

# FAO-OECD Guidance for Responsible Agricultural Supply Chains

Draft for comment | January 2015



## Context

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As the demand for food increases driven by growing populations, higher incomes, and changing diets, agriculture will attract growing investment, particularly in developing countries where investment stocks in agriculture are relatively low. Enterprises operating along agricultural supply chains may be confronted with ethical dilemmas and face challenges in observing internationally agreed principles of responsible business conduct, notably in countries with weak governance and insecure land rights.

In this context, the Food and Agriculture Organization of the United Nations and the OECD are developing guidance to help enterprises undertake risk-based due diligence to observe standards of responsible business conduct along agricultural supply chains and ensure that their operations can contribute to economic development and food security.

## Invitation to contribute

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Government, business and civil society representatives, international organisations, and the general public are invited to contribute comments on this draft chapter. Comments should be sent to [coralie.david@oecd.org](mailto:coralie.david@oecd.org) by 20 February 2015.

A compilation of comments received will be published online at the end of the consultation period.

## Contact

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If you have any questions regarding the consultation, please email [coralie.david@oecd.org](mailto:coralie.david@oecd.org)

Find out more about OECD work on responsible agricultural supply chains:  
[mneguidelines.oecd.org/rbc-agriculture-supply-chains.htm](http://mneguidelines.oecd.org/rbc-agriculture-supply-chains.htm)

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## ABBREVIATIONS

CAO	Compliance Advisor Ombudsman of IFC and MIGA
CBD	Convention on Biological Diversity
CFS-RAI	Principles for Responsible Investment in Agriculture and Food Systems developed by the Committee on World Food Security
CFS	Committee on World Food Security
CSR	Corporate Social Responsibility
ESHRIA	Environmental, Social and Human Rights Impact Assessment
ESMS	Environmental and Social Management System
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign Direct Investment
FPIC	Free, Prior and Informed Consent
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IFPRI	International Food Policy Research Institute
ILO	International Labour Organization
ITPGR	International Treaty on Plant Genetic Resources for Food and Agriculture
MIGA	Multilateral Investment Guarantee Agency
MNE	Multinational Enterprise
NCP	National Contact Point
NGO	Non-governmental Organisation
OECD	Organisation for Economic Co-operation and Development
OIE	World Organization for Animal Health
PRAI	Principles for Responsible Agricultural Investment that respects rights, livelihoods and resources developed by FAO, International Fund for Agricultural Development (IFAD), United Nations Conference on Trade and Development (UNCTAD) and World Bank

RBC	Responsible Business Conduct
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
US	United States
USD	United States Dollar
WB	World Bank
WHO	World Health Organization

## 1. INTRODUCTION

### Background

1. As the demand for food increases driven by growing populations, higher incomes, and changing diets, long term prices for both crop and livestock products are set to rise. The demand for non-food agricultural products and services is also increasing. Agriculture should thus continue attracting further investment, particularly in developing countries where investment stocks in agriculture are relatively low.

2. Enterprises operating along agricultural supply chains<sup>1</sup> can create employment and bring expertise, technology and financing capacities for increasing agricultural production sustainably and upgrading in supply chains, which can enhance food and nutritional security. At the same time, as new actors, such as institutional investors, are increasingly involved in agricultural supply chains and as a growing number of investors target frontier markets with weak governance frameworks, the risks of failing to observe internationally agreed principles of responsible business conduct (RBC) may be exacerbated.

3. In this context, providing guidance to enterprises involved in agricultural supply chains on how to observe existing RBC standards is essential to prevent adverse impacts and ensure that agricultural investments benefit enterprises, governments and communities and contribute to economic development, poverty reduction and food security. The range of enterprises targeted by this Guidance for Responsible Agricultural Supply Chains thereafter referred to as ‘the guidance’ includes not only enterprises directly involved in agricultural production, including small-scale producers, but also other actors involved through business relationships, such as investment funds or sovereign wealth funds.<sup>2</sup>

### Purpose

4. The guidance intends to help enterprises observe existing standards for RBC along agricultural supply chains, including the OECD Guidelines for Multinational Enterprises (MNE Guidelines).<sup>3</sup> It aims to prevent risks from arising, thereby providing a potentially useful complement to the work of the National Contact Points (NCPs)<sup>4</sup> that are tasked with furthering the effectiveness of the MNE Guidelines.

5. The guidance does not create new RBC standards. It is intended to help enterprises observe existing standards by referring to them in order to undertake risk-based due diligence. Risk-based due diligence refers to the steps enterprises should take to identify and address actual or potential risks in order to prevent or mitigate adverse impacts associated with their activities or sourcing decisions.

6. While the guidance does not create new standards under the MNE Guidelines or create additional standards, it can help governments in their efforts to promote the MNE Guidelines and in clarifying existing standards in the agricultural sector. It should be noted that although the guidance only refers to the most relevant parts of the MNE Guidelines and other standards, enterprises should observe all the recommendations contained in the MNE Guidelines and other standards considered in the guidance. The guidance does not aim to substitute the RBC standards considered in its various sections. Enterprises should thus refer to each of these standards to ensure they are in full compliance with those.

### Scope

7. The guidance considers existing standards and principles that are relevant for responsible business conduct in agricultural supply chains, including:

- The OECD Guidelines for Multinational Enterprises (MNE Guidelines);

- The Principles for Responsible Investment in Agriculture and Food Systems of the Committee on World Food Security (CFS-RAI);
- The FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT);
- The Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources developed by FAO, International Fund for Agricultural Development (IFAD), UN Conference on Trade and Development (UNCTAD) and the World Bank (PRAI);
- The Guiding Principles on Business and Human Rights - Implementing the UN 'Protect, Respect and Remedy' Framework (UN Guiding Principles);
- The International Labour Organization Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO MNE Declaration);
- The Convention on Biological Diversity (CBD), including the Akwé: Kon Voluntary Guidelines;
- The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of the UN Economic Commission for Europe (Aarhus Convention).

8. The above standards and principles meet the following three criteria established by the Advisory Group:<sup>5</sup> they have been negotiated and/or endorsed through an inter-governmental process; they are relevant to agricultural supply chains; and they target in particular the business/investor community. The guidance also considers the following standards and principles that do not meet these criteria but that are being widely used to the extent that they are consistent with the standards and principles listed above:

- The International Finance Corporation's Performance Standards;
- The Principles of the UN Global Compact.

9. Additional instruments, such as UN human rights treaties, are also referred to when they provide further guidance on the provisions or the implementation of the above standards and principles. Each of the instruments listed above is described further in Annex IV.

10. It should be noted that not all countries adhering to the MNE Guidelines or members of the FAO endorse the above RBC standards. This guidance does not cover the full content of the standards reviewed herein, but summarises information where there are synergies with other standards. Enterprises should consider the full standards directly before making any claims regarding the observance of such standards.

### **Intended users**

11. While acknowledging that farmers are the largest investors in primary agriculture, the guidance focuses more broadly on enterprises operating along supply chains. It targets domestic and foreign, private and public, small, medium and large-scale enterprises.<sup>6</sup> It covers agricultural upstream and downstream sectors from input supply to production, post-harvest handling, processing, transportation, marketing, distribution and retailing. As such, the guidance includes recommendations on due diligence relevant for input suppliers, producers, processors, trading companies, distributors and retailers, as well as other actors supplying a particular end market such as technical, business and financial service providers.



12. Thus, the guidance covers different types of actors, including:

- Private and state-owned enterprises, including small-scale producers and multinational and agricultural engineering enterprises;
- Institutional investors:
  - Private financial actors: commercial banks, investment funds, hedge funds, private equity funds, family offices and pension funds;
  - State-owned funds: sovereign wealth funds, pension funds and development finance institutions.

13. These different actors are referred to as ‘enterprises’ throughout the document. In Annex II, a distinction is drawn between different types of enterprises, i.e. those directly involved in operations versus institutional investors without direct involvement in operations.

14. The guidance can also be used by governments, particularly NCPs, to better understand existing standards in agricultural supply chains, taking into account that the guidance refers to a wide range of standards in addition to the MNE guidelines. Furthermore, it can help affected communities understand what they should expect from the above-mentioned actors and thus better protect their rights.

## **Process**

15. The guidance was developed through an inclusive consultation process led by a multi-stakeholder Advisory Group established in October 2013 with the participation of the Chair of the CFS-RAI Open-Ended Working Group.<sup>7</sup> The Advisory Group comprises OECD and non-OECD countries, institutional investors, agri-food companies, farmers’ organisations and civil society organisations. Its tasks are as follows:

- Provide substantive inputs for the development of the guidance;
- Assist with the process of broadly consulting with other relevant stakeholders, including by providing inputs on the agenda and participating in multi-stakeholder processes, in particular the meetings of the CFS-RAI Open-Ended Working Group;
- Provide substantive inputs on follow-up measures to effectively promote and implement the guidance.

16. The FAO and OECD Secretariats co-ordinated the consultation process in co-operation with the Advisory Group and under the leadership of its Chair and Vice-Chairs. The OECD Investment Committee, through the Working Party on Responsible Business Conduct, NCPs, and the Committee for Agriculture, through the Working Party on Agricultural Policies and Markets, have been regularly consulted to provide suggestions and comments.

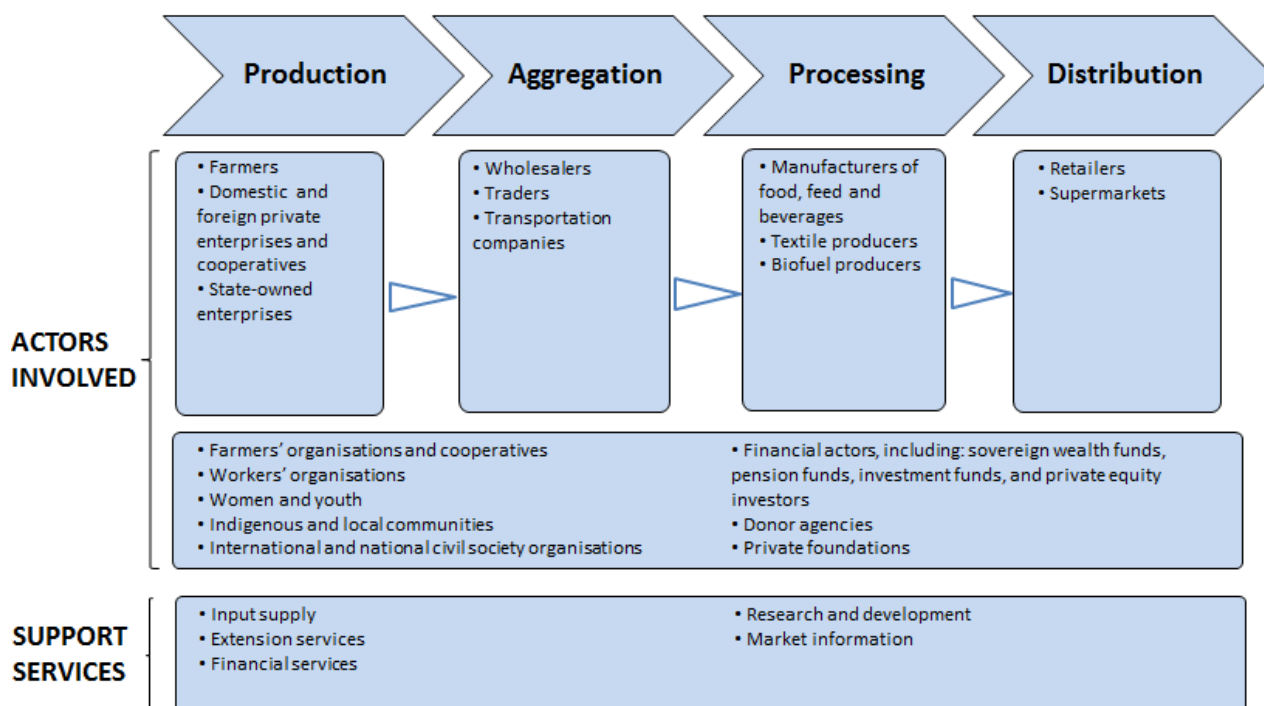
## **Key terms**

### ***Agricultural supply chains***

17. The term supply chain refers to the system encompassing all the activities, organisations, actors, technology, information, resources and services involved in producing agricultural products for consumer markets. It covers agricultural upstream and downstream sectors from the supply of agricultural inputs

(such as seeds, fertilisers, feeds, medicines, or equipment), to production, post-harvest handling, processing, transportation, marketing and distribution. As such, it consists of interrelated actors, such as input suppliers, producers, and processors, trading companies and retailers, as well as other actors supplying a particular end market such as technical, business and financial service providers (Figure 1).

**Figure 1. Various stages of agricultural supply chains and actors involved**



Note: This diagram is for reference only and does not aim at being comprehensive.

18. New actors have entered agricultural supply chains in recent years. A wide range of enterprises are now involved, ranging from smallholders, farmers' organisations, co-operatives and start-up companies to multinational enterprises through parent companies or local affiliates, state-owned enterprises and funds, private financial actors, such as commercial banks and investment funds, and private foundations.

19. These actors invest in agricultural supply chains through diverse relationships and arrangements. For instance, enterprises in downstream stages of agricultural supply chains can engage in various types of relationships to secure access to agricultural products. They can impose standards and specifications on producers with little involvement beyond a buying contract. But they can also be more actively involved, in particular through contract farming, as a way to co-ordinate production and ensure quality.<sup>8</sup> Annex II provides further details on the types of enterprises involved at various stages of agricultural supply chains.

### ***Due diligence***

20. Due diligence is understood as the process through which enterprises can identify, assess, mitigate, prevent and account for how they address the actual and potential adverse impacts of their activities as an integral part of business decision-making and risk management systems.<sup>9</sup> It concerns adverse impacts caused or contributed to by enterprises as well as those adverse impacts that are directly linked to their operations, products or services through a business relationship. The term 'business relationship' includes relationships with business partners and state or non-state entities directly linked to

an enterprise's business operations, products or services (OECD, 2011a).<sup>10</sup> Entities with which an enterprise has a business relationship will be referred to as '*business partners*' throughout the guidance.

21. Due diligence can help enterprises and their business partners ensure they observe international law and RBC standards and comply with domestic laws. It should be undertaken in good faith. By undertaking risk-based due diligence, enterprises identify the factual circumstances of their activities and business relationships and assess risk by evaluating those facts against applicable rights and duties under national and international law and standards, RBC recommendations of international organisations, government-backed tools, private voluntary initiatives and their own internal policies and systems. Identified risks are then prevented or mitigated by adopting and implementing a risk management plan, as outlined in section 3 below.

22. The nature and extent of due diligence will be affected by factors such as the size of the enterprise, the context and location of its operations, the nature of its products or services, and the severity of adverse impacts. Enterprises can carry out due diligence by collaborating with various stakeholders to ensure that ensure such process is mutually reinforcing and reduce costs through:

- Industry-wide co-operation, including to build capacity to conduct due diligence;
- Cost-sharing within industry for specific due diligence tasks;
- Co-ordination between industry members who share the same suppliers;
- Co-operation between different segments of the supply chain, such as upstream and downstream enterprises;
- Partnerships with international and civil society organisations.

23. As detailed in Annex II, in light of the diversity of agricultural supply chains, due diligence would differ across commodities and geographies.

## Structure

Following a brief introduction, the present guidance outlines:

1. A framework for risk-based due diligence along agricultural supply chains;
2. A model enterprise policy for responsible agricultural supply chains;
3. Suggested measures for risk mitigation along agricultural supply chains (Annex I);
4. Roles and responsibilities of various enterprises (Annex II);
5. Lessons learnt and best practices in responsible agricultural supply chains (Annex III);
6. Description of the main instruments considered in the guidance (Annex IV);
7. Free, Prior and Informed Consent (Annex V).

24. This structure draws from the model of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, which for the first time clarified how the MNE Guidelines applied to a specific sector by proposing due diligence steps and risk mitigation

measures. Accordingly, this guidance spells out the procedural steps for risk-based due diligence along agricultural supply chains. It offers a model enterprise policy that provides an outline of the content of the standards for responsible agricultural supply chains. Then Annex I explains in detail which risks arise from the non-observance of standards and which measures should be taken to mitigate them, drawing from existing standards. Annex II identifies, to the extent possible, the most relevant risks for various enterprises operating along agricultural supply chains. Annex III proposes some lessons learnt and best practices from various case studies to provide concrete examples on how to implement RBC standards.

## 2. FIVE-STEP FRAMEWORK FOR RISK-BASED DUE DILIGENCE

25. This section outlines the procedural steps to be taken for risk-based due diligence along agricultural supply chains. These steps are expanded upon in Annex I, which describes risks and suggested measures to mitigate them.

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26. While specific due diligence requirements and processes will differ depending on the sub-sector, the position of enterprises and their type of involvement in the supply chain as well as their size and capacities, enterprises should integrate into their management systems the following five-step framework for risk-based due diligence along agricultural supply chains.

### 1. Establish strong management systems for responsible agricultural supply chains

**1.1** Adopt an **enterprise policy for RBC** along the agricultural supply chain (hereafter enterprise policy for RBC)

27. This policy should incorporate the standards against which due diligence is to be conducted, drawing from the standards set forth in the model enterprise policy below. The policy should:

- be approved at the most senior level and appoint senior level responsibility for its implementation;
- be informed by relevant internal and external expertise;
- stipulate the enterprise's expectations of personnel, business partners and other parties directly linked to its operations, products or services;
- be publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
- be reflected in operational policies and procedures necessary to embed it throughout the enterprise.<sup>11</sup>

28. This policy can include the adherence to existing industry-specific standards, such as certification schemes, as supported by IFC Performance Standards.<sup>12</sup>

### **1.2. Structure internal management** to support supply chain due diligence

29. Senior management should be visibly and actively involved in implementing the enterprise policy for RBC and ensuring that practices align with existing RBC standards. Employees and business partners should be trained and provided incentives to comply with the enterprise policy for RBC and relevant laws and standards. An individual with relevant technical and cultural skills should be designated to be responsible for due diligence with the necessary support team, and adequate financial resources should be made available. An internal reporting structure for risk management should be set, maintained and communicated within the enterprise at key junctures. The enterprise practices should be aligned throughout its operations.

### 1.3. Establish a **system of controls and transparency** along the agricultural supply chain

30. Monitoring the implementation of the enterprise policy for RBC is critical to the credibility and effectiveness of the policy and to good relationships with stakeholders, including governments. It entails the creation of internal audit procedures to undertake regular independent and transparent reviews of compliance with the policy as well as the execution and follow-up of environmental, social and human rights impact assessments (ESHRIAs).<sup>13</sup>

31. Permanent systems of business relations remain the best means for a continual flow of information. Periodic audits or impact assessments should not substitute for them. A chain of custody or a traceability system should be established. This implies: creating internal documentation of due diligence processes, findings and resulting decisions; maintaining internal inventory and transaction documentation that can be used retrospectively to identify actors in the supply chain; making and receiving payments through official banking and ensuring that all unavoidable cash purchases are supported by verifiable documentation; and maintaining the information collected for a period of several years. Due diligence information passed on from upstream to downstream enterprises can increase transparency and facilitate traceability.<sup>14</sup>

32. A traceability system may be implemented by participating in industry-driven programmes.<sup>15</sup> It should be tailored to the capacities of various suppliers. For instance, small-scale farmers might have difficulties meeting stringent and costly requirements. In such cases, enterprises can help build their capacities in order to improve their performance and compliance with the enterprise policy for RBC.

