

The involvement and responsibilities of International Financial Institutions in Asian farmland investment

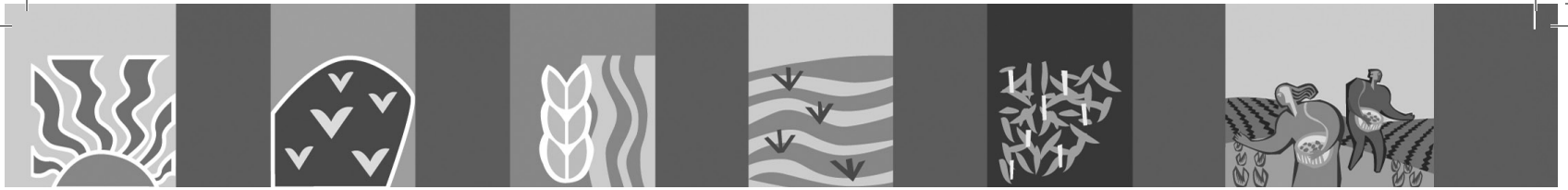
This article is the executive summary of a study (same title) that the Allard K. Lowenstein International Human Rights Clinic prepared in July 2011 for the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC). The team members include Megan Corrarino, Paul Linden-Retek, Laureen Oleykowski and Chelsea Purvis. The full report is available at http://www.law.yale.edu/International_Financial_Institutions_and_Asian_Farmland_Investment_Report.pdf

Abstract: Large-scale agricultural investment projects in South and Southeast Asia pose significant risks to the human rights and food security of people in project host communities. Nevertheless, international financial institutions (IFIs) continue to finance, support, and promote such projects. Current IFI mechanisms, ostensibly designed to protect host communities, fail to provide effective mechanisms for reconsidering or halting problematic agricultural investment projects and for safeguarding the rights of affected people. There is a gap between the mandates of IFIs – to promote development and reduce poverty – and current agricultural investment practices, which threaten the livelihood of some of the world’s most vulnerable people. To bridge this gap, IFIs must (1) increase transparency and host-community participation, (2) emphasize human rights and smallholder empowerment in agricultural investment projects, (3) provide support and funding for host-country governments to enact best practices and monitor land acquisition in their countries, and (4) convert principles on human rights in host communities into enforceable policies.

Large-scale land acquisition in South and Southeast Asia

Global population growth and the corresponding strain on global resources have created increased pressure to expand land cultivation and agricultural productivity.¹ At the same time, public spending and

¹ KLAUS DEININGER & DEREK BYERLEE, WORLD BANK, RISING GLOBAL INTEREST IN FARMLAND: CAN IT YIELD SUSTAINABLE AND



development assistance for agriculture worldwide have declined.² In many countries, increases in agricultural productivity have not kept pace with the demand for food and other agricultural products.³ International financial institutions (IFIs) and governments of developing countries have long considered private investment in agricultural land to be a solution to the growing demand for food and an opportunity for investors to increase the productivity of agricultural land.⁴ International farmland investment became increasingly common following the global food crisis in 2007-2008.⁵

Agricultural land acquisitions often occur, however, without coherent oversight or effective policies to protect the rights of affected communities. These acquisitions allow speculators to take already-scarce land resources out of the hands of small-scale farmers who depend on land for their livelihood. Furthermore, they undermine national and local food security in developing countries.⁶

EQUITABLE BENEFITS? XXIII (2010), available at http://siteresources.worldbank.org/INTARD/Resources/ESW_Sept7_final_final.pdf.

² ROEL R. RAVANERA & VANESSA GORRA, INTERNATIONAL LAND COALITION, COMMERCIAL PRESSURES ON LAND IN ASIA: AN OVERVIEW 5 (JANUARY 2011), available at <http://www.landcoalition.org/fr/publications/commercial-pressures-land-asia-overview>.

