

ANALYTICAL FRAMEWORK FOR LAND-BASED INVESTMENTS IN AFRICAN AGRICULTURE

—
DUE DILIGENCE AND RISK MANAGEMENT FOR
LAND-BASED INVESTMENTS IN AGRICULTURE



NEW ALLIANCE
for Food Security & Nutrition



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FOREWORD

The Analytical Framework for Land-Based Investments in African Agriculture (the “Framework”) is designed to help investors ensure that their land-based investments are inclusive, sustainable, transparent, and respect human rights. It derives from a commitment made by the New Alliance Leadership Council in 2014 to develop a harmonized set of operational guidelines for implementing land-based agricultural investments in a responsible manner. The Framework was jointly developed by land experts from the African Union, UN Food and Agriculture Organisation (FAO), and several donor governments - including Great Britain, Germany, France and the United States.

The Framework builds upon and harmonizes the efforts of several donors who in recent months have released operational tools to help the private sector and other actors operationalize the principles of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (“VGGT”), and of multilateral institutions including the African Union whose Guiding Principles on Large Scale Land Based Investments in Africa are an important source document. The Framework aligns with and follows the structure of the Food and Agriculture Organization of the United Nations’ draft guide, titled Operationalizing the Voluntary Guidelines on the Responsible Governance of Tenure: A Technical Guide for Investors (the “FAO Guide”).

The Framework was presented at the New Alliance Leadership Council Summit on June 3, 2015. The African Union Commission and the World Economic Forum, as Co-Conveners of the Leadership Council, welcomed the Framework as an important tool for investors, and agreed to assess experience with utilization of the Framework in one year’s time.

The Framework is not meant to replace the source documents from which it derives. Rather, it is meant to distill some of the most important principles in these guides, and organize them into a tool that company staff, investor compliance managers, and risk assessment and management professionals can use to assess whether a project is adhering to best practices, and if not, how to address deficiencies. The VGGT - widely acknowledged and supported by the international community – and Africa’s own Guiding Principles remain the primary substantive resources for the Framework.

CONTEXT AND OBJECTIVES

As global demand for food, biofuel, forest, and horticultural products rises, more financial investors, agricultural project operators and supply chain companies (collectively referred to in this document as “investors”) are starting to invest – and will continue to invest – in agricultural land in developing countries. But with the potential benefits of such private sector investments come several risks, including land tenure risks: the risks associated with acquiring rights to land. Responsible investors must respect the rights of local women and men as well as communities to land and other resources, and avoid actions that lead to the loss of these rights and related harms.

Over the last several years, investors have begun to pay closer attention to how to invest responsibly in land, in particular through the application of international and regional land tenure instruments such as the VGGT¹ and the “Framework and Guidelines on Land Policy in Africa” and the “Guiding Principles on Large Scale Land Based Investments in Africa” developed and adopted by the African Union and related collaborating institutions. In some instances, investors pursuing land-based investments have already committed to these instruments, and to other important industry standards, commitments and best practices.

However, despite good intentions, investors often do not have the technical capacity to operationalize international instruments such as the VGGT.

The Framework should not be taken as an endorsement by the New Alliance of large-scale land-based investment. Indeed, the VGGT discourage investments that require large scale transfers of land rights to investors². Rather, it is produced in recognition of the fact that large-scale landbased investment is occurring and in an effort to provide advice and highlight best practices related to structuring investments in the most responsible way possible. In addition to practical guidance on what to do, the framework includes red lines that indicate in which situations investment projects should be cancelled if no benign alternatives can be found. This is generally the case, whenever a project will cause or contribute to forced evictions or any other adverse human rights impacts. The Framework also clearly rejects the transfer of land rights to investors involving tracts of land that exceed the amount reasonably required for the true purpose of immediately using the land for agricultural activities.

The Framework should be used throughout the life of the project beginning with the preliminary project assessment, followed by the due diligence phase and continuing through the negotiation, agreement, operation and close-out phases. Hence, while the Framework ideally should be used right from the beginning of a project, it can also be used after a project has begun as land tenure risks can and should be assessed well beyond the due diligence and start-up periods, especially in areas where communities have insecure land rights. Finally, the Framework can also be used by investors whose projects receive support from the New Alliance to document the extent to which they respect the VGGT.

