



# Columbia Center on Sustainable Investment

A JOINT CENTER OF COLUMBIA LAW SCHOOL  
AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY

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## *Recommending Transparency in Land-Based Investment: A Summary of Relevant Guidelines and Principles*

**A**n emerging consensus on the need for greater transparency in land-based investment is increasingly evident across various forums. This document consolidates recommendations regarding transparency featured in guidelines and principles published by international organizations, government agencies, and multilateral or multi-stakeholder groups. Viewed together, these recommendations offer insight on the evolving narrative on transparency in land-based investment, and provide a starting point for further analysis. This document also can be read alongside the Columbia Center on Sustainable Investment and Open Contracting Partnership's briefing note: *Transparency in Land-Based Investment: Key Questions and Next Steps*.<sup>1</sup>

The guidelines and principles listed below do not comprise an exhaustive list of relevant publications, but represent key documents providing guidance to investors, host governments, or other stakeholders, and indicate how such groups should address the issue of transparency in land-based investment. As the provisions included in the table are excerpts, readers should consult the original documents for a complete understanding of the recommendations and the context in which they were made.





Document	Page
Organisation for Economic Co-operation and Development and the Food and Agriculture Organization of the United Nations, <i>OECD-FAO Guidance for Responsible Agricultural Supply Chains</i> (2016)	3
New Alliance for Food Security and Nutrition, <i>Analytical Framework for Land-Based Investments in African Agriculture: Due Diligence and Risk Management for Land-Based Investments in Agriculture</i> (2015)	3
United States Agency for International Development, <i>Operational Guidelines for Responsible Land-Based Investment</i> (2015)	4
African Union Commission, the African Development Bank, and the United Nations Economic Commission for Africa, <i>Guiding Principles on Large Scale Land Based Investments in Africa</i> (2014)	6
Committee on World Food Security, <i>Principles for Responsible Investment in Agriculture and Food Systems</i> (2014)	6
French Agency for Development, <i>Guide to Due Diligence of Agribusiness Projects that Affect Land and Property Rights</i> (2014)	7
Food and Agriculture Organization of the United Nations and the Committee on World Food Security, <i>Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security</i> (2012)	10
United Nations, <i>Principles for Responsible Contracts: Integrating the Management of Human Rights Risks into State-Investor Contract Negotiations</i> (2011)	12
United Nations, <i>Large-Scale Land Acquisitions and Leases: A Set of Minimum Principles and Measures to Address the Human Rights Challenge</i> (2009)	13

Document, Type, and Key Audience	Page(s)	Text Relevant to Transparency in Land-Based Investment All italic text represents a direct quotation from the original document; internal citations have been omitted. Some text has been emphasized in blue.
<p>Organisation for Economic Co-operation and Development (OECD)-Food and Agriculture Organization of the United Nations (FAO), <i>OECD-FAO Guidance for Responsible Agricultural Supply Chains (2016)</i><sup>2</sup></p> <p><b>Document Type:</b> This draft guidance and model enterprise policy aims to assist enterprises<sup>3</sup> in abiding by existing standards for responsible business conduct (RBC) along agricultural supply chains.<sup>4</sup></p> <p><b>Key Audience:</b> Enterprises operating along agricultural supply chains</p>	Page 24	<p><b>6. Tenure rights over and access to natural resources</b></p> <p><i>To the greatest extent possible, we will commit to <b>transparency and information disclosure</b> on our land-based investments, including <b>transparency of lease/concession contract terms</b>, with due regard to privacy restrictions.</i></p> <p><b>Note:</b> This paragraph forms part of the Guidance document’s “model enterprise policy,” which “provides the major standards that enterprises should observe to build responsible agricultural supply chains” by “outlining parts of the content of the relevant international standards for responsible agricultural supply chains.”<sup>5</sup></p>
	Page 43	<p><b>1. Cross-cutting RBC standards</b></p> <p><b>1.1 Disclosure</b></p> <p><b>Risks</b></p> <p><i>A lack of transparency can create distrust and deprive enterprises of the possibility to resolve minor problems before they escalate into large conflicts, while maximum information sharing can reduce transaction costs for all stakeholders. Unless information is provided in a linguistically and culturally adequate, measurable, verifiable and timely manner, including through regular consultation meetings and the general media, enterprises run the risk of not being fully understood by potentially affected stakeholders or of failing to reach out to all relevant parties. In the absence of clear and enforceable laws on transparency and disclosure, enhanced due diligence is warranted.</i></p> <p><b>Note:</b> This paragraph forms part of Annex A, which “identifies the risks of adverse impacts arising along agricultural supply chains and proposes measures to mitigate and prevent them, drawing from the same standards as the model enterprise policy.”<sup>6</sup></p>
<p>New Alliance for Food Security and Nutrition, <i>Analytical Framework for Land-Based Investments in African Agriculture: Due Diligence and Risk Management for Land-Based Investments in Agriculture (2015)</i><sup>7</sup></p>	Page 15	<p><b>Thematic recommendations contained in the FAO Guide with references to the VGGT and LSLBI [The Land Policy Initiative’s Guiding Principles on Large Scale Land Based Investments in Africa]:</b></p> <ul style="list-style-type: none"> <li><i>• Being transparent should be an integral part of the process of stakeholder engagement, consultation and building solid relationships with the community.</i></li> </ul>

