

Document: EB 2010/100/R.4/Rev.2
Agenda: 6
Date: 17 September 2010
Distribution: Public
Original: English

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Enabling poor rural people
to overcome poverty

Guidelines on Dealing with *De Facto* Governments

Note to Executive Board representatives

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Executive Board — 100th Session
Rome, 15-17 September 2010

For: Approval

Recommendation for approval

The Executive Board, by virtue of Section 52 of the Lending Policies and Criteria, is invited to approve the:

Recommended **Guidelines on Dealing with *De Facto* Governments**. The purpose of these Guidelines is to provide guidance as to whether the Fund should extend new project financing for Member States whose governments change without an orderly transition of power¹.

Draft Decision

1. The Executive Board, by virtue of Section 52 of the Lending Policies and Criteria, is invited to approve the following Guidelines on Dealing with De Facto governments:

In determining whether the Fund should extend new project financing to a Member State, when the government of such Member State is overthrown without an orderly transition of power, the President first allows a certain time to pass to weigh the following five most important criteria:

 - (a) whether a new loan or guarantee would expose the Fund to additional legal or political risks associated with the country's financial obligations and obligations to carry out the project, given the government's de facto nature;
 - (b) whether the government is in effective control of the country and enjoys a reasonable degree of stability and public acceptance;
 - (c) whether the government generally recognizes the country's past international obligations, in particular any past obligations to the Fund (in this regard, the Fund examines the country's record; one indicator is whether past governments have generally recognized the obligations incurred by the de facto governments that have preceded them);
 - (d) the number of countries (particularly neighbouring) that have recognized the government or dealt with it as the government of the country; and
 - (e) the position of other international and regional organizations, within their respective competencies, toward the government.
2. If the President is satisfied that: (a) a new loan or guarantee will not expose the Fund to additional legal or political risks associated with the country's financial obligations and obligations to carry out the project, given the government's *de facto* nature; (b) the government is in effective control of the country and enjoys a reasonable degree of stability and public acceptance; (c) the government generally recognizes the country's past international obligations, in particular, any past obligations to the Fund; (d) a predominant number of countries (particularly neighbouring) have effectively recognized the government or dealt with it as the government of the country; and (e) most international and regional organizations,

¹In considering whether the Fund should continue existing Project financing, it should be recalled that the General Conditions for Agricultural Development Financing (which apply automatically to each financing agreement concluded between the Fund and a Member State) establish situations where the Fund may trigger its right to suspend or even cancel a Financing Agreement. More specifically, reference is made to Sections 12.01 (i), (v), and (vi) of the General Conditions, where the following grounds for suspension are stated: the Borrower has demonstrated an inability to make any Loan Service Payments when due, the Project has failed to fulfil, or is unlikely to fulfil in a timely manner, its purposes as stated in the Agreement, or when the Fund has determined that a situation has arisen which may make it improbable that the Project can be successfully carried. In light of the foregoing, the Fund holds the right to suspend, in whole or in part, and even cancel, project financing if it considers that the de facto nature of a government will impede or obstruct on-going project implementation for existing projects.

within their respective competencies, have effectively recognized the government or dealt with it as the government of the country; then the project financing proposal conforms to the country and project criteria set forth in the Lending Policies and Criteria and the President will recommend the project for approval by the Executive Board. If, however, the President is not satisfied that each and every criterion set forth above has been met, the President will refrain from submitting the project to the Executive Board and will inform the Executive Board accordingly.

Explanatory Note

Guidelines on Dealing with *De Facto* Governments

1. Article 7, section 2(c) of the Agreement Establishing the International Fund for Agricultural Development ("the Agreement"), prescribes that:
 "The President shall submit projects and programmes to the Executive Board for consideration and approval"
2. The purpose of the Guidelines is to provide guidance to the President on whether to submit new projects and programmes to the Executive Board (for approval) for Member States whose governments have changed without an orderly transition of power.