1. *Endorsed by the Committee on World Food Security (CFS) on 11 May 2012, the VGGT are an unprecedented human rights based international soft law instrument intended to promote respect for all legitimate tenure rights. Their legitimacy is based on a consultation and negotiation process that involved representatives from governments, private sector, civil society, academia, and UN organisations. All countries have been explicitly encouraged to implement the Guidelines by resolutions of the United Nations General Assembly A/RES/67/228, the G20, the G8, and the RIO+20 Declaration. Thus, the VGGT provide a critically important framework document for future work and activities of the global community in relation to tenure*

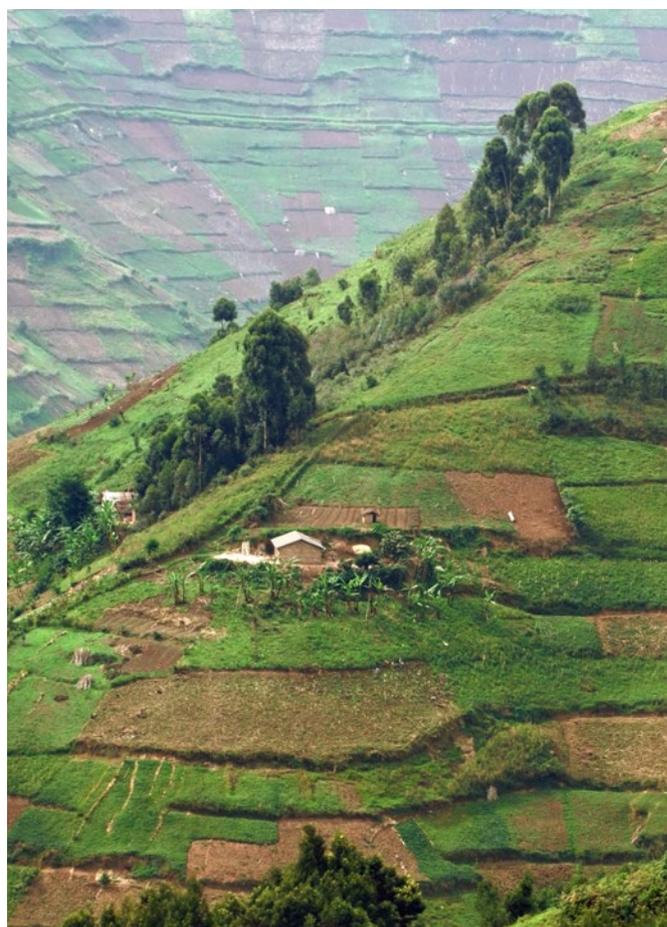
2. VGGT 12.6

STRUCTURE OF THE ANALYTICAL FRAMEWORK

The Framework is organized in a four-column table that follows the thematic structure of the FAO Guide.

- **Column 1** contains a series of thematic **recommendations** contained in the FAO Guide, along with cross-references to relevant sections of the VGGT and of the Guiding Principles on Large Scale Land based Investment in Africa (LSLBI Fundamental Principles) prepared by AU, ADB and UNECA;
- **Column 2** suggests a series of **questions** that an investor should ask to assess whether it is following the recommendations in Column 1;
- **Column 3** suggests a series of **actions** that an investor must take to correct deficiencies identified by the answers to questions in Column 2; and
- **Column 4** contains **references to additional resources**, including the operational guides developed to date by individual donors, that the investor could use to help implement the actions suggested in Column 3.

In order to implement the suggestions outlined in this tool, investors may need to hire additional staff and/or train staff at various organizational levels in the basics of land tenure, as well as in techniques for identifying, mitigating and monitoring land tenure-related risks and impacts.



THE IMPORTANCE OF IDENTIFYING STAKEHOLDERS

Depending on the size and location of the project, an agricultural investment can affect hundreds or thousands of people, directly or indirectly. Identifying all stakeholders will help an investor understand who will be affected by a project and how, what influence these people may have over a project, and how to engage with them. Every project should avoid or, at least minimize, its negative impacts on local communities, and only use the minimum land and natural resources necessary to realize the project. Identifying and engaging with stakeholders is the first step in ensuring that a project is legitimate and well-supported. By contrast, failing to identify and engage with stakeholders will likely lead to the exclusion of important voices and interests, and may result in conflict and opposition to the project. Put differently, stakeholder analysis is an essential input in helping an investor correctly and fully address the questions posed in the body of this tool. Doing so should reduce project risks for both the investor and the community.

So, who may be potential stakeholders in a land-based agriculture project? The following is a non-exhaustive list:

- Those with legitimate rights to land in or around the project area (including those with formal ownership, customary ownership, lease, occupancy, seasonal or temporary use)³
- Government officials (local, regional, national)
- Traditional authorities (village elders, chiefs, religious leaders, etc.)
- Trade union organizations, farmers' organizations and farmers' cooperatives
- Vulnerable groups (women, pastoralists, indigenous peoples, youth, elderly, etc.)
- NGOs and Civil Society Organisations
- Project partners (financiers, suppliers, customers)

A stakeholder analysis will help target due diligence, outreach, communications, consultations, negotiations, and project operations to best meet the needs and expectations of various groups affected by the project. In many cases NGOs and civil society organizations can assist in the analysis.

