Enforcing Industry Codes of Conduct: Challenges and Lessons from Other Sectors [1,2]

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Abstract: The International Finance Institutions and several bilateral private project financing institutions have accumulated considerable experience with regulating the acquisition of land induced by investment in various sectors such as dams, roads, mines, pipelines and parks. The process of this kind of land acquisition is guided by detailed norms and procedures to minimize potential harm to populations who have to change or give up the use of their land. It would make sense to capitalize on the 40 years of this experience in turning the recently established principles for large-scale land acquisition into concrete guidelines. The paper explains the genesis of the norms and procedures established by the IFIs, describes the experience with enforcing them, draws lessons from that experience, and recommends actions to adapt this experience under conditions of an imperfect institutional environment.

Introduction

Setting guidelines, policies and procedures is only the first step in ensuring that land acquisition will be handled in a fair and socially acceptable way. How will those rules and regulations be respected? How will they be enforced? These are for many observers the more pressing question and many critiques of investment in large-scale land acquisition are quite skeptical that this can be done in a reliable way in many countries where this sort of investment has recently accelerated.

Learning from land acquisition induced by infrastructure investment

Much of the current debate is quite similar to the one that has occupied experts in the case of land acquisition for development-induced infrastructure projects. It is a central thesis of this paper that there is much to learn from 40 years of experience

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[2] Draft April 20,2010

with those investments funded by international and bilateral finance institutions. The paper also suggests that those who need to implement the principles jointly elaborated by FAO, IFAD, UNCTAD Secretariat, and the World Bank (henceforth called the "FIUW Principles") adopt and adapt many of those lessons, procedures and institutional innovations in their work.

Enforcing conduct: Direct and indirect avenues of exerting influence on the mode of land acquisition

Conduct for socially and politically acceptable land acquisition can be guided and enforced in direct and indirect ways: "Direct" through formal government rules imposed on the principle agent, i.e. the one who is acquiring the land. "Indirect", through rules that are either imposed on the institutions that provide inputs, mainly financing for the acquisition, or through pressure that links the legitimacy of the products coming from the land to the legitimacy of the land acquisition and the resulting production.

This paper focuses on the enforcement of conduct through processes that were developed for international and bilateral financing institutions. It looks at experience with land-use change induced by investment not in land per se but in sectors that were deemed to be necessary for development but required land that had already other uses --- often informal ones --- and, what is more important, had other users --- often without clear titles.

The following analysis is essentially the story of what often is described as "development – induced land acquisition and displacement " or "involuntary resettlement". It is an account of how financial institutions engaged in projects that required land achieve higher-order development objectives devised procedures to regulate land transactions in order to minimize harm to vulnerable people and what they did to get those rules adhered to. The experience is instructive since it covers a

number of land dependent sectors, ranging from hydro-electric power dams and power transmission to roads and railways, to mines and oil/gas pipelines, as well as natural park and forest management.

A) Developing Meaningful "Norms"

Setting the rules and enforcing them need to be seen as interrelated tasks that rely on the same principles. Although others in this conference will also have dealt with norms and regulations, it will be useful to first provide the development rationale behind the regulations and summarize their most important features before entering in the discussion on enforcement *per se*.

The World Bank as a pioneer in dealing with the negative impact of development-induced land acquisition.

A substantial body of literature shows that interfering in land use has the potential to create new wealth and wellbeing for some but also brings with it the risk of impoverishing others whose livelihood also depends on the land in question. The World Bank and other institutions engaged in international development and investments in a variety of sectors recognized this problem already in the 1970's and began looking for solutions to mitigate the negative impacts of land-requiring investment that were deemed necessary in the interest of furthering development goals.

During the 1980's and 1990's the Bank adopted and modified policies, procedures and practical guidelines to safeguard against the most damaging consequences of projects that interfered in the traditional and often customary use of land. The conceptual foundation of these efforts was rooted in a fortuitous collaboration between anthropologists, sociologists, planners and economists.

Land acquisition and impoverishment risks

Most influential in the evolution of this new thinking were Michael Cernea, then with the World Bank, and colleagues in other institutions through their empirical analyses and their elaboration of an **Impoverishment Risks and Reconstruction (IRR) model** to predict the risks that poor and marginal populations face in development-induced land transactions. The IRR model has explicitly or implicitly been used in designing and adapting policies and standards at the World Bank and at other institutions. It has served as a guide in the application of these policies to devise strategies to counter, overcome or mitigate these risks. It also has influenced how enforcement of the mitigation measures became organized or assessed.

The IRR model focuses on **eight basic risks of impoverishment** that affected populations face when they have to cede land or land use: **1) Landlessness; 2) Joblessness; 3) Homelessness; 4) Marginalization; 5) Food insecurity; 6) Increased morbidity and mortality; 7) Loss of access to common property resources; and 8) Community Disarticulation[3].**

From risk analysis to policy concepts

With the impoverishment risks in mind, policies and concrete guidelines to deal with land acquisition were developed and refined. The most important of those concepts are briefly described since those concepts need to be understood and dealt with wherever attempts are made to implement the FIUW Principles

a) Rights do not depend on "papers"

A key concept behind the policies on Land Acquisition, Displacement and Involuntary Resettlement (LDIR) that emerged at the World Bank and other IFIs is the recognition that those who are on the land now or use it, might not have a paper or something similar to document their ownership, but they have certain "rights", particularly the right to be humanely and fairly dealt with. While rarely explicitly mentioned in IFI documents, policies and papers, much of the post WWII thinking

[3] http://www.adb.org/Resettlement/activities/TA6091REG/module6-intro.pdf

on Human Rights is embedded in the procedures and guidelines developed by the World Bank and by others.

b) Livelihood is more than the replacement value of the land asset or the trees

It is only during the past two decades that the concept of livelihood has governed thinking about how households and individuals manage their existence and their development. It is not just the value of the land that makes them richer or poorer, but it is the composite of social, political, and cultural capital that interacts with physical capital and land to determine a person's and a family's livelihood. And it is the totality of this livelihood that needs to be considered and preferably enhanced through a land-related transaction.

c) The fallacy of relying only on compensation: Compensation does not prevent impoverishment.

Most traditional approaches to land acquisition have either informally or formally relied on compensation. While this seems plausible for transactions among equally strong contract partners, extensive research has demonstrated that compensation alone is leading to impoverishment of the weaker contract partners. Specific measures, in addition to economic compensation—even at replacement value—are necessary to make up for the many factors that are systemically tied to the use of a specific land asset but are not adequately captured by compensating at the market rate of replacement. The previously mentioned "livelihood" notion explains the rationale behind this thinking.

d) Sharing in the Gains: Those whose land use is diminished must be at least as well off after the land transaction as before.

Although most land acquisition regulations, including the FIUW Principles, advocate the notion of compensation or compensation at replacement value, they often insufficiently consider the development potential of a land transaction for those who give up the land. Similarly, they insufficiently emphasize the moral and social obligation to ensure that political and economically weak partners in the land transaction also receive some of the additional value created through a project or a land-based development. Experience has shown that 'win-win' transactions have a higher probability to become politically and organizationally sustainable.

e) It is the individual or the individual household or the individual family that counts, not the aggregate or the average of those impacted by a land transaction. This concept is important both for the analysis of risks and the elaboration of remedial action. It derives directly from the foregoing livelihood concept and it leads to the necessity to identify livelihoods and project-induced impacts on an individual or a household basis and establish compensation and other mitigating measures accordingly. While there might be some leeway in developing typologies or clusters of affected households, experience has shown that those affected have usually more heterogeneous livelihoods than is visible from the outside.

B) IFI Policies, Standards and Guidelines on Land acquisition, Displacement and Involuntary Resettlement (LDIR)

Both the IRR Model and the underlying concepts discussed are the intellectual foundation of the current policies on land acquisition in investments funded by the IFIs and similar development support institutions. The World Bank led the way in 1980 in devising a policy that became the first to specifically safeguard the interests of those whose land was taken for a development project. Since many whose land was taken also lived on their land, they also were forced to settle somewhere else. Thus the resulting policy and its replications in other organizations were associated with "involuntary resettlement".

