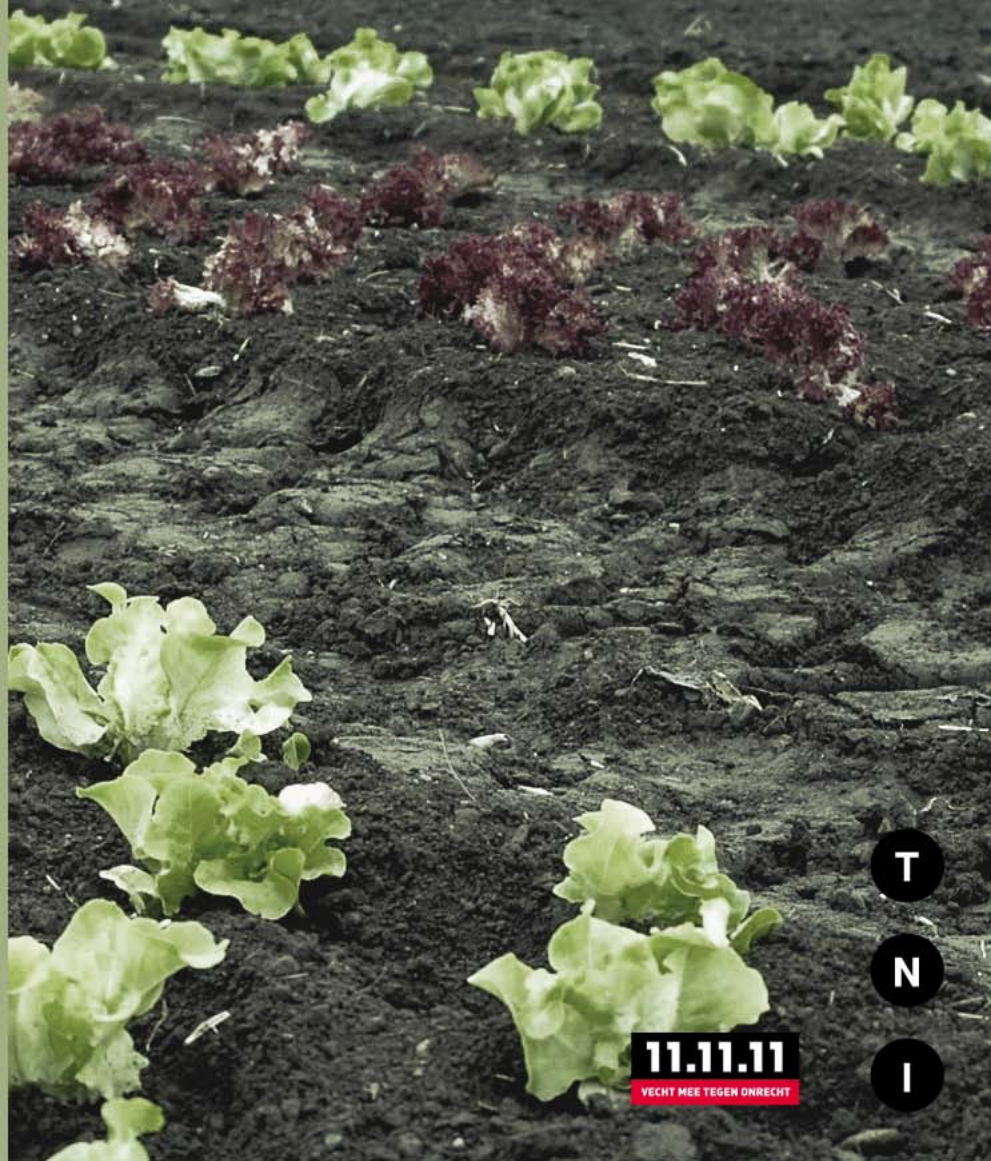


EU Land Policy and the Right To Food

Pascal Bergeret



T

N

I

11.11.11

VECHT MEE TEGEN ONRECHT

Published: Transnational Institute and 11.11.11

Author: Pascal Bergeret

Series editors: Jun Borrás, Jennifer Franco, Sofia Monsalve and Armin Paasch

Copy editors: Jessica Penner and Oscar Reyes

Design: Ricardo Santos

Cover photo: Jahansell - www.flickr.com/photos/jahansell

ISBN: 978-90-71007-24-8

CONTACTS

Transnational Institute

De Wittenstraat 25

1052 AK Amsterdam

The Netherlands

Tel: +31 20 662 66 08

Fax: +31 20 675 71 76

website: www.tni.org

11.11.11 – Coalition of the North-South Movements

Vlasfabriekstraat 11

1060 Brussels

Belgium

Tel. +32 536 11 13

Fax +32 536 19 10

website: www.11.be

Contents of this Report may be quoted or reproduced, provided that the source of information is acknowledged. TNI and 11.11.11 would like to receive a copy of the document in which this report is used or quoted.