33. Monitoring also entails creating channels for communicating with employees and other stakeholders to warn of possible deviations from the policy and relevant standards. Such monitoring may be implemented by collaborating with stakeholders or participating in industry-driven programmes, i.e. initiatives created and managed by an industry organisation to support and advance adherence to international standards.<sup>16</sup>

### 1.4. Strengthen **engagement** with business partners

34. A supply chain policy should be incorporated into contracts and/or agreements with business partners. This implies:

35. Where practicable, establishing long-term relationships with business partners can help build leverage to encourage the adoption of the enterprise policy for RBC. Expectations on responsible supply chain management should be clearly communicated to business partners and incorporated into contracts or other written agreements as possible. Measurable improvement plans can be designed in co-ordination with them and involve, if relevant and where appropriate, local and central governments, international organisations, and civil society. This implies engaging in training and capacity building with business partners based on their needs, strategic values, or the risks they entail, based on the risk assessments.

### 1.5. Establish, in consultation and collaboration with relevant stakeholders, an operational-level **grievance mechanism**<sup>17</sup>

36. Such grievance mechanism should be used as an early-warning risk-awareness system and as a mechanism to prevent conflicts and provide redress.<sup>18</sup> It should complement enterprises' co-operation with judicial or non-judicial mechanisms.

37. Grievance mechanisms help alert businesses to deviations from relevant RBC standards and better identify risks, including by allowing for improved communication with relevant stakeholders. They

should be easily accessible by workers and all those actually or potentially affected by the negative impacts deriving from the enterprise's failure to uphold RBC standards.

38. Enterprises should publicise the existence and modalities of access to grievance mechanisms, actively encourage their use, and guarantee that their users remain anonymous. Lessons learnt through grievance mechanisms should be incorporated in the enterprise policy for RBC, its relations with business partners and its monitoring systems.

## **2. Identify and assess risks in the supply chain**

**2.1. Map out the supply chain** by identifying the various actors involved, including the names of the immediate suppliers and business partners, and the sites of operations.

**2.2. Assess the risks** raised by the enterprise's operations and those of its business partners by identifying:

- relevant rights holders, affected stakeholders and other stakeholders likely to be affected by the operations on an ongoing basis;<sup>19</sup>
- any business partner that may not undertake proper due diligence;
- any red flags as described in Box 1 below. In such situations, heightened managerial care is warranted and additional due diligence may be needed, which could include on-the ground verification of qualitative circumstances for red flag areas, suppliers, or products;
- any reasonable inconsistency between the factual circumstances of the operations and the enterprise policy for RBC.

### **Box 1. Examples of situations that warrant heightened managerial care**

- **Red flag locations** - Operations are planned in or agricultural products originate from areas:
  - Affected by conflicts or considered as high-risk areas;
  - Considered as weak governance areas;
  - Where national or local governments do not observe some of these standards or do not provide support to the enterprise to ensure the observance of these standards, such as by proposing agricultural land on which local communities have legitimate tenure rights and have not been consulted, or which is located in protected areas;
  - Where violations to human rights and/or labour rights have been reported;
  - Where tenure rights are weakly defined and/or are contested;
  - Where some communities are food insecure or face water shortages;
  - Affected by environmental degradation.
- **Business partner red flag**
  - The enterprise's business partners are known not to have observed the standards contained in this guidance;
  - They operate in one of the above-mentioned locations;

- They are known to have sourced agricultural products from one of the above-mentioned locations in the last 12 months;
- They have shareholder or other interest in enterprises that supply agricultural products from or operate in one of the above-mentioned red flag locations.
- **Product red flag**
  - The production of the agricultural product is known to have adverse environmental, social or human rights impacts.

**2.3. Assess the potential adverse environmental, social and human rights impacts<sup>20</sup>** of the enterprise's operations, processes, goods and services and those of its business partners over their full life cycle. Undertaking stakeholder consultations, monitoring by a third party, such as civil society organisations, and organising field visits of the factories and processing facilities outside formal audits can help identify such adverse impacts.

### **3. Design and implement a strategy to respond to identified risks**

**3.1. Report the findings of the risk assessment** to the designated senior management.

39. Enterprises should also provide affected stakeholders and business partners with clear, accurate and timely information on the risk factors identified through ongoing environmental, social, and human rights impact assessments and on the measures taken to prevent or mitigate such risks.

**3.2. Adopt a risk management plan**, which could include risk prevention and mitigation measures suggested in Annex I.

40. A risk management plan can propose several scenarios depending on the risk identified: continuing the operations throughout the course of measurable risk mitigation efforts; temporarily suspending the operations while pursuing ongoing measurable risk mitigation; or disengaging with a supplier after failed attempts at mitigation or when an enterprise deems risk mitigation not feasible or unacceptable.

41. To determine the appropriate strategy, enterprises should consider their ability to influence, and when necessary take steps to build leverage over, business partners who can most effectively prevent or mitigate the identified risks.

**3.3. Implement the risk management plan**, monitor and track performance of risk mitigation efforts and report back to the designated senior management. This entails:

- consulting with affected stakeholders and business partners to clarify concerns and agree on the strategy for mitigating risk;
- taking the necessary steps to prevent or cease adverse impacts caused by the operations, or use leverage to mitigate any remaining adverse impact to the greatest extent possible if business partners contribute to the impact;
- undertaking contingency planning for preventing, mitigating and controlling serious damage from operations, including accidents and emergencies, and reporting to competent authorities.



42. While on-farm enterprises may be more directly involved than downstream enterprises in the mitigation of some risks, such as tenure risks, the latter should also be actively involved in risk mitigation, even if those risks are several tiers away from their own operations. Downstream enterprises can help build capacities for due diligence efforts and use their leverage on upstream and on-farm enterprises to mitigate risks.

**3.4. Undertake additional fact and risk assessments** for risks requiring mitigation or after a change of circumstances.

#### **4. Commission an audit of supply chain due diligence**

43. Due diligence practices and the observance of relevant standards should be audited by independent third parties at identified points in the supply chain. These audits should determine the conformity of the due diligence processes with relevant national laws and international standards. They may include on-site investigations, including consultations with government authorities, local civil society, and members of the affected community, and the generation of recommendations to improve due diligence practices. Audits should aim at preventing and mitigating risks and support efforts for improvement by presenting not only an assessment of the situation but also a dynamic approach of the progress made. The capacities of various enterprises should be taken into account as such audits can be costly. Due diligence may be assessed through more affordable mechanisms for small enterprises, such as locally-driven social compliance initiatives.

44. The independence and quality of the audits are critical to their effectiveness, as underlined by the French NCP following the Rana Plaza disaster.<sup>21</sup> Auditors should be independent (neutral and impartial), competent and accountable. Enterprises may consider incorporating the audit scope, criteria, principles and activities into an independent institutionalised mechanism. Such mechanism can accredit auditors, verify audits, publish audit reports, implement modules to build capabilities of suppliers to conduct due diligence, and help follow up on grievances of interested parties.

45. Auditors may co-ordinate efforts in order to recognise audit conclusions from other independent third party audits carried out for other purposes. Designing complementary and mutually-reinforcing audit systems against common standards, at appropriate points in the supply chain, can help avoid audit fatigue and increase efficiency. Enterprises may wish to identify so-called ‘choke points’ or leverage points to focus their audits - as opposed to every enterprise in the supply chain being audited. Choke points could be identified by taking into consideration:

(i) Key points of material transformation in the supply chain, such as processing or packaging;

(ii) Number of actors at a given point in the supply chain: audits could focus on points in the supply chain where relatively few actors are active or where most agri-food products are aggregated;

(iii) Greatest points of leverage of downstream enterprises;

(iv) Points where schemes and audit programmes already exist to leverage these systems and avoid duplication.

46. For instance, a possible choke point for the coffee supply chain in Ethiopia could be the Ethiopian Commodity Exchange. In more fragmented coffee supply chains, choke points could be processing factories, wholesalers or exporters. The focus on these choke points should not substitute a thorough due diligence carried out throughout the supply chain.

## **5. Report on supply chain due diligence**

47. Enterprises should publicly report on their supply chain due diligence policies and practices, with due regard taken of business confidentiality and other competitive concerns. Public reports may include information on the enterprise management systems, the risks assessments it has carried out, the steps taken to manage risks, and audit reports of due diligence practices. They should be accessible to all relevant stakeholders.

### 3. MODEL ENTERPRISE POLICY FOR RESPONSIBLE AGRICULTURAL SUPPLY CHAINS

48. This model enterprise policy provides an outline of the content of the relevant international standards for responsible agricultural supply chains, i.e. it explains what is defined as responsible investment in agricultural supply chains.<sup>22</sup> It intends to provide a common reference to all enterprises operating in agricultural supply chains. Some of these standards are not voluntary but binding as they have already been incorporated in the legislation of many countries, such as for human and labour rights.

49. The model enterprise policy could be adopted by enterprises as it is, or incorporated into and tailored to their existing policies on corporate social responsibility, sustainability, risk management, or other (hence, the use of "we" below to indicate the self-commitment of enterprises). Adopting a policy for responsible agricultural supply chains is the first step in the risk-based due-diligence framework outlined in section 3 below, which describes how this policy can be implemented.

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50. Recognising the risks of significant adverse impacts associated with agricultural supply chain management, and recognising our responsibility to respect human rights and our capacity to contribute to food security and sustainable development, we commit to adopt, implement, widely disseminate and incorporate in contracts and/or agreements with business partners the following policy on responsible agricultural supply chains. This policy represents a common reference for our own and our business partners' practices and risk management strategy along agricultural supply chains.

#### Regarding cross-cutting elements:

51. We will continuously assess and address in decision-making the **actual and potential impacts** of our own and our business partners' operations, processes, goods and services over their full life-cycle, with a view to avoiding or, when unavoidable, mitigating any negative impacts. Impact assessments should involve all relevant stakeholders.<sup>23</sup>

52. We will **disclose timely and accurate information** related to foreseeable risk factors and our response to particular environmental, social and human rights impacts to potentially affected communities, at all stages of the investment cycle.<sup>24</sup>

53. We will hold **good-faith, effective and meaningful consultations** with communities through their own representative institutions before initiating any operations that may affect them and will continue to hold consultations with them during and at the end of operations.<sup>25</sup>

54. [Further consultations are required to incorporate Free, Prior and Informed Consent (FPIC). Annex V provides details on the definition and implementation of FPIC].

55. We will ensure that our operations contribute to sustainable and inclusive rural development,<sup>26</sup> including, as appropriate, through sharing **monetary and/or non-monetary benefits** with indigenous peoples, such as when our operations are located in or near lands that they traditionally hold or use, or use or affect other natural resources, including genetic resources, that they traditionally hold or use.<sup>27</sup>

56. We will provide for and co-operate in **non-judicial grievance and mediation mechanisms**, as early-warning risk-awareness systems, including by setting up equitable and transparent operational-level complaint mechanisms accessible by local communities and in consultation with potential users. Such

grievance processes or mechanisms can help lead to remedy when our operations have caused or contributed to adverse impacts due to non-adherence to RBC standards.<sup>28</sup>

### **Regarding human rights:**

57. Within the framework of internationally recognised human rights, the international human rights obligations of the countries in which we operate as well as relevant domestic laws and regulations, we will:

- respect human rights,<sup>29</sup> which means we should avoid infringing on the human rights of others and should address adverse human rights impacts with which we are involved;
- within the context of our own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur;<sup>30</sup> seek ways to prevent or mitigate adverse human rights impacts that are directly linked to our operations, products or services by a business relationship, even if we did not contribute to those impacts;<sup>31</sup>
- carry out human rights due diligence as appropriate to the size, nature and context of our operations and the severity of the risks of adverse human rights impacts;<sup>32</sup>
- provide for, or co-operating through legitimate processes in, the remediation of adverse impacts on human rights when we identify that we have caused or contributed to these impacts;<sup>33</sup>
- strive to ensure that all persons' human rights are respected, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>34</sup>

### **Regarding labour rights:**

58. We will respect international core labour standards in our operations and those of our business partners, namely the freedom of association and the right to collective bargaining, including for migrant workers, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation.<sup>35</sup>

59. In our operations and those of our business partners, we will also:

- ensure occupational health and safety;
- ensure decent wages, benefits and working conditions, that are at least adequate to satisfy the basic needs of workers and their families, and strive to improve working conditions more generally;<sup>36</sup>
- promote the security of employment;<sup>37</sup>
- seek to prevent abuses of migrant workers;<sup>38</sup>
- adopt approaches, measures, and processes to enhance women's meaningful participation in decision-making and leadership roles.<sup>39</sup>

60. We will contribute to the realisation of the right to work,<sup>40</sup> by:

- striving to increase employment opportunities, both directly and indirectly;<sup>41</sup>

- providing adapted training, education, and mentorship programmes for youth to increase their productivity and/or access to decent employment and entrepreneurship opportunities;<sup>42</sup>
- ensuring maternity protection at work.<sup>43</sup>

#### **Regarding health:**

61. We will promote public health<sup>44</sup> by:

- adopting appropriate practices to prevent threats to human life, health, and welfare in our operations and those of our business partners, as well as threats deriving from the consumption, use or disposal of our goods and services,<sup>45</sup> including by adhering to good practices in food safety;<sup>46</sup>
- contributing to the protection of the health and safety of affected communities during the life-cycle of our operations.<sup>47</sup>

#### **Regarding the progressive realisation of the right to adequate food in the context of national food security and nutrition:**

62. We will strive to ensure that our operations and those of our business partners do not lead to food insecurity and contribute to food security and nutrition, including by enhancing the availability, accessibility, stability and utilisation of safe and nutritious foods. We will give attention to improving people's ability to purchase food.<sup>48</sup>

#### **Regarding tenure rights over and access to natural resources:**

63. We will respect **legitimate tenure right holders and their rights** over natural resources, including public, private, communal, collective, indigenous and customary rights, potentially affected by our activities. Tenure rights over natural resources include in particular rights to land, fisheries and forests as well as existing and potential water uses.

64. To the greatest extent possible, we will commit to **transparency and information disclosure** related to land-based investments in our operations and those of our business partners, including transparency of lease/concession contract terms, with due regard to privacy restrictions.<sup>49</sup>

65. We will give preference to feasible alternative project designs to avoid, or when avoidance is not possible, minimise the **physical and/or economic displacement** of legitimate tenure right holders, while balancing environmental, social, and financial costs and benefits, paying particular attention to adverse impacts on the poor and vulnerable.<sup>50</sup>

66. When holders of legitimate tenure rights are negatively impacted, we will seek to ensure that such holders receive a **fair and prompt compensation** of their tenure rights being negatively impacted by our operations.<sup>51</sup>

#### **Regarding animal welfare:**

67. We will support animal welfare in our operations and those of our business partners,<sup>52</sup> including by:

- striving to ensure that the ‘five freedoms’ for animal welfare are implemented, i.e. freedom from hunger, thirst and malnutrition, physical and thermal discomfort, pain, injury and disease, fear and distress, and freedom to express normal patterns of behaviour;<sup>53</sup>
- ensuring high standards of management and stockmanship for animal production, that are appropriate to the scale of our operations, in accordance with OIE’s standards.<sup>54</sup>

#### **Regarding environmental protection and sustainable use of natural resources:**

68. We will establish and maintain, in co-ordination with responsible government agencies and third parties as appropriate, an **environmental and social management system** (ESMS) appropriate to the nature and scale of our operations and commensurate with the level of potential environmental and social risks and impacts.<sup>55</sup>

69. We will continuously improve our **environmental performance** by:

- preventing, minimising and remedying pollution and negative impacts on air, land, soil, water, forests and biodiversity, and reducing greenhouse gas emissions;
- avoiding or reducing the generation of hazardous and non-hazardous waste, substituting or reducing the use of toxic substances,<sup>56</sup> and enhancing the productive use or ensuring a safe disposal of waste;
- ensuring the sustainable use of natural resources and increasing resource use and energy efficiency;<sup>57</sup>
- reducing food waste and promoting recycling;
- promoting good agricultural practices, including to maintain or improve soil fertility and avoid soil erosion;
- supporting and conserving biodiversity, genetic resources and ecosystem services; respecting protected areas, high conservation value areas and endangered species; and controlling and minimising the spread of invasive non-native species;
- increasing resilience of agriculture and food systems, the supporting habitats and related livelihoods to the effects of climate change through adaptation measures.<sup>58</sup>

#### **Regarding governance:<sup>59</sup>**

70. We will prevent and abstain from any form of corruption.<sup>60</sup>

71. We will comply with both the letter and spirit of the tax laws and regulations of the countries in which we operate.<sup>61</sup>

72. We will refrain from entering into or carrying out anti-competitive agreements among competitors and will co-operate with investigating competition authorities.<sup>62</sup>

**Regarding technology and innovation:**

73. We will contribute to the development and diffusion of appropriate technologies, particularly environmentally-friendly technologies and those that generate direct and indirect employment;<sup>63</sup>

74. We will hold good-faith, effective and meaningful consultations with farmers, indigenous peoples and local communities to respect their knowledge, innovations and practices that we wish to use in our innovation processes.<sup>64</sup>

## ANNEX I. SUGGESTED MEASURES FOR RISK MITIGATION

75. This Annex identifies possible risks arising from failing to observe RBC standards in agricultural supply chains outlined in the model enterprise policy (section 2) and offers more detailed guidance on how to implement the model enterprise policy, drawing from the same standards as this policy. Such measures may reinforce each other. For instance, observing labour rights, including by providing decent working conditions, can help observe standards related to the progressive realisation of the rights to adequate food and to the highest attainable standard of physical and mental health. Examples of lessons learnt and best practices for each of these risks are provided in Annex III. Enterprises may have different capacities to mitigate risks depending on, for instance, the location and size of their operations and the number of their suppliers. Risk mitigation measures should thus be tailored to the capacities and operations of each enterprise.

### 1. Cross-cutting elements

#### 1.1 Information sharing

##### *Risks*

76. 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 (FAO, 2010). 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 (IFC, 2012). In the absence of clear and enforceable laws on transparency and disclosure, heightened managerial care is warranted (OECD, 2006).

