

Position Statement on Land Governance

FMO (the Netherlands Development Finance Company) is the Dutch development bank. Since 1970 we have been a driving force behind investments empowering entrepreneurs in emerging markets. It is our role and mandate to create local prosperity in some of the world's most challenging economies.

This Position Statement is an integral part of the [FMO Sustainability Policy framework](#) that steers FMO's activities. The Position Statements explain FMO's choices in relation to major global sustainability issues and further explain how we select investments, work with clients and other stakeholders, and monitor performance. They reflect our objective to apply the highest possible standard of ethics and integrity to our business activities.

Governance of Land Rights in a Private Sector Context

FMO invests in projects that may require land acquisition¹ or result in restrictions on land use.² This can have large implications for the people that rely on this land for their livelihood, and whose families may have done so for many years before. Land acquisition and restriction of land use can result in environmental, social and human rights impacts. According to the [UN Guiding Principles on Business and Human Rights](#), it is the duty of the state to enforce laws and provide a business environment that respects human rights, including rights related to land use. Businesses, including financial institutions, have a responsibility to respect human rights. [IFC Performance Standard 5](#)³ on Land Acquisition and Involuntary Resettlement provides specific guidance for businesses. The '[Voluntary Guidelines on the Responsible Governance of Tenure](#)' (VGGTs) provide further guidance on land-related issues.

Especially in emerging market economies, where FMO is active, ownership or tenure of land is not always clear or sufficiently protected; this can increase the risk of land conflicts and adverse effects on the wellbeing of the people who depend on the land for their livelihood. Respect for human rights in relation to land acquisition includes paying particular attention to the needs and challenges faced by people who may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced, for example, by women, minority groups, and nomadic users of land.

¹ Land acquisition includes purchases of property and acquisition of access rights, such as easements or rights of way.

² Restriction on land use can be both short-term, for example during project construction, and long term in the form of a land lease for example.

³ IFC – The International Finance Corporation of the World Bank group

FMO's choices

FMO recognizes its responsibility to respect human rights, including those related to land, in line with the standards and principles described in section 4 of FMO's Sustainability Policy. FMO acts in line with applicable national and international law, applies international best practices, notably the IFC Social and Environmental Performance Standards and requires the same from clients through our contracting and monitoring processes.⁴ Therefore, understanding if there is any land acquisition, and its potential environmental, social and human rights impacts (or legacy tenure issues)⁵, is a priority from the first assessment of an investment project and further explored in FMO's due diligence process.

In all projects that involve land acquisition or a change in the use of land, FMO requires its clients to implement a process of effective and meaningful consultation that offers affected stakeholders the opportunity to express their views on the project and its impacts and mitigation measures. We expect the client to respond to these views; to take account of them in project design and execution, and establish appropriate procedures to address grievances and complaints from affected communities that can facilitate early resolution and prompt remediation. We assess this during due diligence and project monitoring that includes site visits by FMO staff and our consultants. Where projects involve any involuntary resettlement (economic and/or physical, as defined in the IFC Performance Standards) we expect clients to review their approach and find ways to avoid or minimize resettlement as part of our social and environmental due diligence. We encourage clients to look for opportunities to contribute to strengthening tenure rights for local people.

Indigenous Peoples (IP) are often amongst the most marginalized and vulnerable segments of the population with particularly close ties to their lands and related natural resources. This poses an increased responsibility for businesses to respect the rights of Indigenous Peoples. FMO requires its clients to undertake a Free, Prior and Informed Consent (FPIC) process for the use of their lands, resources, traditional knowledge, or intellectual property where the IFC Performance Standards require this. FMO verifies this requirement through independent advisors and its own due-diligence processes.

From an environmental, social and human rights perspective, land acquisition transactions can be divided into two categories: (a) land acquisition based on the "Willing Buyer/Willing Seller" principle and (b) land acquisition involving involuntary resettlement.

a. Willing Buyer/Willing Seller

Land acquisition qualifies as "Willing Buyer/Willing Seller" when project affected people voluntarily sell their property in a situation where the buyer cannot resort to compulsory acquisition. In order to ensure that property transactions are fair, FMO requires as a minimum that: (i) land markets or other

⁴ For more on how we do this, see Section 5 of [FMO's Sustainability Policy](#).