<p><b>Document Type:</b> Jointly developed by the African Union (AU), FAO, and several donor governments, the Framework seeks to assist the private sector in assessing whether a project adheres to best practices and in operationalizing the <i>Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security</i> (VGGT) and certain other principles, particularly the <i>Guiding Principles on Large Scale Land Based Investments in Africa</i> developed by the AU and others.<sup>8</sup></p> <p><b>Key Audience:</b> Investors, in particular company staff, investor compliance managers, and risk assessment and management professionals<sup>9</sup></p>		<ul style="list-style-type: none"> <li>• <b>At all stages of the investment, make all relevant information available to the public</b> except those subject to legitimate business confidentiality.</li> <li>• <b>Contracts, especially those involving large tracts of land, should be made public</b>, again subject to legitimate business confidentiality.</li> </ul> <p><b>Questions an investor should ask:</b></p> <ul style="list-style-type: none"> <li>• Does the investor make all relevant information available to the affected stakeholders and the public at all stages of the investment, including contractual information?</li> </ul> <p><b>Necessary actions to correct deficiencies:</b></p> <ul style="list-style-type: none"> <li>• If not, disclose all information which is not legitimately commercially confidential in a form accessible to all stakeholders.</li> </ul>
<p><b>United States Agency for International Development (USAID), <i>Operational Guidelines for Land-Based Investment</i> (2015)<sup>10</sup></b></p> <p><b>Document Type:</b> The Operational Guidelines provide best practice recommendations in relation to the due diligence and structuring of land-based investments, and are designed to assist companies in identifying practical steps to align their policies and actions with various guidelines and standards.<sup>11</sup></p> <p><b>Key Audience:</b> Private sector companies operating in one or more of the ten New Alliance countries,<sup>12</sup> or in other developing countries<sup>13</sup></p>	Page 22	<p><b>Section 1.0: Due Diligence</b></p> <p><b>Good Practice Examples:</b></p> <ul style="list-style-type: none"> <li>• Conduct participatory, independent environmental and social impact assessments that clearly address land tenure concerns. You should strongly consider conducting human rights impact assessments as a complement to Environmental and Social Impact Assessments (ESIA). This is required by the IFC PS [International Finance Corporation Performance Standards on Environmental and Social Sustainability] and will align your project with VGGT guidance.</li> <li>• <b>Make findings of ESIA's and Human Rights Impact Assessments (HRIAs) available</b> to the public and to stakeholders.</li> <li>• Consult with independent experts including lawyers, sociologists, and gender and land tenure experts when conducting ESIA's and HRIAs.</li> </ul> <p><b>Note:</b> These good practice examples form part of a sub-section on how companies should carry out their due diligence processes.</p>
	Page 24	<p><b>Section 2.0: Stakeholder Engagement</b></p> <p><i>If the decision is made to move forward [with a land-based investment project], and prior to beginning contract negotiations, you must take the following two steps:</i></p> <ul style="list-style-type: none"> <li>• <b>Raise awareness</b> within the local community and among other stakeholders about the proposed project through dialogues, and educate yourself about the needs, concerns, and desires of the local community. Being transparent with stakeholders about the project has proved to be helpful and is required by the VGGT (Chapter 12.11) and by the IFC PS (1, 5, &amp; 7); and, the RAI (Principle 4).</li> </ul>

