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Banks + Land Grabs: Research, campaigning + advocacy tools, sharing Oxfam Australia's experience

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Abstract

In April 2014 Oxfam Australialaunched the report *Banking on Shaky Ground: Australia's Big Four Banks and Land Grabs*. Using case studies and policy analysis, the report shows how the banks are backing companies that face credible allegations of land grabbing in the agriculture and forestry sectors overseas. This paper shares key learnings from Oxfam Australia's Banks & Land Grabs campaign that links land grabs in Asia-Pacific, as well as elsewhere, to Australian financing. It contributes to the evolving understanding of financialisation and agricultural land grabs, and highlights one example of coordinated action that targets the banks for their involvement. Collectively Australia's big four banks have an exposure of billions of dollars in the agriculture sector and they are rapidly expanding into Asia-Pacific.

The paper describes how Oxfam Australia uncovers links between Australian banks and land grabs in Asia-Pacific. Drawing on practical case studies, it explores avenues for financing land grabs – through loans, shareholdings and wealth management services. The paper also provides an overview of research tools, and outlines advocacy approaches in the follow-up to the report. This includes collaboration with affected communities and a campaign drawing on the power of Australians as bank customers and shareholders. Lastly, the paper focuses on the key campaign asks of the banks. Based on learnings since the release of the report, this section gives detailed examples of how a Zero Tolerance for Land Grabs approach could be put in place across a range of banking operations. This includes making investment information accessible to affected communities and their collaborators – allowing them to better identify bank links to land grabs. It also outlines policies and practices to deter banks from backing companies involved in land grabs, including processes for redress.

Introduction

In April 2014, Oxfam Australia launched the report *Banking on Shaky Ground* and an associated campaign on the big four Australian banks and their links to agriculture land grabs in emerging markets.[1] The key author, Shen Narayanasamy, showed how Australian banks were financing companies active in the 'soft commodity' sector (such as sugar, timber, coffee, palm oil and rubber), that were connected to forced evictions, associated food shortages and environmental degradation. The report profiled four cases covering sugar, palm oil and timber projects, and revealed bank links to another twelve credible allegations of agricultural land grabs. Close policy analysis showed how land rights are not adequately covered in bank policies relevant to agriculture and forestry, and that the banks have fallen short in realizing their existing human rights commitments. The report also made the business case – outlining how land grabs are associated with increased sovereign, credit, operational and reputational risks. Oxfam Australia has called for the banks to adopt a Zero Tolerance for Land Grabs approach which involves increased transparency and accountability, stronger due diligence and a public commitment to respecting land rights, advocating for responsible investment and supporting justice for affected communities.

Through the bank link, the campaign offers a way for Australians to act in support of community and indigenous land rights struggles overseas. Oxfam Australia seeks to build pressure on the banks for change by raising public and investor awareness of agricultural land grabs. While tackling systemic issues in the financial system, the campaign also emphasizes the human story of land rights violations. This involves collaborating with affected communities and their allies to share information, as well as appealing to bank customers pointing out that: 'our money could be used to finance land grabs'. In 2014, over 20,000 Australians took action – writing letters, participating in shareholder action, signing an anti-land grabs petition and sharing stories via social media.[2] In response to our campaign, in November two banks - National Australia Bank and Westpac - announced new lending policies. These were the first Australian policies by major banks to include stronger recognition of land rights as applied to agriculture overseas. The NAB policy outlined what it will do to respect land rights – moving from referring to land mostly in vague or indirect ways through human rights obligations, to explicitly detailing its land responsibilities and integrating land into its annual reporting and review.[3] Westpac committed to only lending to agribusiness companies that respect Free, Prior and Informed Consent for all communities, not just indigenous communities.[4] While these developments are far from the Zero Tolerance or Land Grabs approach needed by the banks – these developments signal that increasing pressure against land grabs by targeting bank soft commodity financing is a viable strategy in the Australian context.

Oxfam Australia has benefitted greatly from the insights of other finance, agribusiness and land

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[1] Shen Narayanasamy (2014) Banking on Shaky Ground: Australia's Big Four Banks and Land Grabs. Oxfam Australia. April. The definition of a 'land grab' is that applied by the International Land Coalition 2011 Tirana Declaration, further contextualized on p 9-10 of the report. See: www.oxfam.org.au/wp-content/uploads/site-media/pdf/2014-47%20australia's%20big%204%20banks%20and%20land%20grabs_fa_web.pdf
In our campaign, 'land' is understood in a holistic sense, comparable to the term territory that reflects diverse social, ecological and spiritual relationships. Fair access to land is seen as intimately tied to post-colonial healing, food sovereignty, peace-building, gender equality, race relations, good governance and economic justice. As well as being the report author, Shen Narayanasamy was a key architect of the broader Banks & Land Grabs campaign.

[2] Examples of campaign actions and information can be accessed via www.oxfam.org.au/grow/land/australias-big-four-banks-and-land-grabs/

[3] NAB's Improper Land Acquisitions policy statement. http://cr.nab.com.au/docs/141114_nab-improper-land-acquisition-policy-statement-1.pdf

[4] Westpac (2014) Financing Agribusiness Our Position. November. www.westpac.com.au/docs/pdf/aw/sustainability-community/Agribusiness_Position_Statement.pdf

grabs campaigns, as well as input from responsible investors. In turn, in this paper we share our experience in the hope that it may be useful to others and to invite further ideas on our work.

This paper starts with a brief introduction to campaigns that link finance and the agrifood system. Next, it provides some contextual background on Australia's big four banks. It then outlines some practical learnings for researching banking links to companies connected to land grabs. This is followed by exploring specific dynamics of our campaign – such as how we have communicated links between land grabs and 'risk'. Lastly, it discusses financial tools that we have identified that, if systematically implemented, could improve bank accountability on land rights, as well as some other lessons learned.

Land grabs, agriculture and the financial sector

Over the last decade, activists and academics have increased their interest in the role of the financial sector in the agrifood system, including land. This work targeting the private sector builds on earlier campaigns targeting state and institutional finance, particularly the critique of international financial institutions (IFIs) for using their financing power to leverage political influence and forcefully shape national agricultural policies through Structural Adjustment Programs. In the 21st century, financial sector interest in agriculture – including farmland – is attributed to various, often inter-related factors. This includes changes in agricultural markets – such as new sources of agriculture demand from industrial biofuels (agrofuels) and carbon offsets, and the prevalence of flex-crops which reduce and diversify financier risk by allowing a single crop to have multiple uses as food, feed, fuel or other industrial products.[5] There were also shifts in financial markets – with, for example, the EU and US market downturns triggering what can be seen as a cyclical shift towards commodities and low interest rates deterring investors from buying government bonds in favour of other 'conservative' investments such as farmland.[6] There is also a growing global pool of financial capital seeking out investment. This investment growth is shaped by various factors, including the growth of private funds following the privatization of former state functions such as pensions and heightened levels of one-off resource extraction – with some of this money directed into Sovereign Wealth Funds. These developments are enabled by structural changes that increase outsider access to local agri-food systems – this may be due to long-term policy shifts or more dubious crony capitalism.

