

USAID  
POLICY DETERMINATION  
LAND TENURE

I. Introduction

This Policy Determination (PD) sets forth USAID policy regarding assistance to LDC programs and projects in land market development, land tenure security and related activities.

A. USAID's Interest and Objective in Land Tenure

USAID's primary objective is to promote broadly based economic growth in less developed countries (LDCs). To achieve this, USAID supports efforts to intensify the economically viable use of existing land resources devoted to agricultural production, and to bring into economically viable production those resources which currently lie dormant.

Land is a fundamental factor of all agricultural production. In LDCs whose economies are primarily agricultural and where capital is scarce, land plays an especially important role as a determinant of employment and income. This policy determination is specifically concerned with programming USAID's resources to support increased productivity of land as a factor of production in a context of equality of opportunity for access to land. It expands on the basic policy guidance on food and agriculture set forward in the Agricultural Development Policy Paper (1978) and the Food and Agricultural Development Policy Paper (1982), and complements other USAID policy documents related to allocation and efficiency in the capital and labor market (see Policy Papers on Private Enterprise Development, [Revised 1985], Employment and Intermediate Financial Institutions [forthcoming]).

People are at the center of farming; people are affected by circumstances of land tenure. USAID seeks by this policy determination to identify those elements of land tenure policy which will expand the abilities of individual farmers (both male and female) throughout the world to control their destinies and be rewarded with the fruits of their labor, thereby providing incentives to increase agricultural productivity.

As with other inputs to production, agricultural land is used most efficiently when its value is market-determined and when those who control the resource experience a real economic loss by not using the asset productively. Consequently, A.I.D. supports those LDC policies and programs which lead to a general, country-wide reliance on market forces in the valuation and distribution of land ownership and land use rights. USAID will also support programs that broaden the opportunity for access to agricultural land, promote tenure security and stimulate productive uses of land to ameliorate the barriers to market entry that exist in some LDCs.

The nature and pattern of land ownership and use rights fundamentally influence whether land is put to its most productive use. When investors' choices are limited by the political or policy structures of a LDC, land may be held primarily for its value as a secure asset, not for its value as a factor of production. Thus, land ownership may be concentrated in the hands of individuals whose principal motivation is not to utilize the land to its full economic potential. Such a result, protected and sustained by market-restricting economic policies, denies the majority of rural dweller equal opportunity to obtain land and put it to its most productive use. When government policy supports a land market system in which information is widely available, and other barriers to entry are removed, land is more likely to be sought for its productive value. In addition, a functioning capital market and a secure private sector may diminish the economic incentives for large, under-utilized landholdings by making such holdings relatively less attractive investments.

Clear and secure land tenure supports the transformation from traditional subsistence agriculture to modern commercial agriculture. When ownership or use right to a parcel of agricultural land is unclear or insecure, that land may be left to lie fallow or may be worked only for immediate or near-term gain -- often with adverse consequences for the productivity of the land over the long run by those who maintain temporary occupancy. Significant increases in agricultural productivity of land are more likely to occur when the owners or users of land feel secure in their ability to obtain sustained benefits from investments in the land. Consequently, USAID will support LDC policies and programs which improve the security of land tenure, provided they do not merely legitimize a land tenure system which discriminates against small farmers and the landless and their opportunity to obtain or utilize land and earn a fair return on their investments of labor and capital.

In other words, both functioning land markets and provision of more secure and stable land tenure must join to stimulate agricultural production that extends equal opportunity to own or use land to the majority of the rural population in LDCs.

B. The Parameters of USAID's Assistance

The Foreign Assistance Act (FAA) of 1961, as amended provides the statutory authority for USAID's support of land tenure activities. Section 102, in part, states that "...the principal purpose of bilateral development assistance is to help the poor majority of people in developing countries to participate in a process of equitable growth through productive work and to influence the decisions that shape their lives, with the goal of increasing their incomes..." and that one criterion by which developing countries' movement toward these objectives is to be measured is the "increase in agricultural productivity per unit of land through small-farm, labor intensive agriculture." Further, Section 103(b)(1) states that with establishment of more equitable and more secure land tenure arrangements" is one means by which the productivity and income of the rural poor will be increased, which in turn is the purpose for which assistance is provided under the authority of the FAA. Other statutory authorities, such as Sec. 620(g), also apply to USAID's land tenure-related programs.