##### *Risk mitigation measures*<sup>65</sup>

- Provide timely and accurate information to the public, without endangering competitive position or duties to beneficial owners about:
  - Purpose, nature, and scale of the operations;
  - Lease agreements and/or contracts;
  - Activities, structure, ownership and governance;
  - Financial situation and performance;
  - RBC policies and implementation process, including the stakeholder engagement process and the availability of grievance and redress mechanisms;
  - ESHRIAs, including foreseeable risk factors, such as potential environmental, social, human rights, health and safety impacts of the enterprise's operations on various stakeholders, as well as on sacred sites or lands and waters traditionally used or occupied by indigenous peoples and local communities;
  - Environmental characteristics of products and environmental management plans.<sup>66</sup>



- Diffuse information through all appropriate means of notification (print, electronic and social media, including newspapers, radio, television, mailings, local meetings, etc.), taking into account the situation of remote or isolated and largely illiterate communities and ensuring that such notification and consultation take place in the language(s) of the affected communities;<sup>67</sup>
- In the event of imminent threat to human health or the environment, share immediately and without delay all information which could enable authorities and the public to take measures to prevent or mitigate harm arising from the threat;<sup>68</sup>
- Tailor disclosure policies to the nature, size and location of the operations, with due regard taken of costs, business confidentiality and other competitive concerns.<sup>69</sup>

## 1.2 Consultations

### Risks

77. A lack of consultations with stakeholders likely to be affected by the operations will prevent enterprises from realistically assessing the project viability and from identifying effective and context-specific response measures. Inclusive and fully transparent consultations can lower transaction costs and reduce opposition and create trust among stakeholders.

### Risk mitigation measures<sup>70</sup>

- Develop and implement a **stakeholder engagement plan** tailored to the risks, impacts and development stage of the operations and to the characteristics and interests of affected communities. Where applicable, the plan should include differentiated measures to allow the effective participation of those identified as disadvantaged or vulnerable;<sup>71</sup>
- Hold early and ongoing good-faith, effective and meaningful **consultations with potentially affected communities**, in particular when the operations: i) are located on or near, or will commercially develop natural resources on, lands traditionally owned or occupied by indigenous peoples and local communities; ii) may lead to the physical and/or economic displacement of indigenous peoples and local communities from lands and natural resources that they traditionally own, use or occupy; iii) may have significant impacts on the cultural heritage of indigenous and local communities; or iv) intends to use the genetic resources and/or traditional knowledge held by indigenous peoples, local communities and farmers. Such consultations should also be held for any modifications to the operations that may concern any of the above;<sup>72</sup>
- Organise consultation and decision-making processes **without intimidation**, in a climate of trust, prior to taking decisions, and respond to the contributions taking into consideration existing power imbalances between different parties;<sup>73</sup>
- Take **full and fair consideration** of the views expressed during the consultations, allow for sufficient time between notification and public consultation of proposed operations for affected communities to prepare their response;<sup>74</sup>
- **Document and implement agreements resulting from consultations**, including by establishing a process by which community views and concerns can be properly recorded. While written statements may be preferred, the views of the community members could also be recorded on video or audio tape, or any other appropriate way, subject to the consent of communities;<sup>75</sup>

- Try to verify that **community representatives** do in fact represent the views of the stakeholders they represent and that they can be relied upon to faithfully communicate the results of consultations to their constituents;
- Establish mechanisms for community participation in designing and conducting **impact assessments**, including for the participation of vulnerable groups; identify actors responsible for liability, redress, insurance and compensation; and establish a review and appeals process.<sup>76</sup>

### *1.3 Impact assessment*

#### *Risks*

78. Enterprises can avoid or, when unavoidable, mitigate the negative impacts of their operations, processes, goods and services by assessing such impacts over their full life-cycle on an ongoing basis. Such assessments can allow enterprises to develop a comprehensive and forward-looking approach to the management of actual and potential risks, including the risks arising from the operations of their business partners.<sup>77</sup>

#### *Risk mitigation measures*<sup>78</sup>

- Include in an impact assessment the **following stages**:
  1. Screening, i.e. determining which proposals should be subject to the impact assessment, to exclude those unlikely to have adverse impacts and to indicate the level of assessment required;
  2. Scoping, i.e. defining the focus of the impact assessment and key issues to be studied;
  3. Impact analysis;
  4. Mitigation measures, including, as appropriate under the circumstances: not proceeding with the operations; finding alternatives to avoid negative impacts; incorporating safeguards in the design of the operations; or providing monetary and/or non-monetary compensation for adverse impacts;
  5. Reporting on the impact assessment;
  6. Review of the impact assessment and decision-making;
  7. Design of management and monitoring plans, including auditing.
- Cover, as appropriate, the following **likely impacts** (it may be relevant to cover not only negative impacts but also positive impacts in order to enhance the latter) when undertaking an environmental, social and human rights impact assessment (ESHRIA):
  - Social impacts that may affect the economic, social, cultural, civic and political rights, as well as the well-being, vitality and viability, of affected communities, including quality of life as measured in terms of income distribution, physical and social integrity and protection of individuals and communities, employment levels and opportunities, health and welfare, education, and availability and standards of housing and accommodation, infrastructure, services;

- Environmental impacts, such as those on soil, water, air, forest, and biodiversity;<sup>79</sup>
  - Impacts on the cultural heritage, way of life, values, belief systems, language(s), customs, economy, relationships with the local environment and particular species, social organisation and traditions of affected communities;
  - Impacts on women with due regard to their role as food providers, custodians of biodiversity and holders of traditional knowledge;<sup>80</sup>
  - Impacts on animal welfare.
- Invite **affected communities** to be involved in the conduct of the impact assessment, solicit information from them, and provide them with regular feedback throughout all stages of the impact assessment;<sup>81</sup>
  - Assess the risks and impacts associated with **primary supply chains** where the enterprise can reasonably exercise control, and assess the risks and impacts in the area of influence resulting from a third party's action in a manner commensurate with the enterprise's control and influence over third parties, with due regard to conflict of interests.<sup>82</sup>

#### ***1.4 Benefit sharing***

##### *Risks*

79. To avoid the risk of creating local opposition and to reduce transaction costs, enterprises should explore ways to maximise the positive impacts of their operations on local communities. Engaging in consultations on the benefits of their operations among various stakeholders can build trust, help ensure local acceptance and create long-term alliances among parties while preventing conflict. Benefit sharing can also facilitate siting of acceptable locations for operations and can draw on local knowledge to ensure an optimal use of the agro-ecological potential (FAO, 2010; UN, 2009a and 2010a).

80. Benefit sharing is separate (and may be additional) to compensation for unavoidable negative impacts; it aims to build a partnership between the enterprise and indigenous or local communities in recognition of their contribution to the operations. In specific circumstances, indigenous peoples and local communities may be entitled to share the benefits arising from operations if enterprises use their land, resources or knowledge.<sup>83</sup> Such benefits can be monetary or non-monetary<sup>84</sup> as agreed between the enterprise and the relevant community as part of the consultation process. The decision as regards the types of benefits can be informed by ESHRIAs.<sup>85</sup>

81. There are, however, also risks associated with benefit sharing. Enterprises face risks of conflict with local communities when, after negotiating benefit-sharing agreements, benefits are not actually shared with the whole community but captured by a specific group of stakeholders. Or benefit sharing may be agreed with some, but not all, relevant communities, therefore leading to the exclusion of certain communities. Such risks can be mitigated if benefit sharing is considered in the due diligence process.

##### *Risk mitigation measures*<sup>86</sup>

- Strive to **identify opportunities** for development benefits, such as through: the creation of local jobs within safe working environments; the diversification of income-generating opportunities; capacity development; technology transfer; improvements in local infrastructure; better access to

credit and markets, particularly for small and medium-sized businesses; payments for environmental services; allocation of revenue; or the creation of trust funds;<sup>87</sup>

- Strive to ensure that operations are **in line with the development priorities** and social objectives of the government and community where operations are located;<sup>88</sup>
- Share **monetary and non-monetary benefits** arising from our operations involving indigenous peoples' lands, resources and knowledge, on the basis of the consultation process and ESHRIAs, in a way that does not unfairly benefit specific groups, but that fosters equitable and sustainable social development.<sup>89</sup>

## 1.5 Grievance mechanisms

### *Risks*

82. Operational-level grievance mechanisms designed as early-warning risk-awareness systems offer a locally based, simplified, and mutually beneficial way to settle issues between enterprises and affected communities by helping resolve minor disputes quickly, inexpensively, and fairly before they are elevated to formal dispute resolution mechanisms, including judicial courts (IFC, 2009). They can provide valuable feedback to enterprises by: serving as an early warning system for larger problems; yielding insights from individuals that spotlight opportunities for improvement in company operations or management systems; and indicating possible systemic changes to ensure particular grievances do not recur (CAO, 2008).

### *Risk mitigation measures<sup>90</sup>*

- **Scale** the grievance mechanism according to the risks and adverse impacts of the operations, with a view to seeking to resolve concerns promptly, using an understandable, transparent, culturally appropriate and readily accessible consultative process, without retribution to the party that originated the issue or concern;<sup>91</sup>
- **Engage with affected stakeholders** about the mechanism design and performance to ensure it meets their needs, that they will use it in practice, and that there is a shared interest in ensuring its success;<sup>92</sup>
- Avoid using grievance mechanisms established by enterprises to **preclude access** to judicial or non-judicial grievance mechanisms, including the NCPs under the MNE Guidelines, or to undermine the role of trade unions in addressing labour-related disputes.<sup>93</sup>

## 2. Human rights

### *Risks*

83. Enterprises run the risk of not respecting human rights when they cause or contribute to adverse human rights impacts within the context of their own activities and fail to address such impacts when they occur. Enterprises should additionally prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship.<sup>94</sup> The corporate responsibility to respect human rights exists independently of States' abilities and/or willingness to fulfil their own human rights obligations and does not diminish these obligations.<sup>95</sup> If national laws are not

sufficiently developed or enforced, enterprises should use heightened managerial care in identifying and addressing the risk of adverse human rights impacts.

84. The interdependence of all human rights, including civil, cultural, economic, political or social rights, should be borne in mind. Enterprises should regularly review their human rights commitments to qualitatively understand if they may not be respecting human rights that are not specifically addressed in this guidance.

#### *Risk mitigation measures*<sup>96</sup>

- **Identify right holders** potentially affected by the operations of the enterprise and its business partners. This generally entails undertaking an in-depth fact-finding review of the enterprise's actual or potential operations and relationships, and then qualitatively evaluating those operations against human rights standards to identify actors whose rights may be affected. Proactive consultations with relevant stakeholders are necessary to fully understand all the potential negative impacts of the enterprise's operations and relationships;<sup>97</sup>
- **Carry out human rights due diligence** by assessing actual and potential human rights **impacts**, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence is an on-going exercise, recognising that human rights risks may change over time as the enterprises' operations and operating context evolve;<sup>98</sup>
- Ensure that **all stakeholders involved are treated fairly**, particularly groups in vulnerable situations such as women, youth, and minorities, recognising their respective situations, constraints and needs;<sup>99</sup>
- Recognise the vital role played by women in agriculture and take appropriate measures to eliminate **discrimination against women** and to help ensure their full professional development and advancement,<sup>100</sup> including by facilitating equal access and control over natural resources, inputs, productive tools, advisory and financial services, training, markets and information.<sup>101</sup>

### **3. Labour rights**

#### *Risks*

85. Enterprises can bring **substantial benefits** to host countries and societies by contributing to economic and social welfare through improving living standards and creating attractive employment opportunities, and by facilitating the enjoyment of human rights and labour rights. In addition to ensuring core labour standards for their own workers, enterprises can help improve the working conditions of informal workers, including in subsistence farms.

86. The right to the enjoyment of just and favourable conditions of work and to form trade unions are recognised human rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR). International labour conventions elaborate on the ICESCR and the International Covenant on Civil and Political Rights. Respecting the standards contained in these international labour conventions, including the eight fundamental ILO conventions,<sup>102</sup> can help companies minimise negative impacts and maximise positive impacts. For instance, establishing a genuine dialogue with freely chosen workers' representatives enables both workers and employers to better understand each other's challenges and to find ways to resolve them (ILO, 2006).

87. However, respecting labour rights in the agricultural sector may be **a challenge**, as most workers employed in the agricultural sector and in own-account or unpaid family work, are poor (ILO, 2012). As a result, both independent and waged agricultural employment remains informal, and many agricultural workers are excluded from the scope of labour laws (UN, 2009a). 60% of child labourers aged 5-17 work in agriculture (ILO, 2011a). The working and living conditions of plantation workers have also been a continued source of concern, notably compulsory pregnancy testing, debt bondage, and health risks linked to the widespread misuse of pesticides (UN, 2009a).

88. Marginalised groups, such as women, youth and indigenous and migrant workers, as well as workers employed on a casual, piecework or seasonal basis, and informal workers, often face abusive or insalubrious working conditions (UN, 2009a). The situation of women raises specific risks: in developing countries, 43% of the agricultural labour force is composed of women but the agro-industry tends to code female tasks as unskilled, employ women for labour-intensive tasks and pay them less than men with fewer opportunities for advancement (ILO, 2011b).

89. **Violations of core labour rights** may encourage disruptive social tensions that may affect the enterprise's bottom line. An enterprise using discriminatory employment and occupation practices limits its access to talents from a wider pool of skills and competencies. The sense of injustice and resentment generated by discrimination is likely to affect workers' performance (ILO, 2008).

#### *Risk mitigation measures*<sup>103</sup>

##### Workers' protection

- Be guided throughout operations by **the principle of equality of opportunity and treatment in employment** and do not discriminate against workers with respect to employment or occupation on such grounds as race, colour, sexual orientation or gender identity, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies that specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job; thus make qualifications, skill and experience the basis for the recruitment, placement, training and advancement of staff at all levels;<sup>104</sup>
- Respect the **minimum age** for admission to employment or work in order to secure the effective abolition of child labour;<sup>105</sup>
- Refrain from employing or benefitting from **forced labour**, which consists of any work or service not voluntarily performed that is exacted from an individual under threat of force or penalty;
- **Monitor** the primary supply chain on an ongoing basis in order to identify any significant changes or new risks or incidents of child and/or forced labour, and work with primary suppliers to take corrective action and remedy them.<sup>106</sup>

##### Decent working conditions

- Observe **standards of employment** and industrial relations not less favourable than those observed by comparable employers. Where comparable employers may not exist in the country in which the enterprise operates, provide the best possible wages, benefits and conditions of work within the framework of government policies. These should be at least adequate to satisfy the basic needs of the workers and their families;<sup>107</sup>

- Endeavour to provide **stable employment** for workers, and observe freely negotiated obligations concerning employment stability and social security;<sup>108</sup>
- In considering changes in operations that would have major employment effects, provide **reasonable notice of such changes** to workers' representatives, and, where appropriate, to the relevant governmental authorities, and co-operate with them to mitigate to the maximum extent practicable adverse effects.<sup>109</sup>

#### Workers' representation and collective bargaining

- Recognise that workers, without discrimination whatsoever, have the right to **establish and join organisations** of their own choosing without previous authorisation;
- Establish systems for regular **consultation and co-operation** between employers and workers and their representatives on matters of mutual concern, as well as with competent authorities to ensure adherence to national social development policies;
- Establish systems to provide regular **information** to workers and their representatives to support meaningful negotiations on employment conditions and to enable them to obtain a true and fair view of the enterprise performance;<sup>110</sup>
- Refrain from **discriminatory or disciplinary action** against workers who make bona fide reports to management or, as appropriate to the competent public authorities on practices that contravene the law, the MNE Guidelines, or the enterprise's policies;
- Do not threaten to **transfer** the whole or part of an operating unit from the country concerned or to transfer workers from the component entities in other countries in order to influence unfairly negotiations with workers' representatives or to hinder the exercise of workers' right to organise;
- Do not retaliate, interfere with or discriminate against **workers' representatives**;<sup>111</sup>
- Enable authorised workers' representatives to negotiate on **collective bargaining or labour management relations**;
- Include in collective agreements provisions for the **settlement of disputes** arising over their interpretation and application and for ensuring mutually respected rights and responsibilities.<sup>112</sup>

#### Local employment

- To the greatest extent practicable and without discrimination, **employ local workers**, including in managerial positions, and provide training with a view to improving skill levels, in co-operation with workers' representatives and, where appropriate, relevant governmental authorities.<sup>113</sup>

#### Training

- Ensure that **relevant training** is provided to workers at all levels to meet the needs of the operations, where appropriate, in co-operation with relevant governmental authorities and employers' and workers' organisations. Such training should, to the extent possible, develop generally useful skills and promote career opportunities;

- When operating in developing countries, participate in programmes encouraged by governments and supported by employers' and workers' organisations that aim to encourage **skill formation** and development and to provide vocational guidance;<sup>114</sup>
- Provide appropriate training, education and mentorship programmes for **youth** to increase their capacity and/or access to decent work and entrepreneurship;<sup>115</sup>
- Wherever feasible, **make the services of skilled resource personnel available** to help in training programmes organised by governments as part of a contribution to national development.<sup>116</sup>

#### 4. Health

##### *Risks*

90. Agricultural activities often involve some of the most hazardous activities for workers and many agricultural workers suffer from occupational accidents and illnesses. Exposure to bad weather, close contact with dangerous animals or plants, extensive use of chemical products, difficult working postures and lengthy hours, and the use of hazardous tools and machinery all lead to health problems (IFPRI, 2006). For instance, the estimated number of pesticide poisonings ranges between 2 and 5 million per year, of which 40,000 are fatal (ILO, 2005 and 2011b). Land use changes, the loss of natural buffer areas, such as wetlands, mangroves, and upland forests that mitigate the effects of natural hazards (flooding, landslides, and fire), or the diminution or degradation of natural resources, including decreasing quality, quantity, and availability of freshwater, may result in increased vulnerability and community safety-related impacts (IFC, 2012).

91. The ICESCR provides for the progressive realisation of the right to the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights interprets this right to health as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information. States Parties to the ICESCR have a legal obligation to undertake to take steps with a view to the progressive realisation of the right to the highest attainment standard of physical and mental health.<sup>117</sup>

92. While human rights treaties such as the ICESCR are addressed to States, enterprises have an important role to play in supporting the progressive realisation of the right to the highest attainable standard of physical and mental health. They may impair it or undermine government actions to progressively realise it. In addition to the direct health risks detailed above, agricultural operations may affect individuals' health more indirectly.

93. It is worth noting that human health is closely linked to animal health. The "One Health" concept is founded on an awareness of the major opportunities that exist to protect public health through policies aimed at preventing and controlling pathogens at the level of animal populations, at the interface between humans, animals and the environment. This concept has been endorsed by several governments and led to measures aiming to prevent diseases affecting both people and animals and to ensure a responsible use of antibiotics for both.<sup>118</sup> Sixty percent of the pathogens that cause diseases in humans are of animal origin. These diseases, known as zoonoses, can be transmitted by domestic or wild animals. Animal diseases that



are transmissible to humans present a public health risk worldwide. The most effective and economical solution to protect humans is to combat all zoonotic pathogens through their control at the animal source.