		<ul style="list-style-type: none"> <li>• <b>Consult</b> with the local community and other stakeholders about their interests in the land that will be used in the proposed project, as well as several other factors discussed in the “Consultation” section below. Consultation is required by numerous international instruments including the VGGT (Chapter 9.9), IFC PS (1, 5 &amp; 7), and the RAI (Principle 4).</li> </ul>
	<p>Pages 38 &amp; 39</p>	<p><b>Section 4.0: Contract Negotiations</b></p> <p><b>How to Negotiate</b>  <i>The same principles that apply to consultations apply to contract negotiations.</i></p> <p><b>Equitable and transparent:</b> <i>Conduct negotiations in good faith and support efforts to ensure transparent, equitable negotiations with local groups. For example, consider supporting communities by providing access to independent legal counsel of the community’s choosing, or to responsible experts who can assist a community negotiating team. <b>Contracts need to be disclosed and terms and conditions shared with negotiating parties.</b> Take time to ensure that the local community understands what contract provisions mean, how their land is being valued, and different compensation options (see the “Compensation” section below). For transparency and monitoring purposes, <b>consider making the terms of agreement public.</b></i></p> <p><b>Inclusive and responsible:</b> <i>When acquiring land directly from communities, work with village authorities, local CSOs, women’s groups, and other community institutions to ensure negotiations adhere to customary norms and are conducted in a way the community accepts and understands. Take account of local practices and include migratory groups such as pastoralists.</i></p>
	<p>Page 52</p>	<p><b>Section 5.0: Project Operations</b></p> <p><b>Establishing a Grievance Mechanism</b>  <i>According to the IFC, a sound grievance mechanism should have the following characteristics:</i></p> <ul style="list-style-type: none"> <li>• <b>Transparency and Accountability to All Stakeholders: <i>The grievance process should be predictable, consistent, and transparent.</i></b> <i>A grievance mechanism is transparent when members of the affected community (I) know who in the organization is responsible for handling complaints, overseeing the process, and communicating results, (II) have input into the development of the grievance mechanism, (III) understand how to access the grievance mechanism, and (IV) have power to ensure compliance with the process.</i></li> </ul>

<p><b>African Union Commission (AUC), the African Development Bank (AfDB), and the UN Economic Commission for Africa (UNECA), <i>Guiding Principles on Large Scale Land Based Investments in Africa (2014)</i></b><sup>14</sup></p> <p><b>Document Type:</b> The Guiding Principles seek to facilitate the implementation of the AU’s <i>Declaration on Land Issues and Challenges in Africa</i>, the <i>Comprehensive Africa Development Program</i>, and the <i>Nairobi Plan of Action</i> by providing policy direction and guidance to inform investment in African agriculture.<sup>15</sup> The Guiding Principles were developed under the auspices of the Land Policy Initiative, a joint program formed of the AUC, AfDB, and UNECA.</p> <p><b>Key Audience:</b> Multiple stakeholders, including AU Member States and investors</p>	<p>Pages 9 &amp; 10</p>	<p><b>Principle 4</b></p> <p><i>Member States have the responsibility to <b>promote transparency</b> of all parties throughout the investment process.</i></p> <p><i>States should <b>require investors to disclose comprehensive project information</b> in accessible form to parties affected by the LSLBI [large-scale land-based investments]. This includes information about the identity of the parties involved, including the investor and its owners, financial intermediaries and backers; about the concession area and nature of rights; about investment plans and expected risks and opportunities, costs and benefits; about assessment and mitigation of potentially negative impacts. There should be a presumption by all parties that results of impact assessment studies and <b>investment contracts should be disclosed</b>. States have a key role in establishing effective institutions to handle such public disclosure and to promote multi-stakeholder involvement in the processes of these institutions.</i></p> <p><i>State agencies and investors should also be required to seek the prior, informed participation of affected communities with respect to all decisions which have consequences for communities.</i></p> <p><i>Corrupt practices in the context of LSLBI contribute significantly to observed impacts of LSLBI, including unauthorized conversion of customary land to commercial land in the interests of LSLBI. Measures should be put in place and implemented to make corruption in the conduct of LSLBI a punishable offence. Corruption can further be avoided by ensuring that decisions on LSLBI follow prescribed process.</i></p> <p><i>Contracts entered by government and communities with investors should clearly identify the rights and obligations of all parties. These rights should be formulated in specific and enforceable terms and should provide effective arrangements for monitoring compliance and sanctioning non-compliance including contract termination in case of material noncompliance.</i></p>
<p><b>Committee on World Food Security (CFS), <i>Principles for Responsible Investment in Agriculture and Food Systems (2014)</i></b><sup>16</sup></p> <p><b>Document Type:</b> The Principles seek to: (i) identify the core elements of responsible investment in agriculture and food systems; (ii) identify the roles of key stakeholders with respect to such investment; and (iii) define a framework for responsible investment to guide the actions of stakeholders.<sup>17</sup></p>	<p>Pages 17 &amp; 18</p>	<p><b>Principle 9: Incorporate inclusive and transparent governance structures, processes, and grievance mechanisms</b></p> <p><i>29. Responsible investment in agriculture and food systems should abide by national legislation and public policies, and incorporate inclusive and transparent governance structures, processes, decision-making, and grievance mechanisms, accessible to all, through:</i></p> <ul style="list-style-type: none"> <li><i>i. Respecting the rule and application of law, free of corruption;</i></li> <li><i>ii. <b>Sharing of information</b> relevant to the investment, in accordance with applicable</i></li> </ul>