NGOs and civil society campaigns have frequently been at the forefront of research and action on the changing relationship between finance, land and agriculture. This has included showing pension fund and private equity interests in farmland,[7] and using investigative reporting to expose bank links to land grabs and corruption through specific commodities such as palm oil and rubber.[8] Reports have shown how global grain traders are now offering agriculture investment services and have highlighted

[5] Ie. sugar, palm oil, soy and corn.

[6] See generally: Madeleine Fairbairn (2014) 'Farmland Meets Finance: Is Land the New Economic Bubble?' Land and Sovereignty in the Americas. Issue Brief No.5, 2014. Food First Institute and Transnational Institute. Oakland. www.tni.org/sites/www.tni.org/files/download/lsa_brief_no5_finance_fairbairn-1.pdf

[7] GRAIN (2011) 'Pension Funds: Key Players in the Global Land Grab'. 20 June. http://www.grain.org/article/entries/4287-pension-funds-key-players-in-the-global-farmland-grab
Caroline Bergdolt & Anuradha Mittal (2012)'Betting on World Agriculture: US Private Equity Managers Eye Agricultural Returns'. The Oakland Institute. www.grain.org/article/entries/4287-pension-funds-key-players-in-the-global-farmland-grab

[8] See Tuk Indonesia & Profundo (2015) Tycoon-controlled oil palm groups in Indonesia', Executive Summary. and Tuk Indonesia (2015) *Kuasa Taipan: Kelapa Sawit di Indonesia*, accessible via: http://www.tuk.or.id/2015/02/kuasa-taipan-kelapa-sawit-di-indonesia
See also Global Witness (2013) 'Rubber Barrons' available in various languages at: www.globalwitness.org/campaigns/land-deals/rubberbarons/

that heightened land pressure may represent a 'farmland bubble'.[9] Civil society groups and allied researchers have also explored the relationship between new models of finance for climate and energy-related projects and land grabs,[10] and the NGO BankTrack frequently features land-grabs related cases in its database of 'Dodgy Deals'.[11] In the Cambodian Clean Sugar campaign, banks present one additional target along the commodity chain. For example, advocacy targets range from Deutsche Bank and ANZ for financing sugar companies linked to land grabs, to the EU Everything But Arms trade agreement that has spurred increased sugar exports (and incentives for land grabs), to sugar purchasers (Mitr Phol and Tate & Lyle) and end-users (such as Coca-Cola).[12] Banks have been critiqued for their ongoing support for deforestation by failing to implement their own forest policies and relying on inadequate certification schemes to indicate compliance. Campaigns have also targeted multiple banks with a link to a specific company.[13] While global banks are most often targets, a campaign critiquing World Bank International Finance Corporation links to agriculture, and other, land grabs via financing for local financial intermediaries highlights the role that domestic banks and investment groups play in backing local companies connected to land grabs.[14] Banks and other financial sector actors may be the primary focus of a campaign – particularly in their host country. Tactically, focusing on bank or other private sector actors' involvement in a land grab can also enable communities to keep media and government attention on a case. This may be an important temporary or long-term strategy in militarized situations, where communities are violently targeted when directly confronting a company on the ground. Following on this extensive reporting by NGOs, as well as other academic and media work, research consultancies working as part of the financial sector are slowly raising issues linked to land grabs – although this coverage, for the most part, focuses on

[9] Sophia Murphy, David Burch & Jennifer Clapp (2012) Cereal Secrets: The World's Largest Grain Traders and Global Agriculture. Oxfam Research Reports. August. www.oxfam.org/sites/www.oxfam.org/files/rr-cereal-secrets-grain-traders-agriculture-30082012-en.pdf
Madeleine Fairbairn (2014) 'Farmland Meets Finance: Is Land the New Economic Bubble?' Land and Sovereignty in the Americas. Issue Brief No.5, 2014. Food First Institute and Transnational Institute. Oakland. www.tni.org/sites/www.tni.org/files/download/lsa_brief_no5_finance_fairbairn-1.pdf
[10] For example, new industries such as agrofuels and carbon credits have dramatically reshaped agriculture and land demand. Both government and private financing have, at various times, been critiqued for acting in ways to ensure their access to this fast-growing market by operating without adequate respect for land rights.
For a recent example see: Kristen Lyons, Carol Richards & Peter Westoby (2014) The Darker Side of Green: Plantation Forestry and Carbon Violence in Uganda. The Case of Green Resources Forestry Based Carbon Markets. November.
http://oaklandinstitute.org/sites/oaklandinstitute.org/files/Report_DarkerSideofGreen_hirez.pdf
Oxfam France has also tracked French bank funding to agrofuels producers. Oxfam France (2013) Agrocarburants: Les banques françaises font le plein.
www.oxfamfrance.org/sites/default/files/file_attachments/policy_paper/agrocarburants_-_les_banques_francaises_font_le_plein_rapport_oxfam_france_avril_2013.pdf
[11] Searchable at: www.banktrack.org/
[12] See: www.cleansugarcampaign.net/
[13] For example, see Joint NGO Statement (2015) Briefing to banks and potential investors on the ongoing risks and outstanding social conflicts in the palm oil agribusiness sector: Golden Agri-Resources (GAR) bond offering. 15 April
www.banktrack.org/show/news/briefing_to_banks_and_potential_investors_on_the_ongoing_risks_and_outstanding_social_conflicts_in_the_palm_oil_agribusiness_sector_golden_agri_resources_gar_bond_offering
Also, Facing Finance (2014) *Dirty Profits 3.* http://www.facing-finance.org/en/publications/dirty-profits-3/
And Friends of the Earth International (2013) Sime Darvy and Land Grabs in Liberia. Factsheet. June.www.foeeurope.org/sites/default/files/press_releases/foee_sime_darby_and_its_eu_financiers_240613.pdf
And Friends of the Earth International (2013) Commodity Crimes: November.
https://www.foeeurope.org/sites/default/files/publications/commodity_crimes_nov13.pdf
[14] Oxfam International (2015) The Suffering of Others: The human cost of the International Finance Corporation's lending through financial intermediaries. Oxfam Issue Briefing. April.
www.google.com.au/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=The+Suffering+of+Others

companies engaged in land grabs, not their financiers.[15]

Work linking finance, agriculture and land rights is dynamic and evolving. Much of the NGO and civil society focus is set against a backdrop of the early 21st century agricultural price boom impacting land demand. However, prices in many agricultural commodities are now falling. As seen in the late 1970s and 1980s, a dramatic downturn in agricultural prices combined with poor national policies can have devastating impacts on small-scale farmers. Low prices could decrease pressure on land demand and see companies responding to pressure for more ethical sourcing, as commodity producers strive to find markets for their business. Alternately, land alienation and farmer repression may increase – as companies or associated elites seek to recoup their multi-year investments of plantings and squeeze an additional profit margin. These developments could also impact the way that banks finance the agricultural sector. As Colonial First State Global Asset Management, a subsidiary of the Commonwealth Bank Australia, noted in March 2015: *"International food prices have continued to decline in recent months amid growing inventories of feed grains, foodstuff cereals, cooking oils, dairy and even meat products. Lower grain prices year-on-year from inventory overhangs will impact farm economics, with flow-on effects passed on to the demand for agricultural equipment and other inputs."*[16]

Australia: The Local Context

Back in June 2012 Oxfam Australia released 'Food, Land and Water: Considerations for Australian Responsible Investors', a report outlining the risks for investors and company operations from land grabs and proposing clear recommendations for action. Oxfam Australia also hosted briefings for investors with the then Special Rapporteur on the Right to Food, Olivier de Schutter. Despite the high levels of secrecy that make it difficult to track financing to agriculture, the financial sector's response at the time was, largely, to ask: Where is the evidence of a link? This directly influenced the emphasis on clearly stated and direct links in the 2014 *Banking on Shaky Ground* report, as well as the traceable connections between a bank and specific communities affected by land grabs. Through public, media and investor pressure our Banks & Land Grabs campaign seeks to influence Australia's big four banks to only back companies which fully respect community land rights. This section seeks to give a sense of how the campaign was constructed to meet the local context, beginning by outlining some background on Australia's big four banks.