#### *Risk mitigation measures*<sup>119</sup>

- Evaluate the **risks and impacts** to the health and safety of the affected communities throughout the operations;
- Establish **preventive and control measures** that are consistent with good international industry practice,<sup>120</sup> and commensurate with the nature and magnitude of the identified risks and impacts, trying to avoid, and, if unsuccessful, to minimise risks and impacts;
- Avoid or minimise workers, third party and community exposure to **hazardous materials and substances** that may be released by the operations, including by modifying, substituting, or eliminating the condition or material causing the potential hazards, and by exercising reasonable efforts to control the safety of deliveries, transportation and disposal of hazardous materials and wastes;
- Avoid or minimise the potential for community exposure to water-borne, water-based, water-related, vector-borne and communicable **diseases** that could result from operations, taking into consideration differentiated exposure to and higher sensitivity of vulnerable groups;<sup>121</sup>
- Assist and collaborate with affected communities, local government agencies, and other relevant parties, in their preparations to respond effectively to **emergency situations**, especially when their participation and collaboration are necessary to respond to such emergency situations;<sup>122</sup>
- Consider adhering to global **food safety standards**, such as the Codex Alimentarius<sup>123</sup> or other schemes;<sup>124</sup>
- Promote traceability to ensure food safety but also to facilitate social and environmental management and increase trust.<sup>125</sup>

### **5. Progressive realisation of the right to adequate food in the context of national food security and nutrition**

#### *Risks*

94. Under the **ICESCR**, the right to adequate food is part of the right to an adequate standard of living; The States Parties to the ICESCR must undertake to take steps to progressively realise the right to an adequate standard of living, including adequate food. The ICESCR also recognises the fundamental right of everyone to be free from hunger. Recognising this right, States Parties should take the measures needed to improve methods of food production, conservation and distribution and to take into account the needs of both food-importing and food-exporting countries.<sup>126</sup> According to the Committee on Economic, Social and Cultural Rights, the right to food is realised ‘when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.’ As part of their obligations to protect people’s resource base for food, States parties should take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food.<sup>127</sup>

95. The **FAO Voluntary Guidelines** to support the progressive realisation of the right to adequate food in the context of national food security provide guidance to governments in realising the right to adequate food, which include guaranteeing the availability of food in a quantity and of a quality sufficient to satisfy the dietary needs of individuals, as well as the physical and economic accessibility to adequate food, free from unsafe substances and acceptable within a given culture. The Guidelines remind governments that they should take measures to ensure that all food, whether locally produced or imported, freely available or sold on markets, is safe and consistent with national food safety standards. They should establish comprehensive and rational food-control systems that reduce the risk of food-borne disease using risk analysis and supervisory mechanisms to ensure food safety in the entire food chain, including animal feed.

96. While the Guidelines are addressed to States, **enterprises** have an important role to play. Agricultural investments have increased following food price hikes in 2008, particularly to respond to a growing demand for food - it is estimated that global food production will need to increase by 60% by 2050 in order to meet projected demand. While such investments hold the promise of increasing production, reducing poverty, and fostering economic development, they may also undermine access to food in various ways. One of the most prominent negative impacts can result from acquiring large tracts of land and, in the process, displacing communities from it, or hindering their access to it (FAO, 2010).

#### *Risk mitigation measures*<sup>128</sup>

- To the extent possible, consider the impacts of operations on access to food, local employment, dietary preferences and stability of food supply, including by involving local governments;
- When appropriate, identify food-related concerns of different stakeholders and evaluate strategies for meeting investment objectives while respecting the food-related concerns of different stakeholders, through consultations with relevant stakeholders;
- To the extent possible, adjust project design to address concerns about negative impacts on food security. Enterprises may consider reclaiming degraded lands, choosing land that has not been previously used for agriculture yet is not environmentally sensitive, or improving agricultural productivity through sustainable intensification in order to contribute to food security;

97. To the extent possible, consider contributing to improving access to food and the resilience and nutrition<sup>129</sup> of local populations by: increasing the production of nutritious foods and promoting the nutritional value of food and agricultural products; facilitating access to inputs, technology, and markets; generating employment in downstream activities; or setting up community storage facilities to reduce post-harvest losses and price volatility.<sup>130</sup>

## **6. Tenure rights over and access to land and other natural resources**

### *Risks*

98. **Land tenure risk**, arising when several land claims overlap, represents a statistically significant risk in concession investments in emerging economies (Munden Project/Rights and Resource Initiative, 2013). Indeed, among 39 large-scale agri-business investments analysed by the World Bank and UNCTAD, land tenure was identified as the most common cause of grievances for affected communities, in particular due to disputes over land over which communities had informal land use rights and to the lack of transparency, especially on conditions and process for land acquisition (WB, 2014). In 2013, half of the

issues raised in letters of complaints received by the IFC and MIGA Compliance Advisor Ombudsman (CAO)<sup>131</sup> related to land. In addition, since 2000, nearly a quarter of all cases handled by the CAO have had both a land and a water component. Increased pressure on these resources leads to concerns over access, quantity, and management, and both land and water are often entwined with a sense of culture and identity. In CAO's land-related complaints, the dominant grievances raised by individuals are land acquisition (22%), compensation (33%), and resettlement (32%) (CAO, 2013).

99. The food and beverage industry is second only to the extractive industry in being the recipient of accusations from non-governmental and civil society organisations for failing to give adequate consideration to rights related to access to land and water (EC, 2011).<sup>132</sup> Land should not be perceived solely as a productive asset. Its environmental and socio-cultural roles should be recognised as well; land can be a source of various ecosystem services, including drinking and irrigation water, and a safety net and an old age insurance for farmers. Land can also play a major role in the social, cultural or religious practices of indigenous peoples and local communities.

100. Although states have the primary responsibility to protect tenure rights, enterprises should assume that the legal framework may not always be adequate and ensure proactively that they respect legitimate tenure rights. In particular, the following risks should be well considered:

- Risks arise when **national laws** do not reflect the full extent of legitimate tenure rights or when such laws are not implemented effectively. For instance, national land titling and registration systems may be inadequate, failing to protect the tenure rights of land users, particularly women, and providing enterprises with incomplete information regarding relevant land claims. Land tenure rights can be complicated further when the land is used only seasonally and may appear unused, for instance if it has been abandoned by internally displaced persons or if it is used for pasture, forage or shifting agriculture. Enterprises may then exclude from consultations certain right holders (whether statutory or customary, primary or secondary, formal or informal groups or individuals) that may be adversely affected by their activities (OECD, 2011a);
- Risks may augment if states do not provide **clear and transparent rules for consultations** between enterprises and stakeholders, or safeguards to protect existing tenure rights from risks arising from large-scale transactions in tenure rights. In particular, enterprises may be at risk if national rules are not implemented or not sufficient to: (i) ensure appropriate engagement in good faith and in a culturally appropriate manner with the holders of tenure rights, and (ii) identify the modalities under which land and other natural resources will be transferred and used, including through the use of independent and participatory ex-ante and ex-post impact assessments, and/or to obtain redress (UN, 2009a). A lack of inclusiveness in consultations over land acquisitions may cause tensions and possibly conflicts between enterprises and communities, which may feel excluded from the process and contest enterprises' rights (FAO, 2013a);
- As per the UN Guiding Principles, while governments hold the primary responsibility for providing prompt, adequate and effective compensation to former landowners when expropriating land, enterprises have responsibilities to ensure that their operations do not lead to the **resettlement** of local communities without meaningful consultations or their forced evictions without proper compensation. As per the VGGT, states should expropriate only where land rights are required for a public purpose and should clearly define the concept of public purpose in law in order to allow for judicial review. However, in many developing countries, the unclear and/or broad definition of public purpose, the lack of land use plans, high corruption levels in land management and land speculation, lead to unlawful expropriation. Such expropriation may precipitate the loss of the livelihoods of local communities, or more limited access to land and other key natural resources, thus resulting in nutritional deprivation, social polarisation, entrenched poverty or political

instability.<sup>133</sup> It may also infringe on the rights of indigenous peoples as set out in the UN Declaration on the Rights of Indigenous Peoples. Enterprises may be negatively impacted in their reputation and operations if they are connected to an expropriation for which the government has not undertaken appropriate consultations with local communities or obtained prior consent of indigenous peoples and not paid due compensation. This is likely to cause tensions and conflicts between enterprises and communities that feel excluded or unfairly treated (FAO, 2013a).

#### *Risk mitigation measures*<sup>134</sup>

- **Identify rights holders** - who consist not only of holders of officially recognised tenure rights, but also of public, private, communal, collective, indigenous and customary tenure rights that may not have been officially registered and titled, including women's tenure rights - and other relevant stakeholders, including through local and open consultations;<sup>135</sup>
- **Establish a committee** representative of the relevant stakeholders to advise on impact assessments, particularly on initial phases (screening and scoping) and on management, monitoring and contingency plans. Special consideration should be given to ensuring the adequate representation of indigenous peoples, local communities and marginalised groups;<sup>136</sup>
- Consider feasible alternative investments if proposed investments lead to the **physical and/or economic displacement** of indigenous peoples or local communities;<sup>137</sup>
- If tenure right holders are physically and/or economically displaced, ensure prior consultation with holders of legitimate land tenure rights before proceeding with the operations;<sup>138</sup>
- When tenure right holders are negatively impacted by operations, work with the government to ensure that tenure rights holders receive a fair, prompt and appropriate **compensation** for those tenure rights negatively impacted by the operations by:
  - holding good-faith, effective and meaningful consultations on the compensation offered and ensuring consistent and transparent application of compensation standards;
  - giving preference to land-based compensation, that is commensurate in quality, size and value, and otherwise providing compensation at full replacement cost for lost assets, including assets other than land (crops, water resources, irrigation infrastructure and land improvements);
  - monitoring the implementation of the compensation arrangement.<sup>139</sup>
- Where government capacity is limited, play an active role in the resettlement planning, implementation and monitoring.<sup>140</sup>

## **7. Animal welfare**

### *Risks*

101. Significant welfare risks may arise in agricultural supply chains. They can be associated with limitations on space in individual stalls restricting the movement of animals, high stocking densities in groups increasing the potential for disease transmission and injurious contact with others,

barren/unchanging environments leading to behavioural problems, feeding diets that do not satisfy hunger, injurious husbandry procedures that cause pain, and breeding for production traits that heighten anatomical or metabolic disorders. Inadequate inputs from knowledgeable and skilled stockpersons may also increase welfare risks (IFC, 2014).

102. Improving animal welfare can make business sense. Disease is a good example of a joint threat to animal welfare and business sustainability. The OIE estimates that morbidity and mortality due to animal diseases cause the loss of at least 20% of livestock production globally – which represents at least 60 million tonnes of meat and 150 million tonnes of milk with a value of approximately USD 300 billion per year. In addition, affluence in many parts of the world has increased consumer choices and heightened expectations about food production standards. Surveys in Europe and North America found that the majority of consumers care about animal welfare and report a willingness to pay significantly more for animal products they perceive to have come from farm animals raised humanely (ICF, 2014).

103. As virtually none of the standards and principles considered in the guidance makes reference to animal welfare, this section refers to the guiding principles developed by the World Organisation for Animal Health (OIE). In 2008, the members of the OIE adopted a definition of animal welfare in order to clarify on an international scale what it actually involves.<sup>141</sup> Animal welfare can be compromised in any size of farms when conditions and/or management are inadequate (RSPCA, 2014).

104. The nine OIE standards address specific welfare challenges, including the transport and slaughter of animals, production systems for cattle and poultry, the control of stray dog populations and the use of animals in research. These standards are based on scientific evidence and the fundamental principles for animal welfare are known as the ‘five freedoms’: freedom from hunger, thirst and malnutrition; physical and thermal discomfort; pain, injury and disease; fear and distress; and to express normal patterns of behaviour.<sup>142</sup> The five freedoms established by the UK Department for Environment Food and Rural Affairs (DEFRA) are similar. Enterprises engaged in animal production should demonstrate: caring and responsible planning and management; skilled, knowledgeable and conscientious stockmanship; appropriate environmental design; considerate handling, transport of animals, and humane slaughter (DEFRA, 2003).

105. In addition to OIE standards, the European Union has adopted a detailed set of animal welfare legislation, and Article 13 of the Treaty on the Functioning of the European Union recognises animals as ‘sentient beings’.<sup>143</sup> While most EU rules on animal welfare apply only to EU producers, third countries wishing to export meat into the EU are required to establish standards equivalent with EU standards on welfare at the time of slaughter. Furthermore, the EU is working to ensure that international trade agreements achieve a level playing field on animal welfare.

106. It is worth noting that additional standards and certification schemes on animal welfare have been developed by private enterprises, governments and civil society organisations.<sup>144</sup>

#### *Risk mitigation measures*

- Assess actual and potential animal welfare impacts, using the framework of the ‘Five Freedoms’;
- Ensure that the physical environment allows comfortable resting, safe and comfortable movement, including normal postural changes, and the opportunity to perform types of natural behaviour that animals would naturally engage in;

- Ensure that animals have access to sufficient feed and water, suited to their age and needs, to maintain normal health and productivity and to prevent prolonged hunger, thirst, malnutrition or dehydration;
- When painful procedures cannot be avoided, mitigate the resulting pain to the extent that available methods allow;
- Ensure that the handling of animals fosters a positive relationship between humans and animals and does not cause injury, panic, lasting fear or avoidable stress;
- Use livestock breeds appropriate to the environment and circumstances so that they can be reared without production diseases and other intrinsic problems.<sup>145</sup>

## 8. Environmental protection and sustainable use of natural resources

### *Risks*

107. Agricultural activities can deploy environmentally-friendly practices that can enhance ecosystem services, in particular by employing land management techniques conserving soil and moisture, protecting watersheds, restoring vegetation and habitat, and maintaining biodiversity. However, agricultural investments intended to increase agricultural production in the short term may also lead to ecosystem degradation in the long term, including land degradation, water resource depletion, and losses of pristine forests and biodiversity. The most commonly arising issues among the 39 investments analysed by the World Bank and UNCTAD in 2014 were related to agrochemical use, such as water contamination, chemical drift, and aerial spraying. In addition, agricultural activities can generate external impacts, including greenhouse gas emissions, impacts on watersheds, or deforestation occurring far from the location of the operations but directly linked to them (FAO, 2010).

108. Adverse environmental effects may be due to the lack of proper environmental impact assessment prior to the investment and the absence of an effective environmental management system during its implementation (FAO, 2011). The quality, comprehensiveness and public availability of these assessments have often been the object of criticism of large-scale investments (FAO, 2010). Risks are higher when scientific evidence is not sufficient to fully assess adverse impacts. Risks for enterprises are also rapidly evolving as international standards on efficient resource utilisation and recycling, emission reduction, substitution or reduction of use of toxic substances, and biodiversity conservation advance (OECD, 2011a; IFC, 2012).

### *Risk mitigation measures*<sup>146</sup>

- Establish and maintain a **system of environmental management** appropriate to the characteristics of the enterprise, including by: collecting and evaluating adequate and timely information regarding the environmental, health, and safety impacts of its activities; establishing measurable objectives and, where appropriate, targets for improved environmental performance and resource utilisation, including by developing an integrated pest management plan;<sup>147</sup> and regularly monitoring and verifying progress toward environmental, health, and safety objectives or targets;<sup>148</sup>
- Establish procedures to **monitor** and measure the effectiveness of the environmental management system. Where the government or third party has the responsibility for managing

specific environmental risks and impacts and associated mitigation measures, collaborate in establishing and monitoring such mitigation measures. Where appropriate, consider involving representatives from affected communities to participate in monitoring activities;<sup>149</sup>

- **Address** the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment;<sup>150</sup>
- Avoid reference to the **lack of full scientific evidence** as a reason for postponing cost-effective measures to prevent or minimise such damage, consistent with the scientific and technical understanding of the risks, where there is a risk of harm to the environment, taking also into account risks to human health and safety;<sup>151</sup>
- Maintain **contingency plans** for preventing, mitigating, and controlling serious environmental and health damage from the operations, including accidents and emergencies, and, where applicable, assist and collaborate with potentially affected communities and local government agencies to respond effectively to emergency situations, including by setting up mechanisms for immediate reporting to competent authorities;<sup>152</sup>
- Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights, provide the public and workers with adequate, measureable and timely **information** on the potential environment, health and safety impacts of the activities of the enterprise, and engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation;<sup>153</sup>
- Seek to avoid negative impacts on, and support the conservation of **biodiversity, genetic resources and ecosystem services**, and when avoidance of such impacts is not possible, implement measures to minimise impacts and restore biodiversity and ecosystem services through an adaptive management approach;<sup>154</sup>
- Select the most appropriate production system, in collaboration with the government if appropriate, to enhance **resource use efficiency** while preserving the future availability of current resources.<sup>155</sup> This implies in particular striving to:
  - Improve **water conservation**, waste-water treatment and water use efficiency, and invest in and use technologies to achieve this objective;<sup>156</sup>
  - Improve the management of **agricultural inputs and outputs** to enhance the efficiency of production and minimise potential threats to the environment and to plant, animal and human health;<sup>157</sup>
  - Reduce **waste and losses** in production and post-harvest operations and enhance the productive use of waste and/or by-products;<sup>158</sup>
  - Implement technically and financially feasible and cost effective measures for improving efficiency in energy consumption;<sup>159</sup>
  - Take measures, as appropriate, to reduce and/or remove greenhouse gas emissions.<sup>160</sup>

## 9. Governance<sup>161</sup>

### 9.1 Corruption

#### *Risks*

109. If the government does not have clear and well-enforced laws on transparency and anti-corruption, governance-related risks for enterprises are high (OECD, 2006). Government bodies overseeing the land sector are among the public entities most affected by service-level bribery, with only the police and the judiciary having higher levels of bribery (FAO and TI, 2011). Enterprises may have to offer undue advantages to obtain access to large land areas to the detriment of local communities holding customary land rights. Corruption may also affect the allocation of government-subsidised credit, with unnecessary fees being garnered by government officials when granting credits. Corruption can also increase the price of agricultural inputs, as agricultural input companies can sell their products to government agencies at an elevated price to provide public officials with a share of the profit (OECD, 2011b).

110. Allegations of corruption either reduce the benefits of agricultural investment or prevent them from being realised by augmenting the cost of accessing resources, minimising synergies with current and future infrastructure development, and increasing the potential for conflict (FAO, 2010). They can undermine the confidence and trust of local communities in the enterprise, which are essential for developing positive relationships in the long term.

#### *Risk mitigation measures*

- Refrain from seeking or accepting **exemptions** not contemplated in the statutory or regulatory framework related to human rights, environment, health, safety, labour, taxation, or other issues;
- Avoid directly or indirectly (via a third party) offering, promising, giving, or demanding **a bribe or other undue advantage** to public officials, the workers of business partners or to their relatives or business associates, to obtain or retain business or any other improper advantage;
- Develop and adopt adequate **internal controls**, ethics and compliance programmes or measures for preventing and detecting bribery;
- Prohibit or discourage, in internal company controls, ethics and compliance programmes or measures, the use of **small facilitation payments**, which are generally illegal in the countries where they are made, and, if and when such payments are made, accurately record these in books and financial records;
- Ensure properly documented due diligence pertaining to the **hiring**, as well as the appropriate and regular oversight of agents, and ensure that the remuneration of agents is appropriate and for legitimate services only;
- Abstain from any improper involvement in **local political activities**;<sup>162</sup>
- Use objectively assessed values, transparent and decentralised processes and services, and a right to appeal, to prevent corruption with regard to **tenure rights**, in particular the rights of indigenous peoples and local communities holding customary tenure rights;<sup>163</sup>



- Collaborate in the efforts by governments to implement the **OECD Convention** on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention).

## 9.2 Taxation

### *Risks*

111. Enterprises can contribute to the economic development of host countries by making timely payment of their tax liabilities. Tax governance and compliance in their risk management systems can ensure that financial, regulatory and reputational risks associated with taxation are fully identified and evaluated (OECD, 2011a). As demonstrated by recent campaigns targeting large enterprises, tax avoidance can increase reputational risk.