**Key Audience:** All stakeholders involved in, benefitting from, and/or affected by investment in agriculture and food systems<sup>18</sup>

- law, in an inclusive, equitable, accessible, and transparent manner at all stages of the investment cycle;
- iii. *Engaging with and seeking the support of those who could be directly affected by investment decisions prior to decisions being taken and responding to their contributions, taking into account existing power imbalances, in order to achieve active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes in line with the VGGT;*
  - iv. *Effective and meaningful consultation with indigenous peoples, through their representative institutions in order to obtain their free, prior and informed consent under the United Nations Declaration of Rights of Indigenous Peoples and with due regard for particular positions and understanding of individual States;*
  - v. *Promoting access to **transparent and effective mediation, grievance, and dispute resolution mechanisms**, particularly for the most vulnerable and marginalized;*
  - vi. *Taking steps to respect human rights and legitimate tenure rights, during and after conflict, to achieve free, effective, meaningful, and informed participation in decision-making processes associated with investments in agriculture and food systems with all parties affected by the investments, including farmers, consistent with applicable international law, including human rights law and international humanitarian law, and in accordance with the VGGT.*

**Principle 10: Assess and Address Impacts and Promote Accountability**

*Responsible investment in agriculture and food systems includes mechanisms to assess and address economic, social, environmental, and cultural impacts, considering smallholders, gender, and age, among other factors, and respects human rights and promotes accountability of each actor to all relevant stakeholders, especially the most vulnerable, by:*

- i. *Applying mechanisms that provide for **independent and transparent assessments** of potential impacts involving all relevant stakeholder groups, in particular the most vulnerable;*
- ii. *Defining baseline data and indicators for monitoring and to measure impacts;*
- iii. *Identifying measures to prevent and address potential negative impacts, including the option of not proceeding with the investment;*
- iv. *Regularly assessing changes and communicating results to stakeholders;*
- v. *Implementing appropriate and effective remedial and/or compensatory actions in the case of negative impacts or non-compliance with national law or contractual obligations.*

**French Agency for Development (AFD), Guide to Due Diligence of Agribusiness Projects that Affect Land and Property Rights (2014)**<sup>19</sup>

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**Part 2: Guide to the analytical framework**  
**Evaluating contract negotiation and management**

**Document Type:** The Guide (including the Analytical Framework contained in the Annex) seeks to help France’s institutional actors to apply and abide by the VGGT.<sup>20</sup>

**Key Audience:** “[A]ctors and operators – and especially those within the AFD group – who work with private, State and local government investments that affect land and property rights (perennial plantations, agro-industrial operations, hydro-agricultural developments, pastoral and forestry initiatives)”<sup>21</sup>

**Were the contracts made public?**

**The terms of every contract need to be transparent** to ensure that consultations are meaningful and that the public can hold governments and investors to account. It is important to determine whether the contract and impact assessments have been published and made accessible to local people, and whether these people were invited to participate in the contract negotiation process and comment on draft versions of the contract.