THE CRUCIAL ROLE OF HOST GOVERNMENTS

Although the primary audience of this Framework is investors, the key role of host governments needs to be stressed. The VGGT recognize that governments play the most important role in recognizing and protecting tenure rights, food security, human rights and the environment⁴. Governments also play a crucial role in regulating investments and investors. Ideally, governments should take actions to secure all legitimate land and resource rights of their constituents, particularly vulnerable and marginalized groups, and ensure their access to sufficient land and resources in the future, before investors make responsible

investments. But this is not always the case. Of course, the private sector cannot and should not take on the role of government. However, investors and businesses can support and, in some cases, supplement the activities of government. This is especially important in settings where the government is unwilling or unable to carry out its investment oversight and land governance responsibilities effectively. While investors must always comply with national, regional and international law, there will be circumstances where it will be in their interests to go beyond the minimum required by law as set forth in the VGGT:

3. The term „legitimate tenure rights” is used by the VGGT to stress that not only those land rights that already are legally secured are referred to but also all other land rights that are deemed locally to be socially legitimate.

4. See, for example, VGGT sections 3.1, 12.2 and 12.6.



Non-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights. Business enterprises should provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, where appropriate, where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights. Business enterprises should identify and assess any actual or potential impacts on human rights and legitimate tenure rights in which they may be involved (VGGT 3.2).

THEMATIC RECOMMENDATIONS CONTAINED IN THE FAO GUIDE WITH REFERENCES TO VGGT AND LSLBI	QUESTIONS AN INVESTOR SHOULD ASK	NECESSARY ACTIONS TO CORRECT DEFICIENCIES	REFERENCES TO ADDITIONAL RESOURCES
I. TENURE RIGHTS			
<p>UNDERSTANDING, IDENTIFYING AND RECOGNIZING RIGHTS</p> <ul style="list-style-type: none"> Identify and recognize all legitimate land rights holders including those with customary, secondary, seasonal and other use rights Consult with experts regarding national and local laws and customary practices relating to land. Check with government officials and review land records. Consult with communities and do participatory mappings with them to identify legitimate land rights holders and uses. Check historical process of land acquisition and identifying existing conflicts related to land rights Prior to starting negotiations, commission independent Environmental and Social Impact Assessment (ESIA) that includes a tenure assessment (transparent and participatory) Be sensitive to vulnerable groups. Focus on women's land rights. <p>VGGT 3.2, 4.6, 5.3, 5.4, 7.1, 7.4, 9.6, 11.6, 12.4, 12.11, 12.12.</p> <p>LSLBI Fundamental Principles 1, 4.</p>	<p>Is there national legislation governing whether and how foreign or domestic investors can acquire rights to land?</p>	<p>Review and understand the law and hire local counsel to review national and local laws and practices.</p>	<p>USAID Operational Guidelines, 3.13 – 3.20</p> <p>French Cooperation Operational Guide, p. 20</p>
	<p>Does national law accurately recognise and effectively protect legitimate land rights, including customary rights and informal tenure, of individuals and groups? Is the law effectively applied?</p>	<p>If not, conduct analysis of legitimate land rights in the project area.</p>	<p>USAID Operational Guidelines, 5.01 – 5.15</p> <p>French Cooperation Operational Guide, p. 18, p. 35</p>
	<p>What records exist that document land rights in the project area? Do they document customary and secondary rights? What rights are undocumented?</p>	<p>Commission an independent participatory mapping process to identify all such rights and local institutions responsible for local land governance.</p>	<p>USAID Operational Guidelines, 5.01 – 5.15</p> <p>French Cooperation Operational Guide, p. 21 (Box 2)</p>
	<p>Are there administrative, legal or customary authorities who act as guarantors of these rights and/or collective management rules? If so, are they effective, and do they help secure these rights or rules even if they have not been formalize?</p>	<p>Commission an independent participatory mapping process to identify all such rights and local institutions responsible for local land governance. Ensure that community participates.</p>	<p>USAID Operational Guidelines, 5.01 – 5.15</p> <p>French Cooperation Operational Guide, p. 22</p>
	<p>Have all legitimate local land rights (including those holding customary, secondary, overlapping, seasonal and other use rights) been validated for the project area through a process of participatory mapping?</p>	<p>Evaluate results of participatory mapping, with expert assistance if necessary.</p>	<p>USAID Operational Guidelines, 5.01 – 5.15</p> <p>French Cooperation Operational Guide, p. 22</p>
	<p>Are there minorities or other vulnerable groups in the project area? Does the mapping reflect their legitimate land rights?</p>	<p>Evaluate results of participatory mapping, with expert assistance if necessary, consulting specifically with vulnerable groups.</p>	<p>USAID Operational Guidelines, 5.01 – 5.15</p>
	<p>How secure are women's and pastoralist's rights to use and/or own land?</p>	<p>Consult with experts in conjunction with social and gender assessment.</p>	<p>USAID Operational Guidelines, Box 5</p> <p>UN Women and OHCHR (2013)</p> <p>French Cooperation Operational Guide, p. 21-24</p>