The Bank's Policy is known as "Operational Policy on Involuntary Resettlement, OP 4.12". While covering the process of physical resettlement, this policy and similar ones at other institutions have increasingly been applied to all changes in the social, economic and political environment of those who are impacted by an alteration in their right to use land. To make this broader concept clearer, "displacement" has increasingly become the preferred term for describing the process of impact of land transactions on socio-economic and politically weak populations. The term encompasses also notions of "social displacement", "cultural displacements" and

other dimensions of potential deprivation included in the risk model described above.

Policies to deal with land acquisition in public and para-statal investments: OP 4.12 as the global benchmark

The policies developed by the World Bank for IBRD and IDA-financed investments have set the standard for most other institutions involved in financing public or para-statal projects. In several institutions, the World Bank policies are applied directly, in others new language was developed without much change in substance. It will therefore be sufficient to briefly summarize the World Bank Policy that is known as Operational Policy OP 4.12. Again it needs to be pointed out that the reference to "involuntary resettlement" includes all kinds of livelihood risks and deprivations and not just the act of physical relocation of an individual or a household. A few highlights of the policy[4] are paraphrased in the following to demonstrate how it corresponds to the FIUW Principles and at the same time goes into greater details.

> "**The overall objectives** of the Bank's policy on involuntary resettlement are the following:
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> (a) Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs.
>
> (b) Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.
>
> (c) Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.
>
> **The policy covers direct economic and social impacts** that both result from Bank-assisted investment projects, and are caused by
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> (a) the involuntary taking of land resulting in

[4] http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064610~isCURL:Y~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html

(i) relocation or loss of shelter;

(ii) lost of assets or access to assets; or

(iii) loss of income sources or means of livelihood, whether or not the affected persons must move to another location; or

(b) The involuntary restriction of access to legally designated parks and protected areas resulting in adverse impacts on the livelihoods of the displaced persons.

This policy applies to all components of the project that result in involuntary resettlement, regardless of the source of financing. It also applies to other activities resulting in involuntary resettlement that in the judgment of the Bank, are

(a) directly and significantly related to the Bank-assisted project,

(b) necessary to achieve its objectives as set forth in the project documents; and

(c) carried out, or planned to be carried out, contemporaneously with the project.

Several instruments are available to elaborate the measures required under the policy: (a) a **resettlement plan** or abbreviated resettlement plan is required for all operations that entail involuntary resettlement unless where impacts on the entire displaced population are minor, or fewer than 200 people are displaced, and an abbreviated resettlement plan may be agreed with the borrower;(b) a **resettlement policy framework** is required for operations that may entail involuntary resettlement, unless otherwise specified; (c) a process framework is prepared for projects involving restriction of access.

The full costs of resettlement activities necessary to achieve the objectives of the project are included in the total costs of the project. The costs of resettlement, like the costs of other project activities, are treated as a charge against the economic benefits of the project; and any net benefits to resettlers (as compared to the "without-project" circumstances) are added to the benefits stream of the project.

The borrower is also responsible for adequate monitoring and evaluation of the activities set forth in the resettlement instrument. The Bank regularly supervises resettlement implementation to determine compliance with the resettlement instrument. Upon completion of the project, the borrower undertakes an assessment to determine whether the objectives of the resettlement instrument have been achieved. The assessment takes into account the baseline conditions and the results of resettlement monitoring. If the assessment reveals that these objectives may not be realized, the borrower should propose follow-up measures that may serve as the basis for continued Bank supervision, as the Bank deems appropriate.

The World Bank's Involuntary Resettlement Sourcebook[5]

[5] All documentation addressing a particular policy is structured in the following way: Operational Policies (OPs) are short, focused statements that follow from the Bank's Articles of Agreement, the general conditions, and policies approved by the Board. OPs establish the parameters for the conduct of operations; they also describe the circumstances under which exceptions to policy are admissible and spell out who authorizes exceptions.
Bank Procedures (BPs) explain how Bank staff carry out the policies set out in the OPs. They spell out the procedures and documentation required to ensure Bankwide consistency and quality.

Since land acquisition and the risks connected with it have become of increasing complexity, Bank staff prepared an exhaustive Involuntary Resettlement Sourcebook [6]. It refers to the various elements of the policy, discusses real cases that had to deal with the various land acquisition and mitigation issues and gives valuable guidance on how to apply the concepts and requirements in the most reliable and practical way. Much of the discussion in the Sourcebook could be of immediate relevance also to those who need to implement the FIUW Principles.

Land acquisition in private sector investments: Performance Standard (PS) 5 as the global benchmark

In spite of some differences in orientation and application, it is fair to say that the IBRD/IDA policy OP 4.12 and the IFC/MIGA Performance Standard PS#5 are largely identical in substance and rely equally strong on the concepts and experience emanating from the IRR model and related practice. The following, copies and paraphrases the most important passages of the IFC Performance Standard (PS#5) [7] governing IFC's handling of land acquisition and involuntary resettlement.

> **Involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihood)** as a result of project-related land acquisition.
> 1. Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land acquisition that results in displacement. This occurs in cases of: (i) lawful expropriation or restrictions on land use based on eminent domain;2 and ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.
> 2. Unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for affected persons and communities, as well as environmental damage and social stress in areas to which they have been displaced. For these reasons, involuntary

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Operational Memoranda (Op Memos) are interim instructions intended to elaborate on material in OPs/BPs or ODs. Once the instructions in OP Memos are incorporated into revisions of the pertinent OPs/BPs, the Op Memos are retired.
Documentation on the Involuntary Resettlement Policy is listed under OP 4.12 and related documents. In addition some very specific guidance is provided in the "Involuntary Resettlement Sourcebook"

[6] Involuntary Resettlement Sourcebook: Planning and Implementation in Development Projects;World Bank, August 2004

[7] http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_SocEnvSustainability2006/$FILE/SustainabilityPolicy.pdf

resettlement should be avoided or at least minimized. However, where it is unavoidable, appropriate measures to mitigate adverse impacts on displaced persons and host communities3 should be carefully planned and implemented. Experience demonstrates that the direct involvement of the client in resettlement activities can result in cost-effective, efficient, and timely implementation of those activities, as well as innovative approaches to improving the livelihoods of those affected by resettlement.
3. Negotiated settlements help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly. Negotiated settlements can usually be achieved by providing fair and appropriate compensation and other incentives or benefits to affected persons or communities, and by mitigating the risks of asymmetry of information and bargaining power. Clients are encouraged to acquire land rights through negotiated settlements wherever possible, even if they have the legal means to gain access to the land without the seller's consent.

