



## **Are development finance institutions equipped to address land rights issues?**

### **A stocktake of practice in agriculture**

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More and better investment in agriculture could help improve rural livelihoods in low- and middle-income countries. But a wave of investments since 2005 has raised concerns that deals could dispossess rural people and promote exclusionary development models. Recently developed international soft-law instruments provide specific guidance on how to secure land rights in the context of private sector investments. But much remains to be done to translate this guidance into real change.

Bilateral development finance institutions (DFIs) play an increasingly prominent role in the international aid architecture. International guidelines affirm the responsibility of states to ensure respect for land rights when they promote investments overseas and there is growing jurisprudence on the extraterritorial human rights obligations of states, including in connection with business activities overseas. Because of their position between development and commercial worlds, DFIs can be a key player in efforts to align

private sector conduct with international norms and standards.

However, land rights issues are often complex and the stakes are high, partly due to the close relationship that exists between land and human rights. Several governments are encouraging their DFIs to work in more difficult environments – including fragile states and post-conflict situations – where land challenges are even more acute. Thus, DFIs may need support to effectively address land rights issues.

### **About this stocktake**

This executive summary summarises findings from a review of the approaches European and North American bilateral DFIs use to address land rights issues in the agriculture sector. It assesses whether the policies and practices that the DFIs apply in environmental and social (ES) matters adequately address land rights issues; and what areas, if any, present opportunities for improvement.

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The stocktake reviews publicly available materials for selected DFIs, particularly their policies and publications. For insights on operational practice, in-depth questionnaires and interviews were carried out with three DFIs. In addition to the DFIs' ES policies, the Voluntary Guidelines on Responsible Governance of Tenure (VGGT) – the key global instrument on land governance – provided an important reference for the analysis.

## The IFC Performance Standards and the VGGT

The DFIs' ES systems rely heavily on the Performance Standards of the International Finance Corporation (IFC-PS). These contain detailed operational guidance on addressing land rights issues in an investment context and present significant convergence with the VGGT. That said, the IFC-PS and the VGGT take different entry points and approaches. While the IFC-PS focus on addressing project-specific impacts, the VGGT take a more systemic perspective on land issues and governance. More than the IFC-PS, the VGGT emphasise rights language throughout and reiterate the underlying human rights obligations of states and responsibilities of businesses.

Further, the IFC-PS primarily reflect a 'do no harm' approach, while the VGGT call for 'smallholder-sensitive investments' that positively contribute to policy objectives, such as poverty reduction, food security and rural development. Some such differences reflect the different nature of the two instruments, with the IFC-PS being designed for operational use in commercial investments, and the VGGT primarily to improve land and resource governance. To DFIs, the VGGT may seem an unwieldy tool that offers them limited practical guidance. But the differences also raise questions as to whether prevailing ES standards fully reflect the latest thinking and policy consensus on land rights. Some DFIs have expressed support for the VGGT and developed guidance to address land rights issues that are covered by the VGGT but not the IFC-PS.

## Land rights in operational systems

Responses from the three participating DFIs indicate that, in those institutions, awareness and practices concerning land rights have significantly improved over time. All three participating DFIs have developed, and improved over the years, sophisticated ES systems that cover land rights issues. They also host growing ES teams of dedicated staff that have been described as integrated into investment decision making.

These advances have been made despite the challenging situation DFIs have been operating in. DFI ES teams must deal with several difficult issues, besides land rights. The international pool of land governance experts available to DFIs is relatively small. Prospective clients often approach DFIs after key project parameters have been established; and although DFIs can, and often do, seek changes to align ES systems with their institutional policies, they are rarely able to start with a clean slate.

## Areas for improving DFI policies and practices

While these advances and constraints need to be acknowledged, there is a strong case for DFIs to invest in further improving their policies and practices related to land rights, and to play an even more proactive role in improving private sector conduct in this area. If not properly addressed, land rights issues can expose people affected by DFI-financed activities to severe negative impacts and human rights violations. They can also expose DFIs to reputational and operational risks.

As specific DFIs follow somewhat different approaches, opportunities for improvement vary and peer learning could help advance the agenda. In general terms, however, areas for improvement include:

1. Increasing transparency of due diligence processes and establishing systematic opportunities for third parties – including land rights holders, other affected people and non-governmental organisations – to feed into those processes.

2. More fully mainstreaming human rights due diligence across DFI financing, aligning due diligence with the more comprehensive spectrum of land rights issues covered in the VGGT, and considering indirect land rights impacts in the supply chain.
3. Developing approaches to assess and, where relevant, promote improvement of any partnerships which clients establish with land rights holders and/or small-scale rural producers, and creating arrangements to finance independent technical, legal and other capacity support for affected people in their relations with DFI clients.
4. Strengthening arrangements to review investor–state and investor–community contracts, and ensuring that land rights and wider ES issues are fully integrated into contracting along the investment chain – including at both contracting and compliance stages, as well as making arrangements to address land rights issues upon exit.
5. Disclosing DFI–client contracts, and requiring disclosure of underlying investor–state and investor–community contracts – building on advances made on the disclosure of investor–state contracts in the extractive industries.
6. Systematically analysing human rights contexts at both country and project levels to assess and monitor risks for land rights defenders, identifying measures for DFIs and clients to mitigate risks of repression and intimidation, and developing rapid response systems to address threats to project critics.
7. Supporting arrangements for independent third-party monitoring of compliance throughout the project life-cycle, and ensuring that an effective and accessible DFI-level grievance mechanism is in place to handle ES (including land rights) issues.

## Possible ways forward

To address these issues, DFIs could pursue two complementary modes of engagement: (1) incremental improvements through technical support, peer learning and lesson sharing; and (2) concerted and sustained action to foster transformative change in the ways the industry handles land rights issues.

**1. Lesson sharing, technical support and peer learning to sustain incremental improvements in DFI policies and practices.** The first mode of engagement involves DFIs sharing lessons and harnessing technical support to incrementally improve practices in the land-related areas identified above, based on existing channels for exchange. Existing spaces for peer-to-peer learning and technical input can provide vehicles for addressing specific land rights issues (e.g. in Areas for Improvement two, three and four).

This may involve, for example, developing operational guidance on specific land rights issues, or holding thematic sessions at the events of the Association of European Development Finance Institutions (EDFI). There is also scope for exploring joint initiatives to support the development of a pool of land governance experts that can advise DFIs on land rights issues in due diligence and project implementation contexts.

**2. Catalysing transformative change in DFI policies and practices.** The second complementary avenue involves catalysing transformative change in the ways DFIs – and the private sector – handle land rights issues. This can be done by more fully mainstreaming human rights issues in all DFI financing and by increasing scope for public engagement with, and scrutiny of, DFI-funded activities. This may include, for example, developing innovative arrangements to open up due diligence processes and make contract disclosure the new normal (addressing Areas for improvement one and five). Concerted DFI action in these spaces is likely to be more effective than isolated initiatives by individual DFIs.

Land: Enhancing Governance for Economic Development (LEGEND) is a DFID programme that aims to improve land rights protection, knowledge and information, and the quality of private sector investment in DFID priority countries. It includes the development and start-up of new DFID country land programmes, alongside knowledge management activities, a challenge fund to support land governance innovations, and management of complementary DFID grants. The implementation of LEGEND is supported by the Core Land Support Team.

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