices and to provide effective support and legal protection for 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 does the reform process help to overcome landlessness?
- How does the land policy take into account the specific needs of women? Are women allowed to own land and acquire 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 improving 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

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 under way, donor capacity and strategic policy directions. Capacity building in civil society organisations and public institutions should be an integral part of all donor programmes.

Key principles for donor engagement:

- Land reforms are extremely case specific. Donors should support **tailor-made solutions**, strongly linked to the 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, designing programmes and approaches that are 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 broad 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 a long period. Sector approaches can provide some safeguards against the risk of one or the other donor discontinuing support.
- **Gender-aware legislative reforms** are essential, though not sufficient to secure enforceable access to, control over and use of, land resources by both women and men.
- **Information and awareness are key**. Donors must contribute to the understanding of different stakeholder interests and strategies and should encourage the search for consensual solutions.
- **Research** can be a powerful tool to understand and inform national processes. Donors can be instrumental in accompanying implementation with research and encouraging feedback and debate on emerging issues.
- Donor support for land reform should **in no case result in further deprivation for women and poor people** from access to and control over land nor in the **dispossession or eviction of ethnic minorities or tribal and indigenous peoples** from the territories they traditionally occupy.

5.1. 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 for government role as mediator among conflicting interests between stakeholders. Support for the engagement of farmers' organisations and other civil society groups in the public debate.

- *Legislation:* Support for 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 for 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:* Providing 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 for civil society engagement in participatory monitoring of land policy reforms.

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

- *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 approaches and provide good opportunities for budgetary support.
- *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

Indicators are a powerful tool to measure the extent to which the new policy is meeting agreed objectives. 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.

6.1. 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.

6.2. Trends in land market

- Development of a land market: number and volume of transactions.
- 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.

6.3. *Environmental impact and Natural resources management*

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

6.4. *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.

7. APPENDICES

SELECTED BIBLIOGRAPHY

DFID, November 2002, *Better livelihoods for poor people: the role of Land Policy*, Consultation draft of a DFID issues paper.

FAO, 2002, *Land tenure and rural development*. FAO Land Tenure Studies No 3.

GTZ, 1998, *Land Tenure in Development Cooperation: Guiding Principles*, CD-ROM (also available on line)

GTZ, Sustainable Land Management, Guidelines for Impact Monitoring.

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

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

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