Objectives of IFC Performance Standard # 5:

- To avoid or at least minimize involuntary resettlement wherever feasible by exploring alternative project designs
- To mitigate adverse social and economic impacts from land acquisition or restrictions on affected persons' use of land by: (i) providing compensation for loss of assets at replacement cost; and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected
- To improve or at least restore the livelihoods and standards of living of displaced persons
- To improve living conditions among displaced persons through provision of adequate housing with security of tenure4 at resettlement sites

The applicability of this Performance Standard is established during the Social and Environmental Assessment process, while implementation of the actions necessary to meet the requirements of this Performance Standard is managed through the client's Social and Environmental Management System. The assessment and management system requirements are outlined in Performance Standard 1.
5. This Performance Standard applies to physical or economic displacement resulting from the following types of land transactions:
ß Type I: Land rights for a private sector project acquired through expropriation or other compulsory procedures
ß Type II: Land rights for a private sector project acquired through negotiated settlements with property owners or those with legal rights to land, including customary or traditional rights recognized or recognizable under the laws of the country, if expropriation or other compulsory process would have resulted upon the failure of negotiation5

This Performance Standard does not apply to resettlement resulting from voluntary land transactions (i.e., market transactions in which the seller is not obliged to sell and the buyer cannot resort to expropriation or other compulsory procedures if negotiations fail). In the event of adverse economic, social, or environmental impacts from project activities other than land acquisition (e.g., loss of access to assets or resources or restrictions on land use), such impacts will be avoided, minimized, mitigated or compensated for through the process of Social and Environmental Assessment. If these impacts become significantly adverse at any stage of the project, the client should consider applying the requirements of Performance Standard 5, even where no initial land acquisition was involved.
Grievance Mechanism
10. The client will establish a grievance mechanism to receive and address specific concerns about compensation and relocation that are raised by displaced persons or members of host communities , including a recourse mechanism designed to resolve disputes in an impartial manner.
Resettlement Planning and Implementation

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Private Sector Responsibilities under Government-Managed Resettlement
22. Where land acquisition and resettlement are the responsibility of the host government, the client will collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with the objectives of this Performance Standard. In addition, where government capacity is limited, the client will play an active role during resettlement planning, implementation and monitoring, as described below in paragraphs 23 through 25.
23. In the case of Type I transactions (acquisition of land rights through expropriation or other legal procedures) involving physical or economic displacement, and Type II transactions (negotiated settlements) involving physical displacement, the client will prepare a plan (or a framework) that, together with the documents prepared by the responsible government agency, will address the relevant requirements of this Performance Standard (the General Requirements, except for paragraph 13, and requirements for Physical Displacement and Economic Displacement above). The client may need to include in its plan: (i) a description of the entitlements of displaced persons provided under applicable laws and regulations; (ii) the measures proposed to bridge any gaps between such entitlements and the requirements of this Performance Standard; and (iii) the financial and implementation responsibilities of the government agency and/or the client.
24. In the case of Type II transactions (negotiated settlements) involving economic (but not physical) displacement, the client will identify and describe the procedures that the responsible government agency plans to use to compensate affected persons and communities. If these procedures do not meet the relevant requirements of this Performance Standard (the General Requirements, except for paragraph 12, and requirements for Economic Displacement above), the client will develop its own procedures to supplement government action.

Differences between OP 4.12 and Performance Standard #5: Mandatory vs. voluntary norms

While the IBRD-IDA policies and the IFC Performance standards on land acquisition and resettlement share common objectives and activities for protecting the livelihoods and the explicit or implicit rights of affected populations, they differ most significantly in their "legal" or "statutory" standing. In a nutshell this can be summarized as: "The **IBRD-IDA Policy 4.12 "must" be complied** with. It is mandatory. **The IFC Performance Standard 5 "should" be complied** with. It's application is voluntary and subject to the judgment of the professionals and administrators involved.

This difference applies to all Policies and all Performance Standards, not just the ones on Land Acquisition and Displacement/Resettlement. The difference also

reflects the ongoing debate about the usefulness of more or less "regulation" and is the subject of much debate in the Governance bodies of the Bank Group and among members of Civil Society. Some civil society representatives have argued "while the Policy and Performance Standards adopted by the IFC in 2006 reflect some improvements over previous environmental and social safeguards, they fall short of the recommendations of many civil society groups. Moreover, implementation of the Policy and Performance Standards is alleged to be uneven" [8]. Currently, reviews and evaluations are underway to shed more light on these issues and determine whether the current arrangements are effective and efficient.

C) Emergence of a global approach to regulate land acquisition

The experience at IBRD/IDA and at IFC/MIGA has led other institutions to also strengthen their capacity to deal with investment-induced land acquisition. In the course of this mutual learning and sharing, global norms of handling land-acquisition emerged.

Adoption of the IBRD-IDA norms for public sector financing at other institutions

Both the IBRD-IDA Policies and the IFC[9] Performance Standards were elaborated and revised over a span of almost thirty years and with the collaboration of many practitioners and researchers from many different organizations and countries. It is therefore no wonder that when other development institutions looked for a prototype that would suit their safeguard needs, they turned to the norms and approaches elaborated at the World Bank Group. What emerged is a global system of development banks and similar institutions that have either adapted the Bank norms to their needs or adopted these norms as part of their own regulations.

[8] http://accountabilityproject.org/article.php?list=type&type=45

[9] MIGA, The World Bank Group's Multilateral Investment Guarantee Agency, also uses the IFC Performance Standards. Thus IBRD/IDA Operational Policies are for the World Bank Group's public sector investments and IFC/MIGA Performance Standards are the safeguard norms for the WBG private sector investments.

While this process of borrowing and adapting started with the Regional Development Banks (e.g. AsDB, AfDB, EBRD, IADB, and EIB), it spread to bilateral development banks, (e.g. JBIC/Japan,) and similar bilateral institutions (eg. OPIC/USA).

IFC Performance Standards have become the norm for private sector investments

Led by the IFC example, numerous private financing institutions have adopted the IRR-based Performance Standards.

Equator Banks

A group of Banks involved in project financing in developing countries formed an association, called the " Equator Banks" whose members subscribe to the IFC norms. These banks have developed rules of conduct that they call the "Equator Principles" that were launched in June of 2003 and revised in 2006 in response to the revision of the IFC Performance Standards[10]. The complete text of the Equator Principles is in the Annex A.

The agreement among the Equator Banks spells out that "....These Principles are intended to serve as a common baseline and framework for the implementation by each EPFI [Equator Principles Financial Institution] of its own internal social and environmental policies, procedures and standards related to its project financing activities. We will not provide loans to projects where the borrower will not or is unable to comply with our respective social and environmental policies and procedures that implement the Equator Principles"[11]. About 70 banks and financial institutions (including over ten institutions from emerging markets) have now adopted the Equator Principles and their implicit connection to the IFC Performance Standards. A list of the Equator Banks can be found in the Annex B.

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[10] http://www.equator-principles.com/ft4.shtml

[11] http://www.equator-principles.com/principles.shtml#

Export Credit Agencies

In addition to the Equator Banks, there are about 30 Export Credit Agencies (ECAs)[12] of OECD countries that use the IFC Performance Standards as a benchmark for the financing of their private sector projects. A list of those Export Credit Agencies is found in the Annex C [13].

Exceptions: Sovereign Wealth Funds (SWFs) [14] have not yet dealt with safeguards on land acquisition

A new group of financing institutions was formed in April 2009. The International Working Group of Sovereign Wealth Funds (IWG) established the International Forum of Sovereign Wealth Funds (IFSWF). Some of the members of IFSWF are potentially and probably *de facto* quite important in large scale land acquisition. IFSWF is a voluntary group of Sovereign Wealth Funds (SWFs), for the exchange of views on issues of common interest and for furthering an understanding of the Santiago Principles[15] that had been developed by the Working Group. The Santiago Principles deal with important elements of banking conduct. Thus far no special attention has been given to the conduct of the investments financed by group members. A listing of the Santiago Principles is in Annex D. The members of IFSWF are listed in Annex E.

D) Governance and Enforcement

"The effectiveness of enforcement… depends to some extent on whether people see the rules as being worthy of respect. If rules are not seen as fair or fairly enforced,

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[12] Some of the ECAs are also member of the Equator Banks

[13]http://www.oecd.org/countrylist/0,3349,en_2649_34169_1783635_1_1_1_1,00.html

[14] http://www.ifswf.org/

[15] http://www.iwg-swf.org/pubs/gapplist.htm

individuals and organizations have greater incentive to evade them, increasing the difficulty and cost of enforcement" [16]

The discussion in the first part of this paper documented rules and procedures on land acquisition that many consider fair and appropriate. The discussion also showed how widely accepted those rules have in many investment sectors --- both public and private. The following sections concentrate on what institutions and governance mechanisms have been developed to enforce the norms that are meant to protect the livelihoods of poor and marginal people affected by those land acquisition.