### *Risk mitigation measures*

- Provide authorities with **timely information** that is relevant or required by law for the purposes of the correct determination of taxes to be assessed in connection with operations;
- Conform **transfer pricing** practices to the arm's length principle;
- Adopt **risk management strategies** to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated.<sup>164</sup>

## 9.3 Competition

### *Risks*

112. Anti-competitive practices may not only negatively affect consumers but also weaken the bargaining power of smallholders if excessive buyer power goes unchecked, thereby affecting the progressive realisation of the right to adequate food (UN, 2009a). Similarly, dumping by large enterprises selling a product at loss in a competitive market can force competitors, including small and medium enterprises, out of the market. In countries where competition laws and regulations are not sufficiently developed or enforced, enterprises run the risk of infringing competition standards if they do not exercise heightened managerial care in refraining from practices that constitute an undue exercise of buyer power, such as retrospective reduction in prices without reasonable notification or unjustified payments imposed on supplier for consumer complaints (OECD, 2006).

### *Risk mitigation measures*

- Refrain from entering into or carrying out **anti-competitive agreements** among competitors;
- **Co-operate with investigating competition authorities** by, among other things and subject to applicable law and appropriate safeguards, providing responses as promptly and completely as practicable to requests for information, and considering the use of available instruments, such as waivers of confidentiality where appropriate, to promote effective and efficient co-operation among investigating authorities.<sup>165</sup>

## 10. Technology and innovation

### *Risks*

113. Promoting and sharing technologies may contribute to create an environment that supports the enjoyment of human rights and enhance environmental protection. However, empirical studies suggest that actual technology transfer in the agricultural sector is seldom up to the level announced by enterprises (UNCTAD, 2009).

114. As regards genetic material and the traditional knowledge of indigenous peoples, local communities and farmers, States Parties to the CBD, the International Treaty on Plant Genetic Resources for Food and Agriculture, and the Nagoya Protocol on Access and Benefit-sharing to the CBD, have specific international obligations related to access to genetic resources and traditional knowledge for research and development. Companies should collaborate with governments to support them in complying with these international obligations, or should at the very least not undermine them, taking into account relevant intellectual property laws.

### *Risk mitigation measures*<sup>166</sup>

- Endeavour to ensure that activities are compatible with the science and technology policies and plans of host countries and, as appropriate, contribute to the development of local and national innovative capacity;
- Adopt, where practicable in the course of the operations, practices that permit the transfer and rapid diffusion of locally-adapted and innovative technologies, know-how and practices, with due regard to the protection of intellectual property rights;<sup>167</sup>
- Subject to national law and in accordance with applicable international treaties, respect the right of farmers to save, use, exchange and sell genetic resources, including seeds;<sup>168</sup>
- When appropriate, perform science and technology development work in developing countries that aim to address local market needs, employ local personnel and encourage their training, taking into account commercial needs;
- When granting licenses for the use of intellectual property rights or when otherwise transferring technology, do so on reasonable terms and conditions and in a manner that contributes to the long term sustainable development prospects of the host country;
- Where relevant to commercial objectives, develop ties with local universities, public research institutions, and participate in co-operative research projects with local industry or industry associations.<sup>169</sup>

## ANNEX II. ROLES AND RESPONSIBILITIES OF VARIOUS ENTERPRISES

115. While all enterprises should conduct due diligence, the implementation of due diligence should be tailored to their activities and relationships, such as their position in the supply chain. This section intends to analyse how the various risks and standards considered in this guidance apply to each type of enterprises and to provide specific guidance on due diligence according to the different positions of enterprises in the supply chain.

116. The structure of supply chains and the enterprises involved at each stage vary significantly across products and geographies.<sup>170</sup> For instance, the rice chain in Burkina Faso includes four types of producers at the production stage, i.e. rainfed, lowland, gravitation irrigation, and pump-equipped irrigation rice producers. Producers sell their products through two channels, either to processors and wholesalers or to steamers. In contrast, the cocoa supply chain involves more processing stages. Producers are responsible for processing beans into cocoa nibs. Then various enterprises process nibs into cocoa liquor, chocolate, cocoa butter and cocoa powder (FAO, 2013c). Mapping enterprises that operate along agricultural supply chains should thus be undertaken on a case-by-case basis, with a view to better understanding relationships and information and financial flows among these enterprises and to better designing audits, as highlighted in the five-step framework above.

117. For the present purposes, the simplified supply chain structure below is proposed, drawing from Figure 1. It does not aim at being comprehensive.

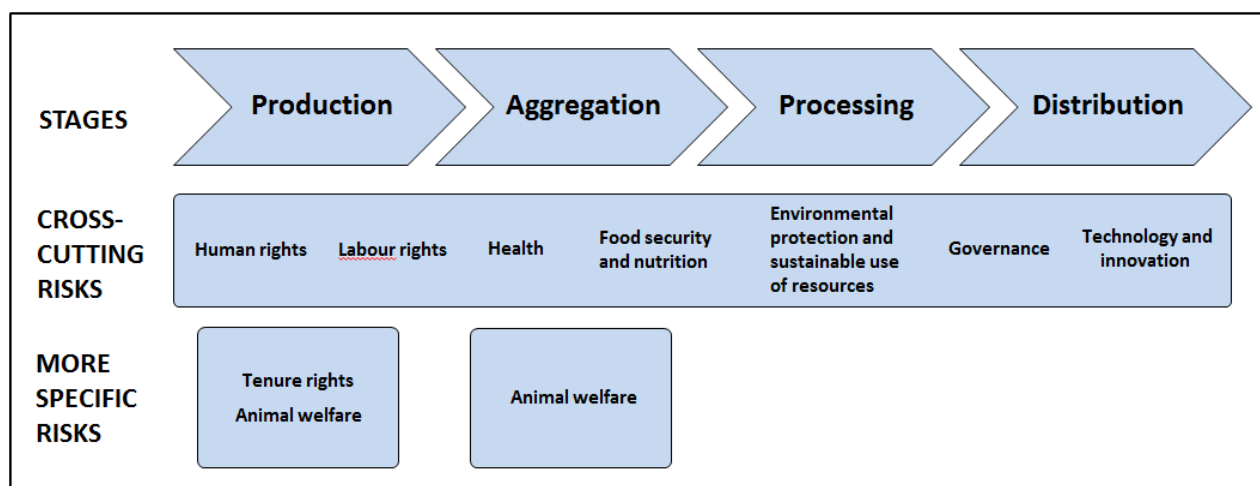
- *On-farm enterprises* comprise enterprises involved in on-farm seed propagation, agricultural production, and near-farm basic processing. They comprise farmers, including small to large family farms, as well as farmers' organisations, co-operatives and private enterprises. Agri-food companies or listed companies whose core strategy is to invest in land can also be considered on-farm enterprises if they directly manage farms;
- *Downstream enterprises* are involved in the aggregation, processing, distribution and marketing of agri-food products;
- *Indirect enterprises* include institutional investors that may be involved throughout the supply chain with a less direct involvement than the other enterprises cited above. They can provide capital in different forms to the latter. While they do not constitute a uniform group, they can be grouped into the following broad categories:
  - Asset owners own capital and have full discretion over the way they invest it across different asset classes. They can manage investments themselves or delegate this task to asset managers. They include but are not limited to: insurance companies, family offices, pension funds, endowment funds, private foundations, and sovereign wealth funds;
  - Asset managers manage investments on behalf of asset owners. They can focus on just one asset class or a range of asset classes. They include but are not limited to: investment fund managers / private banks, private equity funds, and hedge funds;

- Bilateral or multilateral development banks provide debt financing to projects and can take equity in specific circumstances;
- Financial services, including commercial banks, arrange financing for enterprises that invest in agriculture.
- Commodity traders can provide trade finance and hedging instruments (Clapp, 2014).

118. These categories are often difficult to delineate in practice. For instance, co-operatives often own or manage downstream assets (e.g. sugar mill) and could thus be considered not only as on-farm enterprises but also as downstream enterprises.

119. Taking into account all these caveats, some enterprises may focus on specific risks, as per the figure below. For instance, on-farm enterprises are more likely to face higher risks related to tenure rights. They should thus focus particularly on undertaking good-faith, effective and meaningful consultations with tenure rights holders. Downstream enterprises should verify that upstream enterprises have carried out proper due diligence and may rather focus on risks related to consumer's health.

**Figure 2. Risks at various stages of agricultural supply chains**



Note: This diagram only intends to open discussions and could be elaborated further.

120. The nature and extent of due diligence will be affected by factors such as the size of the enterprise, the context and location of its operations, or its position in the supply chain:

- *On-farm enterprises* may establish on-the-ground assessment teams for generating and sharing verifiable, reliable and up-to-date information on the qualitative circumstances of agricultural production. They should provide the results of risk assessments to their downstream purchasers. Smallholder farmers are not expected to carry out due diligence as recommended in this guidance, but they are encouraged to remain involved in due diligence efforts of their customers and formalise so that they can carry out due diligence in the future;
- *Downstream enterprises* should identify, to the best of their efforts, and review the due diligence process of their suppliers and assess whether they adhere to due diligence measures put forward in this guidance. They may participate in industry-wide schemes that assess their suppliers' compliance

with this guidance and may draw on the information these schemes provide to help them fulfil the recommendations in this guidance.

- *Indirect enterprises* may have hundreds to thousands of clients. It may not always be practical to conduct extensive due diligence on each of them. The MNE Guidelines expect them to identify general areas where the risk of adverse impacts is most significant and to prioritise due diligence on their clients accordingly. The appropriate scope of due diligence responsibilities of a financial institution would depend on the nature of its operations, products and services.<sup>171</sup> A distinction should be made between ‘contributing’ to an adverse impact (entailing a substantial contribution) and adverse impacts ‘being directly linked’ to the operations, products and services of a financial institution through a business relationship. For instance, a financial institution may contribute to an adverse impact caused by its investee company in which it has a majority or controlling holding because its majority shareholding directly supports and maintains the activities of the investee company. The distinction may be difficult in the case of project finance, or majority or controlling holdings in an entity causing an adverse impact.<sup>172</sup>

## ANNEX III. LESSONS LEARNT AND BEST PRACTICES IN RESPONSIBLE AGRICULTURAL SUPPLY CHAINS

121. This annex provides lessons learnt and best practices documented in agricultural supply chains. While such lessons have been increasingly documented, there are certain risks for which little experience has yet been reported. In the absence of agriculture-specific experiences on certain risks, examples from other sectors are drawn upon and could be substituted once agriculture-specific lessons and success stories become available.

### 1. Cross-cutting elements

#### *1.1 Information sharing*

122. As indicated by the World Bank and UNCTAD study of 2014, transparency and disclosure of information about investments was generally lacking. While there were some positive examples, this seems to be an area in which better practice is needed. In many cases, there was almost no information at all available to the public at large, other than a name listed on a government land registry website (WB, 2014).

123. Information was particularly lacking with regard to the terms and process of land acquisition. There was typically insufficient information on who held rights to use the land and other natural resources, how those rights were obtained, and what the contractual rights and obligations of different parties were. While some governments sought to rectify this via the publication of information on concession/land registry websites, such information was often incomplete and inaccurate. Another key information gap was in the results of ESHRIAs and subsequent environmental management plans. Similarly, the conduct and outcomes of consultations with communities were rarely made public. Financial and operational information on the enterprises was scarce, in particular regarding taxes paid (WB, 2014).

124. One relevant NCP case can be mentioned. The French NCP considered a specific instance concerning foreign enterprises associated with a palm oil producer that allegedly failed to disclose company information. In its public report, the NCP noted that the four companies targeted by the referral did not sufficiently adhere to the MNE Guidelines for disclosure, particularly non-financial information including environmental reporting (French NCP, 2013).

#### *1.2 Consultations*

125. The analysis of 39 large-scale agri-business investments in 2014 offers valuable lessons and best practices on consultation processes. Although initial consultations were time consuming (in some cases 1-2 years) and expensive, particularly for new investments, they were a key step in developing a strong relationship with local communities. This generated more **positive socioeconomic outcomes** and was in the interests of investor because it contributed to financial and operational success, in particular by minimising the risk of land disputes which can lead to expending significant resources dealing with disputes over access to land. Attempts to shortcut these processes led to negative long-term ramifications (WB, 2014).

126. **Comprehensive consultations** with external stakeholders prior to the investment benefited both those impacted by the investment and the enterprise itself. Full and thorough consultation procedures should start with the assumption that all land is used in myriad ways. A key element of effective consultations was giving individuals and communities adequate time and opportunities to consider and articulate the various ways in which an area of land holds utility or meaning for them. Consultation processes needed to be tailored to the particular local context. There can be no one-size-fits-all model for

consultations. Failure to recognise the unique nature of each community's modes of social organisation can be disruptive (WB, 2014).

127. Consultations were most effective when the investor took **primary responsibility** for his conduct. It proved perilous to leave consultations to the host government; or for the investor to assume that the land acquired was being provided by the government without any existing land disputes. Similarly, it was unsatisfactory to outsource the consultation process to third parties such as land agents. Some countries have enacted legislation requiring government oversight of community consultations. This helped to ensure that investment projects supported national and local development goals (WB, 2014).

128. Ensuring community interests are represented requires the **involvement of state and non-state actors**. Effective consultations involved all those potentially affected by an investment. The presence of trusted third parties, such as public-interest lawyers or non-governmental organisations (NGOs), helped to mitigate the power differentials between the negotiating parties, as well as promote more inclusive consultations and beneficial outcomes (WB, 2014).

129. When enterprises have undertaken **consultations with pastoralists**, outcomes seem to have been positive. One investor agreed to develop pasture land for use by cattle owners as supplementary grazing during winter months. Another investor agreed to investigate the potential to use rice straw and husks, with additives, for use as animal feed to, in part, offset the reduced access to grazing land. Another dug canals and water sources for cattle to use. In other cases, enterprises and pastoralists agreed on land corridors along water sources which are not fenced off and through which cattle are free to roam. Consultations also helped convince pastoralists of the positive impacts of the investment, such as job creation and national food production, and consequently generated a better relationship and willingness to work together (WB, 2014).

130. A good example of consultation mechanisms identified by the 2014 World Bank and UNCTAD study was those which were formalised, typically involving a community liaison committee on which the investor and the local community were represented. A palm oil investment had such a committee with representatives for various segments of the population (young, old, women, and so on) through which grievances could be raised. Meetings were agreed and minuted. One rubber producer also had a liaison committee in which the community, the investor, and local government were all represented (WB, 2014).

131. A specific instance addressed by NCPs, a complaint filed to the **Compliance Advisor Ombudsman** (CAO), an independent recourse mechanism for IFC and MIGA, as well as an example from the extractive sector, are worth mentioning.

132. In 2012, the **US NCP** received a request for a review from NGOs alleging that an investor had been involved in the alleged forced eviction of villagers with no public consultation, environmental and social impact assessment or settlement plan in the context of a sugar plantation and refinery. The NGOs contended that the investor, by virtue of its supply chain relationship with the plantation (namely, purchasing sugar produced at the plantation through a UK-based company) had an obligation to implement the MNE Guidelines. In 2013, as mediation attempts failed, the NCP recommended that the investor evaluate the issues raised by the NGOs and consider how to address them, in particular by conducting a corporate human rights policy review process, in line with the recommendations of the MNE Guidelines and the UN Guiding Principles. Such a policy process was expected to include consultations with external stakeholders (US NCP, 2013).

133. A complaint filed at the **CAO** raises concerns about forced evictions and displacement in a plantation area. Representatives of the affected communities claim that the evictions have negatively impacted their communities by displacing them from land and forcing them to forgo health, education, and

livelihood opportunities. The complaint also voices broader concerns about the due diligence surrounding the project, including the lack of genuine or meaningful consultation around the evictions. A CAO mediation process is now underway with the parties participating in joint meetings and confidential bilaterals (CAO, 2014a).

134. Companies often underestimate the **costs of conflict** with affected communities, which often result from a failure of adequate consultation. In particular, they may overlook the staff time required to address the conflict. One company had undertaken a systematic review of the potential costs of non-technical risks connected to its various projects and estimated a value erosion of more than USD 6 billion over a two-year period, representing a double-digit percentage of its annual profits. If a mining project worth USD 3-5 billion suspends its operations because of conflict with the community, it would cost USD 20 million per week (Shift, 2014).

### ***1.3 Impact assessment***

135. The 2014 World Bank and UNCTAD study offers valuable lessons and best practices. Impact assessments, which should be primarily the responsibility of enterprises, were too often ‘box-ticking’ exercises, not translated into environmental management plans which were actively incorporated into the conduct of the business. Many of them were one-off assessments, not accompanied by a system of ongoing monitoring and adherence to recommendations for changes to operations. Some environmental management plans only existed on paper and were not authentic tools used to manage the environmental impact of the investment. In some cases, there was a stark divergence within the enterprise between head office policies and the actual on-site practices and situations. The sample of investors developed many examples of recommendations contained within the impact assessment that were ignored, to the detriment of the operation (WB, 2014).

136. It is essential to ask whether the host country government has the human resources and expertise necessary to assess factors such as the financial and technical capacity of enterprises and the suitability and viability of their business plans. When environmental impact assessments were conducted on the investor’s behalf by host country governments or land agents, this led to poor outcomes. Host country governments could gradually phase in investments, both in terms of the number of enterprises accepted and the scale of the concession areas provided. In some instances, land and concessions have been given away faster than the host government’s ability to vet and monitor enterprises. Better outcomes were achieved for all when the host country was able to vet enterprises in advance. Moreover, the government must be able to monitor investments to see whether plans are being adhered to and commitments upheld (WB, 2014).

### ***1.4 Benefit sharing***

137. Agriculture-specific experience accrued in relation to this standard specifically concerns the lack of sufficient benefit-sharing and the type of benefit-sharing arrangements that may be considered.

138. The French NCP considered that several foreign enterprises associated with a palm oil producer were not exercising all their possible influence on the producer who did not make a sufficient contribution to the sustainable development, capacity-building and training of local communities. Nonetheless in June 2013, the NCP noted that the situation had evolved significantly since the case was raised late 2010, and that this held out prospects for enhancing the living conditions of the workers and the populations living adjacent to the plantations. The NCP welcomed the enterprises’ willingness to assume their responsibilities and use their influence on their trading partners to ensure observance of the MNE Guidelines (French NCP, 2013). Thanks to the good offices of the NCP, the major parties accepted to enter in mediation with the NCP. They jointly drew a roadmap to be implemented by the producer to facilitate access to drinkable water, education and electricity for affected communities, support village plantations and harvesting, and



recruit local workers for its own plantations. The parties also agreed to report on the implementation of the roadmap to the NCP and to recruit an independent organisation to monitor its implementation and ensure stakeholder involvement (French NCP, 2014).

139. With regard to the type of benefit-sharing arrangements, in the case of a partnership between local and foreign enterprises for organic mango cultivation in Ghana, outgrowers earned significant financial rewards over a relatively long period of time. This was considered key in ensuring the local acceptance and support for the initiative, as well as allowing the foreign enterprises to fulfil environmental and food security requirements with minimal risk, since outgrowers actively contributed to fulfil these standards. In the case of sugar plantations in Zambia, a combination of own-production and contract farming on company-held land involved equity participation for outgrowers as well as training, with the latter appearing as important to improve local livelihoods and economic returns (FAO, 2013a).