You may stay informed of TNI publications and activities by subscribing to TNI's fortnightly e-mail newsletter. Send your request to tni@tni.org or register at www.tni.org

Amsterdam, December 2008

EU Land Policy And The Right To Food

Pascal Bergeret

Table of Contents

1. Introduction	5
2. The complexity of EU land policy	6
3. The origin and elaboration of the EU Land Policy Guidelines	8
4. The content of the guidelines	12
The 2002 EU ‘issue paper’ on land	12
The EU guidelines on land policy	13
The EU Land Policy Guidelines and Human Rights concerns	19
5. Using the EU Guidelines: Implications for Advocacy	24
 Bibliography	 26
 About the Land Policy Series	 28

1. Introduction

In 2004 the EU Commission published *EU Land Policy Guidelines: Guidelines for Support to Land Policy Design and Land Policy Reform Process in Developing Countries*. This document was drafted by a task force comprising representatives of some EU member states and independent experts, and was endorsed by the European Council and Parliament. Although it is non-prescriptive, the document contains clear recommendations to governments and donors engaged in land policy, which are geared towards the defence and strengthening of small-scale family agriculture. It proposes that steps be taken to allow the legal recognition of customary rights and to strengthen the institutional capacities of customary structures that enforce them.

2. The complexity of EU land policy

Discussing EU land policy in connection with the right to food is a far from simple exercise.

The EU, as a ‘family’ of countries, is jointly governed by its member states through the Council of Ministers, while it also has its own specific institutions to whom the member states have delegated a part of their sovereignty and who act on their behalf: the Commission as the EU’s executive, the European Parliament as its legislature, and the Court of Justice as its judiciary.

In human rights matters - and the right to food is no exception - it is the states that have obligations (respect, protect, fulfil). In the case of the EU, member states thus have obligations as individual states but also as members of the EU.

Each member state is entitled to conduct its own policy, of which it can be made accountable in regards to human rights but in the framework of the EU, member states also are collectively responsible for the policies implemented by the Commission. This concept of joint responsibility and accountability is complex and difficult to mobilise for operational purposes.

The Commission’s land policy, which has been endorsed by the member states, interacts with each member state’s policy in a complex and intricate way. On one hand, member states have endorsed the land policy of the Commission but on the other, an objective of the Commission is to provide guidelines to member states for their own policies on land issues and to contribute to their coherence.

An additional difficulty stems from the fact that EU land policy, be it at individual member state level or at Commission level, is aimed at influencing the local policy of partner states in which EU countries and the Commission have developed cooperation programmes. At the end of the day, the bodies that are really accountable, for human rights of the local populations, are the national governments. The responsibility and accountability of the EU member states and the Commission is indirect, through what is called the international obligations of states. That is to say that EU land policy has to be appraised, as far as human rights are concerned, through the positive or negative effects that it has on the way the national governments who receive EU aid and advice fulfil their own obligations.

Needless to say, measuring such effects is difficult, as one cannot easily isolate the effects of the influence of the EU from other factors affecting the behaviour of local governments. There is thus a methodological problem when trying to assess the impact of EU land policy on the right to food for the local populations.¹

Furthermore, one has to consider that access to land and the fulfilment of the right to food, although closely linked, are not equivalent. In many cases securing access to land for poor citizens, mostly in rural areas, is the best, and often the only way to fulfil their right to food. However, the right to land in the world of human rights does not exist.² Denying someone from access to land is not exactly equivalent to denying their right to food. As a result, in discussing the impact of land policies on the right to food, each concrete situation must be carefully assessed including alternative means of fulfilling this right to food.

The scope of this paper does not permit us to address all of the above issues. In particular, we are not in a position to discuss both the land policy of individual EU member states as well as the land policy of the Commission. The specific cases of Germany, the UK and Belgium are discussed in other papers in this series but, for the most part, the focus will be on the land policy of the European Commission.

In November 2004 the Commission issued a document entitled *EU Land Policy Guidelines. Guidelines for Support to Land Policy Design and Land Policy Reform Process in Developing Countries*. This document will provide the basis for discussion in this paper.

First, we shall explore a short history of the involvement of the European Commission in land issues and what led to the elaboration of the land policy guidelines.

Then we shall analyse the content of the EU guidelines in connection with the right to food and finally we shall consider how the EU is putting the guidelines to use and what the implications are for advocacy.

1 As far as the right to food is concerned, international obligations of states regarding land issues go beyond their land policy. They also comprise the obligation for each state to prevent their own citizens and national companies from affecting the right to food for citizens in other countries.

2 In common language, one often refers to farmers' right to land. However valid such a concept might be in the field for civil society to defend the livelihood of poor or landless farmers, strictly speaking, the right to land is not internationally recognised as part of the body of economic, social and cultural rights.

3. The origin and elaboration of the EU Land Policy Guidelines

After a first wave of land reforms conducted in many countries in the South at the time of de-colonisation and/or political revolutions (Latin America), as a means to prevent social unrest³ in the mid-twentieth century, land issues have been considered as thorny by most donors, including European ones, despite recognition of the crucial role that the distribution of land plays on development processes. The difficulties encountered in Kenya when an attempt was made in the 1970s at establishing a cadastre as a basis for an extensive campaign of land titling, led to widespread scepticism as to the efficiency of such an approach to land issues.⁴

Although the World Bank, as a major player with land issues amongst the donor community, has never renounced its credo of using formal land property rights as a means of solving the land question, many other opinions have been voiced since the 1980s.