"Accountability from Above" and "Accountability from Below"

The traditional approach to enforcing agreed-upon rules and procedures has been very much "command and control". Rules were written at the top and handed down through the hierarchy. Enforcement was also organized from the top down. However, hand in hand with more democratization, a more participatory process to accountability became introduced. Modern models of governance have emphasized the need for paying more attention to the voices and forces from below. Both the creation and maintenance, i.e. the supply of reliable and effective accountability institutions and the demand for reliable outcomes of these institutions are seen as the necessary conditions for satisfactory outcomes. Regina Birner[17] from IFPRI and others have summarized this demand and supply relationships and pointed to their importance for effective governance.

The World Bank Inspection Panel: Enforcing the IBRD-IDA policies on land acquisition

[16] Organizational Assesment: A Framework for Improving Performance, Charles Lusthaus, Interamerican Development Bank, International Development Research Center (Canada), IDRC/IDB 2002, p 30.
[17] http://conferences.ifpri.org/2020Chinaconference/pdf/beijingbrief_birner.pdf

An instructive example of this strengthening of demand-led accountability is the creation of the World Bank's Inspection Panel[18] in 1995. Up to this point, adherence to the Bank's Operational Policies --- including OP 4.12 dealing with Land Acquisition and Involuntary Resettlement --- was monitored only through the Bank's Management and their counterparts in the project structures or Governments. With the creation of the Panel, accountability became shared also with those who were affected by the lack of compliance with the agreed-upon rules. Citizens and communities had for the first time-unfettered access to an independent recourse mechanism and to authorities (i.e. the Executive Board of the World Bank) that had the responsibility and power to ensure that there was compliance and that negative consequences due to non-compliance would be eliminated. Since the Operational Policies of the Bank are mandatory, the Inspection Panel has exerted considerable influence on the Bank and its staff to ensure compliance with the rules and undo harm when there was non-compliance.

The IFC Recourse Mechanism CAO (Compliance, Advisory, Ombudsman)

In 1998, the World Bank Group created a separate recourse mechanism for the Bank's private sector investments. "The Compliance Advisor Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA). The CAO responds to complaints from project-affected communities with the goal of enhancing social and environmental outcomes on the ground"[19]. It is open to complaints from citizens and communities affected by investments or investment guarantees undertaken by IFC and MIGA. Some of the reasons for the Bank's dual structure (an Inspection Panel and a CAO) relate to the fact that one deals with private investments, the other with public investments. It was felt that an approach specifically tailored to the needs of collaborating with the private sector was needed. Furthermore, there was an interest on the part of IFC to have CAO be much more involved in mediation.

[18] www.inspectionpanel.org

[19] http://www.cao-ombudsman.org/

Extension of the "Panel Process" to other Institutions

As has been the case with the Policies and Performance Standards, all International Financing Institutions have now adopted approaches like the Inspection Panel and the CAO and adapted them to their specific needs. While all have as an objective to get issues of actual and anticipated harm resolved and adherence to norms examined, they differ in the way they organize the interplay between mediation activities and compliance checks.

The Inspection Panel was until recently not involved in problem solving/mediation. Since a few years, the Panel has granted more time and space for the parties in conflict (i.e. the Requesters and Bank Management) to solve some of their problems. However, the Panel does not directly mediate such "problem solving" in order to avoid any conflict of interest. The Panel reports to the Board.

This is different in the case of a complaint lodged against IFC or MIGA. **The recourse mechanism of IFC/MIGA is called CAO - Compliance Advisor Ombudsman.** It has divided its office in three complementary sub-units to ensure some independence among the functions: A complaint goes first to the Ombudsman who facilitates mediation through techniques of Alternative Conflict Resolution (ACR). In case there is no resolution within 100 days, the case is moved over to the Compliance Officer, who checks compliance and drafts a Compliance Report that is forwarded to the President of the World Bank Group. The Advisor is involved in counseling IFC, partner institutions and IFC clients in how to improve systems and draw the appropriate lessons from a particular case or from the CAO experience in general. The CAO reports to the President of the World Bank Group.

A similar integration of Conflict Resolution and Compliance Check exists at the **Asian Development Bank[20]. The AsDB's Accountability Mechanism** has two

[20] http://www.adb.org/SPF/mechanism.asp

components**: A Special Project Facilitator**, reporting to the President, who handles problem solving in an initial Consultation Phase and a **Compliance Review Panel,** reporting to the Board, that is responsible for the Compliance review Phase.

The same division of responsibilities exists at the **Inter-American Development Bank** with its newly (2010) **approved ICIM, Independent Consultation and Investigation Mechanism**[21], which replaces the former Independent Investigation Mechanism of 1994. The ICIM is also divided in Ombudsman and Compliance Check functions whereby the Ombudsperson reports to the President and the Board and the Compliance Panel reports to the Board.

The **European Bank for Reconstruction and Development (EBRD)** has a dual compliance function. One is handled by a Chief Compliance Officer who reports to the Bank's President and not to the Board. The other is the recently installed **Project Complaint Mechanism (PCM)**[22]**.** It is composed of independent Panel Members whose mandate is to react to complaints from project-affected populations and work through a problem solving and a compliance phase.

The Accountability Mechanism of the **European Investment Bank (EIB the financing body of the European Union)** is called **Complaint Mechanism**. Its new procedures were approved in 2010. The procedures apply both to the Bank and to the European Investment Fund (EIF). They are predominantly compliance focused but also leave room for problem solving and dispute resolution. It is interesting to note that the EIB mechanism can be accessed by "any member of the public"[23] while the other recourse IFI recourse mechanisms can only deal with complaints from project-affected individuals or communities. The Office is independent from operational activities, but reports through a Head of Corporate Responsibility to the Management Committee of the Bank or to EIF Chief Executive in the case of EIF

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[21] http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35074768
[22] http://www.ifitransparencyresource.org/en/IndicatorsDetail.aspx?id=3
[23] http://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf

related complaints. It is noteworthy that in the EU system there exists a two-tier approach that allows complaints to move from the "Complaint Office" to the "European Ombudsman" with its extremely high level of authority and power.

Independent Recourse/ Accountability Mechanisms at bilateral development financing institutions

There are also several bilateral development investment organizations that have created their own recourse mechanisms. OPIC (USA) and JBIC (Japan) have the most developed mechanisms. Other bilateral organizations are still thinking about the best ways to improve compliance through stronger reliance on "bottom-up accountability".

The **US Overseas Private Investment Corporation (OPIC)** has an **Office of Accountability** to assess and review complaints about OPIC-supported projects. The Office of Accountability handles both problem-solving initiatives and compliance reviews. Its Director reports to OPIC's President and CEO.

JBIC's [24]recourse approach is called "**Objection Procedures**"[25] and is handled through independent experts called "External Examiners". Two Examiners for Environmental Guidelines were appointed as an independent entity for conducting investigations.   The Examiners report to the President.

No independent Recourse at the Equator Banks, the Investment Guarantee Agencies, and the Santiago Principles Institutions

Of concern to many observers, particular to those from the NGO community is the fact that the **Equator Banks**, while relying on the IFC Performance Standards, do not have a recourse mechanism that matches the one available at IFC in the form of the CAO. Similarly, there are no independent recourse mechanisms available to

[24] JBIC has recently been merged with JICA; however the former JBIC procedures are still in force.
[25] http://www.jbic.go.jp/en/about/environment/guideline/disagree/index.html

those who might have an issue with investments supported by the **Investment Guarantee Agencies (IGAs)** described earlier in this paper.

The Forum of **Sovereign Wealth Funds** working under the **Santiago Principles** is probably too young to have dealt with issues of external and internal recourse. Given their prominence it will just be a matter of time till they will have to address issues of accountability and enforcement.

Increasing Concern with Compliance at Private Financial Institutions

Private financial institutions lack the external recourse mechanisms and the "bottom-up" accountability that drives much of compliance at the public IFIs and similar public institutions. However, there is an increasing focus on the expansion of internal compliance and associated enforcement.