II. Background and General Policy Guidance

In traditional societies producing at or slightly above subsistence and experiencing no population pressure of consequence, the pattern of land tenure usually has not been a significant economic concern. Under such circumstances land is not a scarce resource and thus has little value. However, in most LDCs land has become a scarce factor of production due to the pressure of population and, in some cases, declining productivity of the land base under traditional cultural practices. The continuation of traditional, low-yield agricultural practices in the face of increased demand for food and other agricultural commodities has eliminated, for the most part, LDC reserves of "new" land. To meet the increased demand, traditional extensive agriculture must give way to improvements that increase agricultural productivity. As a result, the opportunity to obtain or use land, and the security and equity of land tenure arrangements, are of increasing concern.

In some societies, traditional methods of defining land boundaries, of ensuring security of tenure and of transferring ownership or use rights may be adequate or may be capable of adjustment to more intensive use of the land. However, in each case, a government must ensure that prevailing systems of tenure security and property transfer are responsive to the economic and social needs of development. An effective system should allow the market to establish the value of

land and ensure equality of opportunity among producers to obtain ownership or use rights to land, which will stimulate the transfer of land to more productive users. The system need not be formally structured or codified, nor need it be based on deeds or written conveyancing instruments, but must be universally recognized as legitimate and not subject to subordination by competing formal systems.

USAID is prepared, in selected cases and as resources may be available, to assist developing countries to improve market-based land tenure systems so that producers are able to obtain land or adjust the amount of land utilized in their production processes. Such assistance should be made available to a LDC as part of a larger program of policy dialogue to promote market-determined decisions for goods and services related to economic growth.

A market-based land tenure system as defined in this policy determination has the following characteristics:

- Transactions occur between willing buyers (lessees) and willing sellers (lessors).
- Transactions occur for economic gain and not primarily for non-economic considerations which have as their purpose the establishment or maintenance of a discriminatory pattern of land tenure based on social or political factors.
- Land tenure is sufficiently secure so that arms-length transactions can occur.
- Land tenure is sufficiently secure so that land may be used as collateral for the purpose of obtaining capital.
- Entry into the market for land is unrestricted by legal or administrative barriers that artificially limit the number of buyers (lessees) and sellers (lessors).

(However, temporary, transitional limitations may be desirable to protect the rights of economically disadvantaged or underprivileged groups.)

- Limitations on use of the land may be imposed by zoning laws which reflect the society's interest in the pattern of land use, protection of the environment and other legitimate external factors.
- Knowledge of the opportunity to buy or use land is widely disseminated, as is knowledge of the transaction process.
- Joint ownership arrangements (e.g., families, partnerships, corporations, cooperatives, employee stock option programs, etc.) are sufficiently well defined so that one or more of the partners within the joint ownership is able to withdraw assets in accordance with a plan understood by the other joint owners.
- The reservation of land for community ownership or management does not significantly impinge upon an individual's right to own or use land alone or in association with others.

As an economy grows and becomes more complex, the legal, administrative and market systems related to viable and responsive land tenure arrangements should also develop. In middle and upper income countries the systems will typically include written and recorded deeds which convey specified ownership and use rights enforced by the legal system, property boundary markers set by cadastral survey and an active private sector furnishing services to facilitate all phases of property transaction including finance.

In less developed economies, transactions in land based on fair market values and tenure security could be effective without the relatively costly systems associated with formalized land markets found in wealthier countries. For example, recognized boundary markers may replace cadastral surveys and public acknowledgment of transfers may substitute for written instruments. Therefore, in seeking to implement this policy determination, USAID will focus on cost-effective systems and institutions, which support tenure security and market-driven transactions in land ownership and use rights. In some cases this policy may direct USAID's efforts to extending, modifying or codifying indigenous tenure systems rather than introducing or fostering more formal, complicated and expensive systems.

Assistance to establish or improve land tenure arrangements should not be reserved for those situations in which constraints in the market for land are an important contributor to political and social unrest, due to the concentration of ownership or benefits in the hands of a few and a denial of the opportunity to own or use land for the many. Assistance to improve land tenure arrangements should be considered whenever it is programmatically and economically justified in support of economic development. Missions should review the conditions of land tenure and the market for land in the host country and seek methods of encouraging more equity and productivity in the use of this resource before constraints contribute to social and political polarization.