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I. TENURE RIGHTS			
	Does the mapping adequately consider women's land rights?	Evaluate results of participatory mapping, with expert assistance if necessary.	USAID Operational Guidelines, 5.01 – 5.15
	How did the current rights holder(s) – including the state acquire rights to the land? Did it involve involuntary displacement or expropriation? Are the current legally recognized rights to the land contested by local people? Are there existing conflicts over the land?	If there are existing conflicts over the land, seek to resolve the conflicts. Red Line: If resolving existing conflicts is not possible, cancel the project.	USAID Operational Guidelines, 5.01 – 5.15 French Cooperation Operational Guide, p. 69
	Does national law require an ESIA? Will such an ESIA, including a land tenure, human rights and food security impact assessment, be done prior to the start of negotiations whether or not legally required?	In all cases, conduct an ESIA, including a land tenure, human rights and food security impact assessment, prior to the start of contract negotiations. Red Line: Do not proceed with a project where no reliable mapping of all legitimate land rights, impact assessments and ESIA were conducted.	USAID Operational Guidelines, 3.34 – 3.35 French Cooperation Operational Guide, p. 36
<p>ASSESSING POTENTIAL DIRECT AND INDIRECT IMPACTS ON TENURE RIGHTS</p> <ul style="list-style-type: none"> Consider how the land will be acquired (purchase vs. lease)? Consider project models that do not involve the transfer of land or at least the minimum land needed. Consider impact on legitimate local land rights. Consider impact on women, youth, or other vulnerable groups such as pastoralists. Ask whether it is planned to involuntarily displaced people. Monitor land tenure conflicts or violence in the area. <p>VGGT 3.2, 12.2, 12.4, 12.6, 12.10</p> <p>LSLBI Fundamental Principles 1 (1), 4 (12).</p>	Is it necessary to acquire land by purchase or lease?	If yes, consider the pros and cons, conduct an economic assessment to verify the benefits for the community and think of alternatives that assure the best mutual outcome for local land rights holders and the investor.	USAID Operational Guidelines, 6.20 – 6.28 French Cooperation Operational Guide, p. 31
	What alternative business models have been considered, including those that do not involve the transfer of land rights?	If none, consider such alternatives.	USAID Operational Guidelines, 6.29 – 6.33 French Cooperation Operational Guide, p. 66.
	Does the proposed project have a negative impact on legitimate local land rights, including socially recognized informal rights? In particular, does the proposed project have a negative impact on rights of women, youth or vulnerable groups, such as pastoralists?	Determine what, if anything, can be done to mitigate the negative impact, including alternative business models. If the impacts on legitimate local land rights cannot be mitigated, do not proceed with the project.	USAID Operational Guidelines, 6.29 – 6.33, 6.34 – 6.49 French Cooperation Operational Guide. P.30 32

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I. TENURE RIGHTS			
<p>MITIGATION MEASURES</p> <ul style="list-style-type: none"> • Exploring alternative investment models that do not result in the large-scale transfer of land rights. • Use different land acquisition structure. • Minimize the amount of land required • Avoid displacement of people. • Ensure prompt, fair and adequate compensation wherever land tenure is affected • If negative impact cannot be avoided withdraw from the project. <p>VGGT 12.2, 12.6, 16.1, 16.3, 16.8</p> <p>LSLBI Fundamental Principle 1 (2).</p>	<p>Does the project require involuntary displacement through expropriation of local people?</p>	<p>Modify the project / business model to avoid involuntary displacement or cancel the project if involuntary displacement through expropriation cannot be avoided.</p>	
	<p>Does the project use the minimum land resources needed in order to avoid or at least limit the physical and/or economic displacement of local people?</p>	<p>Reduce the land area or attempt to redesign the project to avoid physical and/or economic displacement. If voluntary physical and/or economic displacement can't be avoided follow the principles for fair compensation in the VGGT.</p>	<p>IFC Performance Standard 5, para 8-9 (IFC 2012a); USAID Operational Guidelines, 6.34 – 6.49 French Cooperation Operational Guide, p. 62</p>
	<p>Did those whose legitimate land rights were affected get prompt, fair and adequate compensation?</p>	<p>In consultation with those receiving compensation, provide fair and adequate compensation, considering all relevant forms of compensation, including financial and in kind, according to community preferences and international standards. (Inkind compensation may be preferable to cash in many cases.)</p> <p>Document and publish the payment of compensation, explaining how it complies with international standards and listing the recipients and amounts of compensations paid.</p>	<p>USAID Operational Guidelines, 6.34 – 6.49 French Cooperation Operational Guide, p. 66- 68</p>
	<p>Could the project worsen existing land tenure conflicts or violence in the area?</p>	<p>If so, determine what, if anything, can be done to avoid such a result; otherwise do not proceed with the project.</p>	