³ FAO Investment Center, <http://www.fao.org/tc/tci/whyinvestinagricultureandru/en/> (last visited Mar. 17, 2011).

⁴ *Ibid.*

⁵ Luisa Guarneri, *Raise Farm Production to End Food Crisis: FAO Director General Testifies Before Italian Parliament*, FAO NEWSROOM, Sep. 28 2008, <http://www.fao.org/newsroom/en/news/2008/1000922/index.html> (last visited Mar. 17, 2011).

⁶ SHEPARD DANIEL & ANURADHA MITTAL, OAKLAND INSTITUTE, (MIS)INVESTMENT IN AGRICULTURE: THE ROLE OF THE INTERNATIONAL FINANCE CORPORATION IN GLOBAL LAND GRABS (2010). See also, e.g., RAVANERA & GORRA, *supra* note 2; JOACHIM VON BRAUN & RUTH MEINZEN-DICK, INTERNATIONAL FOOD POLICY RESEARCH INSTITUTE, "LAND GRABBING" BY FOREIGN INVESTORS IN DEVELOPING COUNTRIES: RISKS AND OPPORTUNITIES (APRIL 2009), available at <http://www.ifpri.org/publication/land-grabbing-foreign-investors-developing-countries>; U.N. Special Rapporteur on the Right to Food, *Large-scale land acquisitions and leases: A Set of Core Principles and Measures to Address the Human Rights Challenge*, 3 (June 11, 2009), available at <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf>.

Detailed information on land deals and investments in South and Southeast Asia is difficult to obtain. Little information from governments or investors is available to the general public about who is purchasing and leasing land, from whom, and for what purposes; governments and IFIs themselves lack comprehensive data on regional or national land acquisition.⁷

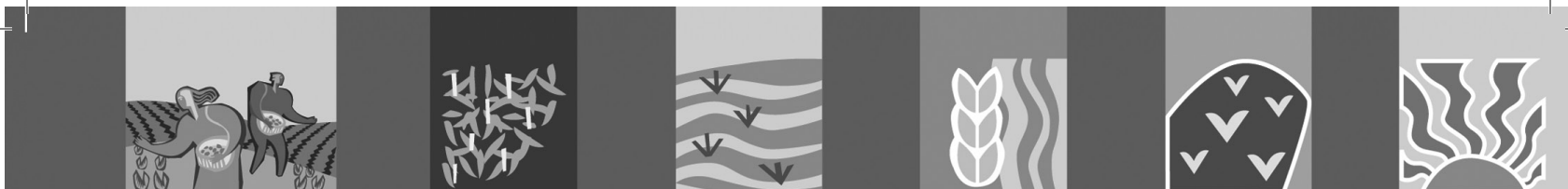
Although Asian governments play an active role in facilitating investments, such investments seldom take the form of large-scale land sales (as they do in other places, notably Africa).⁸ In most of Asia, the amount of unoccupied arable land available for acquisition is small.⁹ Moreover, domestic legal frameworks – through statutes and constitutional provisions that limit land sales to foreigners – often prevent large-scale land acquisition.¹⁰ As a result of these constraints, foreign investment in agricultural land tends to involve contract farming,

⁷ MICHAEL TAYLOR & TIM BENDING, INTERNATIONAL LAND COALITION, INCREASING COMMERCIAL PRESSURE ON LAND: BUILDING A COORDINATED RESPONSE (JULY 2009), available at http://ilcsite.landcoalition.info/sites/default/files/publication/821/09_07_cpl_discussionpaper.pdf. In a series of interviews in Manila, Philippines, government officials and representatives of the Asian Development Bank and the World Bank confirmed that there was no comprehensive data on large-scale land acquisition or leasing. Interview with Cristino Panlilio, Undersecretary for Industry and Investments, Philippines Department of Trade and Industry's (DTI) Board of Investments, Manila, Philippines (Jan. 17, 2011); interview with Marriz Agbon, President, Philippine Agricultural Development and Commercial Corporation, in Manila, Philippines (Jan. 20, 2011); interview with Bert Hofman, Country Director, World Bank Philippines, in Manila, Philippines (Jan. 20, 2011); interview with Michiko Katagami, Project Economist: Agriculture, Environment, and Natural Resources Division (ADB Roundtable), in Manila, Philippines (Jan. 20, 2011).

