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I am pleased to be able to make a submission to the Land Reform Review Group and wish you well with your work. My comments, below, will focus on a set of land tenure guidelines which were adopted and issued last year by the Food and Agriculture Organisation of the United Nations and which have relevance to the issue of land reform in Scotland through their recommendations on the restitution and redistribution of land.

The UN's '*Voluntary Guidelines on the Responsible Governance of Tenure*' set out principles and internationally accepted standards of responsible practices for the use and control of land, fisheries and forests. Although not binding on states, the fact that the guidelines have been produced using a human-rights based approach and endorsed by more than 100 countries, including the United Kingdom, give them considerable moral force.

Here is a weblink to the guidelines:

<http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

According to David Palmer, senior land tenure officer at the FAO, the guidelines "allow governments, civil society, the private sector and citizens to judge whether their proposed actions, and the actions of others, constitute acceptable practices". (Munro-Faure and Palmer 2012: 10)

The guidelines make recommendations on a range of issues that affect land tenure. For the purposes of the Land Reform Review Group's inquiry the most relevant recommendations are in part four of the document which deals with 'transfers and other changes to tenure rights and duties'.

Within part four, section 11 raises the issue of the development of markets in land and in tenure rights.

Paragraph 11.2. concludes:

States should take measures to prevent undesirable impacts on local communities, indigenous peoples and vulnerable groups that may arise from, inter alia, land speculation, land concentration and abuse of customary forms of tenure. States and other parties should recognize that values, such as social, cultural and environmental values, are not always well served by unregulated markets. States should protect the wider interests of societies through appropriate policies and laws on tenure.

From a historical perspective it could be argued that in the Scottish context many 'undesirable impacts' have already occurred or are well advanced throughout many or all parts of the country – both quantitatively, in terms of population loss, and qualitatively, in terms of cultural decline and environmental degradation. In a Scottish context both the land reform agenda and crofting tenure can be understood as measures to “protect the wider interests of societ[y]” from the "undesirable impacts" of land speculation and concentration and the abuse of customary forms of tenure. Following David Palmer of the FAO's comments, it is therefore appropriate to reflect upon the recommendations put forward in the UN guidelines when considering the acceptability of changes to Scottish land reform and crofting legislation.

Part four of the guidelines offers a range of recommendations that seek to prevent or to alleviate "undesirable impacts". Two of these measures that appear to me to be relevant to the Land Reform review Group's inquiry are land reform by 'restitution' and 'redistribution'.

Restitution, according to section 14 of the UN Guidelines, is a means of restoring “the loss of legitimate tenure rights to land, fisheries and forests”. The guidelines add that “Where possible, the original parcels or holdings should be returned to those who suffered the loss, or their heirs, by resolution of the competent national authorities. Where the original parcel or holding cannot be returned, States should provide prompt and just compensation in the form of money and/or alternative parcels or holdings, ensuring equitable treatment of all affected people”.

Partly as an aside, it may be worth questioning whether a greater understanding and collective memory of the loss of legitimate tenure rights – particularly during the 19th century – in the Western Isles and parts of the west Highlands may be part of the reason for the greater enthusiasm for land reform that has been evinced there. If so, it may be worth

considering whether reformation of formal and informal education processes may also have a role to play in fostering the development of land reform in Scotland.

The UN guidelines add that states should develop policies to support land restitution which are gender sensitive, and provide claimants with legal and para-legal aid as well as with support services, should their claims be successful.

In terms of the guidelines' recommendations on restitution of land, given that crofting tenure covers only a proportion of the landmass from which people throughout Scotland were cleared in the centuries leading up to 1886, the Land Reform Review Group may wish to consider whether, where there is evidence that legitimate tenure rights were lost on land that is not currently in crofting tenure, then these rights, or the restitution to outright ownership, should be applied if those whose rights were lost, or their heirs, wish to reclaim those rights. Evidence for this loss could be in the form of estate maps, rental papers or through testimonies to government commissions, for instance.