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II. PARTICIPATION, CONSULTATION AND NEGOTIATIONS			
<p>PARTICIPATION AND CONSULTATION</p> <ul style="list-style-type: none"> Identify all possibly affected (legitimate) land users (as above). Create a stakeholder engagement plan. Engage early, during and after any project, starting with project design. Do not overlook vulnerable groups inside the communities. Share information in a timely manner and be transparent about impacts. Ensure there is no intimidation and consultation is conducted with a climate of trust. Ensure that counterparts have sufficient capacity to engage into meaningful participation and consultation <p>GGT 3B6, 7.3, 8.6, 9.7, 9.9, 12.7</p> <p>LSLBI Fundamental Principles 3 (9), 4, 6.</p>	<p>Has the investor identified all land owners and land users that would be affected by the project?</p>	<p>If no: Commission a land tenure assessment done by a recognized expert with support from local CSOs, traditional and government authorities to identify missing stakeholders who were not identified in the participatory mapping.</p>	<p>USAID Operational Guidelines, 5.01 – 5.15, 3.22 – 3.27</p> <p>French Cooperation Operational Guide. p. 48</p>
	<p>Has the investor created a stakeholder engagement plan that is inclusive, accessible and transparent prior to starting project design? Is information disseminated, and consultations conducted, in a culturally appropriate way?</p>	<p>If no: Rely on assistance from local CSOs, traditional and government authorities and experts to construct an appropriate plan. Ensure information is disseminated in the local language, and in both written and oral form, to ensure broad reach.</p>	<p>USAID Operational Guidelines, Box 6, 3.22 – 3.27, 4.03 – 4.13</p>
	<p>Has the investor taken steps to help the local community and other stakeholders develop sufficient capacity to engage in meaningful and fair consultations?</p>	<p>If no: Increase communication and outreach about the purpose, scope, impacts, timeline, business model and risks of the project, as well as alternatives. Provide access to those who can assist the community with consultations.</p>	<p>USAID Operational Guidelines, 4.03 – 4.13</p> <p>French Cooperation Operational Guide. p.24-28</p>
	<p>Does the stakeholder engagement plan include women, pastoralists, elders, youth, indigenous peoples and other vulnerable groups?</p>	<p>If no: Rely on assistance from local CSOs, special groups (e.g. women’s cooperatives), traditional and government authorities to identify missing stakeholders, and, if necessary, include specific provisions to ensure that the voices and interests of those groups are heard and considered.</p>	<p>USAID Operational Guidelines, 4.03 – 4.13</p> <p>French Cooperation Operational Guide. p.24-28</p>
	<p>Is all relevant information relating to the project shared with stakeholders in local languages in a timely, transparent and accessible manner?</p>	<p>If no: Ensure information is disseminated with enough time to give the community a chance to reflect, ask questions, consult internally, and react and translate documents into local languages.</p>	<p>USAID Operational Guidelines, 4.03 – 4.13</p> <p>French Cooperation Operational Guide. p.24-28</p>
	<p>Are project consultations conducted in an inclusive, honest, transparent, and collaborative manner, with feedback from all stakeholders taken into consideration?</p>	<p>Provide complete and unbiased information about the project; listen carefully and consider community opinions; ensure consultations are conducted in a setting where all stakeholders feel comfortable and empowered to participate; develop a formal mechanism to receive feedback.</p>	<p>USAID Operational Guidelines, 4.14 – 4.26</p> <p>French Cooperation Operational Guide. p.24-28</p>

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II. PARTICIPATION, CONSULTATION AND NEGOTIATIONS			
	Stakeholders to be consulted: parliamentarians, national and local government, grassroots organizations, other CSOs, local leaders, traditional authorities, and local land users, including women, pastoralists, and other vulnerable and marginalized groups.	Red line: If Stakeholders have not been and cannot be consulted properly, do not proceed.	USAID Operational Guidelines, 4.14 – 4.26
NEGOTIATIONS AND CONTRACTS <ul style="list-style-type: none"> • Ensure local legitimacy of the persons involved in land negotiations • Consultations must be voluntary. • Do not discriminate against or in favour of certain groups • Be culturally appropriate • Be Inclusive • Be open and honest • Result in decisions reached collaboratively • Obtain consent from indigenous peoples (VGGT 9.9) • Get support from the other affected persons / groups (in order to mitigate the risks of long term conflicts) • Define duties and diligences of all persons/parties involved in land negotiations <p>VGGT 7.3, 8.6, 9.7, 9.9, 12.7, 12.8</p> <p>LSLBI Fundamental Principles 3 (10), 4, 6.</p>	Do the contract signatories have the legitimacy and legal authority to sign, according to both formal law and customary norms?	Identify those who legally own the land, as well as those who have other legitimate rights over the land. Include both groups in negotiation, even if only legal owner signs the contract. Ensure that the entity or person signing the contract has legal authority to do so. Red line: If those who signed the contract are not the legal or legitimate representatives of the local land rights holders, do not proceed.	USAID Operational Guidelines, 6.01 – 6.14 French Cooperation Operational Guide. p. 25 (Box 5)
	Are indigenous peoples affected by the project? If so, has their free, prior, informed consent (FPIC) been obtained?	Ensure access to the necessary capacity to assess indigenous issues and engage with and obtain an informed decision from indigenous people. Red line: If FPIC has not been obtained from indigenous peoples, do not proceed.	IFC Performance Standard 7, para 10-17 (IFC 2012a)
	Has the investor taken reasonable steps to determine whether those representing the community in negotiations have the best interests of the whole community	Inform the community widely about the project negotiation process, and give them the chance to object or voice displeasure with the person(s) chosen to represent them.	USAID Operational Guidelines, 6.01 – 6.14
	Do negotiations include the interests of women, pastoralists, elders, youth, and other vulnerable groups?	In a culturally appropriate way, ask women, pastoralists, elders, youth and other vulnerable groups whether the chosen representative adequately represents their interests. If no: Include additional representatives as needed.	USAID Operational Guidelines, 6.16 – 6.19 French Cooperation Operational Guide. p. 47

