

Comments on EU Land Policy Guidelines,

M. Wray Witten, J.D., M.P.A. *After retiring in 1992 as an American natural resources lawyer, I spent the last 12 years in northern Ethiopia helping to build multi-sectoral indigenous development organizations, state and local government, and a new model law school. I have taught management at several American Universities, including Princeton University's Woodrow Wilson School of Public and International Affairs, and though I recently left my position as start-up Dean of the Mekelle University Law Faculty, in Tigray, I continue to be a member of its IIED-sponsored land research team, which is funded by DfID.*

Overall the Guidelines strike me as helpful because they are sensitive (as in Part One, Section 4.4), balanced (as in Part One, Section 3.3.3), and practical (as in general is Part Two). The portions dealing with complex issues (e.g., Community Property Resources (CPR), Titling, Decentralization) tend to cover the complexities both skillfully and briefly. However, there are A) one major shift of balance and B) several small annotations I would like to suggest.

A) Why is land being touted as such an unmitigated poverty reduction strategy in poor countries? Farming is hard work. Statistically, many people, maybe most, are not cut out for it and do not succeed at it due to lack of diligence, intelligence, experience, and many other factors. The idea that everyone can farm successfully if only they have access to land, credit, and technology, though trendy, seems to me, and most successful farmers in Tigray, utterly false. It is more likely to be a bankrupting asset for the unsuccessful, particularly once credit is involved. As in richer countries, those people are better off moving to town, with a bit of capital in hand, if possible, or working for a manager. This migration alone accounts for much of the increased well-being in poor countries, despite the current literature against urbanization. Rich countries have recognized this fact at home; why do they persist in shying away from it in poor countries¹?

What I find missing from the Guidelines is a thoroughly integrated recognition of this reality and the guidance necessary for building into land tenure systems methods of Exit, preferably with some capital. This need not be sale or mortgage where those are not politically or socially acceptable. Long term leases work.

Therefore, a related point is that there is no mention (e.g., in Part One, Section 5.5.2) of the large effects that limitations on lease terms have on investment and productivity, and thus on the incomes of unsuccessful rural landholders. When leases are legally limited (usually having been modeled on Lenin's opportunistic land policies at some point in the past) to terms less than required for return on capital investment in land, needed productivity enhancing investments are not made. Often those who suffer because of that are the poorest, particularly single women-headed households (who are more likely to rent out their land), because they receive the lower rent (often as a share of lower produce.)

B) Smaller annotations:

¹ "Rich" and "poor" obviously have gradations. My experience in Ethiopia has affected my perceptions. Ethiopia is so poor that, despite massive improvements under the current government, 50% of the population is still more than an hour's walk to any form of road and does not have access locally to any form of school, clinic, market, newspaper, shop, clean water, sanitation or soap, never mind electricity and telephone. There, even the worst horrors of mass urbanization appear luxurious.

B.1) Though Part One, Section 3.5 is quite good and even-handed at dealing with the two sides of "customary laws", the recognition that they can be either fair and efficient or protective of elites, predatory upon women and minorities, and inefficient, does not sufficiently permeate the Guidelines. For example, Part One, Section 5.7.7's notion of building on existing institutions should be more modulated. [As should the promotion there of the use of "pilots", too often too expensive to ever be scaled up.]

B.2) While traditional CPRs are legitimately different, and due the recognition afforded by the Guidelines (e.g., at Part One, Section 3.1.2), the statements in Part One, Section 5.1.2, are less balanced. Finding some efficient CPRs is *not* evidence that CPRs present "no barriers to agricultural intensification". There are always tensions between traditionalists and modernizers and many CPRs are in fact so inefficient that the members, given the choice, choose to privatize them, e.g., hillside areas in Tigray, northern Ethiopia.

B.3) Slow change of local institutions, as proposed in Part One, sections 5.5.5 and 5.7.7, is both torture for those oppressed and less likely, in my experience, to succeed in eluding the manipulations of those they benefit. Sharp introduction of more neutral rules is often needed, with, of course, the adequate protections, e.g., compensation, mentioned in Part One, Section 3.9.1 and elsewhere.

B.4) Part One, Section 5.6.2: The old bugaboo of land size and lack of economies of scale really should be laid to rest². There are distinct economies of scale, they are just not smooth continuous curves due to the fact that their capital requirements are discontinuous, i.e., the unitary cost of another tractor. And there are plenty of inefficient small farms. Rather than using the ambiguous terms "small and medium sized farms", using capital- and management-related terms, like family farm, would be more functionally useful.

B.5) Part One, Section 5.7.7: It would be helpful to counterbalance cost with "functionality" when talking about technology. We have found that selecting very low cost technologies, e.g., land description by neighbors names only, has a severe effect on functionality, i.e., such descriptions provide no evidence in boundary disputes, only in title disputes. Not enough stress is laid on assessing functionality.

B.6) Part One, Section 6.2.1: Here the difference between legislative and administrative rulemaking should be mentioned, together with recognition of the importance of Administrative Law. Otherwise, opportunities to interface with those different processes, often more in need of reform than land tenure rules, may be missed.

B.7) Throughout the Guidelines, the use of the term "institutions" is ambiguous and confusing. Sometimes it is used with its traditional meaning of "organization" (e.g., Part One, Sections 2.1.4, 3.5.1), sometimes with its more modern meaning, North's "rules of the game" (e.g., Part One, Section 3.5.4 [at least I think so, since the analogue is "procedures" in the next sentence]), and most often ambiguously (e.g., Part One, Section 1.1, "institutional factors").

Thank you for the opportunity to comment.

² See, Ellis, F., *Agricultural Policies in Developing Countries*, Cambridge: Cambridge University Press (1992).