The second method of land reform proposed in the UN guidelines on responsible governance of tenure is 'redistribution'.

Where knowledge may have been forgotten of the loss of people's stake in the land, the guidelines propose the measure of land redistribution which, according to section 15, "can facilitate broad and equitable access to land and inclusive rural development". Section 15 goes on to say that "States may consider allocation of public land, voluntary and market based mechanisms as well as expropriation of private land, fisheries or forests for a public purpose".

...redistributive reforms may be considered for social, economic and environmental reasons, among others, where a high degree of ownership concentration is combined with a significant level of rural poverty attributable to lack of access to land, fisheries and forests respecting, in line with the provisions of Section 15, the rights of all legitimate tenure holders. Redistributive reforms should guarantee equal access of men and women to land, fisheries and forests.

Paragraph 15.8. takes the reform process beyond the reform of land ownership itself. It recommends:

States should ensure that redistributive land reform programmes provide the full measure of support required by beneficiaries, such as access to credit, crop insurance, inputs, markets, technical assistance in rural extension, farm development and housing. The provision of support services should be coordinated with the movement on the land by the beneficiaries. The **full costs** of land reforms, including costs of support services, should be identified in advance and included in relevant budgets. (my emphasis)

The Land Reform Review Group may wish to consider whether the guidelines' reference to the need to budget for the "full costs of land reform" may mean that the restored Scottish land fund is not at present fulfilling the international community's agreed recommendations for responsible policies on land reform.

Among the details of methods of land reform discussed in section 15, the possibility of introducing a 'land ceiling' "as a policy option in the context of implementing redistributive reforms" is also introduced.

At the very least, the UN guidelines suggest that the land reform measures implemented in Scotland a decade ago, and which your group now has the opportunity to strengthen, fit into an emerging international system of regulation which seeks to mitigate and reverse the deleterious social, cultural, spiritual and ecological consequences of free-market capitalism and in particular in ideological modes that encourage land to be valued and distributed on a financial basis.

In a Scottish context the guidelines may superficially be considered to have direct relevance to the seven crofting counties of the Highlands and Islands and to the crofting form of land tenure practiced here. However, it could equally be argued that in relation to 'restitution' and 'redistribution' - the two processes of land reform outlined in the UN's *Voluntary Guidelines on the Responsible Governance of Tenure* - the recommendations are pertinent to all of Scotland.

The 2003 Act's creation of an absolute right for a crofting community to buy its lands – based, as a recent land reform monitoring report noted, on those communities' historical relationship with their lands – may be considered a form of 'restitution', in terms of the UN guidelines, particularly in those areas, such as the Western Isles, where an awareness exists (either through the retention or reawakening of collective memory) of the

means by which rights to land were originally taken from communities.

However the territorial boundaries of crofting tenure as institutionalised law do not reflect the historical experiences of marginalisation and eviction from land in Scotland – “the loss of legitimate tenure rights” – whose scale can be identified by the term ‘The Lowland Clearances’. Unfortunately, little scholarship has been carried out to examine the human costs of a process that goes back at least as far as the 13th century and the collective memory of which in many parts of Scotland has been all but extinguished.

Because of this it may be more appropriate to think of land reform in these areas of Scotland where the collective memory of the means by which tenure rights were taken from the indigenous population during processes of ‘land concentration’ as ‘redistributive’ land reform

However, particularly for those in areas of Lowland rural and urban poverty or in areas outwith the crofting counties where elements of collective memory of the loss of land rights may exist, it is not immediately clear why ‘restitution’ should appear to have received greater legislative favour in the Land Reform Act than ‘redistribution’ – that is, why a crofting community right to buy should legislatively carry more weight than a community right to buy.

Research carried out by the Centre for Mountain Studies in 2010 suggested that this variable territorial weighting is indeed the case. Part two of the Land Reform Act of 2003, the research concluded, “had not been directly useful as a bargaining tool with landowners”.

