



## **Guidance Note for Annotating Commercial Agriculture and Forestry Contracts Using the WB-NRGI-CCSI Template**

**Template Background:** The World Bank (WB), Natural Resource Governance Institute (NRGI) and the Columbia Center on Sustainable Investment (CCSI) have developed an excel template to assist in annotating contracts for large-scale oil, gas, mining, agriculture, and forestry deals. The template helps standardize the annotation process, with the goal of making the annotated contracts more accessible to a wider audience and easier to understand. The template includes specific rows to note the main fiscal, social, human rights, environmental, and operational terms of the contracts and to summarize key provisions. The purpose of the contract annotations is not to analyze whether the contracts or particular contract terms are “good” or “bad,” though this template could be adapted to assist with such an analysis.

The template has been modified several times to accommodate different types of contracts and to incorporate feedback from a range of experts, practitioners and potential end-users. The template will be revised periodically based on user feedback and other input.

**Project Background:** In many places, contracts and other written agreements define the respective obligations and commitments of host governments and investors for large-scale investments in natural resources. Contracts often contain critically important aspects of the deal, such as environmental obligations, tax rates, profit sharing arrangements, risk apportionment among the parties, local content commitments, dispute resolution mechanisms, and the rights of nearby communities. The terms of contracts thus determine the risks and benefits of major investments for both host governments and communities. Yet despite their significance, contracts are often shrouded in secrecy, and even publicly available contracts are hard to access and difficult to understand.

To encourage transparency and promote comprehension, WB, NRGI and CCSI developed a template to create a rigorous methodology for annotating contracts. Annotations of publicly available oil, gas and mining contracts are uploaded to [ResourceContracts.org](http://ResourceContracts.org). Annotations of commercial agriculture and forestry contracts are uploaded to [OpenLandContracts.org](http://OpenLandContracts.org). The online repository, and particularly the annotations, provides useful information to a number of stakeholders. The repository assists communities pushing for greater accountability, host governments seeking to negotiate with investors, investors concerned about overlapping concession allocations, and development practitioners seeking more transparency in large-scale investments. The repository, including its annotations and related tools, brings greater transparency to investments that can have substantial and long-term implications for sustainable development.

**Using this Guidance Note:** The WB-NRGI-CCSI template was designed to facilitate annotations of written agreements governing oil, gas, mining, agriculture, and forestry deals. Given its intended comprehensiveness, some rows in the template are only relevant to contracts for certain industries. There are thus two accompanying guidance notes: one for oil, gas and mining contracts and one for commercial agriculture and forestry contracts. This Guidance Note provides detailed instructions for annotating commercial agriculture

and forestry contracts (“land contracts”). Please use it in conjunction with the template labeled “NRGI\_WB\_CCSI\_template\_and\_metadata\_v4.4\_050115.xlsm.”

The Annex to this Guidance Note provides examples of annotations.

### **Steps to Filling Out the Template:**

To complete the summary of a contract, you should take the following steps:

#### **I. Background/preparation:**

1. Depending on the intended purpose of your contract review using this template, there may be specific steps that you need to take to prepare for the contract annotation. If you are annotating contracts for the land contracts repository, please check in with the project leader regarding which preparatory steps are necessary.