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II. PARTICIPATION, CONSULTATION AND NEGOTIATIONS			
	Has the investor taken steps to help local communities have sufficient capacity to engage in fair negotiations resulting in a contract that evenly balances the interests of different stakeholders?	If no: support national efforts to establish a legal aid program or similar efforts. If such programs cannot be made available in time, offer to pay, directly or indirectly, for a neutral third party to assist the community with legal advice and/or contract negotiation.	
	Do the affected persons, and the community at large support the project as reflected in the final contract?	Do not sign the contract before support has been obtained. Red line: If the affected persons, and the community at large do not support the project as reflected in the final contract, do not proceed. Where national law or regional agreements require FPIC from all affected groups, this needs to be respected.	French Cooperation Operational Guide. p. 24
	What mechanism has been put in place to facilitate communication between local communities, the government and the investors from early consultation, the negotiation of the contract until post evaluation?	Put in place a mandated and adequately resourced oversight committee that includes stakeholder representatives.	USAID Operational Guidelines, 7.03 – 7.10
	What monitoring mechanisms have been established and remedies for non-performance clauses included in the contract to ensure that all commitments during the entire project cycle are respected?	Include monitoring and remedies for non-performance clauses in the contract that can be used by either party. Engage a neutral third party to work with the investor and the community to monitor whether the project complies with the terms of the contract, with regulatory and other obligations not captured in the contract and that it is not causing adverse social and environmental impacts. Red line: If no monitoring mechanism is in place and/or no remedies clause is included in the contract, do not proceed.	USAID Operational Guidelines, 7.11 – 7.16 French Cooperation Operational Guide. p. 29 (Box 8), p. 68

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III. GRIEVANCE MECHANISM – DISPUTE RESOLUTION			
<p>ACCESS TO A MECHANISM TO RESOLVE GRIEVANCES AND DISPUTES</p> <p>Access to a Mechanism to Resolve Grievances and Disputes must be provided to deal with infringements of legitimate tenure rights. The mechanism should contain effective and accessible means for all parties to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes. The mechanism can involve judicial authorities or other approaches.</p> <p>The mechanism should be set up in consultation with the affected communities. Available complaint mechanisms include:</p> <ul style="list-style-type: none"> • Judicial system • Complaint mechanisms inside the land administration • National Human Rights Institutions • National Contact Points under the OECD Guidelines for Multinational Corporations • Traditional dispute settlement mechanisms (chiefs etc.) • Alternative dispute resolution • A mechanism created by the investor or as part of a certification scheme the investor is participating in. <p>VGGT 3.1(4), 3.2, 4.9, 21.1</p> <p>LSLBI Fundamental Principle 3 (8).</p>	<p>Does the investor understand what complaint mechanisms are available for the stakeholders, their functioning as well as their fairness, effectiveness and accessibility?</p>	<p>If not, seek expert support to get the overview.</p> <p>If no adequate mechanisms are available start developing a company based mechanism (see below).</p>	<p>USAID Operational Guidelines, 7.14 – 7.17</p> <p>UN-Guiding Principles on Business and Human Rights, Guideline 31</p>
<p>NON-JUDICIAL, COMPANY BASED COMPLAINT MECHANISMS</p> <p>should follow the effectiveness criteria from the UN-Guiding Principles on Business and Human Rights, which are: legitimacy, accessibility, predictability, equity, transparency, rights-compatibility, source of continuous learning and based on engagement and dialogue (Guideline 31).</p>	<p>Does the investor-based complaint mechanism comply with the effectiveness criteria for non-judicial complaint mechanisms from the UN Guiding Principles on Business and Human Rights (see Guideline 31)</p>	<p>If not, improve the complaint mechanism accordingly.</p>	<p>USAID Operational Guidelines, Box 13</p> <p>UN Guiding Principles on Business and Human Rights, Guideline 31</p>