### III. Land Tenure-Related Programs

Several interventions to improve tenure security are candidates for USAID support. These include land market development via land titling and other means, land settlement, land consolidation and improvement in the terms of rental or other tenancy arrangements. It is important, however, that the overall policy environment, particularly in the agriculture sectors, be considered and constraints addressed as a Mission considers one or more of these interventions. In general, interventions discussed here rely on a gradual approach to the establishment of competitive markets and tend therefore to be more politically acceptable. These gradual approaches may be preferred options in countries not yet experiencing polarization as a result of inequities in opportunity to acquire and use land.

In all activities, Missions should be conscious of the differential access by men and women to land, and should ensure that programs have a positive impact on the tenure security of the actual farm operator. Further guidance on this point may be found in USAID's Policy Paper on Women in Development.

#### A. Land Market Development

Areas that have the highest potential for development of a land market based on a modern titling and registration system are those characterized by a growing informal market in land and a

widespread perception of insecure or limited access to land. Under such circumstances, a program to enhance market functioning should include attention to three critical attributes:

- wide availability of information on potential land for sale and its value;
- up-to-date records of ownership and transactions; and
- legal sanction of private contracts and legal and administrative means of enforcement.

To the extent that these attributes are absent and not capable of being introduced, the potential is great for modern land titling actually to slow the development of markets, increase insecurity, reduce production and exacerbate inequities. Further, the establishment of modern titling systems involves significant costs, especially for dissemination of information and administration, which raise transaction costs for participants in the system. Missions should weigh these costs against the potential benefits of the establishment of a modern titling system prior to entering into such a program.

In some cases, traditional systems of tenure security, which may be less formal, will provide an adequate basis on which to encourage a competitive market in land. Missions should examine existing systems to ascertain the extent to which they may be modified or codified to allow the benefits (e.g., use of land for collateral, alienability, heritability) that derive from a formalized titling system to flow from a less formal system. For example, informal mechanisms in many countries provide for community recognition of rights in land. In some cases, an improvement in market performance could result merely by giving formal sanctions to the informal arrangements.

Traditional communal tenure and multiple use rights present special challenges to the development of commercial land markets. In traditional communal tenure (as distinct from joint holdings created under modern titling systems) a group that is usually based on common kinship or residence exercises effective control over the agricultural resources in a given geographical area. Within that area, then, individuals generally have secure use rights and decision-making authority over specific parcels in a manner governed by the norms of the group. Land that is communally owned need not necessarily be converted to individual ownership as its value increases, but mechanisms must be found whereby the benefits of the modern sector systems (e.g., use as collateral) can be extended to such tenure systems, and whereby the communal land use will reflect the true market value of the land.

With regard to multiple, overlapping use rights, some circumstances (such as a radical change in land use) are discussed in the following section on land settlement. In other situations, however, there may be a need to codify existing rights by all groups with an effective claim on the land, so as to protect rights that are in jeopardy and to allow for market transactions to occur among individual or group rights holders. For example, Wade<sup>1</sup> has documented a case in which herdsmen bid for rights to graze their animals on a village's fields after harvest. Each side is negotiating on behalf of group rights. On the other hand, where one use is, or is emerging as, dominant, rights may be partitioned or provision made for one user to compensate the other for rights taken.

Missions are encouraged to seek alternatives in land market development that incorporate traditional land tenure rights, including communal and multiple tenure. In some instances, these

approaches will provide for a relatively rapid transition to individual tenure, as in areas of new land settlement in which some rights will be extinguished; in other cases alternatives to individual ownership or use will be secured as the norm.

The development of a competitive, broadly accessible market in land will ordinarily require a programmatic approach that addresses legal, administrative and financial as well as technical aspects. Once an adequate legal framework is in place, a program of incentives may be desirable to stimulate entry into the market. This program may include the establishment of a secondary mortgage market or a financing mechanism for potential borrowers who represent a larger risk than typical commercial borrowers. It may also include assistance in administering tax laws designed to promote the most productive use of agricultural land.

Policy changes related to pricing may also be required. Artificially depressed agricultural prices drive down land prices and discourage sales where owners have reason to hope that more realistic prices may prevail in the future, thus encouraging speculative landholding. Conversely, prices for inputs and commodities that reflect true market values may encourage landowners to put under-utilized land to use or to offer it for sale. However, for some large landowners, the monetary value of revenue generated from land may be insufficient to offset potential loss of social status, political power and other non-financial benefits. The latter types of motivations should be assessed in the design and implementation of any land market development program.