⁸ Interviews with government and IFI officials, *supra* note 7. For descriptions of land grabs in Africa, see, e.g., ALISON GRAHAM ET AL., FOODFIRST INFO. & ACTION NETWORK [FIAN], CSO MONITORING 2009-2010, ADVANCING AFRICAN AGRICULTURE (AAA): THE IMPACT OF EUROPE'S POLICIES AND PRACTICES ON AFRICAN AGRICULTURE AND FOOD SECURITY: LAND GRAB STUDY (2010), available at <http://www.fian.org/resources/documents/others/report-on-land-grabbing/pdf>.

⁹ U.N. Special Rapporteur on the Right to Food, *Large-scale land acquisitions and leases: A Set of Core Principles and Measures to Address the Human Rights Challenge*, *supra* note 6, at 3.

¹⁰ Interview with Michiko Katagami et al., *supra* note 7.



long-term leases of consolidated areas of land, or business partnerships between foreign investors and local enterprises. Foreign investors sometimes collaborate with local companies to form and share ownership of new domestic companies that can, under national law, purchase or lease large holdings of land.¹¹ However, some governments have begun to take actions that suggest they are reducing legal barriers to large-scale land sales, and IFIs frequently encourage such policies as part of open-market and free-trade reforms.¹²

The role of International Financial Institutions (IFIs)

The World Bank Group and the Asian Development Bank (ADB) influence large-scale land acquisition in South and Southeast Asia in at least two different ways: (1) actual, direct participation in the financing of land acquisition projects and projects related to agricultural development, agribusiness, and the development of transportation or processing infrastructure (each of which might affect the rights to food and to access to land); and (2) indirect effects on these rights through the influence of the banks' development guidelines and policies on practices of developing countries' governments.¹³ Nevertheless, the full extent of IFI involvement is often difficult to determine, for two reasons. First, banks and financing parties disclose only limited details concerning land acquisition. Second, because bank policies are often implemented as part of wide-reaching regulatory reforms, it is often difficult to demonstrate empirically that general bank policies have caused specific local outcomes.

¹¹ Raul Q. Montemayor, *Overseas Farmland Investments—Boon or Bane for Farmers in Asia?*, in *LAND GRAB: THE RACE FOR THE WORLD'S FARMLAND 99* (Michael Kugelman and Susan L. Levenstein, eds., 2009), available at http://www.wilsoncenter.org/topics/pubs/ASIA_090629_Land%20Grab_rpt.pdf.

¹² See, e.g., RAVANERA & GORRA, *supra* note 2, at 7.

¹³ Interviews with government and IFI officials, *supra* note 7. See also, e.g., RUMU SARKAR, *DEVELOPMENT LAW AND INTERNATIONAL FINANCE* (1999).

Despite this lack of information, IFIs clearly play a critical role in agricultural investment practices in Asia.¹⁴ They help to design and fund joint ventures between governments and private investors, and they work with host governments to identify, implement, and monitor investment projects in some of the region's most vulnerable agricultural communities. However, despite their enormous power and their mandates to promote development and reduce poverty, IFIs have failed to identify and implement meaningful safeguards to protect the rights of the poorest communities and most vulnerable people.