I. Background

3. Unlike other international financial institutions, the Fund's governing bodies have not yet established any policy for dealing with governments that have come to power without an orderly transition, which may be referred to as *de facto* governments.
4. In the absence of such policy, the Executive Board previously had to consider extending new project financing to Member States whose governments were overthrown without an orderly transition of power.
5. Over the last ten 10 years, some 30 coup attempts have been made affecting 20 countries. In theory, coup attempts are random events, but some consistency is seen over the years. Each year, on average, three coup attempts are made. *De facto* governments emerging from such coups are therefore not as infrequent as one may suspect. The Fund thereby needs guidelines that give clear guidance to its management, especially while processing new projects.

II. Legal Framework

6. IFAD's governing documents provide some high level guidance as to how to deal with *de facto* governments.

A. The Agreement Establishing IFAD

7. The Agreement Establishing IFAD (the "Agreement") states in article 7, section 1(d) that the Fund's financing decisions shall only be guided by development considerations related to food deficiency. The following priorities are listed:
 "(d) In allocating its resources the Fund shall be guided by the following priorities:
 (i) the need to increase food production and to improve the nutritional level of the poorest populations in the poorest food deficit countries;
 (ii) the potential for increasing food production in other developing countries. Likewise, emphasis shall be placed on improving the nutritional level of the poorest populations in these countries and the conditions of their lives."
8. Section 8(g) of article 6 of the Agreement provides that "The President and the staff shall not interfere in the political affairs of any Member State. Only development policy considerations shall be relevant in their decisions and these considerations shall be weighed impartially in order to achieve the objective for which the Fund was established."
9. Finally, IFAD's status as a United Nations specialized agency also has some implications for the way the Fund deals with issues concerning *de facto* governments. According to an advisory opinion issued by the International Court of

Justice in 1996² on the significance of the status of a specialized agency, the Fund, in its capacity as a specialized agency, cannot deal with questions that lie outside its mandate and cannot encroach on the responsibilities of other parts of the United Nations system.

B. IFAD's Lending Policies and Criteria

10. At the same time, the Governing Council of the Fund, through its Lending Policies and Criteria approved at its Second Session on 14 December 1978, instructs that the President may consider the political situation in a Member State when the effectiveness of the Fund's financing or the repayment of a loan may be compromised as a result of the political situation in a Member State (Section 24 and 25 of the Lending Policies and Criteria which refer to country and project Criteria).
11. IFAD's Lending Policies and Criteria clearly establish that both country and project criteria determine the eligibility of financing in a Member State. Section 24 of the Lending Policies and Criteria establish the country criteria that are deemed relevant for the Fund. In particular, the Fund will pay attention to the general economy, agricultural and administrative policies and practices of the countries considered eligible for financing. Of equal importance are actions in the institutional area which enable the government to reach the rural poor effectively through coordinated action of its own agencies. Section 25 of the Lending Policies and Criteria require the Fund to pay particular attention to project criteria, which include, amongst others, the dissemination of improved technologies to small farmers, capital investment programmes that increase output, and the promotion of labour intensive rural activities.
12. By requiring that attention is paid to the general economy, the agricultural and administrative policies and practices of the Member State concerned, and the government's commitment to its institutional capacity, the Lending Policies and Criteria require the Fund to consider the circumstances which could affect the viability of a project or programme. Indeed, it is axiomatic that the Fund must deal with a competent government which is committed to the funded programme or project and to the obligations which come with membership in the organization.

III. Suitability of the World Bank's Policy for the Fund

13. Other international financial institutions, including the World Bank, also hold the requirement to deal with a competent government which is committed to the funded project or programme and to the obligations which come with membership in the organization. Therefore, given that the World Bank has a long established policy³ in this area, it was deemed advisable to examine the suitability of the World Bank's policy for the Fund. The World Bank, in dealing with *de facto* governments, gives paramount consideration to the establishment of a proper legal framework for its loans. Indeed, the Bank's policy on granting new financing to *de facto* governments requires the Bank to weigh the following issues after a certain minimum amount of time has passed:

² Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion. International Court of Justice, July 8, 1996.