Among EU countries, Belgium, France and the UK, all former major colonial powers, have long been exposed to land issues, notably in African and Asian countries, when conducting their aid policy for rural development. Many agriculturalists, economists, sociologists and development specialists have written extensively on land issues and approaches to solving them. The respect for customary rights to land and empowerment of local communities has frequently been advocated as an alternative approach to the dominant one of systematic land titling and individual property rights.

Among major donors, the EU and the European Commission have been surprisingly silent in the debate around land issues, leaving the floor to individual member states. Rural development programmes funded by the European Commission and member states do not take land issues into account, sometimes leading to land conflicts in the field. Some of them did, on occasion, address land issues by providing funds and advice to national governments willing to reform the land laws in their country.

3 For example, the US supported radical land reforms in Taiwan in order to secure social stability in the island, despite tensions resulting from the establishment of Tchang Kai-Chek's nationalist, anticommunist regime.

4 Land registration is different from- redistributive- land reform, because land titling can very well confirm existing inegalitarian patterns of ownership whereas redistributive land reform aims at establishing new, more egalitarian, patterns of ownership.

In 1996, France decided to start a reflection on land issues in Africa and created an interdisciplinary steering committee on rural land tenure, natural resources and development, bringing together researchers, experts and state agents. At the same time, France and Britain decided to conduct common works on development issues, based on their extensive field experience and a wide range of research on that matter. It was decided that land tenure would be one of these common works and a similar working group was created in Britain. Interestingly, both countries commissioned an independent, non-governmental, research institution to conduct the work, Groupe de recherche et d'échanges technologiques (GRET, www.gret.org) and International Institute for Environment and Development (IIED, www.iied.org) for France and Britain respectively.

The French and English working groups found their experiences and approaches to land issues were complementary and led them to similar conclusions. One important common feature was that both working groups considered land not only as an economic asset but also as a social object at the heart of important sociological questions such as identity, citizenship, social equity, etc.

Having reached a set of common reflections and conclusions, the French and British governments tried to establish dialogue at a political level. As their field experiences were mainly related to Africa, they chose the Conference of Agriculture Ministers of West and Central Africa (CAM/WCA) as a forum to discuss their conclusions with African governments. But, as it appeared at the end of the 1990s, West and Central African governments were not prepared to open a debate on land issues and the dialogue never took off.

In 2002, when the World Bank embarked on the preparation of its major report *Land Policies for Growth and Poverty Reduction*, France, the UK and Germany agreed to support the process and try to influence it through funding a participatory process with regional meetings, combined with the participation of national and international experts.

Owing to the intervention by French and British Cooperation Heads for Rural Development, the European Commission Directorate General for Development (DG DEV)⁵ realised it was time for the EU as a major donor to define its own principles concerning land issues and to initiate dialogue with other important donors and

⁵ General Directorate for Development. Within DG DEV, the Head of the Environment and Rural Development Unit, who took a strong personal interest in land issues, was instrumental in starting this initiative.

other stakeholders involved in development. DG DEV then launched a task force aimed at designing a set of guidelines to be used by the European Commission and the member states when supporting land reform in developing countries, with the guidelines to be endorsed by the European Council and the European Parliament before their release. The task force consisted of representatives of interested member states,⁶ experts from the Commission and qualified resource persons. France and the UK agreed to fund experts from GRET and IIED to support the Task Force and draft a first document.

The guidelines aimed to be applicable worldwide and in both rural and urban settings. The EU did not guide the Task Force in terms of rural development strategies, the role of markets, etc. Varying views were accommodated by the task force, including a compromise between differing ideas of what kind of document should result from it. Some wanted the guidelines to be presented as a kind of ‘toolkit’ for land reform in developing countries and others regarded the guidelines as a basis for the elaboration of political choices on land policies: on one side, a ‘technical’ approach and on the other a more ‘political’ approach. In fact, given the diversity of perspectives, and the position of the EU as the donor, it proved impossible to create an operational toolkit, and the focus shifted to the main concepts and policy debate. This also put the guidelines on a level very different from the World Bank Policy Research report, which merely reflects existing knowledge in the economy of land relations.

The funding available for the work was very limited, falling short of even covering the time spent by the writers of the drafts. The document was completed only because GRET and IIED were committed to put their experiences with land issues to use at a political level.

In January 2003, the first draft was submitted to the task force and by the end of 2003 the task force had adopted a final draft. During that time, civil society organisations (CSOs) (and among them, the International Land Coalition - ILC)⁷ had heard about this process and asked to be included into the discussion. A consultation process began in January 2004 aimed at gathering the opinion of stakeholders, in particular from civil society. The ILC was asked to conduct this independent consultation,

6 Austria, Belgium, France, Germany, the Netherlands and the UK

7 The International Land Coalition is a global alliance of civil society and intergovernmental organisations working together to promote secure and equitable access to and control over land for poor women and men through advocacy, dialogue and capacity building. www.landcoalition.org

through a large e-consultation process. Various contributions were written, and the synthesis made by the 'Land Coalition' sent to the Task Force.