National legislation in some countries (e.g. the Sarbanes–Oxley Act of 2002 and similar legislation in other OECD countries) have accelerated the trend to stronger and more reliable internal accountability. However the focus of much of this compliance is still on corruption and very little is known on compliance checks that go beyond financial issues. The potential to do more on issues such as land acquisition exists in the Equator Banks.

Recourse mechanisms in Developing Countries

Discussions that the Inspection Panel had with officials and representatives in developing countries, demonstrate the great interest in creating more "accountability from below". No country-led recourse mechanisms that are equivalent to those at the IFIs have evolved thus far. However, ad-hoc commissions to deal with complaints and compliance have been institutionalized in some countries.

Who is the object of the Recourse Mechanisms of the IFIs and similar financial institutions? Direct and Indirect Impact

As their names and charters imply, Financial Institutions are responsible for the financing of investments. They are not the implementers of projects and programs; however they share a responsibility in ensuring that the financing is implemented in line with agreements and conventions and do not violate national and international laws and regulations. Most importantly and in line with the previous discussion, they are responsible for ensuring compliance with their own policies, procedures, safeguards, and performance standards. Hence it is the management and staff of the institution under investigation that is the formal and direct object of scrutiny through the IFI recourse mechanisms.

However, experience with the recourse mechanisms of the IFIs and others has shown that implementing agencies or Bank clients are an "indirect object" of investigations into a bank's compliance. Thus the indirect impact of these investigations on public opinion and official decision-making has become of increasing importance. Particularly in situations where civil society and the press are very active, and where challenges to authority can be rather freely expressed, one sees a considerable momentum generated through such bank-focused investigations and the reports that become freely available at the end of an investigation.

Impartial Fact-finding through Independent Inspectors/Investigators is a crucial element of Enforcement

The recourse mechanisms described before are " Fact-finding Bodies". Their impact on enforcement stems from the power of the facts they collect and from the way these facts are procured and analyzed. Members of the World Bank's Inspection Panel have repeatedly testified how important the modality of their work is. They

have repeatedly emphasized that the process they are involved in is governed by the **"Three I's" : Independence, Impartiality and Integrity.**

To achieve this level of integrity, Panels or their equivalents are composed of senior professionals who have not been recent staff members or consultants of the Bank or organization in question and have not been implicated in any of the activities that could become the subject of an investigation. Furthermore, they agree not to work for the institutions they inspect at the conclusion of their assignment and stay clear of appearance of conflict of interest

Direct Enforcement through Boards and CEOs

If the Panels do not enforce the rules, who does it then? In the case of the World Bank Inspection Panel, it is the Executive Board. In other institutions, it is the President or CEO of the organization. Implementation of the enforcement decision rests with Management. Monitoring of the enforcement is usually also in the hands of Management. Occasionally external checks are made by the recourse mechanisms, by evaluation departments, independent researchers, or through civil society efforts. In general there is dissatisfaction with current possibilities and approaches to follow-up that are seen as too unreliable, too short-lived and not sufficiently independent.

Recourse Mechanisms as a Deterrent and as a Motivator for better Compliance with Land Acquisition Norms

As imperfect and incomplete as the work of the currently existing recourse mechanisms may be, it has enhanced the culture of adherence to norms at the IFIs and at similar institutions. More importantly, it has impacted significantly on the development of risk-mitigating legislation and implementation in a number of developing countries. For instance, the critical examination of land acquisition in the case of a large transport project in one of the World Bank's member countries has

added significantly to the resolve of the government to adopt and enforce new legislation that incorporates the IRR approach and resulting norms.

Other "Accountability from Below" Approaches: The Demand for Good Governance (DGG) Movement

While the recourse mechanisms thus far described deal with compliance with Policies, Procedures and Performance Standards of international and bilateral investment institutions, the concept of "accountability from below" has become part of the effort of several organizations and agencies to deal with outright corruption. The World Bank has created an expanding Department of Institutional Integrity (INT) that deals with allegations of corruption perpetrated both within the Bank and in partner countries. This Department also depends on information generated by citizens and communities.

Demand for Good Governance: A promise for Enforcement of norms on land acquisition

An increasing number of projects incorporate "Demand for Good Governance" components. Citizen groups watch that projects get implemented according to plan, that teachers show up in schools, that medicine is made available, that roads are maintained and that money for special projects is disbursed and not pocketed by someone.

The essence of the approach is that norms are known to the population. The management dissemination of this information requires organization and support to become successful. Although community agitation is known in cases of large-scale land acquisition, very little is thus far known on how this approach could be applied to situations of large-scale land acquisition.

E) Summary and Lessons learnt

A. There exists a rich body of experience on enforcing social and environmental norms in the acquisition of land for infrastructure projects funded by the IFIs, bilateral and private financing institutions.

B. To ensure fair conditions for those who have to change or give up their traditional use of land, these banks rely on safeguard norms known under labels such as "Displacement/ Resettlement Policies/Performance Standards".

C. Their experience has shown that, while reliable national institutions and legislation need to be developed, some practical procedures can and should be initiated even in the absence of a perfect institutional environment.

D. The experience of the IFIs in enforcing land acquisition norms has been successful because they control the financing and could rely on "indirect avenues of enforcement". They also were supported in these efforts through the pressure brought about by civil society that used the notion of "accountability from below" to point to violations of norms and resulting problems.

E. The degree and quality of enforcement is higher in publicly funded investments than in those funded privately.

F. Although data are hard to come by, experience with land acquisition financed by the IFIs and some bilateral financial institutions has shown that the quality and success of enforcement depends on the following variables:

- Specificity and statutory standing [26] of the norms
  - While there is now a great congruence of norms among international, bilateral, and some private institutions engaged in international financing, there exists considerable difference in terms of their statutory standing. Only the IFI norms for

[26] The term "statutory standing" refers to the degree to which a policy or a performance standard is mandatory or voluntary.

public sector financing are fully mandatory. All the others rely on various degrees of voluntary adherence to the norms.

- Knowledge and skills of those that apply the norms
    - The IFIs have developed considerable skills in applying the norms to all their projects. Private banks and their partners have lesser skills but can rely on a rapidly expanding pool of expert consultants familiar with land acquisition issues.
- Consultation, information and publicity about rights and norms
    - IFIs and the Equator Banks have similar standards for private sector investments. However, little is known about the Equator Bank's actual performance on consultation and information. Although the concept of "consent" is a goal aspired by many, very little is known about the achievement of this goal, even among those institutions that list consent as a specific objective.
- Organizational capacity among the affected populations to articulate and transmit their concerns and complaints
    - The growth of civil society and of democratization in general has led to more awareness of rights and due process. While the IFIs are actively involved in fostering these movements, private banks are less engaged.
- Existence of an independent and impartial fact finding and recourse mechanism to receive complaints
    - Project-internal grievance organizations are becoming increasingly accepted. They are part of most policies and Performance Standards on land acquisition. However, external independent and impartial recourse mechanisms are still rare. Thus far they exist only at the IFIs and at some bilateral institutions
- A formal or informal authority that forces or "shames" violators of norms into compliance

- The power of the purse gives Banks enormous influence over the enforcement of norms. They demand such enforcement because of their own compliance rules and, being constantly observed by a critical public, they want to reduce their reputational risk.
- Civil society has increasingly become global in its reach. Issues of land acquisition and displacement have become focus of their concern and action. Their authority and power to enforce norms is informal but has substantially increased in significance due to their involvement in various important issues with great political significance.