#### **II. Filling out the Template**

1. If you are annotating contracts for the land contracts repository, then each contract should be annotated in a separate excel document. Please save the document as “[Name of company]\_[Country].” For example, “ABC Company\_Country Z.” In situations in which there are multiple contracts with the same company and country, each contract may have a unique number in its title; if so, please note the contract number as well - eg. “ABC Company\_024\_Country Z.” If you are annotating an amendment, please use “[Company]\_Amendment\_[Country]” or “[Company]\_[Contract Number]\_Amendment\_[Country].”
2. Once you open the contract that you will annotate, page through the document and make note of any pages or annexes that are missing from the copy. You can note this at the bottom of the excel sheet in the appropriate box.
  - a. Some contracts are difficult to read. As you go through the contract, you may notice that there are important pieces of information that are completely or partially illegible. You do not need to note every page that is illegible. However, it is important that, when you go through the contract, you do not make educated guesses about what the contract says. If a clause contains important information that is obscured or illegible, you can note this in the relevant cell by saying “Included but illegible” or “Included but partly illegible.”
3. If you find any duplicate pages, please delete these from the PDF file before you commence your annotation. This is important, as you will be noting the PDF page from which you draw each piece of information that is included in each annotation.
4. If you find any amendments to the contract that are joined to the same PDF as the contract itself, the amending provisions must be included in the same annotation as the contract (i.e. the amendments should be incorporated into the annotations and any annotations made obsolete because of the amendment should be removed). If, however, there is a separate PDF containing an amendment to the contract, each document should be annotated separately.
5. **Select the contract language.** The “Language” can be selected at row 113. Please note that if you mistakenly select “FRE” and then wish to revert back to “ENG”, you must select the cell and hit “delete” on your keyboard. You can then select the correct language. For annotations in a language other than English or French, you can enter the language manually in that cell.
6. **Fill in Part I of the template.** Part I focuses on “General Information.” Some of this information will be found in the contract (for example, country, company name, type of document, etc.), but it is

probable that some of this information will *not* be contained within the four corners of the contracts. If annotating contracts for the land contracts repository, do not conduct outside research on the underlying projects to fill in such cells. Rather, for any cell for which you cannot find the requested information within the contract itself, please just leave it blank.

7. **Fill in Part II of the template.** Some notes on how to fill it in:
- a. In general, these annotations are meant to *summarize* the key terms and clauses – to make the contracts easier to comprehend for non-lawyers. Our intended users include a range of stakeholders who are not familiar with land contracts, and the annotations should make it easier for people to find and understand important information. However, accuracy is essential, and this is not a place to interpret contract language. (Insofar as this is possible, since any type of summary is, to some extent, an interpretation.)
    - i. If a clause is short, as well as clear and understandable, you can include the exact language from the contract.
    - ii. Otherwise, please summarize the clause, but stick as closely as possible to the language in the contract. Accuracy is paramount.
    - iii. In addition, err on the side of including more rather than less text as you summarize. It is easier for later reviewers and quality controllers to cut/shorten information than to go back and add more at a later date.
    - iv. You can remove the suffix from the name of the contracting party. For example, “Land Company, Inc” can be shortened to “Land Company” or “Log Company Ltd” can be shortened to “Log Company”. **Please note**, however, that you must enter company names in full, including their suffix, in rows 20 (name of company executing document), 24 (parent company or affiliates outside of the country), 41 (State agency, national company or ministry executing the document), and 43 (name and/or composition of company created).
    - v. You should replace any generic references made by the contract to “the investor” or “the contractor” with the name of the company. For example, if the contract with “ABC Company” says “The Investor has the right,” use “ABC Company has the right”.
    - vi. Use of “Government” versus a specified ministry or department (e.g., “Ministry of Agriculture”): if the clause relates to a specific procedure involving the Ministry or Department, then refer to that Ministry or Department as “the Ministry of \_\_\_” or “the Department of \_\_\_”. Otherwise, refer to the government party as “the Government” (and not “the Government of [Country]” or “the [Country] Government”).
    - vii. You do not need to capitalize defined phrases like “Annual Operation Plan”, even if such phrases are capitalized and/or defined in the contract.
    - viii. Please write “hectares” rather than “ha”.
    - ix. Please use numerals for all numbers, including those under ten. E.g., use “1”, not “one”.
    - x. Use the % symbol for percentages: 7%, 99% (*not* 7 per cent or 99 percent).
    - xi. For English language annotations, please always use American English (English (US)), even if the document itself uses British English (English (UK)).
    - xii. Use the Oxford comma, even when not used in the contract. (So “X, Y, and Z” rather than “X, Y and Z”.)