In contrast, while noting the onerous administrative burden imposed on crofting communities through part three of the Act, the research also noted that several crofting communities who had purchased their land without use of the 2003 Act “cite the Act in general, and the crofting community right to buy in particular, as significant in helping to bring about a successful conclusion to purchase negotiations with the relevant landowner”.

This suggests that the greater leverage the legislation affords to crofting communities in enacting their right to buy may have been responsible for the willingness of landlords to agree to land transfer, and partially responsible for the greater movement to community ownership in parts of the Highlands and Islands.

The UN guidelines and the Centre for Mountain Studies research both

give authority for a proposal that the provisions of both parts two and three of the Act be simplified to make it easier for a community to acquire land, and that an automatic redistributive right for communities to purchase the lands on which they live, regardless of the landowner's wishes, should apply all over Scotland – in addition to the automatic 'restitutional' system that exists in the crofting counties at present.

Given the broad scope of the Land Reform Review Group's inquiry, a critical point in your deliberations will be the fact that, outside of the Western Isles (an area which, as already noted, a strong awareness exists of the means by which rights in the land were lost and regained) there has generally been little uptake of the opportunity for community ownership of land.

This suggests that beyond the direct mechanism of the land reform legislation itself, there is a continuing need to research and raise awareness of the historical processes by which have been formed the current arrangements of land ownership in Scotland, and of the related issues of individual human well-being, community well-being and ecological well-being in the country - including how these issues play out in urban areas.

With respect to quality of life issues, it should be noted that not only have the Western Isles been repeatedly hailed in recent years for their quality of life and strength of communities, by groups as diverse as the Office for National Statistics, DTZ Pineda and the Carnegie Trust, but the isles are also home to ecosystems that are both noted for their inherent biodiversity and extolled for their 'High Nature Value' crofting/farming systems.

From this, while recognising that such statistics do not speak to the fullness of island experience (such as high alcoholism rates, and long term population loss and economic marginalisation), it may be claimed that: (1) Scotland's islands are a model for how land reform, and its associated benefits, can work in Scotland and; (2) a holistic study of their historical development could provide the chance to spread the story, lessons and spirit of the isles throughout the land.

One approach to this awareness raising work could be to pick-up and adapt for modern times the neglected human ecology research and writing of Frank Fraser Darling. It is more than half a century since publication of Fraser Darling's ground-breaking 'West Highland Survey: An Essay In Human Ecology', the results of a huge study carried out for the UK

Government of the time, but not acted on by them.

A contemporary human ecological approach to the study of Scottish history and culture, would be one which seeks to engage with people, not as the objects of history, but as participants in the ongoing story of their place. By utilising such an approach, forms of education and development become less about transmissive processes of 'telling' local people the stories of their past and the developmental policies of their future, and more about supporting them to become the agents of discovering their own and their communities' stories and empowering them to become the agents of their own future development.

As part of a root and branch revisioning of land reform legislation, the Land Reform Review Group may wish to consider ways in which the full range of governmental support - in, for example, the fields of education, culture, agriculture, environment and economy - can be utilised to facilitate the unfolding of the human ecology of people-place relations and of land reform in Scotland. Critically, consideration should also be given to supporting means by which these long-term and complex participatory processes of community development can be supported. In particular this would involve creating educational spaces in which potential human ecology fieldworkers are able to learn from and work with organisations, groups and individuals who have both a proven practical experience in this field and a knowledge base of the breadth of issues involved in it.

Is mise le meas,

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REFERENCE

Fraser Darling, F. 1955. *West Highland Survey: An Essay In Human Ecology*. Oxford University Press.

Munro Faure, P. and Palmer, D. 'An Overview of the Voluntary Guideline on Responsible Tenure' in *Land Reform Journal* 1.12 (2012). United Nations Food and Agriculture Organisation. Available on-line at: <http://www.fao.org/nr/tenure/land-tenure-journal/index.php/LTJ/article/viewFile/48/88> (Accessed on 4th January 2013).