The big four banks

As the International Monetary Fund noted in 2012, 'dominated by four major banks, the Australian banking system is one of the most concentrated in the world'.[17] The 'big four' are Westpac, National Australia Bank, the Commonwealth Bank and ANZ. They are among the most profitable globally – with corresponding local criticism of oligopolistic practices. Deregulation saw the big four banks increase their share of the financial system from 50% in the early 1980s to 90% by 2012.[18] The banks have a pre-existing association with land and resource issues. These span from the foreign currency

[15] For example, see: RepRisk (2014). *Indigenous communities and how ESG issues are impacting them around the* world. RepRisk Special Report. 14 September. http://www.reprisk.com/special-report-on-indigenous-communities/

[16] *Colonial First State Global Soft Commodity Share Fund – Class A, Quarterly Update, March 2015*. See: www.cfsgam.com.au/uploadedFiles/Content/UploadedLiterature/auto/Australia/PdfFlyers/WGAF%20Flyer.pdf

[17] International Monetary Fund (2012) Australian Financial System Stability Assessment. IMF Country Report No. 12/308. p.33 www.apra.gov.au/AboutAPRA/Publications/Documents/cr12308[1].pdf

[18] David Richardson (2012) 'The Rise and Rise of the big banks: Concentration of ownership.' Technical Brief No.15. December. The Australia Institute. p.2 http://www.tai.org.au/node/1926

loan scandal of the 1980s (associated with farmer evictions as still remembered in the 2001 Australian Film *The Bank*), to 21st century environmental campaigns that target financing for companies engaged in logging Tasmania's old-growth forests and coal projects requiring port traffic that would destroy Queensland's iconic Great Barrier Reef. The high number of people who hold savings accounts, credit cards, mortgages or investments with the banks, and their familiarity with other poor practices, make the big four a recognizable target for a public campaign. Unlike the EU and US, where shareholder activism campaigns are long established, this tactic is only now taking hold in Australia – where, for example, there is a rapidly growing movement for fossil fuel divestment targeting banks and superannuation funds, evolving alongside a shareholder-focused effort calling for better disclosure of carbon emissions. Collectively the banks face a multi-billion dollar exposure to agriculture and they are rapidly expanding their activities in Asia-Pacific.

This bank growth in Asia-Pacific appears also to have the support of the Australian government. Since we launched the campaign, the Department of Foreign Affairs and Trade has signed three MOUs to partner with the banks on aid programs in the Pacific. This comprises two MOUs with ANZ and one with Westpac, and follows the Abbot government emphasis on the role of the private sector in aid delivery.[19] This is publicly described as being for financial inclusion work, but aligns with the Treasurer Joe Hockey's stated agenda of growing Australia's financial services as an export industry.[20] In the first MOU in 2014, DFAT has committed to providing ANZ with $500,000 for banking services in the Solomon Islands – which is likely Official Development Assistance funds.[21]

Australia's food movements

Australia is one of the world's most urbanized countries and few people have direct farming experience. Compared to other countries in Asia-Pacific, there is little awareness of land grabs on a global scale. However, the Australian food movement is growing. Farmers markets have grown rapidly, there is a significant community and school garden movement, the Australian Food Sovereignty Alliance is emerging as a sustainable food lobby and there is considerable critique of practices of the supermarket duopoly Coles and Woolworths.[22] There has been a recent national discussion on domestic farming including decisions on foreign leases or purchase of farm and grazing land, as well as the impact of extreme weather events on farmers.[23] 2010 saw the launch of a high profile farmer-environmentalist led people's movement called *Lock the Gate*, which opposes the irresponsible proliferation of coal and coal seam gas exploitation. According to Lock the Gate, 54% of Australia is covered by coal and gas licenses or applications, including on high conservation land, indigenous homelands and sacred sites, and national food bowls such as the Darling Downs.[24] This national

[19] DFAT (2015) 'Australia teams up with ANZ in the Pacific'. Media Release. 18 February. http://dfat.gov.au/news/news/Pages/australia-teams-up-with-anz-in-the-pacific.aspx
Westpac (2014) Westpac and DFAT partner to improve access to finance in the Pacific. 8 September.

[20] Treasurer Joe Hockey (2015). 'Australia's Economic Prosperity', Address to the Institute of Public Affairs, Melbourne. 31 March. www.joehockey.com/media/speeches/details.aspx?s=165

[21] Commonwealth of Australia. 'Role of the Private Sector in Promoting Economic Growth and Reducing Poverty In The Indo-Pacific Region' Joint Standing Committee on Foreign Affairs, Defence and Trade. Official Committee Hansard. 15 August 2014. P.32 Accessible via: http://parlinfo.aph.gov.au/

[22] For an example, see Malcolm Knox (2014) 'Supermarket Monsters: Coles, Woolworths and the price we pay for their domination.' *The Monthly.* www.themonthly.com.au/issue/2014/august/1406815200/malcolm-knox/supermarket-monsters

[23] For example, of the government measures in response see www.pm.gov.au/media/2015-02-11/government-tightens-rules-foreign-purchases-agricultural-land

[24] See Lock the Gate map at: www.dropbox.com/s/i4jr09wh2iilbxp/MAP_OurCountryTheirQuarry.pdf
Methodology Report: National Mapping of Coal and Gas Titles.
https://d3n8a8pro7vhmx.cloudfront.net/lockthegate/pages/289/attachments/original/1364882093/NationalGISAn

campaign plays a significant role in raising issues related to land and resource acquisitions, and the impacts of extractive industries on farming.

How do we find connections between the banks and agriculture land grabs?

In *Banking on Shaky Land* we provided four detailed case studies of how each of the banks are backing companies linked to land grabs, and identified bank links to twelve additional credible allegations of land grabs. Activists often ask how Oxfam Australia uncovered these bank links to land grabs. This section describes what tools we have learned about and found useful so far.

Financial sector databases

Oxfam Australia initially commissioned research from the financial research consultancy Profundo, which frequently collaborates with NGOs. Tuk Indonesia, Oxfam, Friends of the Earth, Facing Finance, BankTrack and the BankWiser project have all used Profundo in their financial sector research.[25] Oxfam Australia provided Profundo with a list of companies wholly or partially owned by the banks. We asked Profundo to check for links to companies featured in extensively documented land grabs cases – including those linked to other Oxfam campaigns. The Profundo research findings drew on an expensive financial database called ThomsonOne. Online databases like ThomsonOne, Bloomberg or Mint Global systematize financial sector information from a range of public sources – drawing on company reports and news media. Staff working at these databases have told Oxfam Australia researchers that the banks (anonymously) submit information, using this as a marketing tool to publicize their loans and other deals.[26] The databases are expensive but can be accessed through a free trial, some universities or by pooling access between different groups. Our experience is that they are difficult to understand at first but are decipherable over time.