### *1.5 Grievance mechanisms*

140. As indicated by CAO, good practice markers for enterprise-level grievance mechanisms include: start early in the project cycle, involve the community in the design, ensure accessibility, maintain a wide scope of issues, develop culturally appropriate procedures, incorporate a variety of grievance resolution approaches, identify a central point for coordination, maintain and publicise multiple access points, report back to the community, and use a grievance log to monitor cases and improve the mechanism. However, there is no ideal model or one-size-fits-all approach to grievance resolution. The best solutions to conflicts are generally achieved through localised mechanisms that take account of the specific issues, cultural context, local customs, and project conditions and scale (CAO, 2008).

IFC and MIGA's Performance Standards and Guidance Notes propose the following measures:

- Establish a procedure for receiving, recording/documenting, and addressing complaints that is easily accessible, culturally appropriate, and understandable to affected communities;
- Inform the affected communities about the mechanism during the investor-community engagement process;
- Consider when and how to seek solutions to complaints in a collaborative manner with the involvement of the affected community;
- Ensure full participation of both genders and vulnerable groups and take into consideration customary and traditional methods of dispute resolution when designing the system;
- Assign consistent, experienced, and qualified personnel with responsibility for receiving and responding to grievances;
- Document grievances received and responses provided and report back to the community periodically (CAO, 2008).<sup>173</sup>

141. Several examples of the need for improving grievance mechanisms can be cited. In the case of organic mango cultivation in Ghana, although the arrangement between foreign enterprises and outgrowers was highly inclusive, it lacked clear formal procedures for outgrowers to bring complaints to the investor's attention (FAO, 2013a). The Dutch NCP facilitated the conclusion of an agreement between NGOs and an investor for upgrading an existing grievance mechanism for temporary workers involved in corn detasseling in Argentina. The agreement intended to meet the recommendations of the MNE Guidelines

regarding the legitimacy, accessibility, predictability, equitability, compatibility, and transparency of the enterprise-level grievance mechanism (Netherlands NCP, 2011).

## 2. Human rights

142. One NCP case relates to human rights. The Dutch NCP facilitated the conclusion of an agreement which included the adoption by the enterprise of a policy and due diligence procedure on human rights for corn detasseling in Argentina, involving temporary rural workers. The agreement included the development and monitoring of standards of business partners to respect human rights and the subjection of business partners to the investor's corrective measures, including contract termination in case of non-compliance (Netherlands NCP, 2011).

143. The World Bank and UNCTAD study of 2014 highlights issues related to gender discrimination. There appeared to be a gender bias in employment at the investments. Across 24 investments, around 35% of employees were women and only 1.5% of outgrowers were women. One co-operative member explained that this was due to obstacles women face in owning or renting land in some places. At the highest levels of company management, women were almost completely absent, with an exception for administrative employees. Furthermore, where women were employed, almost 60% of them had casual, temporary, or seasonal jobs, against only less than 45% of men. Women were overrepresented in the worst paid and most insecure jobs (WB, 2014).

144. Similarly, case studies from the United Republic of Tanzania, Ghana, Zambia, Ghana and Lao PDR have clearly shown that agricultural investments have clear differentiated implications on women and men in terms of employment, income generating opportunities and land access and use. The main lesson from these studies was that having a neutral gender approach is not sufficient to promote gender equality. Companies have to actively engage with a gender policy to ensure that women can equally benefit from the opportunities offered and to secure that they are not the main losers. Partnerships with gender sensitive actors have shown positive results (FAO, 2013b).

## 3. Labour rights

145. **Job creation** was the most frequently cited benefit arising from the investments analysed in the World Bank and UNCTAD study. Indeed, enterprises in the sample employed around 40,000 people - an average of one job for every 20 hectares and roughly equally split between permanent and temporary or seasonal jobs - often in remote areas where formal employment had not existed previously. A formal job with enterprises was generally sought after and well regarded for several reasons, including greater work and income stability, an opportunity to shift from subsistence farming, and other employment benefits, such as medical services, food, accommodation, and trainings. For example, one palm oil producer established over 2,000 formal jobs in an isolated rural community in a post-conflict country. Perceptions of employment were, on balance, very positive with regard to both jobs created and associated pay and contractual conditions. In the interviews, the local community appreciated the accompanying benefits to incomes, food security, health, education, housing, and the general standard of living (WB, 2014).

146. Enterprises also **indirectly** contributed to employment opportunities by providing a stable market for outgrowers' produce. For example, the 11 enterprises with outgrower schemes helped to support the livelihoods of a total of 150,000 contract farmers. The impact of such employment on food security, through increased rural incomes, was a commonly cited benefit arising from these investments (WB, 2014).

147. However, it should be noted that, in several cases, wages were below the acceptable living wage and employees needed to supplement their income with other work. Temporary or casual labour was

frequent. There was also often an evident gender imbalance in employment, with women often confined to the worst jobs (WB, 2014).

148. A few examples related to labour rights in the agricultural sector can be cited, notably in relation to: child labour; collective bargaining and employment security; and decent work.

149. With regard to **child labour**, the German NCP received a request from NGOs alleging that an investor had suppliers employing children in cotton cultivation and had not taken adequate measures to counter the practice. Following the involvement of the NCP, the investor engaged to: actively combat child labour; undertake all reasonable measures within its sphere of influence to protect children and support them in their commencement of schooling and occupational life; further improve its existing programme to protect children and foster farm productivity, reporting periodically to the NCP and other interested stakeholders; and continue to pursue intensive contacts with ILO with the objective of facilitating better access to education in agricultural regions (German NCP, 2007).

150. The UK NCP received an allegation from a NGO that an international investor had bought cotton allegedly produced through the systematic use of child and forced labour. It appointed an external conciliator-mediator (UK NCP, 2011a), and eventually parties agreed on a mutually acceptable solution through conciliation in 2011 (UK NCP, 2011b). A similar instance was addressed by the German NCP from the same NGO about a German multinational enterprise that had allegedly purchased cotton from state-owned companies using child labour. Both parties co-operated in discussions and information sharing and, as a result, issued a joint statement mediated by the NCP in which they agreed that the enterprise would do whatever it could in the course of its business activities when relevant opportunities arose or contact was made with relevant persons, to make clear its opposition to child labour and seek to ensure that cotton resulting from child labour was not purchased, as well as to provide internal training on risk management in the supply chain (German NCP, 2011). The French NCP also received an allegation related to child labour in the cotton industry which questioned supply chain due diligence towards business relations. Although in 2012 the NCP noted that the enterprise stated that it had not purchased cotton in this country over the last few years, it recommended implementing reasonable due diligence with trading partners. The NCP also referred to ILO Conventions No. 29, 105 and 182 and to related ILO reports and recommendations (French NCP, 2012).

151. A success story regarding **decent work** relates to a foreign equity corporation engaged in the production, processing and export trading of pineapple and banana. It employs a total of 328 female and 1,200 male workers, the large majority of which work full-time and are afforded the benefits mandated by national labour law. Many of them achieve earnings above the minimum wage. Almost all workers are from the local area, and family members of the landowners who have leased their land to the corporation are given priority in recruitment. Workers are encouraged to comply with high standards and ethical values are reiterated through weekly assemblies. An internal mechanism known as the Values Reconciliation Board has been established within the main offices of the company and in the plantations managed by the corporation. Through these boards, workers are invited to review management policies and practices and make the case for improvements (FAO, 2014b).

#### **4. Health**

152. One successful experience as regards the health of members of local communities relates to sugarcane production. An IFC-financed project sought to expand sugarcane production and processing by an agro-energy complex. The complaint submitted to the CAO raised concerns related in particular to health impacts on members of local communities, including Chronic Kidney Disease (CKD) and respiratory problems as a result of sugarcane burning. Independent studies to investigate the cause of CKD were undertaken, and efforts are being made to improve care and provide alternate livelihoods to those

suffering from CKD. Based on the recommendations of studies, a programme aimed at reducing the risk of heat stress among workers was launched. An agreement closing out CAO's participation as a convener and mediator of the dialogue process on CKD was signed in June 2012. The agreement provides details on the commitments made by the parties as a result of the dialogue process held since January 2009 and states their willingness to continue in a direct dialogue to keep finding solutions to this problem (CAO, 2014b).

## **5. Progressive realisation of the right to adequate food in the context of national food security and nutrition**

153. According to the World Bank and UNCTAD study, the main **positive contribution** made to food security by most enterprises was through direct employment and outgrower schemes. All enterprises cited employment and the subsequent impact on local incomes as their key contribution to local food security. Many employees stated their preferences for wages, as a more stable source of income, over subsistence farming. Enterprises can contribute to the food security of outgrowers by providing a reliable market for their produce. Outgrowers interviewed confirmed that enterprises make more reliable paymasters than itinerant middlemen, thereby indirectly supporting a more regular food supply. A number of enterprises also provide free or subsidised food to employees, in the form of meals during the workday or grains for home consumption. A number of estate-style investments also allow employees to grow food crops for domestic consumption on parts of the concession (WB, 2014).

154. The main **negative contribution** made by enterprises to food security was through reduced access to land and associated natural resources for local communities. One local community complained that through resettlement, land holdings had been reduced from 2-15 acres to around 0.25 acres, thereby negatively impacting their ability to produce and procure adequate food. Another frequent grievance was from communities, including pastoralists, whose access to land, natural resources, and water was restricted once an investor demarcated its farming operations. In most cases, enterprises promoted the extensive cultivation of one or two crops, thereby increasing the vulnerability to pests, diseases, and declining commodity prices and having potentially detrimental consequences on local food security (WB, 2014).

## **6. Tenure rights over and access to land and other natural resources**

155. The most prominent negative impacts of the investments studied by the World Bank and UNCTAD in 2014 were **disputes over access to land**, such as conflicts between the formal rights provided to the investor by the government and the informal rights of existing land users. Such situations were at times exacerbated by a lack of clarity on the conditions and process for land acquisition, and further compounded in a significant number of cases where enterprises were using only a small portion of their land allocation. Despite some positive examples, resettlement was seldom sufficiently consultative, inclusive, or adequately compensated. Involvement by local communities in decisions affecting them was deemed insufficient, and procedures to raise grievances or hold enterprises to account were commonly absent (WB, 2014).

156. Good practices can be drawn from the recent commitments to zero tolerance for land displacements of any legitimate tenure rights taken by several major food and beverage companies. Several lessons on land tenure rights can be taken from existing case studies. They concern: ensuring the proper use of allocated land; considering alternatives to land acquisitions; involving potentially affected stakeholders; and providing adequate compensation.

157. As regards **land use**, in 2012-13, the French NCP provided its good offices in a specific instance concerning foreign enterprises associated with a palm oil producer whose concession spread over land used by local communities and indigenous pygmy groups. The NCP noted that the development of the producer's activities had not sufficiently respected the rights of the local communities as outlined in UN

conventions, particularly in relation to indigenous pygmy groups. One enterprise explained that contact had been made with indigenous pygmy groups to ensure that their hunting grounds were respected (French NCP, 2013). One objective of the roadmap negotiated under the mediation of the NCP in 2013-14 is to reduce land conflicts by renewing the dialogue between the producer and neighbouring residents, clarifying the exact boundaries of the land area granted to the producer, and providing fairer compensation to neighbouring residents for the loss of access to some of the land (French NCP, 2014).

158. Land acquisition in excess of that actually used by enterprises may undermine food security and lead to conflicts with communities wishing to return to and use unused lands. For instance, in the case of an agricultural investment project in Zambia, it is reported that enterprises were not using the land allocated to the project to its full potential after many years since project inception. The acquisition of land in excess of the needs of the investment raised questions related to the opportunity cost of large land leases and creating significant risks of local conflict due to the growing scarcity of valuable land (FAO, 2013).

159. With regard to **alternatives to land acquisitions**, contract farming, outgrower schemes, and joint ventures can offer enterprises as much security of supply as direct production, spread the risks between private companies and smallholders, and reduce transaction costs. Some large investments have managed to achieve broad-based benefits by developing such partnerships with local communities and formulating innovative schemes for sharing both risks and rewards. No single model emerges as the best possible option and investments may involve a combination of various models. The success of a specific model depends on its capacity to meet a set of context-specific requirements, and is contingent on tenure, culture, history, and biophysical, social and demographic considerations (FAO, 2010; IIED, 2010).

160. In Zambia, providing local groups with an equity stake in a sugar plantation was not only profitable for the investor but also for outgrowers by creating additional income opportunities. The higher business risks of this arrangement were addressed through crop insurance, while transactions costs associated with dealing with a large number of farmers were reduced by avoiding the geographical dispersion of outgrowers. This scheme resulted in higher levels of contractual compliance among the outgrowers. A succession clause was also established so that women could inherit the contract held by their spouse, leading to a substantial increase of women participation in the contract farming scheme (FAO, 2013a).

161. In Indonesia, an investor set up a farmers' development programme to encourage Javanese smallholders to grow black soybean. The investor's processing factory committed to buying all production supplied by the co-operatives that meets its quality standards, at a price agreed annually, based on the market price, before the crop is planted. Contracting farmers reach bean yields of 1 to 2 tonnes per hectare, while untrained farmers typically reach 0.7 tonnes. In 2010, the programme involved the participation of some 7,000 smallholders, who grow approximately 30% of the black soybeans used to produce the investor's brand, and farmers' incomes had increased by approximately 10-15% since 2000 (OECD, 2012).

162. A business model used for investments in jatropha cultivation in Mali and Tanzania heavily relies on outgrowers and expands production by using in marginal areas or field bounds where the crop has traditionally been grown, showing that supply can be expanded without large-scale land acquisition or replacing traditional cultivation patterns. This business model draws on women as collectors, thus providing them with cash to improve their livelihood, and allows them to use by-products (glycerol for soap and press cake for fertiliser) (FAO, 2010).

163. However, enterprises should carefully consider the potential risks of such schemes when designing them. These arrangements have been criticised for: the unequal power relationship with farmers to whom are passed on production risks; specialisation and unsustainable agricultural practices; the

exclusion of marginal subsistence farmers and women; risks of indebtedness; and unclear pricing arrangements.

164. With regard to the **involvement of affected stakeholders**, case studies related to agricultural investment in Africa indicate that the complete identification of right holders can serve as an important risk prevention measure and can help avoid local resistance to the investment, contestations of land ownership and use, and possibly even sabotage. Risks of conflict and contestation, including encroachment and litigation, grow if enterprises limit themselves to make deals with customary chiefs that do not represent all the affected communities (FAO, 2013a). Experience also suggests that chances for investment viability are enhanced if: (i) the specific groups likely to be affected by the project are involved in a meaningful way with adequate representation and consultation, including on issues of project design; (ii) the selection of project areas builds on participatory land use planning at the local level; and (iii) there is continuous dialogue and monitoring to ensure that agreements are enforced (FAO, 2010).

165. The lack of **adequate compensation** was considered by the German NCP in relation to allegations of forced expulsion of local communities by the military prior to the establishment of a coffee plantation by the subsidiary of a multinational enterprise. Allegations also related to the lack of willingness on the part of the enterprise, as the beneficiary of the resettlement, to engage in dialogue and to exert influence on the host country government. In 2011, the NCP concluded that there were indications that the enterprise could believe in good faith that it had acquired the land for use as plantation from the Investment Authority free of encumbrances and claims of third parties. However, the NCP underlined that parties should work together to strengthen trust between the plantation and those affected towards an amicable settlement (German NCP, 2009).

166. Secure **access to water** is as critical as access to land when it comes to agricultural production. In this regard, lessons can be learned from the World Bank and UNCTAD study. The administration of water extraction rights differs widely. In around half of the investments, the water use and extraction of the investor was totally unregulated. A more positive example is countries which require an environmental impact assessment before providing water extraction rights. Even where there is a well-established water act that includes monitoring reporting systems, the capacity of authorities to implement and enforce requirements may not be sufficient. Where enterprises had to apply for water rights or adhere to water extraction limits, these were often only enforced at the project approval stage and there was no subsequent monitoring of adherence to agreements made (WB, 2014).

## 7. Animal welfare

167. Positive features of livestock production systems should include the potential for better animal nutrition, feed conversion efficiency, health management and environmental control, control over reproduction, genetic selection of better performing animals, and consistency of product quality and delivery to the market place. Taken together, these attributes usually also decrease production costs, generate regular cash flow, and offer a reasonable return on investment (IFC, 2014).

168. Welfare risks may be addressed and mitigated by actions including increasing the space allowance for each animal (e.g., individual to group housing, decreasing group stocking density); providing environmental enrichment (e.g., straw for pigs to manipulate, nest boxes for hens) to stimulate positive emotional states; adding bulk to high energy diets to help satisfy appetite; minimizing the pain from invasive husbandry procedures (e.g., avoiding such procedures; using low-pain methods or analgesics); re-aligning production-orientated genetic selection to include welfare traits (e.g., less aggressive or fearful animals or birds); and increasing the monitoring of individual animals by well-informed stockpersons using direct and/or electronic observation to aid in the early detection and alleviation of health and welfare problems (IFC, 2014).

169. Some good practices can be mentioned. Poor transportation can result in bruised meat with a higher pH value that may be considered unfit for human consumption. An IFC client upgraded the practices of the catching team through training. The team modified the catching system by placing birds into containers with both hands rather than throwing them. The transport crates were changed from wire to plastic crates and birds protected from the sun. The unloading system was modified to stop birds being 'dumped' from a height onto the intake belt at the slaughterhouse. As a result, downgrades dropped by 8%, resulting in a gain of USD 320,000 per year (IFC, 2006).

170. Adopting standards for animal welfare also has visible economic impacts. The broiler industry in Thailand adopted stringent welfare standards, which allowed access to affluent markets such as Japan and the European Union. Similarly, the Namibian beef industry is subject to a national assurance scheme addressing animal health and welfare, transport and handling, and slaughter. This has allowed the industry to export over 80% of its production and to become the largest African beef exporter to the United Kingdom (IFC, 2006).

## **8. Environmental protection and sustainable use of natural resources**

171. As highlighted by the World Bank and UNCTAD study, most enterprises have taken some measures to mitigate the negative environmental impacts of their operations. The conduct of environmental impact assessments, their translation into environmental plans, and the monitoring of those plans were all areas that required improvement. For instance, the full environmental impact of many operations was not known and consequently efforts to mitigate negative environmental impacts were generally deficient. In most cases, monitoring and enforcement of water contamination was cursory (WB, 2014).

172. Another example relates to enterprises involved in biofuel production in Mozambique who held consultations with communities to obtain access to a local forest in exchange for significant job creation opportunities. No mechanisms existed, however, for communities to hold the investor accountable for its successive contribution to environmental degradation resulting from depleted forest and water sources (FAO, 2010).