The comments made by civil society organisations were instrumental in contributing a human rights perspective and language into the guidelines, as such concerns had not been explicitly addressed by the task force. However, as we shall see in the next section, the human rights language is minimal in the final document, as the European Commission and the member states represented in the task force were not in favour of putting too much emphasis on that dimension of the problem.

The CSO's comments on the draft of the guidelines also helped clarify that land reform and land policy ought to be part of an overall strategy in favour of small-scale family agriculture.

The consultation lasted three months and, eventually, the final draft was ready in October 2004. In November 2004, the Commission published the guidelines after the European Council and European Parliament endorsed them.

4. The content of the guidelines

When mandating the task force with the work of writing the guidelines, the Commission (DG DEV) did not impose any framework in terms of policy or strategy. General EU policy documents on rural development were, of course, available and on the particular topic of land reform, an EU ‘issue paper’ had been published by the Commission (DG DEV, Environment and Rural Development Unit) in 2002, entitled *Land Ownership and Titling and its Effect on the Poor*.

THE 2002 EU ‘ISSUE PAPER’ ON LAND

This short document⁸ contains a section on ‘Land Reform Theories and Lessons from Experience’ and a second part proposing a ‘Framework for Improved Land Policies’.

The issue paper of the Commission clearly rejects the Property Rights Theory which claims that traditional land relations are static and hinder development as they do not allow the optimal distribution of land to the most efficient farmers through a land sale market based on the trade of land titles. According to this theory, land reform should thus consist of a drastic reform of tenure with extensive titling and a registration programme. The Commission recognises that such an approach presents serious flaws because it seeks to impose a one size fits all solution without taking account of concrete local situations. The issue paper says that experience has shown that:

- Privatisation and land titling have often been manipulated by the elites to their own benefit,
- Privatisation has often resulted in the poorest being excluded from a number of ‘secondary rights’ (access to forest products, water, off-season grazing, etc.)
- Land registration and titling are costly endeavours, especially when considering the cost of disputes
- Market failure for inputs and labour can offset potential advantages of land titling

⁸ The document is a total of five pages in length

- Land titling, especially in rural areas, does not necessarily increase the availability of agricultural credit from the formal banking system

In the issue paper, rather than the Property Rights Theory, the European Commission expresses its preference for an Evolutionary Theory of Land Rights. This vision states that with time, land becomes more and more scarce and, as a result, ‘traditional’ land tenure systems tend to ‘modernise’ and evolve into the private property of land. Such an evolution is ‘spontaneous’ and asks for a differentiated approach as far as land reform is concerned, according to the degree of maturity of a country or a region, measures taken to reform land tenure should differ. Land titling is appropriate only in situations that are ‘mature’ enough .

This teleological conception of land issues implies that the dynamics of land tenure are governed by their end or a ‘purpose’ to evolve towards a regime of private property.

The rationale of any land policy should thus be to ‘accompany’ a country on its path to modernity, that is, to facilitate the rapid transition from a ‘traditional’ land tenure regime to a modern one of private land rights. Land titling might not be adapted to the particular context of a given country or region at a given time, but it should be the ultimate goal of a land policy, to be reached as fast as possible. Such a vision is still predominant in the community of donors⁹ but the EU guidelines fundamentally differ from it.

THE EU GUIDELINES ON LAND POLICY

The EU guidelines on land policy form a document of limited size. It comprises two parts: a Policy Framework of 23 pages and 10 pages of Operational Guidelines. The first part reflects the concerns and convictions of those members of the task force who were in favour of a political approach and the second part is geared towards the toolkit, a more technical approach preferred by other members.

One of the guideline’s central arguments is that land rights are not limited to private ownership but can be achieved through a “diverse balance between individual rights and duties and collective regulation at different levels (family, organisation, communities, local governments or states)” (EU, 2004: 2).

⁹ See the 2003 World Bank Policy Research Report.

Far from the classical, teleological vision on land rights and land reform, the guidelines clearly put the emphasis on the advantages of customary rights: “there is no major insufficiency in customary land management systems which could justify their replacement” (Ibid:13). It thus makes sense to build on existing rights and give them legal recognition. Bridging the gap between law and customs should therefore be a major orientation of land policies, according to the guidelines.

Such an emphasis on customary land rights goes hand in hand with the defence and promotion of family agriculture and the small farm sector as a major objective of land reform. Policies in favour of small family farms are economically justified by the “more effective use of labour and lower costs in small and medium sized farms” (Ibid: 16) which results in them being “more efficient than large ones” (Ibid). If no action is made in favour of small farms, then the universal trend towards liberalisation of imports and the dominance of export-oriented agriculture often results in “land re-concentration and in exclusion and/or deprivation of vulnerable groups” (Ibid:).

Land reform is thus presented as a part of a broader strategy of agricultural development based on the defence and strengthening of the small farm sector. Rather than correcting market imperfections, as the classical vision dictates, land reform is part of an effort to counterbalance market forces, which, if left to the sole forces governing land distribution, would lead to the eviction of the most vulnerable groups from access to land.