Leaked information, government & media reports

While financial sector databases are useful, they do not cover all countries well. Investigative reporting and cultivating insider sources remains a key way of uncovering information about bank links to land grabs. One case study we featured was a reprinted article from Australian Fairfax journalists. In January 2014 they reported that ANZ Royal – a Cambodian bank in which ANZ Australia has a 55% controlling stake – had issued a loan to Phnom Penh Sugar (PPS).[27] Owned by a local senator, the PPS sugar plantation complex is implicated in child labour, forced evictions and causing food shortages. Government inquiries are also a useful source of information. In a separate case, not covered in our report, evidence was presented to the PNG Commission of Inquiry into Special Agriculture and Business Leases (SABL) that ANZ Bank had issued a bank guarantee of 595,000 kina (roughly $250,000 Australian dollars) for Queensland-led company Independent Timbers & Stevedoring Ltd for a deal that was to cover two million hectares, belonging to tens of thousands of

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alysis_March2013.pdf?1364882093

[25] See further at: www.profundo.nl/page/show/themes#landgrabbing__2014

[26] See 'The farce of Client Confidentiality – the case for Disclosure' in *Banking on Shaky Ground* p.45 for further discussion of banks disclosure to databases such as ThomsonOne, Bloomberg and Mint Global.

[27] Richard Baker & Nick McKenzie (2014) 'ANZ bankrolls child labour sugar cane plantation'. 23 January. *Financial Review*. www.afr.com/business/banking-and-finance/financial-services/anzbankrolls-child-labour-sugar-cane-plantation-20140122-iy7ro

people in PNG's Western Province.[28] We also scan NGO, media and academic reports for information about Australian bank links to land grab cases.

Other ways of finding loan information

We have identified other tools for tracking loan information. All of the big four banks have signed onto the Equator Principles (EP) – a voluntary framework involving a commitment to certain measures for managing the financial risks of poor environmental and social practices. Under the most recent incarnation of EP, EP III, the banks have agreed to self-report basic information about projects that they fund: this includes project name, year, sector and host country. On 30 June 2015 the EP Association will start to publish bank project-name reports on their website.[29] The obligation to report is far from ironclad – it is limited to projects over $10 million, includes various opt-outs and faces no independent verification. However it is possible that project name reports may reveal some insights in future, and are certainly useful in pointing out the precedent that banks can improve disclosure on lending, which should be more broadly applied to other corporate loans. There are also various country-specific tools for researching lending and credit relationships. For example, in PNG foreign companies are required to include charges that they have registered to a bank in their annual reports filed with a national regulator – the PNG Investment Promotion Authority (IPA). These documents are publicly available via the IPA and searchable in an online database.

Finding information about bank connections through shares

Another link is through shares. This includes money that is invested directly by a bank on behalf of their clients and money that the bank financial service planners may assist its clients to invest in funds managed by third parties. This is often referred to as 'asset management' or 'wealth management'. This is a particularly relevant area as Australia increasingly moves from emphasis on state pensions to private funding of retirement. Financial sector databases include systematic information on shareholdings that can provide a link between the banks and their financing of land grabs. There are also free ways of tracing these connections. Some bank subsidiaries publish what are called proxy voting records – which vary in their level of detail. A comprehensive proxy voting record includes a list of all the companies that an investment fund has a significant stake in, alongside details of how the fund voted at the company annual general meeting. For investors, a proxy voting record signals how active a fund is in monitoring the companies in which it invests. It also allows activists to trace links to companies in the agricultural sector – indicating bank links to companies with strong or poor records on land rights. The Commonwealth Bank Australia subsidiary Colonial First State Global Asset Management has a consistent high standard for these records that are published online.[30] Other banks often publish information with the top 10 holdings of a fund, although this is time intensive to track. Banks that operate in the US submit a list of their US holdings in a '13F' form. This can be searched for free via the US Securities and Exchange Commission Edgar database.[31] In some countries, there is

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[28] Commissioner Mirou report, Commission of Inquiry into Special Agriculture and Business Leases. Dated June 2013. P.453. https://pngexposed.files.wordpress.com/2014/01/mirou-sabl-final-report.pdf
In a separate case, the Inquiry reported that funds had been deposited into an ANZ bank account – a rare example of evidence of links between transactional banking and improper land deals. P.769.
[29] Equator Principles Implementation Note. http://www.equator-principles.com/resources/equator_principles_implementation_note_july_2014.pdf
[30] See: CFSGAM 'Stewardship Disclosure Framework for Asset Managers' https://www.cfsgam.com.au/uploadedFiles/Content/About_Us/Responsible_investment/RI_policies/NAPF_Stewardship_Framework_FSI-CFSGAM_March_2014.pdf
[31] See: http://www.sec.gov/edgar.shtml

a fee for searching shareholder databases, in other countries it can be more difficult to track information. For example, in the UK people can be penalized for publishing shareholder details.

Other types of banking relationships

Banking on Shaky Ground focused mostly on loans, credit and shares. The ability of land grabbing companies to hold an account with a bank is also important as this can assist companies to transfer the proceeds of land grabbing out of the country. However we have not found an easy way of tracking these relationships. Other campaigns have targeted bank involvement in derivatives markets and brokerage and underwriting services.[32]

The challenge of researching the financial sector

As newcomers to financial sector advocacy, and with an approach that is highly evidenced based, our report and subsequent research goes through an extensive fact-checking process. This includes rigorous internal feedback, as well as outsider review from investment specialists and journalists. A legal expert advised Oxfam Australia on the framing of our claims – in essence, this was to let the facts speak for themselves and avoid sensationalist language. Almost two months before publishing the report, we communicated with the banks about links to companies accused of land grabs and provided them with an opportunity to respond. In some cases, banks provided credible evidence that they no longer had links to certain companies – these cases were subsequently not included in our report. Others maintained that they could not disclose which companies were not their clients, as it would act as a form of tacit disclosure by elimination. Our media partners also checked claims and reporting through their legal departments.

