

Suggestions for integrating considerations of land concentration impacts into the EBRD's safeguards

by CEE Bankwatch Network and Land Matrix Initiative

The EBRD provides financial support to companies working in the agricultural sector that aim to increase their land bank (see for example loans to [Zelena Dolyna Group](#), [Nyva Pereyaslavschny](#), [Mriya Farming](#) and [UkrFarm Funding Limited](#) observed in Ukraine alone).

The process of land consolidation (concentration) can cause negative impacts on local communities and should be properly considered. The problem of land concentration goes beyond the process of land acquisition itself. This process of buying up vast tracts of land by a single company in certain areas has long-term effects through changes in land ownership (control), resulting in shifts in the balance of power between stakeholders (e.g. large landowners, local governments, and local communities).

The EBRD's Environmental and Social Policy includes the Performance (Environmental and Social) Requirement 5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement. The list of objectives for PR5 is entirely focused on the avoidance of resettlement and compensations for resettled people. These objectives narrow down the scope of the requirements listed to those associated with the loss of land, rather than those associated with limitations on the use of land.

In particular, PR5 recommends that:

The client shall consider feasible alternative project designs and sites to avoid or minimise land acquisition or restrictions on land use, other assets and natural resources while balancing environmental, social, and financial costs and benefits, and paying particular attention to gender impacts and impacts on vulnerable persons.

We suggest that the policy clearly spells out the need to assess the impact of large-scale land acquisition as a dedicated assessment aimed at avoiding land concentration by individual companies. Such an assessment should not be the sole responsibility of the client, as it is the client's objective to increase its land bank while keeping logistics and infrastructure costs low, thus aiming to concentrate its land in certain areas. The impact of such land consolidation on smaller landowners and communities should be part of the Bank's project due diligence.

Bankwatch has documented public concerns expressed by small landowners about the activities of the EBRD's clients in Ukraine and Uzbekistan. People from the communities in Ukraine where MHP is expanding

its operations have complained about the harsh treatment of locals who were unwilling to lease their land to the company.

People in Ulianivka and Bilousivka describe how the company was systematically pressuring landowners individually to sign the leases, not on the community level. People were approached individually several times, with some visited up to four times. The most vulnerable people, usually elderly, single or widowed women, were targeted the most. The families of the company workers were also among the ones who were being intimidated to sign the lease.

- Bankwatch report '[Black Earth: Agribusiness in Ukraine and the marginalisation of rural communities](#)', 2015.

One common problem observed in Ukraine and supported by a formal complaint to the EBRD's project complaint mechanism [on MHP projects](#), is the loss of the ability to lease land to anyone other than the dominant land lessee or have a say what would be the development on their land. In case of MHP it was also the matter of lease of agriculture land for 49 years and constructing there the chicken facilities, without proper plan how these lands will be returned into their prior state after those years.

"Even some landowners who leased land to MHP have reported that they were not properly consulted on, or even made aware of, MHP's planned Project facilities prior to their construction. Moreover, local landowners were not given an opportunity to fairly negotiate the terms of the lease agreements, but instead were presented with long-term lease agreements with fixed prices, leaving individual farmers faced with a 'take it or leave it offer' with no opportunity to negotiate."

- [Complaint request to the EBRD on MHP projects](#), 2018.

Sometimes it is difficult for other potential users to physically access the land because they have to cross someone else's land. In other cases, a potential alternative lessee may find it difficult to work on several unconnected plots of land. In this situation, landowners have no choice but to agree to whatever terms the monopoly land company proposes as in the case of [Tomato Processing Line](#) reviewed by the EIB Complaint Mechanism.

In Uzbekistan the EBRD-supported Indorama company saw a rapid expansion of its land bank when the Uzbek government transferred land operated by 2,879 farmers.

Farmers who were required to give up their leases were promised employment with the company. They would become 'direct farmers' working for Indorama with training in modern farming techniques, full time pay, benefits and security, certainly a tempting alternative to scratching out a living in a sector that retains significant government involvement. Two years later and, according to one official in Kasbi, unemployment and the number of those receiving social assistance have tripled.

- [Land-grabs – the new red flag for Uzbek cotton sector](#), Uzbek Forum for Human Rights, 2021.

The problems associated with land concentration are not unique to the Bank or to the region in which it operates. The Land Matrix Initiative is one of the academic groups discussing these issues in its third

analytical report '[Taking stock of the global land rush: Few development benefits, many human and environmental risks](#)' (2021).

The results of our review and complementary analyses are sobering, in part alarming. Compliance with the principles of responsible business conduct is rare, and scant consultation with the affected communities is common. The non-consensual and uncompensated loss of land often comes with only little socio-economic benefits – be they employment, positive productivity spillovers, or infrastructure.

The issue of land concentration was highlighted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in its [Benchmarking Study of Development Finance Institutions' Safeguard Policies](#). The study points out the need to adjust International Financial Institutions' policies to avoid negative impacts of land transactions on page 118:

3. LAND TRANSACTIONS DFIs' Safeguards have for a long time addressed involuntary land transactions and involuntary resettlement. Land is a vital asset, critical for human rights and sustainable development, and many DFI projects affect land access and land rights with potential impacts on a wide range of human rights. The multiple functions and uses of land as a source of food, water livelihoods and other resources, its importance for cultural and social identity, peace and economic security, and the impoverishment risks that often result from involuntary resettlement, underscore the need for broad-ranging and robust Safeguards. Resettlement has been a consistent focus of complaints to IAMs and a source of social tension and violent conflict. This Section focuses on one particular gap in most DFIs' Safeguards, pertaining to land transactions.

The OHCHR suggests among other recommendations:

- *Require procedural checks in relation to the "willing buyer willing seller" assumption. This would help to ensure that transactions are validly negotiated, and that the right not to proceed with the transaction (when this is claimed) is respected. This would entail an assessment of parties' access to information, access to legal and technical support, reprisal risk checks, and the availability of effective grievance mechanisms. Many of these dimensions are already included in the World Bank's ESSF 5, which in OHCHR's view may serve as a precedent and stimulus for wider progress on these issues.*
- *Recognize that there may be a need for a sliding scale of requirements tailored to particular transactions and situations; for example, minimal checks would suffice where there is an active land market, and more detailed requirements should apply in situations of large-scale acquisitions in rural settings, and in relation to acquisitions from marginalized groups, which could also require third-party verification.*

Suggested text to Environmental and Social Requirement 5

We suggest the following additions to the requirements, with a dedicated subsection:

Consideration of the impact of land consolidation activities

- *The EBRD will assess the level of land consolidation in the project areas (based on economic centres or administrative units) to estimate the level of economic, social or political impact on communities,*
- *The EBRD will assess the possible negative impact on the ability of individuals who refuse to sell or lease their land to access and work their land plots following the Client's land consolidation operation. Assess*

possible negative impacts on free access to areas commonly used by communities (such as meadows, lakes, rivers and forests).

Adjustment of the existing provisions:

Census, inventory of affected assets and cut-off date

25. The client will carry out a census of project-affected people to: (i) identify persons affected by the project and (ii) determine who will be eligible for compensation and assistance. The census will also take into account seasonal resource users who may not be present in the project area at the time of the census, **and landowners who will be limited in working their land because of land consolidation.**

For more information: Olexi Pasyuk, olexi.pasyuk@ecoaction.org.ua