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<sup>1</sup>Wade, Robert. "Common Property Resource Management in South Indian Villages." Paper prepared for the Common Property Resource Management Conference organized by the National Academy of Sciences, April 21-26, 1985.

Differential taxation of under-utilized agricultural land has frequently been suggested and occasionally tried as a mechanism to stimulate more productive uses of the land. However, there are several problems with this approach. First, use of a single instrument (land taxes) to achieve two objectives (raise revenue and stimulate increased use of particular lands) usually achieves only one of the objectives at best. Second, the administrative requirement of a tax designed to stimulate production, if it is to remain equitable, invariably exceeds the administrative capabilities of even the most capable tax system. Consequently, assistance to improve land tax administration should avoid the introduction of specialized taxes if the purpose is to stimulate the productive use of the land; but such assistance is acceptable for administration of non-discriminatory land taxes.

#### B. Land Settlement<sup>2/</sup>

In some LDCs there exist government-owned lands that might be suitable for settlement. In a few countries the government, under the aegis of a land bank or agrarian reform agency, has established a fund for the purchase of tracts of unused land to be distributed to voluntary settlers. In others, the eradication or control of disease such as onchocerciasis or trypanosomiasis may allow settlement of previously unusable lands. In such instances, Missions and host governments might consider adapting the Homestead Act approach used in developing the Western United States.

In most cases, however, there will be pre-existing claims to land that must be honored, even in very remote areas designated for settlement. These claims may be multiple and overlapping,

based on seasonal, topographical or social determinants. Missions should assure that all such claims are satisfactorily accommodated, either through compensation or equitable inclusion of prior claimants.

Settlement schemes may be a viable alternative to redistributive land reform, but they are also sometimes inappropriately proposed by governments as alternatives to larger-scale reforms. In these cases, the schemes may not be well planned and may be executed too hastily. New land settlement generally does not affect a large percentage of a LDC farming population, and cannot provide a sufficient response to widespread inequality in the opportunity to obtain and use agricultural land. In instances that conform to this description, other interventions with wider impact will be preferred. Missions are required to address this issue before including support for agricultural land settlement as part of a country strategy.

It may also be the case that "new" lands are inappropriate for settlement because of their fragility. Care must be taken that settlement schemes do not result in serious environmental degradation and that they establish safeguards to protect biological diversity [see particularly USAID Policy and Program Guidance on Humid Tropical Forests (84 State 328482)].

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<sup>2/</sup> Includes resettlement.

Recent literature on land settlement <sup>3/</sup> suggests that a least-cost approach to the support of settlement activities is preferable. The disruption caused by the move to a new area, and development of the requisite infrastructure and services usually means that economic activity will not reach its full potential for a number of years. Complete development of the regional economy may take a generation. A least-cost approach to the initial settlement activity also encourages settler independence from the outset.

#### C. Land Consolidation

There may be instances in which fragmentation of land has occurred, due either to certain biophysical constraints or to inheritance practices. Generally, such fragmentation is a risk aversion strategy in response to specific agro-climatic conditions using conventional technology. Under such circumstances, land consolidation is not likely to be an appropriate measure to increase agricultural productivity, nor will it be perceived by beneficiaries as enhancing tenure security.

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<sup>3/</sup> See for example:  
Scudder, Thayer; The Development Potential of New Land Settlement in the Tropics and Sub-Tropics. A Global State-of-the-Art Evaluation with Specific Emphasis on Policy Implications. USAID Program Evaluation Discussion Paper No. 21 (PN-AAL-039). 1984.

World Bank. Agricultural Land Settlement: A World Bank Issues Paper. 1978.

Under certain circumstances, fragmented landholdings may be candidates for a program of consolidation. Introduction of new technologies, or changes in tenure patterns for other reasons, may

make consolidation practical or desirable and may lead to increased productivity. In most of these cases, a pattern of consolidation will be occurring informally (e.g., several farmers will rent a tractor to plow contiguous plots, or families will be pooling separate holdings and other resources). Agricultural productivity may be enhanced by encouraging such trends through a systematic program. If a valuation system for the land is established, it may be possible to effect exchanges in kind, in addition to the more usual sale-and-purchase mechanism. It should be noted that in order to retain the advantages of the consolidation, incentives must be built into the program to prevent a recurrence of fragmentation. For example, if a new technology overcomes prior biophysical constraints, an assured supply of inputs and services required to implement that technology must be available.