- xiii. For US dollars, use the following format: “US\$ 10 million.” For other currencies, use similar formatting.
- b. The template provides a separate row for each key term, obligation or commitment. Note that a row might ask about information that is found in more than one clause in the contract – so even if you find something relevant in one clause, please check to make sure that there is not other key information elsewhere in the contract.
- c. The template is comprehensive, and was designed to be used for contracts in the extractives sector as well as for land, agriculture and forestry contracts. Not every row will be relevant for every contract.
  - i. If a subject is not mentioned in the contract at all, leave the cell blank.
  - ii. A few rows are not relevant when annotating land contracts. These are noted in the document. In addition, they are shaded in light green in the template. Do not worry about filling in any of these rows.
  - iii. A few rows are relevant for land contracts, but not as relevant for oil, gas or mining contracts. They are shaded in light purple in the template. You should annotate these rows where possible.
  - iv. The template was designed to be used for “comprehensive” annotations as well as for “concise” annotations, which is why some rows are orange and some are white (white rows are those that are not included in concise annotations but are included in comprehensive ones).
  - v. If you are doing a comprehensive annotation, fill in all relevant information that can be found for each row (remembering that the light green rows will never be relevant for these types of land contracts, as noted above).
- d. Place corresponding information in Column C (marked “Details”).
- e. In Column D (marked “Reference”), you should note the Article Number that contains the information you included in Column C. For consistency, use the abbreviation “Art.” If the information that you provide spans more than one consecutive article, use the convention: “Arts. 2 – 4.” Be as specific as possible: if the information that you provide comes only from Art. 2.1(b)(ii), then the reference should state “Art. 2.1(b)(ii)”. If the information that you provide spans more than one non-consecutive article, use the convention: “Arts. 15, 22.” If the information was found in the Preamble, Appendix, or on the Signature page, note accordingly. If some information was found in an article in the body of the document and other information was found in an annex to the contract, use the convention: “Art 3; Annex A, Art. 7”.
- f. In Column E (marked “Page (permalink)”), you should note the page number of the PDF where the reference is included as follows: “[page number] ([top/middle/bottom])”. For example, if something was found on the top of page 2, you would write “2 (top).” In the future, this will enable a user to click on a link that takes them directly to that page of the document. If the page numbers printed in the header or footer of the contract itself differ from the page numbers of the PDF file, use the page numbers of the PDF file. (For example, a contract document might start with four pages numbered i, ii, iii, iv before using page numbers, so that page “1” of the contract might start on page 5 of the PDF file. In this situation, if you wanted to note that something was found on page 1 of the contract/page 5 of the PDF file, you would mark it as page 5.)

- g. If you do not understand language in the contract or are uncertain about the information that you are entering into a cell, highlight the cell in yellow so we can ensure that we pay special attention to it during our review. Again, accuracy is essential, so feel free to mark rows in yellow as necessary.
- h. If there is an issue in the contract that seems important but is not adequately covered by the rows in the template, you can enter it into the “Other” row for the relevant section (for example, under the section on “Community, environment and social obligations” or under the section on “Developer’s financial obligations”).<sup>1</sup> If there is more than one issue that you think should be included in this way within a section, you can create more than one “Other” row for the section, one corresponding to each issue. For any piece of information that you include as “Other,” please add a note in Column F (“Notes”) proposing the corresponding annotation title that could be used on the website.
- i. Be sure to include relevant information contained in the available annexes.
- j. Some notes on specific rows:
  - i. Row 20 asks for “Name of company executing document.” This should include the composition of the company’s shareholders, if available.
  - ii. Row 27 asks for the “Type of contract.” For commercial agriculture and forestry contracts, this will likely be one of the following: Land Concession Agreement, Land Lease Agreement, Land Sale Agreement, Investment Incentive Agreement, Timber Sale Contract, Forest Management Contract, or Memorandum of Understanding. These, and other document types, are listed in a drop-down menu in the cell.
  - iii. Row 30 asks for the “location.” How much information you provide here depends on how much information is found in the contracts. For example, some contracts give general locales but say that specific information (or maps) will be inserted at a later date, some provide the latitude and longitude coordinates for the central point, and some provide nearly two pages of specific coordinates and details. If you can summarize the location information, including longitude and latitude, *in less than 4 lines*, please do so in Column C. If the location explanation or detail is much more involved, then do not include the specific details – just flag where exactly in the contract the location is noted.
  - iv. Rows 32 and 33 ask for date and year of issue of title/permit – this is for underlying permits, and NOT the contract signature or ratification date, which is requested below. You most likely will leave this blank. Row 33 will automatically populate the year of issue based on your entry in row 32.
  - v. Row 34 asks for date of ratification of the contract. Use DD/MM/YYYY (ex: April 30, 2009 would be 30/04/2009). You may or may not be able to figure out this information from the document.
  - vi. Row 43 asks for “Name and/or composition of the company created.” This is generally not applicable for your purposes.
  - vii. Row 44 asks for “Date of contract signature.” Use DD/MM/YYYY. Row 48 will automatically populate the year of contract signature based on your entry in row 47.