³ OP 7.30 – *Dealings with De Facto Governments*, World Bank Operational Policy, July, 2001. [This Operational Policy statement was revised in August 2004 to reflect the term "development policy lending" (formerly adjustment lending), in accordance with OP/BP 8.60, issued in August 2004.] Available online: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0..contentMDK:20064666-menuPK:64701637-pagePK:64709096-piPK:64709108-theSitePK:502184,00.html>, last visited 21 July 2001.

“(a) whether a new loan or guarantee would expose the Bank to additional legal or political risks associated with the country's financial obligations and obligations to carry out the project, given the government's *de facto* nature;⁶

(b) whether the government is in effective control of the country and enjoys a reasonable degree of stability and public acceptance;

(c) whether the government generally recognizes the country's past international obligations, in particular any past obligations to the Bank (in this regard, the Bank examines the country's record; one indicator is whether past governments have generally recognized the obligations incurred by the *de facto* governments that have preceded them);

(d) the number of countries (particularly neighbouring) that have recognized the government or dealt with it as the government of the country; and

(e) the position of other international organizations toward the government.”⁴

14. It can safely be said that these criteria are compatible with the Agreement Establishing IFAD and the Fund's Lending Policies and Criteria. Although the Fund can be guided by the approach of the World Bank, the Fund should take into account its role as a specialized agency of the UN and its special mandate in the field of financing agricultural development. Given that the World Bank is also both an international financial institution and a specialized agency of the UN, there appears to be no reason why the same criteria could not be applied by the Fund. For that reason, it is proposed to adopt the same tests that are applied by the World Bank.

IV. Recommended Guidelines on Dealing with *De Facto* Governments

15. For the Fund, the following five tests appear to offer the best guidance in determining whether the President should submit projects and programmes to the Executive Board for Member States whose governments have changed without an orderly transition of power: (a) whether a new loan or guarantee would expose the Fund to additional legal or political risks associated with the country's financial obligations and obligations to carry out the project, given the government's *de facto* nature; (b) whether the government is in effective control of the country and enjoys a reasonable degree of stability and public acceptance; (c) whether the government generally recognizes the country's past international obligations, in particular any past obligations to the Fund (in this regard, the Fund examines the country's record; one indicator is whether past governments have generally recognized the obligations incurred by the *de facto* governments that have preceded them); (d) the number of countries (particularly neighbouring) that have recognized the government or dealt with it as the government of the country; and (e) the position of other international and regional organizations, within their respective competencies, toward the government.
16. If the President is satisfied that: (a) a new loan or guarantee will not expose the Fund to additional legal or political risks associated with the country's financial obligations and obligations to carry out the project, given the government's *de facto* nature; (b) the government is in effective control of the country and enjoys a reasonable degree of stability and public acceptance; (c) the government generally

[Footnote 6 quoted in paragraph 13(a) refers to: “Agreements between the Bank and its members are governed by international law. International law also prescribes certain principles with respect to *de facto* governments. Under a general but not unqualified principle of international law, obligations entered into by *de facto* governments, purporting to be binding on the state, must be honored by successor governments. The qualifications of the general principle may relate to the nature of both the *de facto* government and the obligation it entered into. For instance, a successor government may question the power of a *de facto* government that had characterized itself as an interim government to enter into long-term obligations not connected with the immediate needs of the country concerned.” Excerpt from *OP 7.30 – Dealings with De Facto Governments*, World Bank Operational Policy, paragraph 5 (a), July, 2001].

⁴ *OP 7.30 – Dealings with De Facto Governments*, World Bank Operational Policy, paragraph 5 (a)-(e), July, 2001.

recognizes the country's past international obligations, in particular, any past obligations to the Fund; (d) a predominant number of countries (particularly neighbouring) have effectively recognized the government or dealt with it as the government of the country; and (e) most international and regional organizations, within their respective competencies, have effectively recognized the government or dealt with it as the government of the country; then the project financing proposal conforms to the country and project criteria set forth in the Lending Policies and Criteria and the President will recommend the project for approval by the Executive Board. On the other hand, if any of these questions receives a negative response, the project does not comply with the Lending Policies and Criteria and the President will refrain from submitting the project to the Executive Board and inform the Executive Board accordingly.