[...]

When the country concerned does not have any legislation requiring investment contracts to be published, cooperation agencies can still ask their partners or clients to do this to ensure that procedures are transparent and that consultations and negotiations with local stakeholders proceed with their informed consent.

**Note:** These paragraphs form part of “Part 2: Guide to the analytical framework”, which is intended to be applied to ex ante analyses of agribusiness projects in order to “clarify the meaning of the key questions in the framework, identify points that merit particular attention and show how donors can influence projects, thereby helping users develop their own analysis of the project in question.”<sup>22</sup>

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**Part 3: Conclusions**

**3. The transparency and inclusiveness of the processes to negotiate contractual arrangements is an indicator of more equitable agreements that benefit all the parties concerned**

The requirement for transparency applies to all actors, including those in the French Cooperation. The results of preliminary social and environmental impact assessments should be published, and this should encourage enterprises to be more transparent about the contracts agreed at different stages of the negotiation process (although they would not be obliged to publish confidential commercial data).

The **whole negotiation process should be transparent** in order to avoid or at least limit the opportunities for corruption, which is a major risk in projects involving land transactions.

This will also ensure that stakeholder consultations and negotiations are based on shared information, with local actors being able to access relevant information at different stages of the process. All parties to the agreement should benefit from a transparent and inclusive negotiation process: the investor will be in a more secure position if local actors consent to and are stakeholders in the project, while local people and governments are more likely to conclude a better balanced and more advantageous agreement.

	<p><b>4. The need for a process to rebalance asymmetric relations between private investors on the one hand, and the State, local governments and local people on the other</b></p> <p><i>Transparency at every stage of the negotiated agreement does not necessarily guarantee an equitable final agreement. Asymmetries of information, competences and general power relations are often so pronounced that specific support is required to redress the balance.</i></p> <p><b>Note:</b> These paragraphs form part of “Part 3: Conclusions,” which seeks to summarize “the main lessons learned from the work on transparency and contract negotiations for agribusiness projects that affect land and property rights,” in addition to presenting recommendations for relevant actors.</p>
<p>Pages 61 &amp; 63</p>	<p><b>Annex: Analytical framework for agricultural investment projects that affect land tenure and property rights</b></p> <p><b>Analysis of the project and associated land contracts</b></p> <p><i>The criteria presented below aim to provide a framework for analysis of the project and related land contracts. The information available in project documents, contracts (or draft contracts), preliminary studies, ex-ante evaluation documents and different legal sources in the broad sense (international, national and customary law) can be used to determine the extent to which the project meets the criteria for each key question.</i></p> <p><b>Contract negotiation and management</b></p> <p><u>Criteria: Transparency in the negotiation process</u></p> <p><b>Key Questions</b></p> <ul style="list-style-type: none"> <li>• <i>How transparent was the preparation of the project, production of the preliminary studies and negotiation of the contract?</i></li> <li>• <i>Was the contract (or some of its content) made accessible to the local actors concerned? Have the impact assessments been published and made accessible to local people so that they can make an informed judgement [sic] about the project?</i></li> <li>• <i>Were local people given advance warning and information about the project, and were they invited to participate in the process of negotiating the contract and commenting on draft versions of the contract?</i></li> <li>• <i>Is information about the transactions that have taken place and the market value of land assets transparent, and has it been disseminated? Does the contract respect national legislative arrangements, or does it give the enterprise additional advantages, suggesting an element of corruption in the process?</i></li> </ul> <p><b>Red Lines</b></p> <ul style="list-style-type: none"> <li>• <i>Local challenges to ongoing projects having given rise to violence.</i></li> <li>• <i>Signatories to the agreement without authority.</i></li> </ul>