To date there are two key cases of banks refuting our evidence. The first is significant, and highlights the value of careful documenting evidence of claims and of providing banks an opportunity to respond before publication. As reported by the television show *60 Minutes*, in November 2014 Westpac presented new documents to the PNG Investment Promotion Authority which showed that it no longer had a connection to the logging company, WTK, which has a likely link to land grabs in PNG.[33] This took place nine months after Oxfam Australia initially presented these claims. The Westpac link to WTK was traced through IPA documents for two separate wholly-owned WTK companies, as well as other forms related to a likely line of credit – or similar facility provided by Westpac. As of the date of publication of our report, the document that is required when companies no longer have charges registered to a bank did not appear in the IPA database and the two companies' most recent annual returns both cited a Westpac link. As *60 Minutes* reported, Westpac claimed that the link with WTK had ended in 2000 – although the new document presented was dated 18 November 2014 and did not list an earlier end date of the relationship with WTK. Reviewing the documents, Oxfam Australia found that Westpac's explanation was plausible, in that the two WTK companies listed no specific charges owing at the time of filing their annual returns each year from 2000 onwards. (However this only indicates that there were no charges owing at the time of submitting a return, it would still be possible to take our credit and pay it back throughout the year.) Yet this depended on the two WTK companies misfiling their returns and Westpac failing to check on the companies reporting *vis-a-vis* the former line of credit. It also does not explain why Westpac waited

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[32] See for example, Tuk Indonesia & Profundo (2015) Tycoon-controlled oil palm groups in Indonesia', Executive Summary, and Brot Fur Alle & Profundo (2014) 'Swiss banks and institutional investors financing landgrabbing companies'. November 2014. Accessible via http://www.profundo.nl/page/search#__2014__p-698

[33] 'Dirty Business' *60 Minutes*, 30 November 2014. www.9jumpin.com.au/show/60minutes/stories/2014/november/dirty-business-60-minutes/

nine months to publicly refute this link. The second case, involving ANZ, we do not deem credible. In response to Oxfam Australia's carefully detailed evidence of links between ANZ and ten additional land grabs cases ANZ has claimed that it is not connected to half of the cases, and in the other half the company has in fact acted responsibly. However, ANZ has provided no information, publicly or privately, to verify its claims – not even company names. We interpret this as merely a PR response by ANZ, seeking to deflect responsibility – rather than a serious refutation of our evidence drawn from extensive financial sector sources.

How do we make a case for action?

To outsiders, the financial world can seem obscure, boring and inaccessible. Unsurprisingly, connecting human stories to the banks was key in attracting media interest at the launch of *Banking on Shaky Ground.* In profiling human stories, Oxfam Australia is aware that it is important to work closely with domestic land grabs campaigns – and to understand the role that affected communities and other allies see for our bank campaign in contributing to their in-country strategy and power analysis. The focus on Australian banks also clearly communicates why Australians specifically should take action. Primarily we have reached out to people via digital campaigns and social media, providing updates on bank policies and affected community campaigns.

An extensive policy analysis in our report also reviewed each of the banks' policies – identifying gaps between policy and practice, and many areas where land rights were not specifically covered. This pre-empted the big four bank claims about their ethical practices. This approach was critical for making the case to institutional investors, as well as the broader public. Through highlighting case studies, gaps in policies and the discrepancy between policy and practice, the campaign has articulated the need for land-specific commitments and practices – showing how a generalist human rights or environmental responsibility approach is insufficient.

Communicating on finance

The language of risk

Oxfam Australia has emphasized in its advocacy that any reported link between the bank and human rights violations should alone be sufficient cause for bank investigation and action. In *Banking on Shaky Ground* Oxfam Australia also describes how social and environmental risks associated with land grabs can be understood in terms of financial risk. There are clearly limitations to this approach of emphasizing the financial costs of land grabs.[34] However, understanding how land grabs may be perceived as a form of financial risk can equip activists with bridging language that sparks the attention of investors, helping to grow interest and engagement. Our report emphasized that exposure to land grabs can indicate a failure of situational analysis – that the bank has not adequately understood the local land rights context and associated risks. This point is raised by financial sector consultancy The Munden Project, in a report commissioned by the Rights and Resources Initiative. That report highlights that investors are the least likely to be informed of local land tenure and use practices, making the case for why they should engage with local communities.[35] It details how

[34] For one example, see Erinch Sahan (2015) 'How businesses can save the world (when shareholders aren't breathing down their neck). Oxfam Blogs. http://oxfamblogs.org/fp2p/how-businesses-can-save-the-world-when-their-shareholders-arent-breathing-down-their-neck/

[35] Ramon de Leon, Tin Garcia, Gordon Kummel, Lou Munden, Sophia Murday & Leonardo Pradela (2013) 'Global Capital, Local Concessions: A Data-Driven Examination of Land Tenure Risk and Industrial Concessions in Emerging Market Economies.' The Munden Project. 13 September.

existing industry tools such as use of credit ratings as a proxy assessment of risk and political risk insurance are unlikely to protect a bank in land grabs cases. As land rights violations often lead to public or media pressure on governments to change laws and land-access practices, this introduces a risk of investment uncertainty, that governments will intervene to change norms on land access – described as 'sovereign risk'. Land conflict can impact a company's ability to operate – signaling 'operational risk'. Together, this increases 'credit risk' – that companies will not be able to repay loans.[36]

Poor land rights practices expose the banks to 'reputational risk' – where negative media pressure and public campaigns can reduce consumer or investor confidence in the bank's risk assessment and broader operations. We have found this a potent way of communicating the consequences for banks of exposure to land grabs – although the culture of prioritizing 'reputational risk' varies between banks. The financialisation literature discusses challenges that emerge when a company is no longer tied to the bricks and mortar productive economy – such as distance from the consequences of investment choices reducing accountability. However, unlike businesses based on physical assets and production, the relative intangibility of finance potentially leaves a bank with less to differentiate it from its competitors – highlighting the importance of reputation. Feedback we received from responsible investors, and our own engagement with the banks, showed the importance of the public, as well as the media, raising the issue again and again through different fora. This reiterating of key messages over a sustained period helps to educate the financial sector about a previously unknown issue and shows that concern about land grabs is not going away. In the Australian context, we see the campaign gains so far as having been achieved by a deep, sustained focus on raising awareness and pressure on land issues. This is strategically different from index-based bank campaigns, such as the Fair Finance Guide in Europe, which incorporate a short-term land grabs spike into an evolving set of advocacy foci and policy asks from banks on a range of issues.

Our approach to divestment

One aspect of our campaign that we have thought deeply about is our position on divestment. In Australia there is already a significant movement, as part of the climate movement, for divestment from fossil fuels. This focuses largely on the environmental impacts but can also employ the financial 'stranded assets' argument. (This outlines that banks are failing in their fiduciary duty to their shareholders, as they are investing in coal and fossil fuel assets for which there is a rapidly decreasing demand.) There are also examples of international campaign on agriculture that state divestment as a key campaign ask.[37]

In structuring the Banks and Land Grabs campaign, Oxfam Australia wanted to ensure that our position on what banks should do was consistent with that of affected communities. We are aware that community asks may shift over time – dependent on their political analysis of the local and national context, as well as their own changing circumstances. As Oxfam Australia wrote *Banking on Shaky Ground*, communities in Cambodia emphasized that they wanted ANZ to press the company operating in their community – Phnom Penh Sugar – to reform and improve its practices. In contrast, in Jatayvary, Brazil the community's preferred outcome was for the agricultural company involved, Bunge, to withdraw its sugar sourcing contracts (not wait for their expiration) to delegitimize sugar farmers rights to operate on indigenous Guarani-Kaiowá land. Given this diversity of views, where a

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www.rightsandresources.org/documents/files/doc_6301.pdf

[36] See further Shen Narayanasamy (2014) Banking on Shaky Ground: Australia's Big Four Banks and Land Grabs. Oxfam Australia. April.

[37] For example, Facing Finance (2014) *Dirty Profits 3.*

bank has a link to an existing land-grabbing case, we call for the bank to support 'Justice for Affected Communities' as defined by communities themselves.