D. Tenancy

Tenancy refers to the terms under which an individual or group holds use rights to certain land for agricultural production for one or more crop seasons. It generally takes the form of an agreement, whether formal or informal, between two or more private parties, as in rental, sharecropping, or squatting.

Occasionally, the agreement will be between a private party and the government. The laws and regulations governing this agreement may need to be altered to assure that both farm owners and operators have incentives to invest resources in the land. Such alterations may include provisions for recording of agreements between lessors and lessees by a disinterested third party; clearer procedures for the enforcement of such agreements; establishment of mediation and adjudication services, including methods which avoid expensive legal procedures; brokerage firms that match prospective lessors and lessees and policies on credit and prices that favor a labor-intensive agriculture.

Legal and administrative reforms are inherently difficult to implement in LDCs, and without strong political will and enforcement measures they are likely to be ineffective.

IV. USAID's Interventions

Agency resources - ESF, DA, PL 480, and some local currency generations - are all eligible for consideration in projects or programs supporting development of competitive land markets, improving land tenure security and related activities. In considering LDC requests for assistance, Missions should be guided by the following discussion of generic program areas:

A. Assistance for Policy Improvement

Land tenure arrangements in a LDC may pose a significant constraint to economic and social development. If a Mission determines that this is the case, it may choose to enter into discussions on this topic as part of its program of policy dialogue. These discussions need not lead to direct programmatic support, but essential policy changes may be required before related programs in the agriculture sector can be successfully undertaken. Missions should be guided by the Approaches to the Policy Dialogue Policy Paper (1982) on this subject.



All project or program assistance related to land markets and land tenure should be provided in a policy dialogue context. In countries in which distorting host country policies are a significant determinant of inequity in the opportunity to own and use land, USAID's assistance should be focused primarily on modifying such policies. In countries where the development of a competitive market in land is constrained more by institutional issues (e.g. cumbersome land registration procedures, lack of proper survey data, etc.) rather than government policy, Missions should nevertheless carefully monitor policy to ensure that it remains supportive of institutional improvements as they occur.

B. Development of Land Markets

Assistance to improve the functioning of land markets might include interventions that allow for land valuation, such as codification of customary law and practice, cadastral surveys, or development of appropriate title recording or registration methods. A key criterion for selection of appropriate intervention(s) is minimization of transactions costs to the individual. Otherwise, any system introduced may quickly fall into disuse. Other interventions may include assistance in the establishment of appropriate financial institutions for long-term agricultural lending and financing for purchase, or purchase and resale (via a non-profit intermediary).

C. Program Design

Technical assistance in design of host country projects to develop a competitive land market, improve tenure security or implement other measures may be useful.

D. Ancillary Interventions

1. Support of Agriculture Supplies and Services. USAID's assistance may be programmed to ensure that the market has adequate stocks of essential inputs such as seeds, fertilizer, insecticides and related farm equipment. Such assistance may be especially critical if an established system of input supply and marketing, which depended on a large landowner-cum-landlord, is being eliminated by changes in land tenure patterns. Support for various aspects of irrigation may also be appropriate as titles become more secure and farmers seek to invest in higher productivity technologies. Extension services related to agricultural inputs, storage and marketing and irrigation are also appropriate for USAID support. In the design and implementation of its projects, USAID should emphasize private sector Provision of both inputs and services.
2. Agricultural Credit. An important ingredient of success in all efforts to improve agricultural productivity is the assurance of available credit for farmers (or for the vendors of agricultural inputs so that they can sell to farmers on credit). In programs that alter patterns of tenure, such as settlement, the availability of credit is essential because most, if not all, of the owners or operators have no other source of capital with which they can finance needed inputs and consumption during the first growing season.

V. Summary

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In order to promote broadly-based economic growth in LDCs that are heavily dependent on agriculture, USAID will support interventions in land tenure that intensify the use of existing land resources, or bring non-utilized land into production in an economically viable manner. These interventions will focus on the establishment of competitive land markets and on enhancing land tenure security, but may include other related activities. All of USAID's available resources, including DA, ESF and PL 480 are eligible for consideration in support of these programs. Ancillary interventions, concerned with input supply, product marketing, technological change and agricultural credit may also be required in order for an intervention in land tenure to be effective. Missions should consider land tenure issues and their resolution as part of any program of assistance in agriculture.

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Date