		<ul style="list-style-type: none"> <li>• <i>Lack of local consultation and no free, prior and informed consent by indigenous people.</i></li> <li>• <i>ESIAs not undertaken or not published.</i></li> </ul> <p><b>Note:</b> The paragraphs above form part of the “Analytical framework for agricultural investment projects that affect land tenure and property rights,” which is attached to the Guide in an Annex (pages 57-73). The Framework is based on the VGGT and other relevant principles. It seeks to “help project leaders and experts who are responsible for evaluating the environmental and social aspects of applications for project financing.”<sup>23</sup></p>
<p><b>FAO and CFS, <i>Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) (2012)</i></b><sup>24</sup></p> <p><b>Document Type:</b> The VGGT serve to guide and improve the governance of land tenure, and ultimately to promote “secure tenure rights and equitable access to land, fisheries and forests.”<sup>25</sup> They were developed through a consultative process and endorsed by the Committee on World Food Security following intergovernmental negotiations.</p> <p><b>Key Audience:</b> All relevant stakeholders<sup>26</sup></p>	<p>Page 17</p>	<p><b>Part 3: Legal recognition and allocation of tenure rights and duties</b></p> <p><b>10. Informal tenure</b></p> <p><i>10.5 States should endeavour to prevent corruption, particularly through increasing transparency, holding decision-makers accountable, and ensuring that impartial decisions are delivered promptly.</i></p> <p><b>Note:</b> This principle forms part of “Part 3: Legal recognition and allocation of tenure rights and duties,” which “addresses the governance of tenure of land, fisheries and forests with regard to the legal recognition of tenure rights of indigenous peoples and other communities with customary tenure systems, as well as of informal tenure rights; and the initial allocation of tenure rights to land, fisheries and forests that are owned or controlled by the public sector.”<sup>27</sup></p>
	<p>Pages 18 - 23</p>	<p><b>Part 4: Transfers and other changes to tenure rights and duties</b></p> <p><b>11. Markets</b></p> <p><i>11.4 States and other parties should ensure that information on market transactions and information on market values are transparent and widely publicized, subject to privacy restrictions. States should monitor this information and take action where markets have adverse impacts or discourage wide and equitable market participation.</i></p> <p><i>11.5 States should establish appropriate and reliable recording systems, such as land registries, that provide accessible information on tenure rights and duties in order to increase tenure security and to reduce the costs and risks of transactions.</i></p> <p><b>12. Investments</b></p> <p><i>12.3 All forms of <b>transactions in tenure rights as a result of investments in land, fisheries and forests should be done transparently</b> in line with relevant national sectoral policies and be consistent with the objectives of social and economic growth and sustainable human development focusing on smallholders.</i></p>

*12.11 Contracting parties should provide comprehensive information to ensure that all relevant persons are engaged and informed in the negotiations, and should seek that the agreements are documented and understood by all who are affected. The negotiation process should be non-discriminatory and gender sensitive.*

**Note:** These principles form part of “Part 4: Transfers and other changes to tenure rights and duties,” which “addresses the governance of tenure of land, fisheries and forests when existing rights and associated duties are transferred or reallocated through voluntary and involuntary ways through markets, transactions in tenure rights as a result of investments, land consolidation and other readjustment approaches, restitution, redistributive reforms or expropriation.”<sup>28</sup>

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**Part 5: Administration of tenure**

**17. Records of tenure rights**

*17.5 States should ensure that information on tenure rights is easily available to all, subject to privacy restrictions. Such restrictions should not unnecessarily prevent public scrutiny to identify corrupt and illegal transactions. States and non-state actors should further endeavour to prevent corruption in the recording of tenure rights by widely publicizing processes, requirements, fees and any exemptions, and deadlines for responses to service requests.*

**18. Valuation**

*18.3 States should develop policies and laws that encourage and require transparency in valuing tenure rights. Sale prices and other relevant information should be recorded, analysed and made accessible to provide a basis for accurate and reliable assessments of values.*

*18.5 Implementing agencies should make their valuation information and analyses available to the public in accordance with national standards. States should endeavour to prevent corruption in valuation through transparency of information and methodologies, in public resource administration and compensation, and in company accounts and lending.*

**21. Resolution of disputes over tenure rights**

*21.5 States should endeavour to prevent corruption in dispute resolution processes.*

**Note:** These principles form part of “Part 5: Administration of tenure,” which “addresses governance of the administration of tenure of land, fisheries and forests with regard to records of tenure rights, valuation, taxation, regulated spatial planning, resolution of disputes over tenure, and transboundary matters.” Principles 17-21 should be read in light of Section 6 in Part 2 of the VGGT (“Delivery of Services”).