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IV. TRANSPARENCY AND CORRUPTION			
<p>TRANSPARENCY</p> <ul style="list-style-type: none"> Being transparent should be an integral part of the process of stakeholder engagement, consultation and building solid relationships with the community. At all stages of the investment, make all relevant information available to the public except those subject to legitimate business confidentiality. Contracts, especially those involving large tracts of land, should be made public, again subject to legitimate business confidentiality. <p>VGGT 3B, 10.5, 11.4, 11.7, 12.3, 12.11, 16.6, 17.5, 18.3, 18.5, 21.5</p>	<p>Does the investor make all relevant information available to the affected stakeholders and the public at all stages of the investment, including contractual information?</p>	<p>If not, disclose all information which is not legitimately commercially confidential in a form accessible to all stakeholders.</p>	<p>French Cooperation Operational Guide, p. 23, p. 27, p. 30, p. 63</p> <p>IFC Access to Information Policy, para 28-42 (IFC 2012c)</p> <p>UN Global Compact</p> <p>OECD Guidelines for Multi-national Enterprises</p>
<p>CORRUPTION</p> <ul style="list-style-type: none"> Analyse the overall climate of corruption in the country or locality where the investment will occur Zero-tolerance policy for corruption shall be published, linked with the promotion of transparency and accountability. Zero-tolerance corruption policies must be operationalized by the use of internal controls, including monitoring and compliance programmes. <p>VGGT 3A, 10.5, 11.7, 16.6, 17.5, 18.3, 18.5, 21.5</p>	<p>Does the investor have a zero tolerance policy on corruption?</p> <p>Does the investor have a good understanding of the corruption climate in the country, and in the locality where the investment takes place?</p>	<p>If not, develop and implement a zero-tolerance policy on corruption and make it public.</p> <p>If not, engage a local expert to do such an analysis.</p> <p>Red line: If corruption risks cannot be excluded or corruption is already observed in relation to the specific project, do not proceed.</p>	<p>OECD Guidelines for Multi-national Enterprises</p>
V. FOOD SECURITY, HUMAN RIGHTS, ENVIRONMENTAL SUSTAINABILITY AND LOCAL CAPACITY BUILDING			
<p>FOOD SECURITY</p> <ul style="list-style-type: none"> The investment should not harm local food security but aim to improve it. Identifying and addressing risks related to food security as part of a broader process of identifying impacts on local communities Such impacts should be addressed by a plan to address negative impacts (as part of the ESIA) <p>VGGT 1.1, 12.1, 12.2, 12.4, 12.12</p> <p>LSLBI Fundamental Principle 2.</p>	<p>Does the ESIA address local food security impacts? Have the food security risks been assessed with the local communities?</p> <p>Does the investor have a plan to cope with potential negative food security impacts?</p> <p>Has the investor considered ways to improve local food security?</p>	<p>If local food security is at risk review and modify the project design with the aim of avoiding harm and improving local food security.</p> <p>Red line: If the project will create or exacerbate local or national food insecurity, stop the project.</p>	<p>French Cooperation Operational Guide. p.17</p>

THEMATIC RECOMMENDATIONS CONTAINED IN THE FAO GUIDE WITH REFERENCES TO VGGT AND LSLBI	QUESTIONS AN INVESTOR SHOULD ASK	NECESSARY ACTIONS TO CORRECT DEFICIENCIES	REFERENCES TO ADDITIONAL RESOURCES
V. FOOD SECURITY, HUMAN RIGHTS, ENVIRONMENTAL SUSTAINABILITY AND LOCAL CAPACITY BUILDING			
<p>HUMAN RIGHTS</p> <ul style="list-style-type: none"> • Include human rights impact assessments as part of the broader due diligence process, including the ESIA. • Integrate human rights protections throughout the project • Comply with national and international laws on human rights. <p>VGGT 1.1, 3.2, 9.3, 12.4</p>	<p>Did the investor undertake a meaningful human rights impact assessment?</p> <p>Does the investor have a mechanism to ensure that human rights are respected throughout all phases of the project?</p> <p>Does the investor have the necessary expertise to do human rights impact assessments and to develop a plan for how to deal with these impacts?</p> <p>Did the ESIA include an assessment of human rights impacts?</p> <p>Does the investor apply ILO core labour standards?</p>	<p>Include human rights impacts in the ESIA.</p> <p>If not, obtain the expert support needed, in order to implement participatory and gender-responsive human rights impact assessment and monitoring for adherence throughout all phase of project.</p> <p>Red lines: If infringements of human rights cannot be avoided, do not start the project. If infringements of human rights have already occurred provide access to effective remedy and avoid further infringements.</p>	<p>International Council on Mining and Metals (2010) BSR 2013</p> <p>CFS RAI, Conceptual Framework.</p> <p>OECD Guidelines for Multi-national Enterprises</p>
<p>ENVIRONMENTAL SUSTAINABILITY</p> <ul style="list-style-type: none"> • Ensure sustainable use of natural resources. • Conduct a robust ESIA before deciding whether to proceed with the project. <p>VGGT 11.2, 12.2, 12.4, 12.12, part 23</p> <p>LSLBI Fundamental Principle 3 (7).</p>	<p>Does the investor try to minimize direct and indirect environmental impacts linked to the project?</p> <p>Does the investor assess and monitor short and long term environmental impacts, including land use impacts of its (planned) activities?</p> <p>Does the contract include necessary environmental impact clauses?</p> <p>Does the investor have the necessary capacity to perform the above tasks?</p> <p>Does the contract include clauses ensuring an efficient and sustainable use of natural resources, in particular water?</p>	<p>If not, develop measures to mitigate that impact.</p> <p>If not, conduct a meaningful assessment of such land use impact through the ESIA (as described above)</p> <p>Based on ESIA results, include environmental clauses and relevant enforcement mechanism in the contract.</p> <p>If capacity for measuring the impacts is missing, obtain expert support.</p> <p>If not, ensure that ESIA is done in cooperation with those agencies responsible for the management of irrigation zones and considers the most recent studies on water disposability.</p> <p>Red line: If there are serious risks of irreversible environmental damage (pollution of ground or surface water, soil erosion, destruction of wetland areas of ecological interest, proliferation of invasive species, etc.) do not proceed with the project.</p>	<p>USAID Operational Guidelines, 3.34 – 3.35</p> <p>French Cooperation Operational Guide, p. 71-73.</p> <p>CFS RAI, Principle 6 IFC 2007</p> <p>French Cooperation Operational Guide, p.40-44</p> <p>French Cooperation Operational Guide, p. 73</p> <p>French Cooperation Operational Guide, p. 73</p>