⁵ For example, if there is evidence of gaps in the original land acquisition with respect to the then-applicable legal regime and how local communities were actually treated, the objective would be to see how those gaps can be compensated for.

opportunities exist for the productive investment of sales income (ii) the transaction took place with the seller's informed consent; and (iii) the seller was provided with fair compensation based on prevailing market values. In case land acquisition affects land users other than the "Willing Seller", FMO requires clients to compensate such land users in line with the requirements of IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement (see below).

b. Land Acquisition involving Involuntary Resettlement

These are land acquisition transactions in which people who are physically or economically displaced by land acquisition (permanently or temporarily), and have no right to refuse the land acquisition. This can happen in case of government expropriation or in case of negotiated settlements where the buyer has legal recourse to expropriation should negotiations with the seller fail, e.g. where land is required for power generation and electricity transmission line routes.

FMO aims to avoid involuntary resettlement or involuntary land acquisition, e.g. by modifying project design or location where feasible. FMO encourages and works with clients to reach negotiated agreements on land acquisition and resettlement even if they have the legal means to acquire land without the seller's consent. FMO recognizes that states have rights to expropriate land: FMO will only invest where land has been expropriated for a public purpose.⁶

Where involuntary resettlement is unavoidable and in accordance with the legal system of the host country, it should be minimized (both in land-area and number of people affected) and appropriate measures to mitigate and/or compensate adverse impacts on displaced persons and host communities should be carefully planned and implemented. FMO requires that those affected are as well as or better off than prior to the acquisition and requires clients to provide evidence of livelihood restoration.⁷ In line with IFC Performance Standard 5, land-based compensation is preferred for people displaced from land-based livelihoods.

Forced evictions, i.e. in which people are removed from land without legal protections, remedy and other safeguards⁸, are not acceptable to FMO.

⁶ Determining if expropriation is for a 'public purpose' is a judgement call. Factors include whether the project is defined as meeting a public purpose in the jurisdiction where it will be implemented. FAO (the Food and Agriculture Organization of the United Nations) describes 'public purpose' as including transportation uses, public buildings (including schools, libraries, and factories), public utilities, parks and recreational areas, defense. See [FAO, Compulsory Acquisition of Land and Compensation, 2008](#).

⁷ People who encroach on land after a cut-off date communicated consistent with the requirements of PS 5 are not entitled to compensation.

⁸ See [IFC Performance Standard 5 Guidance Note](#), para 55, for further detail.

Implementation

We support our clients to apply international standards and implement best practices in stakeholder consultation, community engagement, resettlement, and to obtain FPIC when circumstances require this. The willingness and capacity to meet these standards is a key criterion in deciding what investments to make. We are guided by the IFC Performance Standards, [OECD Guidelines for Multinational Enterprises](#)⁹, the United Nations Guiding Principles on Business and Human Rights, and the VGGTs. In FMO's Due Diligence, we take a broad view of land rights, including legal land rights, customary land rights, other restrictions of land use (including in relation to squatting), and impacts on food security. We also consider the needs of vulnerable groups; including the rights of women (who may face discrimination in relation to land rights), for example in impact assessments, resettlement plans, and livelihood restoration plans. When land rights are an issue, FMO will deepen its due diligence with a focus on understanding human rights risks and related mitigation measures, for example, by undertaking a land acquisition audit. In the ongoing monitoring and review of FMO's investments, new actions may be triggered in line with the standards as described in Section 4 of the FMO Sustainability Policy. The elements in the FMO Sustainability Policy on grievance mechanisms are of particular relevance in relation to land governance, and projects involving involuntary resettlement are amongst those that will always be required to have a grievance mechanism.

We take a similar approach to tenure rights for fisheries and forests.

Please see the FMO Position Statements on Disclosure¹⁰, Corruption and Bribery¹¹, Gender¹² and on Human Rights¹³ for more information on FMO's position and choices in these issue areas.

Feedback

We welcome feedback on our Position Statements. Please contact us at consultation@fmo.nl.

⁹ [Organization for Economic Co-operation and Development](#)

¹⁰ FMO's current position on Disclosure can be found [here](#).

¹¹ FMO's current position on Anti-bribery and Corruption can be found [here](#).

¹² FMO's current position on Gender can be found [here](#).

¹³ FMO's current position on Human Rights can be found [here](#).