Beyond mere economic concerns, land reform as presented in the guidelines is part of an overall strategy for governments which “espouse the principle of poverty reduction above all else” (Ibid: 21). As we shall see later, such a formulation is close to human rights language as it seems to refer to the obligation to fulfil economic, social and cultural rights of people (including the right to food).¹⁰

In that light, access to land not only fulfils economic purposes at individual and country levels but also contributes to the fulfilment of social development. Land is recognised not only as an economic asset but as a source of identity, empowerment and dignity for the population in general and for vulnerable, marginalised, groups in particular. The EU land guidelines explicitly link the aspect of empowerment to the legal recognition of customary rights, in particular the common property of resources: “Common property resources are of particular importance to the

¹⁰ The obligation to fulfil a given human right means that governments must commit to devoting as many resources as possible to the fulfilment of this right among their population.

income of poorer groups. Where such rights are clearly recognised and enforced, this control over local resources and their associated economic opportunities contribute for further sustainable management and improved rural livelihood” (Ibid: 4).

In addition, the guidelines clearly explain the numerous possible flaws of a policy of land titling, although they recognise that such a move can still be beneficial in some circumstances (Ibid).

According to the guidelines, as discussed above, the prime objective of government should essentially be geared towards correcting social and economic forces that are detrimental to the access to land of poor and vulnerable groups, as well as providing a framework for transparent land management and governance. That is the reason why the guidelines insist on land policy *reform* and not only on land policy. They have been conceived as a tool to support land policy and land policy reform processes in developing countries.

The need for land policy reform which, in the context of the guidelines, can be understood as land tenure reform, stems from various possible causes:

- 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. (Ibid: 10)

The multidimensional nature of land rights calls for a multi-disciplinary, multi-sector, land reform policy encompassing land legislation, land administration, the management of land rights and land use planning. Institutional aspects are

particularly crucial. Land policy reform, to be efficient, needs to implement a new legal and institutional framework.

As land rights are embedded in a set of norms at the heart of society, any attempt to reform land policy or the land tenure system has deep institutional implications. In that respect, the guidelines carefully point out the complexity and far ranging consequences of reform. Land policy reform relies on both existing rights and the institutions that enforce them, be they formal or informal (customary). The key issue is to give such institutions the legal status they often lack to ensure the security of the land rights they administer. Government must also make sure that those grassroots institutions operate in a transparent manner and are able to formulate clear rules. Institutional capacity strengthening is hence an important part of land policy reform, as advocated by the EU guidelines.

Furthermore, the bridge between the customary and legal systems can only be established by official bodies at the local level. Local governments must play that role by ensuring that existing grassroots institutions have the means and power of guaranteeing security of land rights and by confirming the legal aspect of such rights. National governments, beyond designing the general strategy for land policy reform, must provide the general legal framework in which land rights are to be set, and agree to devolve a great deal of authority to local governments concerning land issues. In that respect, land policy reform coincides with decentralisation and with the concept of subsidiarity .

In some cases, when a ‘reformist’ attitude is not sufficient, national governments might consider more assertive measures and take charge of the process: “In cases it may not be possible to correct extensive inequalities through market-based mechanisms, state led agrarian reforms may still be necessary” (Ibid: 17).

But to be efficient and sustainable the action of national and local governments towards the reform of land policy must rely on a participatory approach as a key principle:

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 ... 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. (Ibid: 18)

The participatory approach to land policy reform is interesting because it does not necessarily seek consensus at all cost among all stakeholders, as that would not necessarily be a strong basis for operational measures if the consensus that was found were to be too vague or too narrow. Rather, the guidelines recognise that the reform aims at counterbalancing trends that are detrimental to poverty reduction, and thus resisted by interest groups who perceive a loss from it. The participatory approach advocated by the guidelines is geared towards building enough political and social momentum in favour of reform so that any group willing to oppose it would be overwhelmed by a majority of society. Along those lines, CSOs, and in particular small farmers' organizations have an important role to play during the whole reform process, from the design phase to implementation, to monitoring and evaluation: "Organizations 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" (Ibid: 22).

The EU guidelines develop such a 'political' approach to land policy reform because, as opposed to a 'soft consensus' approach, it is the only one that has a chance of solving land conflicts in a way that preserves the livelihood of the most vulnerable. Conflict resolution is at the heart of land policy:

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 recognize and strengthen mechanisms for resolving disputes, using alternative dispute resolution techniques that could be based on local structures and practices. (Ibid: 6).

Conversely, a sound land policy, notably in favour of refugees, can contribute to the achievement of peace in war torn countries and regions, as shown by the example of Cambodia, where "the resolution of land claims has supported post-conflict recovery in rural areas" (Ibid: 7).

At the end of the day, one can say that a sound land policy reform is conducive to improving the whole governance system in a given country: sound arbitration mechanisms are established, the poor are guaranteed the ability to exercise their rights, institutions are made accountable, and publicity given to the reform measures (through the media or other means) ensures that proper checks and balances are in place.