This position on divestment is certainly more complex to communicate. It influences how investors approach our campaign asks, but risks a perception that we are not challenging the broader structural conditions that limit community choices on investment. Far from seeing this as an inherently conservative campaigning position, through the emphasis on Justice for Affected Communities as communities themselves define it, and community rights to Free, Prior and Informed Consent as tantamount, we hope to have assembled a campaign that can complement existing national and regional campaigns in whatever form they take. This is also shaped by our work linking to a range of campaigns that reach across different countries, commodities and contexts. This approach seeks to acknowledge and respect the diversity of land movements in Asia-Pacific – the prime regional focus of our campaign.

Learning more about financial tools that already exist to improve bank action on land rights

Our key campaign ask is for the banks to commit to what we describe as a 'Zero Tolerance on Land Grabs' approach. This involves: 1. Increased transparency and accountability on the bank's links to agricultural land risk; 2. Stronger due diligence and clear commitments on land rights; 3. Advocating for responsible investment to others in the financial sector, and 4. Supporting justice for affected communities. While the Westpac and NAB policies in November 2014 were a significant first step, none of the big four banks has committed to a zero tolerance stance. In order to counter their claims that Zero Tolerance for Land Grabs is unachievable, we have identified existing tools and precedents that banks could apply to improve their approach to land rights. If Oxfam Australia, a relative newcomer to finance and agriculture issues, is able to identify these sorts of tools it is clear that the banks themselves could readily construct a zero tolerance policy.

Increased transparency

Much of the financial sector operates behind closed doors and the big four Australian banks are strongly resistant to our calls for increased disclosure of their exposure to land-related risks. Various other industries have applied similar arguments on their need for secrecy. These secrecy measures often act to hide companies' poor practices and, when faced with sufficient public, investor or government pressure, industries have found a way forward to increase transparency. For example, today key clothing brands such as Nike and Adidas disclose their manufacturers, even agribusiness companies with notorious records – such as palm oil giant Wilmar – are increasing the traceability of their supply chain, and extractive companies are moving towards publishing what they pay to governments in response to anti-corruption campaigns. This highlights that barriers to disclosure are far from insurmountable.[38] One example of the bank culture of undue secrecy can be seen in ANZ not releasing any substantial information about its sensitive sector policies, policies whose stated intention is to increase the bank's environmental and social accountability.

Bank resistance to improved disclosure is evident but barriers are often over-exaggerated. Two frequent arguments that the Australian banks use to justify such levels of secrecy are: 1. The need for 'client confidentiality' – sometimes describing this as an insurmountable legal requirement; and 2. Negative commercial impacts – such as the poaching of clients. A third, less frequent argument, relates to the technical difficulties of implementing disclosure. While increasing disclosure will likely include

[38] See also Global Witness (2012) Dealing with Disclosure. 19 April. www.globalwitness.org/campaigns/land-deals/dealing-disclosure/

some new innovations, the three key concerns raised by the banks can be significantly countered by looking at existing practices. The banks already have processes for disclosing information that, if shifted from one-off ad hoc measures to a systematic, sector-wide approach, would significantly increase their transparency. Examples of these tools, described more in the research section (above), include comprehensive proxy voting records, project name reporting and more systematically reporting 'top 10' holdings of bank-managed funds. Banks already provide information to financial sector databases – aimed at their competitors – for marketing purposes, showing that they have clear processes for gaining client consent.[39] They can also make it easier to access information about their subsidiary companies.[40] In 2014 all of the big four increased their commitments on carbon reporting in response to active shareholder campaigns – unsurprisingly showing that multi-billion dollar companies have sufficient resources to find a way forward to improve disclosure. Bankers have told us that increased disclosure actually improves their operations – alerting them at an earlier stage of possible problems tied to their investments or if a company is reluctant to disclose through project name reports, this potentially signals other problems. Together this reinforces that the banks' reluctance to make clear commitments on increased transparency and accountability – which would reduce their likelihood of entering into risky relationships with companies linked to environmental and human rights abuses – is due to a lack of will, not means. We also point to shifts towards increased disclosure and traceability in the agricultural supply chain – highlighting that banks lag behind their clients.

Commitments on land rights

In *Banking on Shaky Ground* Oxfam Australia discussed that in the Asia-Pacific rural and indigenous communities often use and control land through long-term tenure arrangements which are seldom recognized and protected by legal frameworks. The report highlighted the lack of bank due diligence or accountability to properly understanding their clients and their operational contexts.

Free Prior and Informed Consent

Oxfam highlights that respecting all community rights to Free, Prior and Informed Consent is an important tool for the banks to respect local land tenure, reduce their exposure to land-related risk and to ensure that they comply with local law as they extend their operations into multiple jurisdictions and complex local contexts. Each of the big four banks have already committed to respecting the rights of indigenous people to FPIC. However, there is limited information on if, and how, this commitment is actually realized. Westpac's *Financing Agribusiness* policy statement has committed the bank to only lending to agribusiness companies that respect all communities' rights to FPIC. This applies across the agriculture and timber commodity chain, including processors and distributors. Westpac's position on FPIC suggests that all of the Australian banks can make commitments on FPIC for all communities. Given that banks' most direct exposure to land risk is through lending, if Westpac can make FPIC communities to all communities in this domain all the banks are capable of applying similar standards across all their operations. Public recognition of FPIC is a good start – increasing the bank's external accountability to commitments to better respect local land tenure. However a lack of disclosure and the absence of clear processes for dealing with community grievances means that, at present, there is almost no external oversight to ensure that banks remain accountable to these commitments.

As FPIC is increasingly adopted into international and national legal frameworks, as well as the policies of some of the world's biggest companies – such as Coca-Cola and Pepsi, there is a nuanced

[39] See 'The farce of Client Confidentiality – the case for Disclosure' in *Banking on Shaky Ground* p.45.

[40] For example. ANZ clearly lists its wholly-owned subsidiaries and other companies in which it has a significant stake in its annual report.

debate on the efficacy of FPIC as a campaign ask. This includes raising direct implementation failures – such as people not being made aware of their right to withhold consent, companies seeing FPIC as promoting 'consultation' rather than as a rights framework, and communities not being adequately informed before decisions are made of the full implications of proposed developments.[41] The Forest People's Programme reports emphasize the interaction between consent and other accountability measures such as the traceability of supply chains, and points out that a companies' business model may be fundamentally at odds with any meaningful realization of FPIC.[42] Jennifer Franco also critiques the limitations of 'consent' as understood through an FPIC framework.[43] She notes: '*Marginalised and vulnerable rural working peoples might accept, acquiesce or consent to being expelled or exploited under a variety of terms. Such 'consent' when it occurs should not be confused with them having had a real choice to begin with – that is, where at least one of the options on the table is truly social justice-driven in the sense of explicitly prioritising and privileging their concerns, interests and aspirations'*. There are also questions, both from activists and companies, as to what precisely adequate consent looks like. Franco continues: *"...'consent' to a land deal is neither static nor necessarily permanent. In some cases communities may resist at the start and later switch to acceptance, as happened with fishers in the case of the Shell Malampaya project in the Philippines. In other instances, initial acceptance can turn to opposition, as happened with farmers in the Chikweti case in Mozambique. Communities are differentiated and so how people experience a land deal can vary within and between communities over time. These and other cases suggest that conservative attempts to control FPIC processes and outcomes in the direction of consummating big land deals may not always or permanently succeed, and can at times lead to unintended dynamics and outcomes.* Another potential critique of focusing on FPIC is that it risks ignoring the rights of those who self-identify as landless – for example, those who have been historically alienated from land tenure and articulate their objectives as reclaiming a legitimate land right. While these criticisms are certainly valid, and land rights frameworks will inevitably continue to evolve, we promote the right of all communities to FPIC as it is the best available tool for banks to respect land rights in a systemic way across their operations. (Understanding also that the banks are only one small part of a broader process of power and politics informing land access, but that, as Australians, it is one of the sites that we can most directly influence). Oxfam Australia, and others, are quick to criticize processes that purport to represent FPIC without meaningfully engaging community members and obtaining a social license to operate. However, FPIC as a framework, despite its challenges, is the most rigorous and comprehensive tool that we have available to regulate outsider interactions with farmland.