**United Nations, *Principles for Responsible Contracts: Integrating the Management of Human Rights Risks into State-Investor Contract Negotiations* (2011)<sup>29</sup>**

**Document Type:** The Principles seek to optimize the benefits of investments, while ensuring that potentially negative impacts are avoided or mitigated, including by ensuring that states maintain adequate policy space in investment contracts.<sup>30</sup> The Principles were developed by the UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, and, as part of the UN Guiding Principles on Business and Human Rights, were endorsed by the UN Human Rights Council.

**Key Audience:** Investors and states

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**Part II: Ten principles for integrating the management of human rights risks into contract negotiations**

**Principle 10: The contract's terms should be disclosed, and the scope and duration of exceptions to such disclosure should be based on compelling justifications.\*\***

*Key implications of Principle 10 for the negotiations:*

- **Contract terms, with exceptions for compelling justifications, should be disclosed in an accessible manner** and seen as part of the community engagement plan for the project.
- Exceptions to the disclosure of contract terms should be based on compelling justifications, such as business proprietary information or information that could directly impact the position of one of the parties in a concurrent or imminent negotiation. Exceptions to disclosure should be time-bound to fit the compelling justification.
- Where there are exceptions to disclosure, the subject matter of the excluded clause(s) should be identified, along with their expected release date.
- Applying disclosure requirements to all business investors equally can contribute to alleviating business investors' concerns regarding competitiveness.

*Recommended checklist for Principle 10:*

- The State has considered how it can facilitate disclosure of contract terms, for example by standardizing disclosure rules for all business investors.
- The parties have agreed to disclose the contract terms and identified the exceptions, if any. Those are made for particular clauses or subjects where there are compelling justifications. The parties have agreed to a reasonable time frame for keeping exceptions confidential.
- The contract requires that where clauses are kept confidential, the subject matter of the excepted clause(s) is disclosed, along with the expected release date.
- If disclosure of contract terms poses costs or risks, measures to resource or mitigate these have been agreed between the parties before the finalization of the contract.
- The contract delineates responsibility for making the contract terms accessible. The contract requires publication in an accessible manner, taking into account possible barriers to access such as linguistic, technological, financial, administrative, legal or other practical constraints.

**\*\* Disclosure of information related to the project throughout its life cycle allows people to have information that is pertinent to them and their human rights. Transparency of project information throughout its life cycle should be considered as part of the ongoing community engagement plan (See Principle 7). Initiatives like the Extractive Industries Transparency Initiative and some lending standards offer additional benchmarks on disclosure that can be useful reference points for parties.**

**UN, Large-Scale Land Acquisitions and Leases: A Set of Minimum Principles and Measures to Address the Human Rights Challenge, UN Doc. A/HRC/13/33/Add.2 (2009)**<sup>31</sup>

**Document Type:** These Principles and Measures seek to ensure that negotiations leading up to land acquisitions comply with key procedural requirements, and that any acquisitions provide for adequate benefit-sharing and do not trump the human rights obligations of states.<sup>32</sup> They were developed by the UN Special Rapporteur on the Right to Food, Olivier De Schutter.

**Key Audience:** Investors and host states

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**Annex: Minimum human rights principles applicable to large-scale land acquisitions or leases**

*Principle 1: The **negotiations leading to investment agreements should be conducted in a fully transparent manner**, and with the participation of the local communities whose access to land and other productive resources may be affected as a result of the investment agreement. In considering whether or not to conclude an agreement with an investor, the host government should always balance the advantages of entering into such an agreement against the opportunity costs involved, in particular when other uses could be made of the land available, which could be more conducive to the long-term needs of the local population concerned and the full realization of their human rights.*