F) Recommendations emanating from this review

1. **This review demonstrated that the norms and procedures developed for infrastructure and similar projects are relevant to the current discussion on large-scale land acquisition. Those interested in establishing, applying, and enforcing norms for land acquisition need to familiarize themselves in detail with this experience and adapt and adopt as much as possible from existing norms--- even if they were designed for different types of land acquisition.**
2. **Wherever national governments have adopted rules derived from the IBRD/IDA-type Policies or the IFC/MIGA-type Performance Standards, one should explore the use of those rules before recommending additional sets of national rules. Relevant training in adapting existing norms to the new kind of land acquisition should start as soon as possible.**
3. **The experience of national and international expert consultants on land acquisition and displacement for infrastructure projects should be made accessible to the entities and decision makers involved in this new kind of land acquisition.**

4. **Although voluntary norms and guidelines are less effective than mandatory ones, they are easier to put in place. Their success depends on the "buy-in" by those who acquire land. Communication, information, and training programs need to be initiates as quickly as possible --- preferably borrowing materials that have been developed by the IFIs for dealing with land acquisition induced by infrastructure investments.**
5. **Since many private financing institutions have already adopted some norms for investment-induced land acquisition (usually similar to IFC/MIGA Performance Standard #5), there is a need to understand their involvement in this new type of land acquisition and, if they are involved, encourage them to use these instruments in their transactions.**
6. **New financiers of land acquisition need to be introduced to the merits of the IBRD/IDA or IFC/MIGA -type norms and to the impact these rules and their enforcement have on reducing reputational risks for those involved.**
7. **A close cooperation with civil society should be sought in developing recourse and grievance mechanisms that help to minimize the most serious consequences of land acquisition.**

Annex A: The "Equator Principles"; A financial industry benchmark for determining, assessing and managing social & environmental risk in project financing, July 2006 (partial reproduction) (http://www.equatorprinciples.com/principles.shtml)

PREAMBLE

Project financing[1], a method of funding in which the lender looks primarily to the revenues generated by a single project both as the source of repayment and as security for the exposure, play an important role in financing development throughout the world. Project financiers may encounter social and environmental issues that are both complex and challenging, particularly with respect to projects in the emerging markets.

The Equator Principles Financial Institutions (EPFIs) have consequently adopted these Principles in order to ensure that the projects we finance are developed in a manner that is socially responsible and reflect sound environmental management practices. By doing so, negative impacts on project-affected ecosystems and communities should be avoided where possible, and if these impacts are unavoidable, they should be reduced, mitigated and/or compensated for appropriately. We believe that adoption of and adherence to these Principles offers significant benefits to ourselves, our borrowers and local stakeholders through our borrowers' engagement with locally affected communities. We therefore recognise that our role as financiers affords us opportunities to promote responsible environmental stewardship and socially responsible development. As such, EPFIs will consider reviewing these Principles from time-to-time based on implementation experience, and in order to reflect ongoing learning and emerging good practice. These Principles are intended to serve as a common baseline and framework for the implementation by each EPFI of its own internal social and environmental policies, procedures and standards related to its project financing activities. We will not provide loans to projects where the borrower will not or is unable to comply with our respective social and environmental policies and procedures that implement the Equator Principles.

SCOPE

The Principles apply to all new project financings globally with total project capital costs of US$10 million or more, and across all industry sectors. In addition, while the Principles are not intended

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[1] 1 **Project finance** is "a method of funding in which the lender looks primarily to the revenues generated by a single project, both as the source of repayment and as security for the exposure. This type of financing is usually for large, complex and expensive installations that might include, for example, power plants, chemical processing plants, mines, transportation infrastructure, environment, and telecommunications infrastructure. Project finance may take the form of financing of the construction of a new capital installation, or refinancing of an existing installation, with or without improvements. In such transactions, the lender is usually paid solely or almost exclusively out of the money generated by the contracts for the facility's output, such as the electricity sold by a power plant. The borrower is usually an SPE (Special Purpose Entity) that is not permitted to perform any function other than developing, owning, and operating the installation. The consequence is that repayment depends primarily on the project's cash flow and on the collateral value of the project's assets." Source: *Basel Committee on Banking Supervision*, International Convergence of Capital Measurement and Capital Standards ("Basel II"), November 2005. http://www.bis.org/publ/bcbs118.pdf.

to be applied retroactively, we will apply them to all project financings covering expansion or upgrade of an existing facility where changes in scale or scope may create significant environmental and/or social impacts, or significantly change the nature or degree of an existing impact.

The Principles also extend to project finance advisory activities. In these cases, EPFIs commit to make the client aware of the content, application and benefits of applying the Principles to the anticipated project, and request that the client communicate to the EPFI its intention to adhere to the requirements of the Principles when subsequently seeking financing.

STATEMENT OF PRINCIPLES

EPFIs will only provide loans to projects that conform to Principles 1-9 below:

Principle 1: Review and Categorisation

When a project is proposed for financing, the EPFI will, as part of its internal social and environmental review and due diligence, categorise such project based on the magnitude of its potential impacts and risks in accordance with the environmental and social screening criteria of the International Finance Corporation (IFC) (Exhibit I).

Principle 2: Social and Environmental Assessment

For each project assessed as being either Category A or Category B, the borrower has conducted a Social and Environmental Assessment ("Assessment") process[2] to address, as appropriate and to the EPFI's satisfaction, the relevant social and environmental impacts and risks of the proposed project (which may include, if relevant, the illustrative list of issues as found in Exhibit II). The Assessment should also propose mitigation and management measures relevant and appropriate to the nature and scale of the proposed project.

Principle 3: Applicable Social and Environmental Standards

For projects located in non-OECD countries, and those located in OECD countries not designated as High-Income, as defined by the World Bank Development Indicators Database, the Assessment will refer to the then applicable IFC Performance Standards (Exhibit III) and the then applicable Industry Specific EHS Guidelines ("EHS Guidelines") (Exhibit IV). The Assessment will establish to a participating EPFI's satisfaction the project's overall compliance with, or justified deviation from, the respective Performance Standards and EHS Guidelines.

The regulatory, permitting and public comment process requirements in High-Income OECD Countries, as defined by the World Bank Development Indicators Database, generally meet or exceed the requirements of the IFC Performance Standards (Exhibit III) and EHS Guidelines (Exhibit IV). Consequently, to avoid duplication and streamline EPFI's review of these projects, successful completion of an Assessment (or its equivalent) process under and in compliance with local or national law in High-Income OECD Countries is considered to be an acceptable substitute for the IFC Performance Standards, EHS Guidelines and further requirements as detailed in Principles 4, 5 and 6 below. For these projects, however, the EPFI still categorises and reviews the project in accordance with Principles 1 and 2 above.

The Assessment process in both cases should address compliance with relevant host country laws, regulations and permits that pertain to social and environmental matters.

Principle 4: Action Plan and Management System

For all Category A and Category B projects located in non-OECD countries, and those located in OECD countries not designated as High-Income, as defined by the World Bank Development Indicators Database, the borrower has prepared an Action Plan (AP)[3] which addresses the relevant findings, and draws on the conclusions of the Assessment. The AP will describe and prioritise the actions needed to implement mitigation measures, corrective actions and monitoring measures necessary to manage the impacts and risks identified in the Assessment. Borrowers will build on, maintain or establish a Social and Environmental Management System that addresses the management of these impacts, risks, and corrective actions required to comply with applicable host country social and environmental laws and regulations, and requirements of the applicable Performance Standards and EHS Guidelines, as defined in the AP.

For projects located in High-Income OECD countries, EPFIs may require development of an Action Plan based on relevant permitting and regulatory requirements, and as defined by host-country law.

Principle 5: Consultation and Disclosure

For all Category A and, as appropriate, Category B projects located in non-OECD countries, and

those located in OECD countries not designated as High-Income, as defined by the World Bank Development Indicators Database, the government, borrower or third party expert has consulted with project affected communities in a structured and culturally appropriate manner.[4] For projects with significant adverse impacts on affected communities, the process will ensure their free, prior and informed consultation and facilitate their informed participation as a means to establish, to the satisfaction of the EPFI, whether a project has adequately incorporated affected communities' concerns.

In order to accomplish this, the Assessment documentation and AP, or non-technical summaries thereof, will be made available to the public by the borrower for a reasonable minimum period in the relevant local language and in a culturally appropriate manner. The borrower will take account of and document the process and results of the consultation, including any actions agreed resulting from the consultation. For projects with adverse social or environmental impacts, disclosure should occur early in the Assessment process and in any event before the project construction commences, and on an ongoing basis.