<u>Other due diligence tools</u>

Our focus on FPIC as a central due diligence standard can also be understood by identifying how this approach compares with other methods proposed by the banks – such as screening. While these

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[41] Marcus Colchester, Sophie Chao & Norman Jiwan (2013) 'Conflict or Consent?' Conclusions and recommendations'in Marcus Colcester & Sophie Chao (eds) 'Conflict or Consent?: The Oil Palm Sector at a Crossroads.' FPIC in the Palm Oil Sector Case Study Series. November. Forest Peoples Programme, Sawit Watch + Tuk Indonesia. English version: www.forestpeoples.org/topics/palm-oil-rspo/publication/2013/conflict-or-consent-conclusions-and-recommendations. Full Report English version: http://www.forestpeoples.org/sites/fpp/files/publication/2013/11/conflict-or-consentenglishlowres.pdf Indonesian version: www.forestpeoples.org/sites/fpp/files/publication/2013/11/conflict-or-consentbahasaindonesiaversion2lowres.pdf

[42] Colchester et al (2013) 'Conflict or Consent?: The Oil Palm Sector at a Crossroads.' Forest Peoples Programme (2015) Hollow promises: An FPIC assessment of Golden Veroleum and Golden Agri-Resource's palm oil project in south-eastern Liberia. www.forestpeoples.org/sites/fpp/files/news/2015/04/Golden%20Veroleum%20FINAL_1.pdf

[43] Jennifer Franco (2014) 'Reclaiming Free Prior and Informed Consent in the context of global land grabs'. Transnational Institute. 15 July. p.7 www.tni.org/briefing/reclaiming-free-prior-and-informed-consent

tools can be a valuable part of a comprehensive land rights approach centred around respect for community rights to FPIC and broader accountability measures, they are insufficient as stand-alone measures. Screening, for example, involves cross-checking client names against existing databases – such as the financial service RepRisk, media monitoring services or even possibly the Land Matrix. There are several shortcomings in screening as a primary due diligence tool. Firstly, database information may be out of date or unreliable. Secondly, database information is not exhaustive – rural communities can face enormous challenges to gaining outsider recognition of violations of local land tenure. Thirdly, screening – even in a perfect scenario – will only identify problems after they occur. This will fail to capture if companies with new land-based operations do not have appropriate processes in place for accessing land ethically. Another approach that some banks are incorporating into their policies is to rule out lending for projects that take place on sites recognised for their ecological importance. This involves ruling out lending for projects to operate on high-conservation value forests or globally significant wetlands, or sites logged within the last 10 years. Again, this is a valuable addition to the policy toolkit – but standing alone, would apply to only a limited geographic area. Another point raised is the shortcomings of Environmental and Social Impact Assessments (ESIA) on behalf of banks. As communities report, EISAs are typically undertaken by external consultants with no independent oversight or fact-checking by local people intimately connected with local conditions that EISAs seek to describe. At least one bank that we, and others, have raised the issue of ESIAs with repeatedly is resistant to more open processes of fact-checking ESIAs, and even appeals for independent third-party human rights impact assessments for cases where land grabs are alleged to have occurred, have been met by claims that they would violate commercial confidence.

This highlights the point that strong due diligence is not only about having clear tools – but banks behaving in good faith and responsibly. While local land tenure arrangements can be complex to understand in detail, it is not difficult to gain an insight into national-level debates and issues raised by the many farmers organisations, human rights groups and media active on land grabs.

Anti-corruption tools

We also find it useful to frame land rights in terms of the banks' anti-corruption commitments. The link between land and corruption involves both the accountability of host governments in granting or overseeing land access, as well as anti-corruption measures that apply in the company's home country. Many of the campaigns that we collaborate with have focused on corruption related to the awarding of land leases. In Australia, Anti-Money Laundering and Counter-Terrorism Financing (AMLCTF) discussions emphasize that the banks should screen clients with links to 'politically exposed persons' – business people with significant ties to national government, or in high-risk areas, regional government. This aligns with international anti-terrorism financing approaches that emphasize that banks 'Know-Your-Customer'. A clear risk associated with land grabs is that a bank may be implicated in facilitating money laundering – allowing companies to move money gained through illegal land grabs offshore. This is relevant to emphasizing the risks of bank connections to companies implicated in land grabs through transactional banking (ie. holding an account) an aspect of the finance chain that tends to garner less attention than lending. In the Solomon Islands, both Westpac and ANZ have announced the closure of all accounts linked to forestry. Yet banks do not communicate about transactional banking risks before taking these extreme measures. This bank announcement corresponds with a new Australian law that bans the importation of illegally logged timbers from overseas, and internationally, groups such as Global Witness are calling for similar regulations on products from grabbed land.[44] The risk of exposure to land-related corruption is a central reason why

[44] Department of Agriculture, Fisheries & Forestry (n.d.) 'Laws to combat illegal logging: New rules for importers.' Australian Government. www.awa.org.au/documents/item/457

banks should be concerned with the shortcomings of their situational analysis of local land tenure contexts.

Justice for Affected Communities

Our campaign takes a two-track approach to calling for the banks to support Justice for Affected Communities. The first is through profiling key case studies and calling for banks to work with communities to support meaningful redress. In the case of Jatayvary, Brazil the community called for the Commonwealth Bank to lobby Bunge to withdraw its sugar sourcing from farmers on Guarani-Kaiowá land – and thereby add its voice to calls for change from local government agencies, indigenous rights groups and sugar end-users. While Bunge did not cut its sugar contracts, it did choose not to renew them in 2015. Yet Bunge's involvement in the area from 2008-2014 has had lasting impacts and contributed to the legitimizing of farmer access to indigenous land, and Guarani-Kaiowá are still unable to return to their land. Although Bunge's action has not resulted in land directly returning to communities, it highlights the risk to other businesses of engaging in sourcing from grabbed land. While it is difficult to quantify the Commonwealth Bank contribution to change, if any, the bank did contribute to asks coming from the community.[45] (However, this small concession by CBA in this case pales when considered against its poor recognition of land rights at a systemic level as reflected in its policies, and exposure to five other credible allegations of land grabs as described in our report).