173. However, some more positive examples exist. The sampling and monitoring of water quality in waterways around one of the investments studied were undertaken by an external consultant who submitted the results to relevant government departments. The sampling and monitoring of effluent discharge water quality were also undertaken and the results were submitted to the environmental authority every month. There are also clear examples of uncovering unacceptable practices and taking remedial action. For example, at one investment site, the enforcement officers of the environmental authority found that partially treated effluent had leaked from anaerobic ponds into the river, which had a negative impact on local communities living along the river. The investor was instructed to take immediate action for remedial work which included the construction of a gabion retaining wall around treatment ponds. This work has been undertaken with progress reports submitted to the environment authority (WB, 2014).

174. In 2011, the French NCP provided its good offices in a specific instance concerning foreign investors associated with a palm oil producer that allegedly diminished the availability of natural resources, did not adequately treat water and prevent air pollution, and failed to prevent negative environmental impacts. The NCP considered that the investors were not exercising all possible influence on their trading partners, even if they had taken positive steps towards improving the producer's environmental performance, including by supporting the producer in proceeding with international certification. Following the involvement of the NCP, the parties involved jointly drew a roadmap to be implemented by the producer to prevent pollution, collaborate with local authorities in detecting pollution-related illnesses and compensate affected communities for medical expenses (French NCP, 2013).

175. Examples of the sustainable use of natural resources can also be drawn from the work undertaken by the Global Agenda for Sustainable Livestock that aims at closing the efficiency gap in natural resource use and at reducing waste in the livestock sector.<sup>174</sup>

## **9. Technology and innovation**

176. The World Bank and UNCTAD study provides best practices related to technology transfer. The types of technology transfer identified in the study include: technical advice on growing practices, disease minimisation, and land preparation; demonstration plots; irrigation scheme development and maintenance; provision of improved seeds; and business trainings to smallholders on budget and cash flow management (WB, 2014).

177. One investor developed a rice contract farming system whereby it supplied improved fragrant rice seeds and provided trainings to farmers' groups, resulting in increased yields of contract farmers. An average farmer cultivated about one to 1.5 hectares of fragrant rice, using improved seeds. Farmers retained part of the harvest for their own consumption and sold the remaining part to the investor. The investor agreed to buy all the production from farmers at market prices and provided a guaranteed minimum price. The rice of contract farmers was milled at the investor's rice mill and the final product sold on the national market (about 80%) or exported. The investor provided technical support and trainings to contract farmers on cultivation techniques. Extension staff visited farmers during the growing season and provided advice on how to address any problems observed during the visit (WB, 2014).

178. One investor was operating in an area identified by the government as a 'development corridor', which required investors to transfer skills. The investor introduced a scheme to improve rice yields of farmers living in villages close to the investor's farm. It provided seeds, fertilisers, and mechanical weeders to each demonstration plot. Smallholders were trained to eliminate bad seeds, plant seeds on a grid, space the seedlings to improve productivity, and use mechanical weeders. Once farmers had been involved in the scheme for over a year, they could enter the second phase through which the investor helped them to obtain loans from a microfinance institution and acted as guarantor. The microfinance institution provided business development trainings. This system succeeded in multiplying yields by 4. The project is being scaled up and today, the system operates in 10 villages with 56 demonstration plots and around 1,300 farmers involved (WB, 2014).

179. An international potato chip producer could not procure enough potatoes of suitable quality to use all its local processing capacity. It partnered with the National Agricultural Research Institute to identify, develop, and distribute potato varieties with required processing qualities. The Institute helped farmers adopt new varieties, grow them with appropriate management practices, and increase productivity and output. The partnership was eventually formalised into an agreement and received public funding (WB, 2012).



## ANNEX IV. DESCRIPTION OF THE MAIN INSTRUMENTS CONSIDERED IN THE GUIDANCE

**180. OECD Guidelines for Multinational Enterprises (*MNE Guidelines*):** The MNE Guidelines form part of the 1976 OECD Declaration on International Investment and Multinational Enterprises, a policy commitment by adhering governments to provide an open and transparent environment for international investment and to encourage the positive contribution of MNEs to economic and social progress. The MNE Guidelines clarify adhering government expectations on responsible business conduct by multinational enterprises operating in or from adhering countries. 46 governments adhere, including 34 OECD members and 12 non-OECD members.<sup>175</sup> The MNE Guidelines cover all major areas of business ethics, including information disclosure, human rights, employment and industrial relations, environment, bribery and corruption, consumer interests, science and technology, competition, and taxation. The Guidelines are also the only government-backed international instrument on responsible business conduct with a unique implementation mechanism, the National Contact Points.

**181. Principles for Responsible Investment in Agriculture and Food Systems (*CFS-RAI*):** In October 2011, the CFS decided to launch an ‘inclusive consultation process for the development and broader ownership of principles for responsible agricultural investment that enhance food security and nutrition’. The terms of reference for the consultation process were adopted at the 39<sup>th</sup> CFS plenary session in October 2012. The principles were approved by the CFS on 15 October 2014 at its 41<sup>st</sup> session. They are voluntary and non-binding and address all types of investment in agriculture and food systems. They contain ten core principles related to: food security and nutrition; sustainable and inclusive economic development and poverty eradication; gender equality and women’s empowerment; youth; tenure of land, fisheries, and forests and access to water; sustainable management of natural resources; cultural heritage, traditional knowledge, diversity and innovation; safe and healthy agriculture; inclusive and transparent governance structures, processes, and grievance mechanisms; impacts and accountability.

**182. FAO Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (*VGGT*):** The VGGT are the first global guidelines on the governance of tenure. They were developed through intergovernmental negotiations led by the CFS and also involved civil society organisations, private sector representatives, academics and researchers, and international organisations. They were endorsed by the CFS at its 38<sup>th</sup> (Special) Session on 11 May 2012. The VGGT have received global recognition and their implementation has been encouraged by the G20 and in the Rio +20 Declaration. On 21 December 2012, the UN General Assembly: welcomed the outcome of the 38<sup>th</sup> (Special) Session of CFS which endorsed the VGGT; encouraged countries to give due consideration to their implementation; and requested relevant UN entities to ensure their speedy distribution and promotion.<sup>176</sup> These Guidelines provide a reference framework to improve the governance of tenure of land, fisheries and forests that supports food security and contributes to the global and national efforts towards the eradication of hunger and poverty. Recognising the central role of land in development, they promote secure tenure rights and equitable access to land, fisheries and forests. They set out principles and internationally accepted practices that may guide the preparation and implementation of policies and laws related to tenure governance. These Guidelines build on and support the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, which were adopted by the FAO Council in November 2004.

**183. Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (*PRAI*):** The Inter-Agency Working Group (IAWG) composed of IFAD, FAO, UNCTAD and World Bank held a roundtable during the United Nations General Assembly in September 2009 on ‘Promoting Responsible International Investment in Agriculture’ to present the seven principles and

subsequently published a synoptic version in February 2010. The seven principles focus on: land and resource rights; food security; transparency, good governance and the enabling environment; consultation and participation; responsible agro-enterprise investing; social sustainability; and environmental sustainability.<sup>177</sup> At its Seoul Summit in November 2010, the G20 encouraged ‘all countries and companies to uphold the Principles for Responsible Agricultural Investment’ as part of its multi-year action plan on development. The IAWG submitted a report on the PRAI and a Plan of Action on Options for Promoting Responsible Investment in Agriculture to the G20 in 2011 and the G8 in 2012.<sup>178</sup> The G20 agreed with a twin track approach as the way forward to both pilot the PRAI and use the lessons learned to inform various consultation processes. In October 2012, the IAWG submitted a progress report on its action plan with particular reference to the field-testing of the PRAI with host countries and enterprises.<sup>179</sup> Recently, the 2013 Saint Petersburg Accountability Report on G20 Development Commitments ‘welcomed the progress of the pilot projects field-testing the PRAIs in some African and South-East Asian countries’.

**184. Guiding Principles on Business and Human Rights - Implementing the UN ‘Protect, Respect and Remedy’ Framework (*UN Guiding Principles*):** On 16 June 2011, the UN Human Rights Council endorsed the Guiding Principles proposed by UN Special Representative on human rights and transnational corporations and other business enterprises, John Ruggie. These principles aim to help implement the UN ‘Protect, Respect and Remedy’ Framework.<sup>180</sup> They apply to all States and all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. They aim not only to provide practical guidance but also guidance informed by actual practice, and should thus help companies avoid getting drawn into human rights abuses. They have been informed by extensive discussions with stakeholder groups.

**185. ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (*ILO MNE Declaration*):** This Declaration takes the principles underlying certain international standards addressed to governments and expresses them as expectations concerning the behaviour of business. It aims to encourage the positive contribution of MNEs to economic and social progress and to minimise and resolve the difficulties to which their various operations may give rise. Adopted unanimously by workers, employers and governments in 1977 (and updated in 2000 and 2006), it is the most detailed intergovernmental instrument concerning labour issues. The ILO has a helpdesk for business concerning International Labour Standards (ILS), which provides free and confidential guidance to companies on ILS provisions as they concern company operations.

**186. Convention on Biological Diversity (*CBD*):** The Convention was opened for signature on 5 June 1992 at the United Nations Conference on Environment and Development (the Rio "Earth Summit"). It remained open for signature until 4 June 1993, by which time it had received 168 signatures representing 194 parties, and entered into force on 29 December 1993. The Convention represents a dramatic step forward in the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources. The **Nagoya Protocol** on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization was adopted by the CBD Conference of the Parties at its 10<sup>th</sup> meeting on 29 October 2010 in Nagoya, Japan. It entered into force on 12 October 2014. The Protocol aims at sharing the benefits arising from the use of genetic resources in a fair and equitable way, including by ensuring an appropriate access to genetic resources and technology transfer, taking into account all rights over those resources and to technologies, and by promoting appropriate funding.

**187. Akwé: Kon Voluntary Guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities (*Akwé: Kon Guidelines*):** Parties to the CBD undertook to respect, preserve and maintain traditional knowledge relevant for the conservation and sustainable use of biological diversity. They

decided to develop, in co-operation with indigenous and local communities, guidelines for the conduct of cultural, environmental and social impact assessments. The 7<sup>th</sup> meeting of the Conference of the Parties adopted the Akwé: Kon Voluntary Guidelines in 2004, named by a Mohawk term meaning ‘everything in creation’ to emphasise the holistic nature of this instrument. Their objective is to provide general advice on the incorporation of cultural, environmental, and social considerations of indigenous and local communities into impact assessment procedures. They intend to provide a framework ensuring the full involvement of indigenous and local communities in assessing cultural, environmental and social concerns related to proposed developments. They have been relied upon by different NCPs as a useful guide to implement the MNE Guidelines. They are also often referred to by the UN Special Rapporteurs on the Rights of Indigenous Peoples and on the Right to Food.

**188. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of the UN Economic Commission for Europe (*Aarhus Convention*):** The Convention was adopted on 25 June 1998 in the Danish city of Aarhus at the 4<sup>th</sup> Ministerial Conference as part of the ‘Environment for Europe’ process. It entered into force on 30 October 2001. As of January 2014, there were 46 Parties to the Convention, 33 Parties to the Protocol on Pollutant Release and Transfer Registers and 27 Parties to the amendment on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms. The Convention establishes a number of rights of the public with regard to access to information and justice, by: linking environmental rights and human rights; establishing that sustainable development can be achieved only through the involvement of all stakeholders; and linking government accountability and environmental protection. It is also forging a new process for public participation in the negotiation and implementation of international agreements.

**189. IFC Performance Standards on Environmental and Social Sustainability (*IFC Performance Standards*):** The last version of these Standards was released in January 2012. IFC requires its clients, i.e. private enterprises investing in developing countries, to apply these eight Performance Standards throughout the life of the investment. The Standards are also used by commercial banks participating in the Equator Initiative and have been relied upon by various NCPs as a useful guide to implement the MNE Guidelines. These Standards provide guidance on how to identify, avoid, mitigate, and manage risks and impacts as a way of doing business in a sustainable way, including through stakeholder engagement and disclosure obligations. They relate to: assessment and management of environmental and social risks and impacts; labour and working conditions; resource efficiency and pollution prevention; community health, safety, and security; land acquisition and involuntary resettlement; biodiversity conservation and sustainable management of living natural resources; indigenous peoples; and cultural heritage.

**190. UN Global Compact (*UN Global Compact*):** The UN Global Compact, the world's largest corporate citizenship initiative, is a UN initiative to encourage businesses worldwide to adopt sustainable and socially responsible policies, and to report on their implementation. It was first announced by the UN Secretary-General Kofi Annan in an address to the World Economic Forum on 31 January 1999, and was officially launched at UN headquarters in New York on 26 July 2000. It is supported by several UN agencies and allows bringing companies together with UN agencies, labour groups and civil society. The UN Global Compact has two objectives: mainstream the ten principles in business activities around the world and catalyse actions in support of broader UN goals, such as the Millennium Development Goals. It states ten principles for business in the areas of human rights, labour, environment, and anti-corruption.

191. In addition, the UN Global Compact office finalised the **Food and Agriculture Business Principles** (FABs) in 2014. It facilitated their development through a nearly two-year broad and inclusive multi-stakeholder process. Over 20 consultations have been conducted globally, including more than 1,000 businesses, UN agencies and civil society organisations involved in agriculture, nutrition and food systems. The six principles complement existing initiatives that advance sustainability in food and agriculture, and

serve as an umbrella over voluntary standards and technical compliance platforms. They provide agreed global language on what constitutes sustainability in food and agriculture on critical issues ranging from food security, health and nutrition, to human rights, decent work, good governance, and environmental stewardship, as well as ensuring economic viability across the entire value chain.

**192. International Covenant on Economic, Social and Cultural Rights (ICESCR):** The Covenant was adopted and opened for signature, ratification and accession by the UN General Assembly in December 1966 and entered into force in January 1976. The Committee on Economic, Social and Cultural Rights (CESCR), a body of 18 independent experts established in May 1985, monitors its implementation by its States parties. All States parties are obliged to submit regular reports to the Committee on how the Covenant is being implemented. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of ‘concluding observations’. In addition to the reporting procedure, the Optional Protocol to the ICESCR, which entered into force in May 2013, provides the Committee with competence to receive and consider communications from individuals claiming that their rights under the Covenant have been violated. The Committee may also, under certain circumstances, undertake inquiries on grave or systematic violations of any of the rights set forth in the Covenant, and consider inter-state complaints. The ICESCR contains 31 articles that cover, among others the progressive realisation of the following rights: right to work; the right to the enjoyment of just and favourable conditions of work; right to form trade unions; the right to social security; right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions; right to be free from hunger; right to the enjoyment of the highest attainable standard of physical and mental health; and right to education.

**193. OIE Terrestrial Animal Health Code:** The OIE is the intergovernmental organisation responsible for improving animal health worldwide. The need to fight animal diseases at global level led to the creation of the Office International des Epizooties (OIE) through the international agreement signed on 25 January 1924. In May 2003, the Office became the World Organisation for Animal Health but kept its historical acronym OIE. It is now recognised as a reference organisation by the World Trade Organisation and had a total of 178 member countries in 2013. The OIE Terrestrial Animal Health Code sets out standards for improving animal health and welfare and veterinary public health worldwide, including through standards for safe international trade in terrestrial animals (mammals, birds and bees) and their products. The health measures in the Code have been formally adopted by the World Assembly of the Delegates of the OIE Members. The 23<sup>rd</sup> edition incorporates modifications to the Terrestrial Code agreed at the 82<sup>nd</sup> OIE General Session in May 2014.

**194. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):** The Convention was adopted in 1979 by the UN General Assembly. It defines what constitutes discrimination against women and provides the basis for realising equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life, education, health and employment. Countries that have ratified or acceded to the Convention commit to undertake a series of measures to end discrimination against women in all forms and against all forms of traffic in women and exploitation of women. They are legally bound to put its provisions into practice and must submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

## ANNEX V. FREE, PRIOR AND INFORMED CONSENT

195. This Annex aims at providing guidance to obtain the free, prior and informed consent (FPIC) of indigenous peoples by describing what FPIC means and how it is incorporated in existing standards and can be implemented.

196. As detailed in previous sections, good-faith, effective and meaningful consultations with communities should be undertaken before initiating any operations that may affect them and during and at the end of operations. Some standards also require obtaining the FPIC of indigenous peoples under certain circumstances, recognising their specific characteristics, such as their spiritual and cultural heritage.

197. FPIC can be incorporated in national laws or enterprise policy commitments. While many countries have national laws consistent with a commitment to obtain FPIC, few have yet adopted laws that explicitly mention FPIC (FAO, 2014a). Several voluntary private standards require the FPIC of indigenous peoples prior to proposed developments.<sup>181</sup> Irrespective of regulatory requirements, enterprises should anticipate that indigenous peoples may expect FPIC and should thus be prepared to deal with it as an operational reality.

### Definition of FPIC

198. There is no universally accepted definition. However, according to the UN Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples, FPIC can be defined as follows:

- **Free** implies that people are able to make decisions without coercion, intimidation or manipulation;
- **Prior** implies that consent is sought far enough in advance of any authorisation or commencement of activities, and the time requirements of consultation and consensus processes are respected;
- **Informed** implies that all information relating to the activity is provided to indigenous peoples and that it is objective, accurate and presented in a manner that is understandable to them;<sup>182</sup>
- **Consent** implies that indigenous peoples have agreed to the activity through consultation and participation. They have the prerogative to withhold consent or to offer it with conditions. They must be able to participate through their own freely chosen representatives and customary or other institutions.

### Definition of indigenous peoples

199. There is no single definition of indigenous peoples. As per IFC Performance Standards, indigenous peoples may be referred to in different countries by such terms as indigenous ethnic minorities, aboriginals, hill tribes, minority nationalities, scheduled tribes, first nations, or tribal groups. However the ILO Convention on Indigenous and Tribal Peoples sets forth the following definitions of indigenous and tribal peoples that may be useful:

- Tribal peoples: their social, cultural and economic conditions distinguish them from other sections of the national community, and their status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

- Indigenous peoples: they are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

200. Self-identification as indigenous or tribal should be regarded as a fundamental criterion for determining tribal or indigenous peoples.<sup>183</sup>

201. Indigenous peoples may experience adverse impacts differently or more severely than other stakeholder groups, based on their relationship to their land that often plays a major role in social, cultural and religious practices, their culture and their socio-economic status. They are often among the most marginalised and vulnerable segments of the population. They may face discrimination and experience high poverty levels, thereby being more vulnerable and less resilient to adverse impacts.

### **Implementing FPIC**

202. Although several multilateral standards refer to FPIC, the extent to which indigenous peoples have a right to or an expectation of FPIC and the application of FPIC in practice, are widely debated at national and international levels.

203. At site level, enterprises should consider any legal requirements or community expectations for obtaining FPIC, how FPIC is understood, as well as the practical implications of establishing projects in areas where they do not have broad community support and related material risks. When domestic laws do not mandate FPIC or fall short of recommendations on community consultation, they should consider local expectations and seek an engagement strategy that meets the legitimate expectations of indigenous peoples to the extent that they do not violate domestic law. As detailed in the OECD User Guide to Meaningful Stakeholder Engagement and Due Diligence in Extractive Industries, the following key steps can be useful:

- Agree with indigenous peoples on a process for working towards obtaining consent. The process should be based on good faith negotiation;
- Agree with them on what would constitute consent, for example, whether this is a majority vote from the community or approval of the council of elders. Whatever measure of consent is decided, it should demonstrate that the project has the broad consensus of the community;
- Ensure that: the process of working towards obtaining consent occurs before any significant adverse impacts have occurred; the community is not subject to any coercion, intimidation or manipulation; and people are fully informed of likely impacts;
- Agree on what activities have been given consent for, and if and when consent for other activities or project milestones is required;
- Document evidence if/when an agreement has been achieved.