Principle 6: Grievance Mechanism

For all Category A and, as appropriate, Category B projects located in non-OECD countries, and those located in OECD countries not designated as High-Income, as defined by the World Bank Development Indicators Database, to ensure that consultation, disclosure and community engagement continues throughout construction and operation of the project, the borrower will, scaled to the risks and adverse impacts of the project, establish a grievance mechanism as part of the management system. This will allow the borrower to receive and facilitate resolution of concerns and grievances about the project's social and environmental performance raised by individuals or groups from among project-affected communities. The borrower will inform the affected communities about the mechanism in the course of its community engagement process and ensure that the mechanism addresses concerns promptly and transparently, in a culturally appropriate manner, and is readily accessible to all segments of the affected communities.

Principle 7: Independent Review

For all Category A projects and, as appropriate, for Category B projects, an independent social or environmental expert not directly associated with the borrower will review the Assessment, AP and consultation process documentation in order to assist EPFI's due diligence, and assess Equator Principles compliance.

Principle 8: Covenants

An important strength of the Principles is the incorporation of covenants linked to compliance. For Category A and B projects, the borrower will covenant in financing documentation:

a) to comply with all relevant host country social and environmental laws, regulations and permits in all material respects;

b) to comply with the AP (where applicable) during the construction and operation of the project in all material respects;

c) to provide periodic reports in a format agreed with EPFIs (with the frequency of these reports proportionate to the severity of impacts, or as required by law, but not less than annually), prepared by in-house staff or third party experts, that i) document compliance with the AP (where applicable), and ii) provide representation of compliance with relevant local, state and host country social and environmental laws, regulations and permits; and

d) to decommission the facilities, where applicable and appropriate, in accordance with an agreed decommissioning plan.

Where a borrower is not in compliance with its social and environmental covenants, EPFIs will work with the borrower to bring it back into compliance to the extent feasible, and if the borrower fails to re-establish compliance within an agreed grace period, EPFIs reserve the right to exercise remedies, as they consider appropriate.

Principle 9: Independent Monitoring and Reporting

To ensure ongoing monitoring and reporting over the life of the loan, EPFIs will, for all Category A projects, and as appropriate, for Category B projects, require appointment of an independent environmental and/or social expert, or require that the borrower retain qualified and experienced external experts to verify its monitoring information which would be shared with EPFIs.

Principle 10: EPFI Reporting

Each EPFI adopting the Equator Principles commits to report publicly at least annually about its Equator Principles implementation processes and experience, taking into account appropriate confidentiality considerations.[6]

DISCLAIMER

The adopting EPFIs view these Principles as a financial industry benchmark for developing individual, internal social and environmental policies, procedures and practices. As with all internal policies, these Principles do not create any rights in, or liability to, any person, public or private. Institutions are adopting and implementing these Principles voluntarily and independently, without reliance on or recourse to IFC or the World Bank.

Exhibit I: Categorisation of projects

As part of their review of a project's expected social and environmental impacts, EPFIs use a system of social and environmental categorisation, based on IFC's environmental and social screening criteria, to reflect the magnitude of impacts understood as a result of assessment. These categories are:

Category A – Projects with potential significant adverse social or environmental impacts that are diverse, irreversible or unprecedented;

Category B – Projects with potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures; and

Category C – Projects with minimal or no social or environmental impacts.

Exhibit II: Illustrative list of potential social and environmental issues to be addressed in the Social and Environmental Assessment documentation

In the context of the business of the project, the Assessment documentation will address, where applicable, the following issues:

a) assessment of the baseline social and environmental conditions
b) consideration of feasible environmentally and socially preferable alternatives
c) requirements under host country laws and regulations, applicable international treaties and agreements
d) protection of human rights and community health, safety and security (including risks, impacts and management of project's use of security personnel)
e) protection of cultural property and heritage
f) protection and conservation of biodiversity, including endangered species and sensitive ecosystems in modified, natural and critical habitats, and identification of legally protected areas
g) sustainable management and use of renewable natural resources (including sustainable resource management through appropriate independent certification systems)
h) use and management of dangerous substances
i) major hazards assessment and management
j) labour issues (including the four core labour standards), and occupational health and safety
k) fire prevention and life safety
l) socio-economic impacts
m) land acquisition and involuntary resettlement
n) impacts on affected communities, and disadvantaged or vulnerable groups
o) impacts on indigenous peoples, and their unique cultural systems and values
p) cumulative impacts of existing projects, the proposed project, and anticipated future projects
q) consultation and participation of affected parties in the design, review and implementation of the project
r) efficient production, delivery and use of energy]s) pollution prevention and waste minimisation, pollution controls (liquid effluents and air emissions) and solid and chemical waste management

Note: The above list is for illustrative purposes only. The Social and Environmental Assessment process of each project may or may not identify all issues noted above, or be relevant to every

project.

Exhibit III: IFC Performance Standards on Social and Environmental Sustainability

As of April 30, 2006, the following list of IFC Performance Standards were applicable:

- Performance Standard 1: Social & Environmental Assessment & Management System
- Performance Standard 2: Labor and Working Conditions
- Performance Standard 3: Pollution Prevention and Abatement
- Performance Standard 4: Community Health, Safety and Security
- Performance Standard 5: Land Acquisition and Involuntary Resettlement
- Performance Standard 6: Biodiversity Conservation and Sustainable Natural Resource Management
- Performance Standard 7: Indigenous Peoples
- Performance Standard 8: Cultural Heritage

Note: The IFC has developed a set of **Guidance Notes** to accompany each Performance Standard. While not formally adopting the Guidance Notes, EPFIs or borrowers may use the Guidance Notes as useful points of reference when seeking further guidance on or interpretation of the Performance Standards. The IFC Performance Standards, Guidance Notes and Industry Sector EHS Guidelines can be found at www.ifc.org/enviro

Appendix B: Institutions That Have Adopted the Equator Principles

Absa Bank Limited
Access Bank
ANZ
Arab African International Bank
ASN Bank NV
Banco Bradesco
Banco de la República Oriental del Uruguay
Banco do Brasil
Banco Galicia
Banco Santander
Bancolombia S.A.
BankMuscat
Bank of America
Bank of Tokyo-Mitsubishi UFJ
Barclays plc
BBVA
BES Group
BMO Financial Group
BNP Paribas
Caixa Econômica Federal
Caja Navarra
Crédit Agricole Corporate and Investment Bank
CIBC
CIFI
Citigroup Inc.
CORPBANCA
Credit Suisse Group
Dexia Group
DnB Nor
E+Co
EFIC
EKF
Export Development Canada
FirstRand Bank Ltd
FMO
Fortis Bank Nederland
Fortis Bank NV/SA
HSBC Group
Industrial Bank Co., Ltd
ING Group
Intesa Sanpaolo
Itau Unibanco S/A
JPMorgan Chase
KBC
KfW IPEX-Bank
la Caixa
Lloyds Banking Group Plc

Manulife
Mizuho Corporate Bank
Millennium bcp
National Australia Bank
Nordea
Nedbank Group
Rabobank Group
RBC
Scotiabank
SEB
Societe Generale
Standard Bank Group
Standard Chartered Bank
SMBC
TD Bank Financial Group
The Royal Bank of Scotland
UniCredit Bank AG
Wells Fargo & Company
WestLB AG
Westpac Banking Corporation

Apendix C: Official Export Credits Agencies

Australia

Export Finance and Insurance Corporation (EFIC)

Austria

Oesterreichische Kontrollbank AG (OeKB)

Belgium

- Office National du Ducroire/Nationale Delcrederedienst (ONDD)

Canada

- Export Development Canada (EDC)

Czech Republic

- Export Guarantee and Insurance Corporation (EGAP)
- Czech Export Bank

Denmark

- Eksport Kredit Fonden (EKF)

Finland

- Finnvera Oyj
- Finnish Export Credit Ltd (FEC)