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<sup>1</sup> Developer and investor are used interchangeably here to refer to the business entity that has entered into the contract with the government.

- viii. Row 46 asks for “Term.” This may also be described as the “period” of the investment, generally provided in years.
- ix. Row 47 asks for “Renewal or extension of term.” This also includes “conditions for extension of term.”
- x. Row 48 asks for “Resource(s)”. For the following resources, please use the term as listed here:
  - 1. “Castor oil (*Ricinus communis*)”
  - 2. “Coffee”
  - 3. “Grain legumes (Pulses)”
  - 4. “Maize (Corn)”
  - 5. “Medicinal plants” – use only when a term of similar generality is employed in the contract; if a medicinal plant is specifically listed by its name, then it need not be also listed as “Medicinal plants”
  - 6. “Oil palm or palm oils” – use when the crop listed is oil palm (the tree from which palm oil is made), palm oil (the oil derived from the fruit of the oil palm tree or palm oils.
  - 7. “Other crops” – use only when a term of similar generality is employed in the contract; if a crop is specifically listed, then it need not be also listed as “Other crops”
  - 8. “Soybeans (Soyabeans)”
  - 9. “Tea”
  - 10. “Teak (*Tectona grandis*)”
  - 11. “Timber (Wood)”
  - 12. “[X] products” – when the contract lists the production of products made from an agricultural crop, you can describe it in this way (for example, “Rice products”).

For all other resources, please use the preferred term in the AGROVOC database. This can be found by typing the resource in question into the search window at <http://aims.fao.org/skosmos/agrovoc/en/search>. If there are multiple resources, please order each resource in alphabetical order, separate each resource with a comma and a space, and capitalize the first word of each resource: e.g.: “Cotton, Rice, Soybeans (Soya beans)”. Where a contract lists more general types of crops and then provides specific examples in parentheses, please use the more general terms only. For instance, if the contract lists “Cotton and subsidiary crops of cereals (maize, sorghum), oil crops (sesame, niger, safflower) and pulses”, this can be listed as “Cereal crops, Cotton, Grain legumes (Pulses), Oil crops.” If the specific crops are listed as additional crops, and not as examples, then they should be listed, even if there is some overlap with the general terms used.

- xi. Row 52 asks for “Local development agreement.” This also includes requirements for “community development agreements,” “social agreements,” or “impact and benefit agreements.” It does not mean plans for developing concession areas generally, or developing land within concessions. When filling in this cell, also include any relevant monitoring and evaluation requirements in respect of such agreements.