THEMATIC RECOMMENDATIONS CONTAINED IN THE FAO GUIDE WITH REFERENCES TO VGGT AND LSLBI	QUESTIONS AN INVESTOR SHOULD ASK	NECESSARY ACTIONS TO CORRECT DEFICIENCIES	REFERENCES TO ADDITIONAL RESOURCES
V. FOOD SECURITY, HUMAN RIGHTS, ENVIRONMENTAL SUSTAINABILITY AND LOCAL CAPACITY BUILDING			
<p>LOCAL CAPACITY BUILDING TO SUPPORT RURAL DEVELOPMENT</p> <ul style="list-style-type: none"> • Do no harm to local peoples livelihoods • Is the project consistent with national plans for sustainable agricultural development as well as rural development plans? • Where possible support through project activities diversification of livelihoods. <p>VGGT 7.5, 8.10, 9.2, 9.8, 9.10, 10.3</p> <p>LSLBI Fundamental Principle 2.</p>	<p>Does the investor check broader societal impacts of the project on local communities and rural development through the ESIA?</p>	<p>Integrate societal effects and impacts on livelihoods in the ESIA and project design.</p>	<p>USAID Operational Guidelines, 3.34 – 3.35</p> <p>French Cooperation Operational Guide, Box 9</p>
	<p>Does the investor have the necessary capacity to do so?</p>	<p>If not, obtain expert advice and develop adequate methodologies for such assessments.</p>	
	<p>Does the investor create direct and indirect revenue generating opportunities for local communities? Does the project contribute to the capacity of out-growers and others in the supply chain leading to a diversification of livelihoods?</p>	<p>Hire, train and promote local people to work in the project and use inclusive business models.</p> <p>Prepare an economic assessment analysing the distribution of the added value between the different stakeholder groups.</p>	<p>IFC Handbook Working with Smallholders (IFC 2012b)</p> <p>French Cooperation Operational Guide, p. 66-68</p>

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TECHNICAL CONTRIBUTORS

MATHIEU BOCHE,	<i>Land Policy Advisor, French Ministry of Foreign Affairs and International Development</i>
YULIYA NEYMAN,	<i>Land Governance and Legal Advisor, United States Agency for International Development</i>
IRIS KREBBER,	<i>Senior Land Policy Lead at the UK Department for International Development</i>
BABETTE WEHRMANN,	<i>Freelance Consultant on Land Governance</i>
DARRYL VHUGEN,	<i>Land Tenure Investment Consultant, FAO</i>
MICHAEL WINDFUHR,	<i>Deputy Director, German Institute for Human Rights</i>
HUBERT OUEDRAOGO,	<i>Land Expert, Land Policy Initiative, United Nations Economic Commission for Africa</i>
BIRGIT GERHARDUS,	<i>Head of Division, One World - No Hunger Special Unit, Federal Ministry for Economic Cooperation and Development</i>

NEW ALLIANCE

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- Produced with support from Grow Africa. Grow Africa is a partnership platform to accelerate responsible and inclusive investment in to African agriculture, and is mandated to support private sector engagement in the context of the New Alliance
- Supported by the African Union Commission. The Commission chairs and coordinates the New Alliance for Food Security and Nutrition
- Welcomed and recognised by the Leadership Council for the New Alliance and Grow Africa, Cape Town June 3 2015

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Date of publication: 5.08.2015
Cover photo: Phoenix Seeds