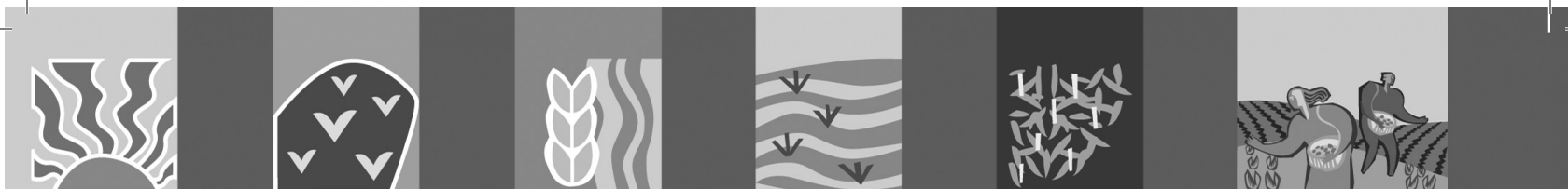
As a result, bank practices in Asian agriculture entail a significant risk of increasing, rather than ameliorating, the problems of food insecurity and hunger. This paper details key problems with IFIs' current approaches to agricultural investment and provides recommendations for reforms that would improve protection of human rights in IFI-funded agricultural projects.

Problems & Recommendations

Current IFI agricultural investment practices lack effective safeguards to protect the human rights and livelihood of host-community members.¹⁵ If they are to protect the very people their policies

¹⁴ See, e.g., LORENZO COTULA, INTERNATIONAL INSTITUTE FOR ENVIRONMENT AND DEVELOPMENT, *INVESTMENT CONTRACTS AND SUSTAINABLE DEVELOPMENT: HOW TO MAKE CONTRACTS FOR FAIRER AND MORE SUSTAINABLE NATURAL RESOURCE INVESTMENTS 1* (2010), available at <http://pubs.iied.org/pdfs/17507IIED.pdf>; ROS-B GUZMAN, PESTICIDE ACTION NETWORK ASIA AND THE PACIFIC, *GLOBAL LAND GRABBING: ERODING FOOD SOVEREIGNTY 14* (DEC. 2010), available at http://www.panap.net/sites/default/files/TurningPoint_GlobalLandGrabbing.pdf.

¹⁵ CTR. INT'L ENVTL. L. & ACCOUNTABILITY COUNSEL, *A CALL FOR REFORM OF WORLD BANK GROUP AGRIBUSINESS POLICIES AND PRACTICES 24* (2011); DANIEL & MITTAL, *supra* note 6; DEININGER & BYERLEE *supra* note 1, at 84. For a discussion of the need to include host communities in project development early, beginning in the negotiation stage, see U.N. Special Rapporteur on the Right to Food, *Agribusiness and the Right to Food*, Human Rights Council, at 13, U.N. Doc. A/HRC/13/33 (Dec. 22, 2009) (by Olivier De Schutter).



are meant to lift out of poverty, the World Bank Group and the ADB must undertake the following policy reforms: (1) improve transparency and the participation of stakeholders; (2) emphasize human rights and smallholder empowerment in agricultural projects; (3) support host countries in identifying and implementing best practices for agricultural regulation and investment; and (4) adopt best principles and practices as enforceable policies. Until such reforms are implemented, IFIs should observe a moratorium on large-scale agricultural investment and on the promotion of pro-investment policies.

First, the World Bank Group and ADB lack adequate measures to ensure transparency and the participation of stakeholders. The current framework for financing agricultural investments fails to create sufficient transparency and community participation. There is little or no information about local governments' involvement in negotiating investment deals, about individual deals themselves, or about the overall volume of land transactions undertaken by local governments. When the banks release information about a particular investment, it is already late in the investment and development process, often too late to make meaningful changes. Information is routinely provided only on bank or government websites and thus available only to those with access to the Internet. This effectively excludes civil society and community groups from influencing development policy and finance decisions and makes existing participatory mechanisms, in practice, largely superficial formalities.¹⁶

Despite these problems, the ADB and the World Bank Group have great potential to bring about increased transparency and participation in Asian land acquisitions. They can contribute human, financial, and technical resources to help domestic governments create information-sharing mechanisms

