

International workshop on land consolidation and land banking
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Enabling legislation for land consolidation and land banking



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Overview

1. Why a law on land banking and land consolidation
2. Objectives of the law
3. Powers of the institution
4. Organizational issues
5. Protections for participants
6. Provisions on fees and taxes
7. Governance measures

1. Law on land banking and land consolidation

Why it is necessary

- Depends on individual countries to what extent land banking is possible without a specific law
- Makes no sense to have separate laws on land consolidation and land banking
- Special law (or perhaps special section of a broader law) can provide more clarity and better governance, so may be advisable
- Land banking/consolidation law can not be comprehensive: other laws remain relevant – but avoid contradictions and overlaps
- Principles in law, details in regulations
- Key provisions will follow

2. Objectives of the law

- Objectives of the law should be spelled out as this guides activities
- Links to the **vision** for agriculture in the country
- What is the land bank /land consolidation agency for?
- Sustainable rural development – environmental protection
 - Ensure land for environmental protection
 - Ensure land for public infrastructure, public works
- Sustainable rural livelihoods - focus on people
 - Promotion of viable family farms – land size
 - Reduced fragmentation and promoting land consolidation
 - Keep lands in production and work against land abandonment
 - Resisting excess concentration?

3. Powers of the institution 1/2

- Facilitating farmer-to-farmer swaps, leases and sales
 - Address weak markets
- Buying and selling and leasing land for
 - Land consolidation
 - In the context of consolidation projects
 - As an ongoing process
 - Public interest – as an alternative to expropriation
 - Infrastructure
 - Protected lands (including forests) and waters

3. Powers of the institution 2/2

- Other powers and functions
 - To stimulate markets
 - Market monitoring (transparency)
 - Market intervention? (land purchase before planning of public infrastructure)
 - Pre-emptive right to buy available land?
 - Clarifying ownership – updating records
 - Dispute resolution – mediation
 - ...

4. Organizational provisions

- Type of institution will determine the structure
 - Function of an existing public land agency or ministry
 - Under the auspices of a community institution
 - Independent public institution
 - Government-owned corporation
- National or regional or community levels
- Special financial provisions (revolving funds?)
- Role of other institutions and links with land bank/consolidation agency
 - agriculture, forestry, water, environment, land use planning, rural development, municipalities
 - can request assistance from the land bank/consolidation agency

5. Protection for participants 1/2

- Landowners' rights - who lease or sell to land bank
 - Assured payments through land banking
- Rights of farmers or environmental group wanting to buy or lease land
 - Assurance of property or use rights transfer and security
- Simultaneous transactions - one big contract
 - Increases trust, is more cost effective, rights more secure
- Right to request land consolidation
 - Suggest an area for land consolidation
 - Apply for waiver of relevant fees in case of private land swaps
- Right to information vs right to privacy?

5. Protection for participants 2/2

- Voluntary nature of land consolidation
 - Principle of land consolidation being voluntary is strongly recommended by FAO in the region
 - Expropriation for public works may be necessary but that should perhaps not be the job of land consolidation agency or land bank, but of the relevant ministry (?)
- Selection of buyers
 - Open auctions could fuel land speculation and work against objectives of the law
 - Closed auctions (only for farmers, only for local farmers...)
 - Selection of buyers from applicants meeting certain criteria according to the objectives of the law
 - Limitations on re-selling within a certain amount of time

6. Fees and taxes

- Provisions of waiving of fees that individual farmers who are participating in a land consolidation project
- Provisions on waiving of taxes on transfers, within land consolidation projects
- If a farmer resells within a certain period, fees and taxes could be reclaimed
- Large and small scale (group project or just 2 farmers wanting to swap some parcels)
- Provisions on fees and taxes that the land bank has to pay when acquiring land for public interest (waiving is not a big issue as between government budgets)

7. Governance measures 1/3

- Transparency provisions
 - Information about the land bank's programmes available
 - Information actively disseminated about upcoming projects
 - Right of all who have an interest to have access to information
 - Links to right to information acts
 - Limits because of right to privacy?
- Participation provisions
 - Corollary of voluntary nature of consolidation
 - People have a right to participate in decisions that affect them
 - Proactive information activities

7. Governance measures 2/3

- In practice transparency and participation means
 - Project launch workshop in project communities
 - Advertisements in local media
 - Election of committee of local stakeholders
 - Public presentation of reparcelling plans
 - Civil society participation at the apex level
- Principle of non-discrimination
 - General principle (race, ethnicity, religion, sex etc.)
 - Special provisions to ensure that women are not excluded and that their rights are fully protected
 - Agreement of the spouse is compulsory if not joint ownership

7. Governance measures 3/3

– Accountability provisions (upwards and downwards)

- Clear administrative recourse provisions (who to complain to)
 - Officials held personally responsible for certain aspects
 - Landowners must be heard and can complain before the approval of the project (and afterwards)
 - Social audit possibility if requested by community (mainly as anti-corruption measure) – clarity about what could be the subject of such audits
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- Yet retaining ability of institution to act fast

Thank you!