Part I of the guidelines, the Policy Framework, clarifies the stand of the European Commission on all contentious issues concerning land policy. From the various observations made above, it appears that the EC is no advocate of a pure pro-market approach to land reform, as the guidelines clearly stipulate that markets are not the only means to achieve social ends. Market forces can be detrimental to the objective of poverty reduction and favour land concentration or re-concentration in the hands of the elite. On the issue of state intervention, the guidelines clearly favour strong policy action taken by governments (at national and local level) within a participatory framework. Vigorous land redistribution programmes handled by the state are deemed necessary when 'reformist', progressive approaches are inefficient. The objective of social equity is mentioned as the first priority, even above economic efficiency, although those two objectives are not contradictory *per se*. The most important level of administration of land rights is clearly identified as the local level, although central governments have a leading role to play in the design of land policies. In that respect, the guidelines differ from more 'conservative' approaches taken by other donors and undeniably add value to the debate.

Another important aspect of the guidelines can be found in the second part, "Operational Guidelines to Assess National Policies and Design an EU Response Strategy." Such an 'operational' part is unusual in most policy documents on land issues published by donors, which tend to focus on 'socially desirable' outcomes but often fall short from identifying operational steps to obtain such results.

The operational guidelines have been written for donors – first of all EU member states - in order to give them tools to design their strategy in support of land policy reform. However, they can also be useful to national governments willing to embark on land reform as they formulate a number of methodological recommendations. This possible dual reading of the operational guidelines is at times a bit confusing as it tends to blur the limits between national governments and donors responsibility.

The operational guidelines identify six steps which should be implemented by donors interested in supporting land policy reform in developing countries:

- Identification of key development challenges linked to land and natural resources
- Analysis of the policy, legislation and institutional framework
- Identification of opportunities for changes in land policy
- Appraisal of the adequacy, affordability and sustainability of land intervention
- Definition of a response strategy and a set of intervention
- Monitoring and evaluation.

Such a methodological approach stresses the importance of :

1) Assessing the situation and the state of the debate, to see whether there is a need to become involved in such an issue, whether there are opportunities for change, and where the most appropriate actions are;

2) Conducting extensive research and studies prior to the definition of a donor (or national government) strategy for land policy reform and during its implementation. The first four steps of the approach aim at dealing with the fact that land reform is heavily contingent on local realities and any strategy must be based on a sound knowledge of the local/national situation and its dynamics. The operational guidelines formulate a series of questions for each step, in a check-list format. Answering each question requests a careful assessment of local/national realities.

The fifth step, on the definition of strategy and intervention, proposes a set of principles to be adopted by donors and a series of possible policy interventions which may be supported. The proposed principles to be adopted by donors specify the EU's stance, as the European Commission sees it: in-depth dialogue, capacity strengthening, awareness raising, consensus building and long-term commitment are their main features. In addition, the donor principles recall the necessity for donors never to support actions that result in the deprivation of vulnerable groups (poor, women, ethnic minorities, tribal and indigenous people) from their access to and control over land. Such language is very close to human rights concerns.

THE EU LAND POLICY GUIDELINES AND HUMAN RIGHTS CONCERNS

As mentioned earlier, the EU task force on land issues was mandated to work on policy reform. It was composed of land policy specialists who were asked to design a set of guidelines meant to facilitate government intervention by providing them with a policy framework and methodological tools. Such a 'policy' approach is based on

the benevolence of governments.¹¹ It differs from a Human Rights approach which aims at encouraging governments to fulfil their obligations in regards to human rights, obligations for which they are held accountable before their own people and before the international community.

A Human Rights approach is based on internationally recognised texts which stipulate the obligations of governments regarding human rights.¹² The focus is to raise general awareness about such texts and build sufficient momentum among various stakeholders and the general public in order that governments really feel they are accountable.

We have already mentioned that the EC and member states were not in favour of adopting a human rights approach for the land policy guidelines and that only after strong intervention from civil society during the e-consultation phase was a human rights dimension introduced in the guidelines, despite its being kept to a minimum.

This dimension is summarised in the guidelines as follows: “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” (Ibid: 4).

Interestingly, in the second part of the EU guidelines, aimed at providing operational tools to donors and governments, we can find the strongest human rights language: “But property rights protected by the States should not result in the exclusion of people from access to basic needs and rights” (Ibid: 20). In this sentence, the European Commission recognises that basic human rights are of a higher nature and must precede property rights.

Other sections of the EU guidelines also explicitly refer to human rights. On page four of the document, one can find a reference to the right to food: “Access to land is linked to some basic economic and social human rights, such as the right to food”. Similarly, the document recalls another basic human right, which is central as far as land issues are concerned, access to fair legal process : “Access to fair legal

11 One relies on the goodwill of governments to design and implement sound policies for the greater good of the public.

12 Concerning the Right to Food, the most recent internationally recognised text is the *Voluntary Guidelines to Support the Progressive Realisation of the Right to Adequate Food in the Context of National Food Security*, adopted by the 127th session of the FAO Council, November 2004. It is an interesting coincidence that the guidelines on the Right to Food were published at exactly the same time as the EU guidelines on land policy!

process represents a legitimate expectation associated with citizenship” (Ibid: 5) and further on the same page: “Democratic states need to guarantee the rights and assets of every citizen, even the poorest.¹³ This may imply the need for innovative legal framework 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”.

Further on, the necessity to pay special attention to the rights of vulnerable groups is again clearly asserted (Ibid: 19): “The rights of minorities and indigenous peoples are to be adequately recognised”. That echoes the analysis on page five according to which “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”.