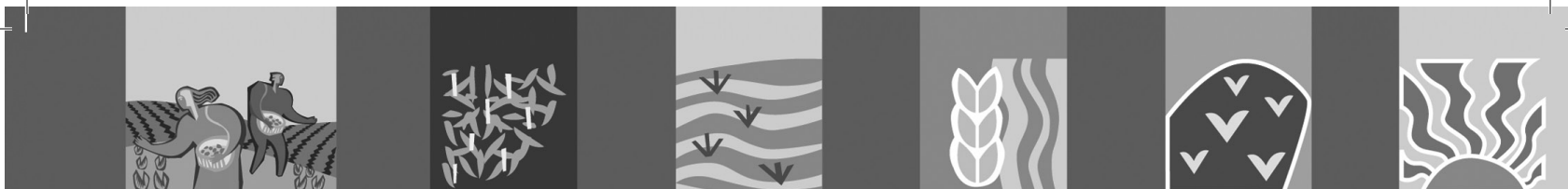
¹⁶ *Ibid.* See also Interview with Dr. Avilash Roul, Dir. Forum on ADB, in Manila, Philippines (Jan. 18, 2011).

that will increase transparency in land acquisitions, and they can help NGOs and CSOs participate in decision-making about land acquisitions. Meaningful community participation requires consultation with communities at the earliest possible stages of project development, as well as actual community influence on project details. Providing for such increased transparency and participation would further the banks' own principles requiring disclosure and community consultation. To improve transparency and participation, we recommend that IFIs:

- (1) increase transparency in land acquisitions by (a) providing effective and meaningful access to project information by all stakeholders and (b) publicizing the full extent of the consultation phase of any project; and
- (2) increase local stakeholder participation in land acquisition processes by (a) strengthening comprehensive mechanisms for civil society involvement, (b) implementing consultative processes and communication plans *before* approval of development projects, (c) simplifying and streamlining complaint mechanisms by which communities can object to projects or project terms, (d) strengthening their ombuds offices, and (e) providing technical assistance to improve mechanisms for community participation and civil-society involvement.

Second, the development banks fail to emphasize human rights and smallholder empowerment in their projects and development priorities.¹⁷ A growing body of literature finds that a rights-based approach to development can best address the needs of the poor and vulnerable, providing, among other benefits, community empowerment, better risk-

¹⁷ See, e.g., CTR. INT'L ENVTL. L. & ACCOUNTABILITY COUNSEL, *supra* note 15; DANIEL & MITTAL, *supra* note 6; OXFAM, PRIVATE SECTOR AGRICULTURAL LAND INVESTMENTS: IMPACTS ON SMALL MEN AND WOMEN FARMERS AND ON FOOD SECURITY (2010).



management capabilities, better development outcomes, and more sustainable economic development.¹⁸ According to the U.N. Special Rapporteur on the Right to Food, the people who face the greatest food insecurity today are “[s]mallholders in developing countries, cultivating small plots of land often with little or no public support.”¹⁹ Bank policies often fail to empower these smallholders or to protect rights of host communities. As a result, some civil society representatives have called for the banks to suspend agricultural investment until they implement a better rights framework.²⁰ Other critics recommend that the banks, particularly the International Finance Corporation of the World Bank Group, permanently stop financing large-scale land acquisitions.²¹ If projects involving large-scale land acquisitions are to continue in a manner consistent with emerging international norms on rights and development, the banks must give rights protection greater weight in project assessment, design, and implementation.

Many policymakers at the World Bank Group and the ADB have shown increased commitment to smallholders’ rights and local food security. However, without a systemic, institutional commitment to a smallholder-oriented approach to agricultural investment, it will be impossible for the banks to fully realize their mandate to promote development in the most vulnerable communities. To improve human rights protection and improve support for smallholders, we recommend that IFIs:

- (1) adopt principles, policies, and practices that reflect a rights-based approach to food security and access to land by (a) recognizing

- the importance of human rights as a measure of success, (b) conforming to the highest environmental and social standards, and (c) empowering local communities; and
- (2) work with governments to strengthen projects that *directly* benefit small-scale farmers and landholders, including (a) technical training and assistance, (b) access to improved inputs, and (c) access to financial services.