France

- Compagnie française d'Assurance pour le commerce extérieur (COFACE)
- Direction des Relations Economiques Extérieures (Ministère de l'Economie) (DREE)

Germany

- AuslandsGeschäftsAbsicherung der Bundesrepublik Deutschland
- Euler Hermes

Greece

- Export Credit Insurance Organisation (ECIO)

Hungary

- Hungarian Export Credit Insurance Ltd (MEHIB)
- Hungarian Export-Import Bank

Italy

- SACE S.p.A. Servizi Assicurativi del Commercio Estero

Japan

- Nippon Export and Investment Insurance (NEXI)
- Japan Bank for International Cooperation (JBIC)

Korea

- Korea Export Insurance Corporation (KEIC)
- The Export-Import Bank of Korea (KEXIM)

Luxembourg

- Office du Ducroire (ODD)

Mexico

- Banco National de Comercio Exterior

Netherlands

- Atradius

New Zealand

- Export Credit Office (ECO)

Norway

- The Norwegian Guarantee Institute for Export Credits (GIEK)

Poland

- Korporacja Ubezpieczén Kredytów Eksportowych (KUKE)

Portugal

- Companhia de Seguro de Créditos

Slovak Republic

- Export-Import Bank of the Slovak Republic (Eximbank SR)

Spain

- Compañía Española de Seguros de Crédito a la Exportación
- Secretaría de Estado de Comercio (Ministerio de Economía)

Sweden

- Exportkreditnämnden (EKN)

Switzerland

- Swiss Export Risk Insurance (SERV)

Turkey

- Export Credit Bank of Turkey (Türk Eximbank)

United Kingdom

- Export Credits Guarantee Department (ECGD)

United States

- Export-Import Bank of the United States (Ex-Im Bank)

Appendix D: Santiago Principles guiding the members of the the International Forum of Sovereign Wealth Funds (IFSWF) http://www.iwg-swf.org/pubs/gapplist.htm

In furtherance of the "Objective and Purpose", the IWG members either have implemented or intend to implement the following principles and practices, on a voluntary basis, *each of which is subject to* home country laws, regulations, requirements and obligations. This paragraph is an integral part of the GAPP.

GAPP 1. Principle The legal framework for the SWF should be sound and support its effective operation and the achievement of its stated objective(s).

GAPP 1.1 Subprinciple The legal framework for the SWF should ensure the legal soundness of the SWF and its transactions.

GAPP 1.2 Subprinciple The key features of the SWF's legal basis and structure, as well as the legal relationship between the SWF and the other state bodies, should be publicly disclosed.

GAPP 2. Principle The policy purpose of the SWF should be clearly defined and publicly disclosed.

GAPP 3. Principle Where the SWF's activities have significant direct domestic macroeconomic implications, those activities should be closely coordinated with the domestic fiscal and monetary authorities, so as to ensure consistency with the overall macroeconomic policies.

GAPP 4. Principle There should be clear and publicly disclosed policies, rules, procedures, or arrangements in relation to the SWF's general approach to funding, withdrawal, and spending operations.

GAPP 4.1 Subprinciple The source of SWF funding should be publicly disclosed.

GAPP 4.2 Subprinciple The general approach to withdrawals from the SWF and spending on behalf of the government should be publicly disclosed.

GAPP 5. Principle The relevant statistical data pertaining to the SWF should be reported on a timely basis to the owner, or as otherwise required, for inclusion where appropriate in macroeconomic data sets.

GAPP 6. Principle The governance framework for the SWF should be sound and establish a clear and effective division of roles and responsibilities in order to facilitate accountability and operational independence in the management of the SWF to pursue its objectives.

GAPP 7. Principle The owner should set the objectives of the SWF, appoint the members of its governing body(ies) in accordance with clearly defined procedures, and exercise oversight over the SWF's operations.

GAPP 8. Principle The governing body(ies) should act in the best interests of the SWF, and have a clear mandate and adequate authority and competency to carry out its functions.

GAPP 9. Principle The operational management of the SWF should implement the SWF's strategies in an independent manner and in accordance with clearly defined responsibilities.

GAPP 10. Principle The accountability framework for the SWF's operations should be clearly defined in the relevant legislation, charter, other constitutive documents, or management agreement.

GAPP 11. Principle An annual report and accompanying financial statements on the SWF's operations and performance should be prepared in a timely fashion and in accordance with recognized international or national accounting standards in a consistent manner.

GAPP 12. Principle The SWF's operations and financial statements should be audited annually in accordance with recognized international or national auditing standards in a consistent manner.

GAPP 13. Principle Professional and ethical standards should be clearly defined and made known to the members of the SWF's governing body(ies), management, and staff.

GAPP 14. Principle Dealing with third parties for the purpose of the SWF's operational management should be based on economic and financial grounds, and follow clear rules and procedures.

GAPP 15. Principle SWF operations and activities in host countries should be conducted in compliance with all applicable regulatory and disclosure requirements of the countries in which they operate.

GAPP 16. Principle The governance framework and objectives, as well as the manner in which the SWF's management is operationally independent from the owner, should be publicly disclosed.

GAPP 17. Principle Relevant financial information regarding the SWF should be publicly disclosed to demonstrate its economic and financial orientation, so as to contribute to stability in international financial markets and enhance trust in recipient countries.

GAPP 18. Principle The SWF's investment policy should be clear and consistent with its defined objectives, risk tolerance, and investment strategy, as set by the owner or the governing body(ies), and be based on sound portfolio management principles.

GAPP 18.1 Subprinciple The investment policy should guide the SWF's financial risk exposures and the possible use of leverage.

GAPP 18.2 Subprinciple The investment policy should address the extent to which internal and/or external investment managers are used, the range of their activities and authority, and the process by which they are selected and their performance monitored.

GAPP 18.3 Subprinciple A description of the investment policy of the SWF should be publicly disclosed.

GAPP 19. Principle The SWF's investment decisions should aim to maximize risk-adjusted financial returns in a manner consistent with its investment policy, and based on economic and financial grounds.

GAPP 19.1 Subprinciple If investment decisions are subject to other than economic and financial considerations, these should be clearly set out in the investment policy and be publicly disclosed.

GAPP 19.2 Subprinciple The management of an SWF's assets should be consistent with what is generally accepted as sound asset management

principles.

GAPP 20. Principle The SWF should not seek or take advantage of privileged information or inappropriate influence by the broader government in competing with private entities.

GAPP 21. Principle SWFs view shareholder ownership rights as a fundamental element of their equity investments' value. If an SWF chooses to exercise its ownership rights, it should do so in a manner that is consistent with its investment policy and protects the financial value of its investments. The SWF should publicly disclose its general approach to voting securities of listed entities, including the key factors guiding its exercise of ownership rights.

GAPP 22. Principle The SWF should have a framework that identifies, assesses, and manages the risks of its operations.

GAPP 22.1 Subprinciple The risk management framework should include reliable information and timely reporting systems, which should enable the adequate monitoring and management of relevant risks within acceptable parameters and levels, control and incentive mechanisms, codes of conduct, business continuity planning, and an independent audit function.

GAPP 22.2 Subprinciple The general approach to the SWF's risk management framework should be publicly disclosed.

GAPP 23. Principle The assets and investment performance (absolute and relative to benchmarks, if any) of the SWF should be measured and reported to the owner according to clearly defined principles or standards.

GAPP 24. Principle A process of regular review of the implementation of the GAPP should be engaged in by or on behalf of the SWF.

Appendix E: List of Members of The International Forum of Sovereign Wealth Funds (IFSWF) (http://www.ifswf.org/)

Australia
Azerbaijan
Bahrain
Botswana
Canada
Chile
China
Equatorial Guinea
Iran
Ireland
Korea
Kuwait
Libya
Mexico
New Zealand
Norway
Qatar
Russia
Singapore
Timor-Leste
Trinidad & Tobago
The United Arab Emirates
The United States