Concerning gender, the guidelines stipulate that “The main legal requirements are to establish women’s right to hold property and recognition of the principle of spousal co-ownership” (Ibid: 5). In that matter the guidelines also put the emphasis on the need to reform inheritance laws because inheritance practices often determine, the reality of women’s actual entitlement to land.

Concerning the right to food, the guidelines make a greater contribution to their promotion than the passing reference on page four would at first suggest. Such a contribution is mainly implicit and should be clearly recognised by any group willing to use this document to promote the right to food.

The Voluntary Guidelines to Support the Progressive Realisation of the Right to Adequate Food in the Context of National Food Security, adopted by the FAO Council in 2004, contain a section on ‘Access to resources and assets’. Guideline 8-B is devoted to land:

States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit. As appropriate, States should consider establishing legal and other policy mechanisms

¹³ The phrase “even the poorest” is not the best language, as it would have been preferable to use the phrase “above all the poorest” to be consistent with the focus on eliminating poverty, as mentioned above.

consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform to enhance access for the poor and women. Such mechanisms should also promote conservation and sustainable use of land. Special consideration should be given to the situation of indigenous communities.

Guideline 8-B emphasises security of land tenure for the vulnerable as well as land reform to improve access to land for women and the poor. Both points are at the heart of the EU guidelines on land policy, as we have seen previously.

According to international human rights standards in general, and the right to food in particular, the obligations of States regarding basic rights are to respect, protect and fulfil.

On the *obligation to respect*, it appears that the EU guidelines on land policy reform adopts a strong stand as they indicate that, among key principles to be followed by donors: “donor support to 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 people from the territory they traditionally occupy” (EU, 2004: 32).

On the *obligation to protect*, the guidelines make a significant, albeit indirect, contribution, when they put the emphasis, as we have seen, on counterbalancing economic and social trends that usually result in weakening the security of land tenure of vulnerable groups. The proposed approach granting legal status to ‘customary rights’ goes along that line, as customary rights are often the sole protector of vulnerable groups against encroachment on their territory by the elite who are always ready to use any formal legal argument to support their claim on land.

The *obligation to fulfil* is the most demanding of the EU guidelines for governments. The obligation to fulfil is a complex concept. It encompasses the obligation for governments to directly provide food to people who cannot do so by themselves and are under direct control of the State (like prisoners), or in the case of disasters. Furthermore, the obligation to fulfil also forces governments to provide the maximum possible resources towards providing right to food among the general population. This obligation makes governments accountable for their policies and

their respective consequences on the right to food. Even if and when governments respect and protect the right to food of their people, it is not enough. The obligation to fulfil binds them to adopt policies with a clear priority in line with the right to food for all. The EU guidelines on land policy press governments to adopt policies in favour of small-scale agriculture and to establish a legal and governance system conducive to the realisation of basic human rights, especially for the most vulnerable segments of the population, including a realisation of the obligation to fulfil the right to food.

Hence, if they are carefully considered and intelligently used, the EU guidelines could prove to be a useful tool for the advancement of the cause of human rights, and especially the right to food in developed countries.

However, there is a specific aspect of the right to food that is only partly covered by the EU guidelines: international obligations of donors, and particularly EU member states at whom the guidelines are specifically aimed. By restricting donor's involvement in land affairs to supporting sound land policy reform, the guidelines bypass another dimension of their international obligations, that is the necessity of intervention when the right to food for people, irrespective of their nationality, is threatened. Such intervention could take the shape of sanctions inflicted by governments who do not adequately fulfil their obligation as regards the right to food for their people. In that respect, the EU could play a major role as a powerful grouping of countries. By falling short of covering that aspect, the EU guidelines do not fully recognise the collective responsibility of EU member states on the world scene.

5. Using the EU Guidelines: Implications for Advocacy

Since the EU guidelines were published in November 2004 through a Communication by the Commission, very little attention has been given to them. It is practically impossible to find them on the website of DG DEV. European Commission policy documents on development – even on rural development - only scantily address land issues and systematically fail to refer to the EU guidelines. When attempting to find the guidelines with major search engines on the Web, one is lead to links for civil society organizations, such as the Land Coalition or OXFAM, instead.

Such a lack of publicity is very telling. It reflects the fact that the work of the task force, although formally endorsed at the highest levels of EU governance (Commission, Council and Parliament) is not actually owned by the EU system. The point of view of the task force, as we have seen, slightly diverges from the point of view of other donors through its political flavour.

The guidelines have not been translated into the EU official languages and publicity has been kept minimal. In 2005 DG DEV stated its intention to accelerate the diffusion of the guidelines but with no apparent concrete steps taken to realise that intention.

In developing countries, advocacy groups wishing to promote sound land policy reform in an attempt to enhance the realisation of the right to food could make use of the EU guidelines. Each delegation of the EU was informed of the Commission Communication of the guidelines in 2004. This document, although non-prescriptive, provides a good yardstick to evaluate the intervention of the Commission and EU member states in developing countries. In the many donor coordination groups currently in place in various countries and in other donor fora, the Commission and other EU member states should refer to the guidelines as a basis to design their engagement strategy. Advocacy groups should take every opportunity to remind the Commission and member state representatives of their existence.