The second point that we raise is the need for banks to have systemic approaches, and clearly stated accountabilities, for addressing community grievances relevant to their activities and role in providing financial, or other, backing to companies connected to land grabs. If banks do not have processes for meaningful engagement with communities in dealing with land grabs allegations, they risk ongoing media, public and financial sector attention. For banks, the traditional orthodoxy is often to divest from companies when exposed to land grabs. While this can send a clear and public message useful for advocacy on the land grabbing company, exiting the relationship can also represent a bank tactic to offload complete responsibility to clients or former clients that banks claim to no longer be able to influence. This does not acknowledge the proportional role that banks play in enabling, legitimizing and profiting from large-scale land deals when they are exposed. In many cases, communities want a bank pull its investment. However, in other cases communities may want the bank to use its influence to exert pressure on the company involved to improve its practices.

The banks have signed onto various voluntary guidelines, although they could be argued to be a form of 'soft' pressure, they lack any external enforcement.[46] Unlike their customer or shareholder complaints processes, currently banks lack clear explanations of who is responsible for overseeing grievance mechanisms for complaints from communities affected by their operations, what the process involves and timelines for responding. In 2014, a BankTrack report showed globally that no banks were upholding their full commitments on grievance mechanisms under the UN Guiding Principles on Business and Human Rights.[47] In October 2014, Equitable Cambodia and Inclusive Development International presented a complaint against ANZ under the OECD Guidelines on Multinational

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Global Witness (2015) 'Anti-Land Grabbing Regulations'. www.globalwitness.org/campaigns/land-deals/land-grabbing-starts-in-our-financial-centres/#more

[45] Our campaign focuses on the Asia-Pacific region, where much of the bank exposure to land-risk appears to be. However, bank interests related to agricultural farmland can be geographically diverse – with Commonwealth Bank having a significant connection to South America.

[46] See further: SOMO (2014) The Patchwork of Non-Judicial Grievance Mechanisms: Addressing the Limitations of the Current Landscape. December. http://somo.nl/publications-en/Publication_4121

[47] Banktrack (2014) Banking with Principles?: Benchmarking Banks against the UN Guiding Principles on Business and Human Rights. December.

Enterprises, to be reviewed by Australia's National Contact Point.[48] While this is an effective strategy for pointing out the gap between the bank's claims of acting responsibly and its actions in this case, the National Contact Point can, at best, only facilitate a mediation process between the parties. This explains why there is pressure to create anti-land grabbing regulations in bank home countries that could perform a similar role in agriculture to laws banning the importation of illegally logged timber. Clearly, one of the challenges of holding banks and their clients to account for their land rights records is that in many contexts local communities have no ability to defend their rights and bring a case to court in their local jurisdiction. In the absence of traceable finance chains or rigorous and enforceable government or industry standards, public campaigning and investor pressure are the main drivers of external accountability for banks. Meaningful grievance processes need to incorporate both external and internal components, to comprise both stated commitments by the banks as well as a culture that supports banks to respond in ways that can specifically meet community needs. Internationally, some groups have also called for bank grievance mechanisms to involve independent panels, including community representatives or to develop sector-focused mechanisms with an independent ombudsman.

In contrast with the perceived wisdom that exiting a relationship will reduce pressure on the banks, one case highlighted in our report and avidly pursued by the Cambodia Clean Sugar Campaign has showed that this is not always the case. In July 2014, following intense media and public attention on ANZ's connection to Phnom Penh Sugar in Cambodia since 2011, it was announced that the companies had ended their relationship.[49] Local NGO household assessments valued community losses from the land grab at USD 11 million and throughout, there has been no meaningful change on the ground to improve life for communities. However, the bank's insistence on keeping its profits from the deal has spurred public interest in the case to increase – including new letter-writing campaigns by Australia's Uniting Church and shareholders raising questions through the 2014 ANZ AGM. In November, approximately 5% of Australians viewed a 60 Minutes television story profiling the case. Months after ANZ exited the relationship, public pressure on the case continued to build. This shows an increasing reputational risk when banks fail to work with communities for meaningful outcomes.

Other Lessons Learned

A key lesson learned for us has been to understand how bankers themselves view the sector as divided. In our meetings and correspondence with the banks we have liaised with head office staff – generally Corporate Social Responsibility officers, as well as more senior staff such as Heads of Investor Relations, Head Counsel and board members. While head office staff are best placed to initiate a group-wide response, they tend to focus on lending – which can make it challenging to apply pressure for change in other areas, such as asset management. In approaching the bank it has also been useful to get a sense of their specific personality, as well as their approach to 'social responsibility' which may have significantly less profile than 'environmental responsibility' or anti-corruption measures. It is also useful to follow-up bank claims that they are legally unable to act. In almost all cases where this claim is used, there are clear legal parameters that banks must work within, but this does not preclude them from developing policies and practices – for instance, on disclosure.

Another insight from our experience – which is likely familiar to many who work on land rights cases – has been to not be scared of communicating the complexity of developments. While ANZ and

[48] See OECD Watch (2014) 'New OECD Guidelines case against ANZ for its role in displacing & dispossessing Cambodian families' for a summary and a link to the complaint. http://oecdwatch.org/news-en/new-oecd-guidelines-case-ec-and-idi-vs-anz

[49] See OECD Watch (2014) 'New OECD Guidelines case against ANZ for its role in displacing & dispossessing Cambodian families' for a summary and a link to the complaint. http://oecdwatch.org/news-en/new-oecd-guidelines-case-ec-and-idi-vs-anz

PPS ending their relationship in July 2014 has meant that we need to spend more time in thinking through how we explain the case to our Australian supporters, keeping a focus on the case has contributed to sustained and significant energy and interest by the public and the media. This is particularly the case when linked to a lack of systemic action by the ANZ in responding to the ten other allegations raised in our report and its failure to match the policy action taken by NAB and Westpac. At strategic points in policy decision-making we asked supporters to write to NAB and Westpac to call for the inclusion of a stronger position on disclosure or Free Prior and Informed Consent; and we have tried to qualify the success of recent bank policies with a view to building increased education and awareness of the financial sector. This willingness to communicate across complex issues – like financial policy or complex land cases – enables us to stick to our original agenda and not be easily sidetracked.

Concluding Note

This paper has shared some of the lessons learned and reflections from in Oxfam Australia's Banks and Land Grabs campaign. It has reflected on various elements of the campaign – from research, to better understanding the finance sector, to examining how our specific campaign is situated relative to global campaigns and the local Australian context. The paper has discussed our approach to certain tactical issues and how we seek to complement organising by communities affected by land grabs. Throughout, various reports, organizations and financial sector tools are referenced highlighting the important contribution that civil society organizations and NGOs have made in contributing to our understanding of the financialisation of agriculture. It is hoped that it can add to an existing body of work exploring how banks are implicated in land grabs, through their role in the commodity chain and direct or tacit support to companies involved in improper land acquisitions.

Land grabbing, conflict and agrarian-environmental transformations: perspectives from East and Southeast

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The Conference Paper Series aims to generate vibrant discussion around these issues in the build up towards the June 2015 conference – and beyond. We will keep these papers accessible through the websites of the main organizers before, during and after the conference.

About the Author

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