Third, IFIs and their partners frequently fail to adjust their project plans to take account of problematic regulatory environments in host countries. Many World Bank Group and ADB projects provide important technical and financial support for development. Frequently, however, bank projects also interact with host-country governments in one of three troubling ways: they promote agribusiness projects and facilitate investment without first understanding the nature of land acquisition in host countries²²; they rely on insufficient domestic regulatory infrastructure for enforcing rights²³; and they lay the groundwork for pro-land-acquisition policies in host countries.²⁴ To improve development of host government capacity, we recommend that IFIs:

²² See *supra* n.7 & accompanying text.

²³ The ADB and the World Bank regularly rely on host governments to ensure host-community approval of ADB-funded projects. OXFAM, *supra* note 17. Yet host governments frequently fail to provide notice and comment processes, either because they lack the capacity to do so or because they have already decided to push through project approval. Interview with Dr. Avilash Roul, *supra* note 16. See also Interview with Michiko Katagami et al., *supra* note 7 (proposing greater involvement from civil society to cover gaps between Asian countries’ strong regulatory frameworks and generally poor enforcement mechanisms).

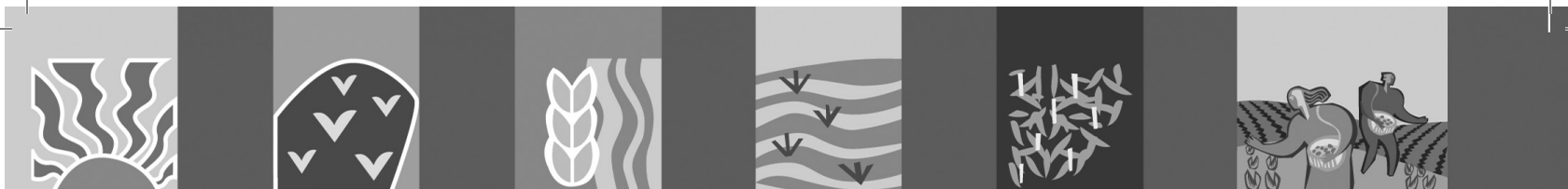
²⁴ See, e.g., LYNN HOLSTEIN, TOWARD BEST PRACTICE FROM WORLD BANK EXPERIENCE IN LAND TITLING AND REGISTRATION (1996), available at www.landnetamericas.org/docs/World%20Bank%20Experience.pdf. Some World Bank projects, such as land-titling schemes in Lao PDR and elsewhere, were explicitly designed to attract foreign investment in agriculture and agribusiness. These projects often undermine existing community land-holding arrangements that provide long-term food and livelihood security to smallholders. *Ibid.*

¹⁸ See, e.g., WORLD RESOURCES INST., A ROADMAP FOR INTEGRATING HUMAN RIGHTS INTO THE WORLD BANK GROUP 3 (2010).

¹⁹ U.N. Special Rapporteur on the Right to Food, *Agribusiness and the Right to Food*, *supra* note 15, at 11

²⁰ See, e.g., CTR. INT’L ENVTL. L. & ACCOUNTABILITY COUNSEL, *supra* note 15.

²¹ See, e.g., GRAIN, *A Word from Grain*, in DANIEL & MITTAL, *supra* note 6.



- (1) take the lead in understanding the extent of land acquisition in Asia by (a) conducting a regional study and (b) assisting national governments in monitoring and reporting on land acquisition; and
- (2) develop principles, policies, and practices that support food security by (a) working with host governments to develop effective regulatory frameworks and (b) ensuring that bank-supported development projects do not lay the groundwork for future land grabs.