In EU countries, advocacy groups should take their government to task on their responsibility to follow up on the guidelines. They should be reminded that their obligations and regards to the right to food, as it also bears a collective dimension within the family of EU member states.

Bibliography

DFID (2002). Better livelihoods for poor people: The role of land policy. Unpublished. Issue Paper. London.

European Union. (2004). EU land policy guidelines: Guidelines for support to land policy design and land policy reform processes in developing countries. EU task Force on Land Tenure. (http://ec.europa.eu/development/icenter/repository/EU_Land_Guidelines_Final_12_2004_en.pdf)

European Commission and DG Development. (2002). Land ownership and titling and its effect on the poor. Unpublished. Issues Paper. Brussels.

FAO (2002). Land tenure and rural development. FAO Land Tenure Studies N° 3. Rome: FAO Publishing Division.

FAO (2004). Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security. Rome: FAO Publishing Division.

GTZ (1998). Land tenure in development cooperation: Guiding principles. Eschborn: GTZ Publication.

Lavigne Delville Ph.. (1998). Foncier rural, ressources renouvelables et développement en Afrique. Coll. Rapports d'études, Ministère des Affaires Etrangères – Coopération et francophonie, Paris, 139 p.

Ministère des Affaires Etrangères. (1998). La dimension foncière du développement rural en Afrique de l'Ouest. Unpublished. Paris.

World Bank (2003). Land policies for growth and poverty reduction. London: Oxford University Press.

LAND POLICY WORKING PAPER SERIES

The **Land Policy Working Paper Series** is a joint publication of the Belgian Alliance of North-South Movements (11.11.11) and the Transnational Institute (TNI). Activist researchers from various non-governmental research institutions have come together to carry out this collective undertaking.

Three quarters of the world's poor are rural poor. Land remains central to their autonomy and capacity to construct, sustain and defend their livelihoods, social inclusion and political empowerment. But land remains under the monopoly control of the landed classes in many settings, while in other places poor peoples' access to land is seriously threatened by neoliberal policies. The mainstream development policy community have taken a keen interest in land in recent years, developing land policies to guide their intervention in developing countries. While generally well-intentioned, not all of these land policies advance the interest of the rural poor. In fact, in other settings, these may harm the interest of the poor. Widespread privatisation of land resources facilitates the monopoly control of landed and corporate interests in such settings.

Local, national and transnational rural social movements and civil society networks and coalition have taken the struggle for land onto global arenas of policy making. Many of these groups, such as Via Campesina, have launched transnational campaigns to expose and oppose neoliberal land policies. Other networks are less oppositional to these mainstream policies. While transnational land campaigns have been launched and sustained for the past full decade targeting international development institutions, there remains less systematic understanding by activist groups, especially their local and national affiliates, about the actual policy and practice around land issues by these global institutions.

It is in the context of providing modest assistance to rural social movements and other civil society groups that are engaged in transnational land campaigns that this research has been undertaken and the working paper series launched. It aims to provide a one-stop resource to activists engaged in global campaigns for progressive land policy reforms. The research covers analysis of the policies of the following institutions: (1) Food and Agriculture Organization of the United Nations (FAO); (2) World Bank; (3) European Union; (4) International Fund for Agricultural Development (IFAD); (5) UK Department for International Development (DFID); (6) Belgian Development Aid; (7) German Technical Assistance (GTZ); (8) Australian Aid (AusAid); (9) Canadian International Development Assistance (CIDA).

The research is coordinated by Jun Borrás (TNI), Jennifer Franco (TNI), Sofia Monsalve (Food First Information and Action Network, FIAN – International Secretariat), and Armin Paasch (FIAN – German section).

PASCAL BERGERET, PhD, is an agro-economist specialising in farming systems and policy research. He has worked in Nepal, Cameroon and Vietnam. He was involved in the FAO sponsored intergovernmental group for the elaboration of voluntary guidelines on the right to food. He is presently Deputy Head for research and innovation at the French Ministry of Agriculture.

11.11.11 is a coalition of the Flemish North-South Movements. It combines the efforts of 90 organisations and 375 committees of volunteers who work together to achieve one common goal: a fairer world without poverty.

www.11.be

TRANSNATIONAL INSTITUTE

Founded in 1974, TNI is an international network of activist scholars committed to critical analyses of the global problems of today and tomorrow. It aims to provide intellectual support to grassroots movements concerned to steer the world in a democratic, equitable and environmentally sustainable direction. In the spirit of public scholarship, and aligned to no political party, TNI seeks to create and promote international co-operation in analysing and finding possible solutions to such global problems as militarism and conflict, poverty and marginalisation, social injustice and environmental degradation.

www.tni.org



In 2004 the EU Commission published *EU Land Policy Guidelines: Guidelines for Support to Land Policy Design and Land Policy Reform Process in Developing Countries*. This document was drafted by a task force comprising representatives of some EU member states and independent experts, and was endorsed by the European Council and Parliament. Although it is non-prescriptive, the document contains clear recommendations to governments and donors engaged in land policy, which are geared towards the defence and strengthening of small-scale family agriculture. It proposes that steps be taken to allow the legal recognition of customary rights and to strengthen the institutional capacities of customary structures that enforce them.