- xii. Row 54 asks for “Community consultation.” When filling in this cell, also include any information about other requirements for community engagement, as well as monitoring and evaluation requirements regarding community consultation/engagement.
- xiii. Row 55 asks for “Training.” This includes training for nationals to qualify them for management and other skilled positions, as well as other types of vocational training for nationals that is meant to help them progress into higher positions.
- xiv. Row 56 asks for “Local employment.” This includes requirements to fill certain types of jobs or positions with host country nationals. It also includes legal working conditions (for example, prohibitions on hiring minors, compensation aligned with the laws of the host country, etc.).
- xv. Row 57 asks for “Local procurement”. This includes requirements to acquire or obtain goods, services or works from contractors or providers who are host country nationals.
- xvi. Row 58 asks for “Resettlement.” This should include any information on the right to compensation for former land users/owners.
- xvii. Row 59 asks for “Outgrowers Program.” This should include any information about how such a program will be funded, whether any additional land will be provided, who is entitled to benefit from the program, etc.
- xviii. Row 60 asks for “Protections or benefits for employees, dependents, or others.” This covers workers hired to work on the underlying project, as well as persons who live on land within the concession area or in nearby communities. It includes requirements for how the workers/concession dwellers are treated (including occupational health and safety issues), as well as any information on other “goods and services” that the government may require the investor to provide – for example, access to clean water, housing, healthcare services, the building of schools, etc. (excepting infrastructure/roads, which are addressed in a different row).
- xix. Row 62 asks for “Grievance mechanisms.” These are generally project-level mechanisms that allow third parties (for example, workers or community members) to bring complaints related to the underlying project.
- xx. Row 63 asks for “Rights to access concession area (non-contracting parties).” This focuses on the rights of access of *non-contracting* parties (for example, can farmers whose farms are located in the concession area continue to access their farms, or can nearby communities access forest resources that are located within a concession area).
- xxi. Row 66 asks for “Royalties.” There are several taxes that may appear in the contracts that would be considered royalty taxes and should be included here, including timber royalties/stumpage fees or turnover taxes.
- xxii. Row 69 asks for “Income tax: other.” This also would include relevant capital allowances and incentives, as well as turnover taxes, amortization, loss carried forward, and ring-fencing.
- xxiii. Rows 70-72 ask for production shares and service agreement fees. **These are not applicable for land contracts.**
- xxiv. Row 77 asks for “Customs duties.” This may include general import duties, duties on fuel or other specific goods, and customs service fees.

- xxv. Row 79 asks for “Surface fees or rent.” This includes rental fees for land use.
- xxvi. Row 80 asks for “Financial obligations - community or commodity.” This includes income contributions/requirements such as “community development funds” or specific commodity development funds (for example, oil palm development funds).
- xxvii. Row 86 asks for “Other – financial/fiscal.” Though many of the financial obligations found in contracts should have their own specific rows in the template, please include any other financial obligations that may be important and that do not have their own row. For example, specific trade levies could be noted here.
- xxviii. Row 89 asks for “Environmental impact assessment and management plan.” This includes plans for mitigating risks of adverse impacts, as well any information on the financing of such plans. In addition, this includes any relevant external environmental standards that will be used.
- xxix. Row 90 asks for “Environmental monitoring.” This covers requirements to monitor the environmental impacts of the investment.
- xxx. Row 91 asks for “Social/human rights impact assessments and management plan.” This includes plans for mitigating risks of adverse social or human rights impacts, as well any information on the financing of such plans. In addition, this includes any relevant external social and/or human rights standards that will be used.
- xxxi. Row 92 asks for “Social/human rights monitoring.” This covers requirements to monitor the social or human rights impact of the investment.
- xxxii. Row 93 asks for “Water use.” This focuses on the right of the investor to use or access water, including any relevant water fees, licenses, or permits that the investor must pay/obtain.
- xxxiii. Row 103 asks for “Other – operational.” This should include any information about “local sales requirements” or requirements related to domestic use; rehabilitation obligations; domestic supply and consumption requirements; etc.
- xxxiv. Row 108 asks for “Stabilization clause.” Stabilization clauses limit how future changes in domestic law will affect investors and contractual obligations. They are not always labeled “stabilization” or “freezing” clauses; look also for restrictions on the governing law. For example, a stabilization clause may say something along the following lines: “in the event of a conflict between this contract and any law of XXX country enacted after the contract came into force, the rights, duties and obligations of the Investor and the government are the ones listed in the contract.”
- xxxv. Row 109 asks for “Assignment or transfer.” This includes assignment/transfer of the contract, as well as assignment/transfer of the land in question or properties developed on the land.
- xxxvi. Row 110 asks for “Cancellation or termination.” This should include the government’s right to terminate based on the investor’s failure to develop.

8. Some stylistic notes:

- i. Capitalize the first word in each cell.
- ii. No periods at the end, unless there are multiple sentences in the cell (in which case, use a period at the end of each sentence, including the last one).

### **III. Process**

1. We estimate that completing the full template spreadsheet will take approximately 7-8 hours per contract. The hours required will vary depending on the contract's complexity and length.