## Endnotes

- <sup>1</sup> Columbia Center on Sustainable Investment (CCSI) and Open Contracting Partnership (OCP), *Transparency in Land-Based Investment: Key Questions and Next Steps* (March 2016), available at [http://ccsi.columbia.edu/files/2016/03/2016-03-11-CCSI-OCP\\_Transparency-in-Land-Based-Investment\\_FINAL.pdf](http://ccsi.columbia.edu/files/2016/03/2016-03-11-CCSI-OCP_Transparency-in-Land-Based-Investment_FINAL.pdf).
- <sup>2</sup> OECD-FAO, *OECD-FAO Guidance for Responsible Agricultural Supply Chains* (2016), available at: <http://mneguidelines.oecd.org/OECD-FAO-Guidance.pdf>.
- <sup>3</sup> The *OECD-FAO Guidance for Responsible Agricultural Supply Chains* uses the term “enterprise” to refer to (1) domestic and foreign, private and public companies and other actors of all sizes directly involved in agricultural production, including small-scale producers, and (2) other actors involved along the agricultural supply chain through business relationships, including institutional investors. See *id.*, p. 15.
- <sup>4</sup> *Id.*, p. 12.
- <sup>5</sup> *Id.*, p. 21.
- <sup>6</sup> *Id.*, p. 43.
- <sup>7</sup> New Alliance for Food Security and Nutrition, *Analytical Framework for Land-Based Investments in African Agriculture: Due Diligence and Risk Management for Land-Based Investments in Agriculture* (2015), available at: [https://new-alliance.org/sites/default/files/resources/Analytical-framework-for-land-based-investments-in-African-agriculture\\_0.pdf](https://new-alliance.org/sites/default/files/resources/Analytical-framework-for-land-based-investments-in-African-agriculture_0.pdf).
- <sup>8</sup> *Id.*, p. 3.
- <sup>9</sup> *Id.*
- <sup>10</sup> USAID, *Operational Guidelines for Responsible Land-Based Investment* (2015), available at: <http://www.usaidlandtenure.net/documents/operational-guidelines-responsible-land-based-investment>.
- <sup>11</sup> *Id.*, p. 1.
- <sup>12</sup> Launched in 2012, the New Alliance for Food Security and Nutrition seeks to *inter alia* “leverage the potential of responsible private investment to support development goals” and “achieve sustained inclusive, agriculture-led growth in Africa”. For further information, see <http://www.new-alliance.org/about>. Ten African governments have joined the Alliance: Benin, Burkina Faso, Côte d’Ivoire, Ethiopia, Ghana, Malawi, Mozambique, Nigeria, Senegal, and Tanzania.
- <sup>13</sup> USAID, *Operational Guidelines for Responsible Land-Based Investment*, *supra* note 10, p. 2.
- <sup>14</sup> AUC, AfDB, and UNECA, *Guiding Principles on Large Scale Land Based Investment in Africa* (2014), available at: [http://www.uneca.org/sites/default/files/PublicationFiles/guiding\\_principles\\_eng\\_rev\\_era\\_size.pdf](http://www.uneca.org/sites/default/files/PublicationFiles/guiding_principles_eng_rev_era_size.pdf).
- <sup>15</sup> *Id.*, p. 4. Specific objectives are outlined in section 1.4, pp. 4-5.
- <sup>16</sup> CFS, *Principles for Responsible Investment in Agriculture and Food Systems* (2014), available at: <http://www.fao.org/3/a-au866e.pdf>.
- <sup>17</sup> *Id.*, p. 5, para. 11.
- <sup>18</sup> *Id.*, p. 6, para. 16.
- <sup>19</sup> AFD, *Guide to Due Diligence of Agribusiness Projects that Affect Land and Property Rights* (2014), available at: <http://www.landcoalition.org/sites/default/files/documents/resources/Guide-to-due-diligence.pdf>.
- <sup>20</sup> *Id.*, p. 3.
- <sup>21</sup> *Id.*
- <sup>22</sup> *Id.*, p. 17.
- <sup>23</sup> *Id.*, p. 57.
- <sup>24</sup> FAO and CFS, *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (2012), available at: <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.
- <sup>25</sup> *Id.*, p. iv. Further information on the objectives, nature, and scope of the Guidelines is available in Part 1 of the Voluntary Guidelines.
- <sup>26</sup> *Id.*, p. 2, para. 2.3.
- <sup>27</sup> *Id.*, p. 11.
- <sup>28</sup> *Id.*, p. 19.
- <sup>29</sup> Human Rights Council, Addendum to the “Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie,” UN Doc. A/HRC/17/31/Add.3 (May 25, 2011), available at: <http://www.ohchr.org/Documents/Issues/Business/A.HRC.17.31.Add.3.pdf>.
- <sup>30</sup> *Id.*, p. 1.
- <sup>31</sup> Human Rights Council, Addendum to the “Report of the Special Rapporteur on the right to food, Olivier De Schutter,” UN Doc. A/HRC/13/33/Add.2 (December 28, 2009), available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-33-Add2.pdf>.
- <sup>32</sup> *Id.*, p. 1.