Fourth, the human rights protections in existing World Bank Group and ADB principles and policies are incomplete, inconsistent, and poorly enforced. A complex patchwork of principles and policies govern World Bank Group and ADB projects. However, these principles and policies incompletely reflect international human rights norms and often fail to effectively protect the rights of vulnerable people.²⁵ Furthermore, the complexity and variety of these principles and policies make it difficult for even high-level bank officials to be aware of the latest developments. This suggests it would be almost impossible for affected populations to have a complete picture of their rights and remedies under

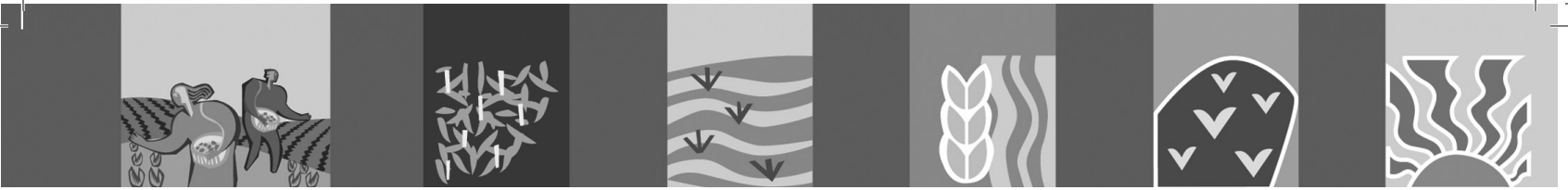
²⁵ For one of many critiques, see, e.g., LEONARD A. CRIPPA & REBECCA ALEEM, COMMENTS AND RECOMMENDATIONS ON THE IFC'S PROPOSED POLICY ON SOCIAL AND ENVIRONMENTAL SUSTAINABILITY AND PERFORMANCE STANDARDS (July 2010).

²⁶ For example, although the banks have mechanisms by which host communities can bring complaints to about projects, these are often highly bureaucratic, happen too late in the project development process, take up to six years to reach decisions (time in which projects might be proceeding), are often fail to account for host communities' resource limitations and need for immediate access to subsistence agriculture. Consequently, they fail to provide a meaningful forum in which host communities can seek remedies for rights violations. OXFAM, *supra* note 17. See also Interview with Dr. Avilash Roul, *supra* note 16 (civil society must advocate strongly and on an ongoing basis for complaint mechanisms to ever work); *ABD Safeguard Policy Update*, INTERNATIONAL ACCOUNTABILITY PROJECT, <http://www.accountabilityproject.org/article.php?list=type&type=40> (last visited Feb. 13, 2011) (expressing concern about a global "race to the bottom" in the development of bank accountability mechanisms).

bank policies.²⁶ Finally, although the World Bank recently developed a set of principles to govern land-acquisition projects, they are, as principles, not binding unless they become bank policy.¹

To improve safeguards within IFIs, we recommend that IFIs adopt policies and practices that incorporate a rights-based approach and are enforceable by (a) identifying best policies and practices under the rights-based approach outlined above and (b) adopting best practices as enforceable policies.

²⁷ Interview with Bert Hofman, *supra* note 7.



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The International Land Coalition is a global alliance of civil society and intergovernmental

organizations working together to promote secure and equitable access to and control over land for poor women and men through advocacy, dialogue and capacity building.

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Founded in 1979, ANGOC is a regional association of 17 national and regional networks of non-government organizations (NGOs) in Asia actively engaged in food security, agrarian reform, sustainable agriculture, participatory governance and rural development. ANGOC member networks and partners work in 14 Asian countries with an effective reach of some 3,000 NGOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy debates with national governments, intergovernmental organizations (IGOs), and international financial institutions (IFIs).

The complexity of Asian realities and diversity of NGOs highlight the need for a development leadership to service the poor of Asia—providing a forum for articulation of their needs and aspirations as well as expression of Asian values and perspectives. ANGOC seeks to address the key issues related to food sovereignty, agrarian reform, sustainable agriculture, participatory governance, and rural development in the region.

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