## Content of existing standards

Standard	Application of FPIC
UN Declaration on the Rights of Indigenous Peoples <sup>184</sup>	<p>The Declaration requires states to obtain FPIC from indigenous peoples for projects impacting their resources. However, it remains unclear with regard to what form consent should take in practice, whether consent is a formal requirement for project approval as well as whether the right of consent includes the right to veto.</p> <p><i>No relocation shall take place without the FPIC of the indigenous peoples concerned (Article 10).</i></p> <p><i>States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs (Article 11).</i></p> <p><i>States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their FPIC prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water and other resources (Article 32).</i></p> <p><i>Additional references to FPIC are included in Articles 19, 29 and 30.</i></p>
ILO Convention No. 169 on Indigenous and Tribal Peoples <sup>185</sup>	<p>The Convention requires governments to obtain FPIC of indigenous and tribal peoples in cases of resettlement. It allows governments to enact a compulsory relocation in exceptional circumstances as long as it complies with the due legal process.</p>
CFS-RAI principles	<p>In line with the UN Declaration, the CFS-RAI principles require FPIC of indigenous peoples.</p> <p><i>Responsible investment in agriculture and food systems should...incorporate inclusive and transparent governance structures, processes, decision-making...through... [Effective and meaningful consultation with indigenous peoples, through their representative institutions in order to obtain their FPIC under the United Nations Declaration of Rights of Indigenous Peoples and with due regard for particular positions and understanding of individual States] (Principle 9).</i></p>
VGGT	<p>In line with the UN Declaration and the ILO Convention, the VGGT require FPIC of indigenous peoples when operations impact the resources for which they hold rights.</p> <p><i>States and other parties should hold good faith consultation with indigenous peoples before initiating any project or before adopting and implementing legislative or administrative measures affecting the resources for which the communities hold rights. Such projects should be based on an effective and meaningful consultation with indigenous peoples, through their own representative institutions in order to obtain their FPIC under the United Nations Declaration of Rights of Indigenous Peoples and with due regard for particular positions and understandings of individual States (Para 9.9).</i></p> <p><i>In the case of indigenous peoples and their communities, States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments, including as appropriate from the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and the UN Declaration on the Rights of Indigenous Peoples (Para 12.7).</i></p>
Akwe: Kon Guidelines	<p>The Guidelines require prior informed consent of indigenous and local communities for the use of their traditional knowledge, innovations and practices or when operations impact on sacred</p>

	<p>sites and lands and waters traditionally occupied or used by them.</p> <p><i>In the conduct of cultural impact assessments, due consideration should be given to the holders of traditional knowledge, innovations and practices and the knowledge itself... In the event of the disclosure of secret and or sacred knowledge, prior informed consent and proper protection measures should be ensured (Para 29).</i></p> <p><i>The following general considerations should also be taken into account when carrying out an impact assessment for a development proposed to take place on, or which is likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities:</i></p> <ul style="list-style-type: none"> <li>• <i>Prior informed consent of the affected indigenous and local communities: Where the national legal regime requires prior informed consent of indigenous and local communities, the assessment process should consider whether such prior informed consent has been obtained. Prior informed consent corresponding to various phases of the impact assessment process should consider the rights, knowledge, innovations and practices of indigenous and local communities; the use of appropriate language and process; the allocation of sufficient time and the provision of accurate, factual and legally correct information. Modifications to the initial development proposal will require the additional prior informed consent of the affected indigenous and local communities (Para 53).</i></li> <li>• <i>Ownership, protection and control of traditional knowledge, innovations and practices and technologies used in cultural, environmental and social impact assessment processes...Such knowledge should only be used with the prior informed consent of the owners of that traditional knowledge (Para 60).</i></li> </ul>
<p>IFC Performance Standards</p>	<p>Performance Standard 7 requires companies to obtain FPIC from indigenous peoples when operations impact on natural resources with traditional tenure rights or on cultural heritage or when they lead to resettlement.</p> <p><i>There is no universally accepted definition of FPIC (...). FPIC builds on and expands the process of Informed Consultation and Participation described in Performance Standard 1 and will be established through good faith negotiation between the client and the Affected Communities of Indigenous Peoples. The client will document: (i) the mutually accepted process between the client and Affected Communities of Indigenous Peoples, and (ii) evidence of agreement between the parties as the outcome of the negotiations. FPIC does not necessarily require unanimity and may be achieved even when individuals or groups within the community explicitly disagree.</i></p> <p><i>Affected communities of indigenous peoples may be particularly vulnerable to the loss of, alienation from or exploitation of their land and access to natural and cultural resources. In recognition of this vulnerability, the client will obtain the FPIC of the affected communities of indigenous peoples in the following circumstances:</i></p> <ul style="list-style-type: none"> <li>• <i>Impacts on lands and natural resources subject to traditional ownership or under customary use;</i></li> <li>• <i>Relocation of indigenous peoples from lands and natural resources subject to traditional ownership or under customary use: The client will consider feasible alternative project designs to avoid the relocation of indigenous peoples from communally held lands and natural resources subject to traditional ownership or under customary use. If such relocation is unavoidable the client will not proceed with the project unless FPIC has been obtained;</i></li> <li>• <i>Critical cultural heritage: Where significant project impacts on critical cultural heritage are unavoidable, the client will obtain the FPIC of the affected communities of indigenous peoples. Where a project proposes to use the cultural heritage including knowledge, innovations, or practices of indigenous peoples for commercial purposes, the client will...obtain the FPIC of the affected communities of indigenous peoples.</i></li> </ul>



**For further guidance on FPIC:**

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## ENDNOTES

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<sup>1</sup> While the Constitution of the United Nations Food and Agricultural Organization (FAO) includes fisheries and forestry in the definition of agriculture, the present guidance focuses mostly on crops and livestock.

<sup>2</sup> See section ‘intended users’ for a more detailed description.

<sup>3</sup> The MNE Guidelines are a set of recommendations on RBC addressed by governments to multinational enterprises operating in or from adhering countries. They are part of the *1976 OECD Declaration on International Investment and Multinational Enterprises*. For further detail, consult Annex IV.

<sup>4</sup> NCPs are offices established by the governments adhering to the MNE Guidelines to further the implementation of the MNE Guidelines. They are responsible for ensuring that the Guidelines are well known and understood by the national business community and other interested parties. They also provide assistance to parties when questions arise with respect to the observance of the Guidelines in ‘specific instances’. NCPs meet regularly to review their experiences in performing and promoting the implementation of the Guidelines.

<sup>5</sup> See the sub-section ‘process’ below for further details on the composition and the role of the Advisory Group in developing this guidance.

<sup>6</sup> While the MNE Guidelines do not provide a precise definition of multinational enterprises (MNEs), they indicate that MNEs usually comprise companies or other entities established in more than one country (MNE Guidelines, I.4). The CFS-RAI principles target ‘business enterprises, including farmers’ (paras. 50-52).

<sup>7</sup> The terms of reference of the Advisory Group [[COM/DAF/TAD\(2013\)2](#)] defining its objectives, tasks and organisational structure have been endorsed by the OECD Working Party on Responsible Business Conduct on 28 June 2013.

<sup>8</sup> Contract farming involves production carried out on the basis of an agreement between the buyer and the producer. It covers a wide range of contracts and differs by type of contractor, type of product, intensity of coordination between farmers and investors, and the number of stakeholders involved. For further information, see <http://www.fao.org/ag/ags/contract-farming/faq/en/#c100440>.

<sup>9</sup> For further detail, see the OECD Due Diligence for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, 2011.

<sup>10</sup> For further information on the definition of ‘directly linked’, please refer to the Note from the OECD Secretariat on ‘Due diligence in the financial sector: adverse impacts directly linked to operations, products or services by a business relationship’ available at <http://mneguidelines.oecd.org/globalforumonresponsiblebusinessconduct/GFRBC-2014-financial-sector-document-1.pdf>.

<sup>11</sup> MNE Guidelines, IV. Commentary 44; UN Guiding Principles, para. 16.

<sup>12</sup> IFC Performance Standard 6, para. 26.

<sup>13</sup> More information in this regard can be found in Annex I, 1.3 and Annex III, 1.3.

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- <sup>14</sup> According to the European legislation, ‘traceability’ means the ability to track any food, feed, food-producing animal or substance that will be used for consumption, through all stages of production, processing and distribution.
- <sup>15</sup> Monitoring platforms such as Sedex can help monitor suppliers’ performance.
- <sup>16</sup> Such programmes include among others: Principles and criteria for sustainable palm oil production which certifies palm oil producers, processors or traders, as well as manufacturers, retailers, banks and investors involved in palm oil supply chains; Roundtable on sustainable biofuels sustainability standards which certifies biofuel operators; Principles and criteria for responsible soy production certifying soy growers and soy growers’ groups; Better Sugar Cane Initiative (Bonsucro) Standards for sugarcane producers; and Principles for Responsible Investment in Farmland for institutional asset owners and managers.
- <sup>17</sup> Such grievance mechanism can be established at the level of a project, an enterprise or an industry.
- <sup>18</sup> For further information, please refer to Annex III, 1.5 and to (IFC, 2009).
- <sup>19</sup> More information can be found in Annex I, 2-3.
- <sup>20</sup> This may also include impacts on animal welfare.
- <sup>21</sup> NCP report on the Implementation of the OECD Guidelines in the Textile and Clothing Sector following a referral from Nicole Bricq, Minister of Foreign Trade, Recommendation #6 on pages 57-58, 2 December 2013, available at <http://www.tresor.economie.gouv.fr/File/398811>.
- <sup>22</sup> References to the standards cited throughout the document are indicated after the last principle mentioned and not after each of the standards cited. They aim to help enterprises refer to the initial text of the standards considered in this guidance for further detail on the content of such standards.
- <sup>23</sup> MNE Guidelines, II.10 and VI.3; CFS-RAI Principle 10; VGGT 12.10; UN Guiding Principles, para. 17; CBD, Article 14; Akwé: Kon Guidelines; IFC Performance Standard 1, paras 5 and 8-10.
- <sup>24</sup> MNE Guidelines, III.1-3, VI.2.a & VIII.2; CFS-RAI Principles 9.ii and 10; UN Guiding Principle, para. 21; IFC Performance Standard 1, para. 29. See Annex I, 1.1 and 1.3 and Annex III, 1.1 and 1.3 below.
- <sup>25</sup> MNE Guidelines, II.14 & VI.2.b; CFS-RAI 9.iii-iv; VGGT, 9.9 and 12.11; UN Guiding Principle, para. 18; PRAI principles 1 and 4; Akwé: Kon Guidelines, 11, 13-17 and 57; IFC Performance Standard 1, para. 26-27 and 30-33. See also ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). See Annex I, 1.2 and Annex III, 1.2 below.
- <sup>26</sup> MNE Guidelines, II.A.1; CFS-RAI 2.iv, v and vii; VGGT, 12.4; Akwé: Kon Guidelines, 40.
- <sup>27</sup> It should be noted that benefit sharing should be discussed further among the members of the Advisory Group to reach a consensus. CFS-RAI Principles 2.iv-vii and 7.i & iii; VGGT, 12.4 and 12.6; PRAI Principles 5-6; Akwé: Kon Guidelines, 46; IFC Performance Standard 7, paras 14 and 17-20 and Standard 8, para 16. See also CBD Article 8(j), Nagoya Protocol Articles 5-7, ITPGR, Article 9.2. Benefits can be monetary and non-monetary: see Annex to the Nagoya Protocol. See also Annex I, 1.4 and Annex III, 1.4 for further detail.
- <sup>28</sup> MNE Guidelines, VIII.3; CFS-RAI Principle 9.v; VGGT, 3.2, 12.14, 25.1 & 25.3; UN Guiding Principle 31; PRAI Principle 1; Akwé: Kon Guidelines, 63; ILO MNE Declaration, 58-59; IFC Performance Standard 1, para 35. See Annex I, 1.5 and Annex III, 1.5.

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- <sup>29</sup> MNE Guidelines, II.A.2 and IV; CFS-RAI Principles 1, 9.iv and 10 and Paras 3, 19i, 47v, 50 and 51; UN Guiding Principles, para. 11. See Annex, I, 2 and Annex III, 2.
- <sup>30</sup> MNE Guidelines, IV.1 and 2.
- <sup>31</sup> MNE Guidelines, IV.3; VGGT, 3.2; PRAI Principle 1; Akwe: Kon Guidelines, 57; UN Global Compact, Principles 1-2.
- <sup>32</sup> MNE Guidelines, IV.5; UN Guiding Principle 17.
- <sup>33</sup> MNE Guidelines, IV.6; UN Guiding Principle 22.
- <sup>34</sup> Universal Declaration of Human Rights, Article 2.
- <sup>35</sup> MNE Guidelines, V.1-3; CFS-RAI Principle 2.i and 2.ii; ILO MNE Declaration, para 8; UN Guiding Principles; IFC Performance Standard 2.
- <sup>36</sup> MNE Guidelines, V.4.b and V.4.c; CFS-RAI Principle 2.iii; PRAI Principle 14; ILO MNE Declaration; IFC Performance Standard 2, 13, 15, 21, 22, 23, 27, 28.
- <sup>37</sup> ILO MNE Declaration; PRAI Principle 14; IFC Performance Standard 2, 13, 15, 21, 22, 23, 27, 28.
- <sup>38</sup> ILO Recommendation 198, article 7 a.
- <sup>39</sup> CFS-RAI Principle 3.iv.
- <sup>40</sup> Universal Declaration of Human Rights.
- <sup>41</sup> ILO MNE Declaration, paras. 16 and 19; CFS-RAI Principle 2.iii.
- <sup>42</sup> CFS-RAI Principle 4.ii.
- <sup>43</sup> ILO Maternity Protection Convention, 2000 (No. 183); Convention on the Elimination of All Forms of Discrimination Against Women, article 11 (2). See Annex I, 5 and Annex III, 5.
- <sup>44</sup> CFS-RAI Principle 8.iv.
- <sup>45</sup> MNE Guidelines, VIII.1 and 7; CFS-RAI Principles 2.viii and 8.iii; PRAI, 5.2.1.
- <sup>46</sup> MNE Guidelines, VIII.1, 6-7; CFS-RAI Principle 8.i and iv; PRAI, 5.2.1.
- <sup>47</sup> Akwé Kon Guidelines, 50; IFC Performance Standard 4.
- <sup>48</sup> CFS-RAI Principle 1 and 8.i; VGGT 12.1, 12.4 and 12.12; PRAI Principle 2. See Annex I, 6 and Annex III, 6. The four elements of food security, i.e. food availability, accessibility, stability and utilisation, are reflected in the World Food Summit Plan of Action of 1996 adopted by 112 Heads or Deputy Heads of State and Government who commit to *'implement policies aimed at eradicating poverty and inequality and improving physical and economic access by all, at all times, to sufficient, nutritionally adequate and safe food and its effective utilization; and pursue participatory and sustainable food, agriculture, fisheries, forestry and rural development policies and practices in high and low potential areas, which are essential to adequate and reliable food supplies at the household, national, regional and global levels.'*

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- <sup>49</sup> VGGT, 2.4, 3.2, 11.4 and 12.3; CFS-RAI, Principles 5 and 9.ii and Para 51; UN Principles for Responsible Contracts appended to the UN Guiding Principles and endorsed by the UN Human Rights Council, Principle 10.
- <sup>50</sup> VGGT, 9.1 & 12.4; IFC Performance Standard 5, paras. 2 and 8 and Standard 7, para. 15. See Annex I, 3 and Annex III, 3 below. Note that the standards mentioned in this guidance align with the commitments to zero tolerance for land displacements of any legitimate tenure rights recently taken by major food and beverage enterprises.
- <sup>51</sup> VGGT, 16.1; PRAI Principle 6.2.1; IFC Performance Standard 5, paras. 9-10, 19, 12, 27-28, and Performance Standard 7, paras 9 and 14. As per IFC Performance Standard 7, para. 14, land-based compensation should be provided in lieu of cash compensation where feasible and continued access to natural resources should be ensured or equivalent replacement resources identified. As a last option, cash compensation should be provided and alternative livelihoods should be identified.
- <sup>52</sup> CFS-RAI Principle 8.ii. See Annex I, 7 and Annex III, 8.
- <sup>53</sup> Fundamental principles developed by the World Organisation for Animal Health (OIE). For further information, see the Farm Animal Welfare Council's Five Freedoms at <http://www.fawc.org.uk/freedoms.htm>.
- <sup>54</sup> England's regulations 2000 (S.I. 2000 No. 1870) and Regulation 3(1) on the welfare of farmed animals.
- <sup>55</sup> MNE Guidelines VI.1; CFS-RAI Principle 10; PRAI principle 7; IFC Performance Standard 1.1.
- <sup>56</sup> A list of toxic substances can be found in: the WHO list of hazardous agrochemicals; the WHO recommended classification of pesticides by hazard class Ia (extremely hazardous) or Ib (highly hazardous); the Stockholm Convention on Persistent Organic Pollutants (POPs) of 2004; the Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade of 2004; the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal of 1992; the Montreal Protocol on substances that deplete the ozone layer of 1999; and the list 'Substitute It Now' (SIN) for pesticides.
- <sup>57</sup> Although most instruments that have been endorsed through an intergovernmental process refer to 'resource use efficiency', the paragraph 9 on water consumption of IFC Performance Standard 3 goes further by requiring the enterprise to 'adopt measures that avoid or reduce water usage'.
- <sup>58</sup> MNE Guidelines, VI.6; CFS-RAI Principles 1.i and 6; PRAI Principle 7; IFC Performance Standards 3 and 6; CBD, Convention on international trade in endangered species or wild flora and fauna CITES of 1975. See also Annex I, 8 and Annex III, 9.
- <sup>59</sup> While the sections on governance, technology and innovation are currently not specific to the agricultural sector, they will be developed further in the next versions of the guidance to tailor them to the specific challenges faced by enterprises operating in agricultural supply chains.
- <sup>60</sup> MNE Guidelines II.A.5, II.A.15, and VII; CFS-RAI Principle 9.i; VGGT, 6.9, 9.12 & 16.6; UN Global Compact Principle 10. See Annex I, 9.1.
- <sup>61</sup> MNE Guidelines, XI.1-2. See Annex I, 9.2.
- <sup>62</sup> MNE Guidelines, X.2-3. See Annex I, 9.3.
- <sup>63</sup> MNE Guidelines, IX; CFS-RAI Principle 7, iv; ILO MNE Declaration, 19 ; CBD, Article 16; UN Global Compact Principle 9.



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<sup>64</sup> Akwe: Kon Guidelines, 60. See also Nagoya Protocol, Article 7 and ITPGR, Article 9.2. International negotiations are currently underway at the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). The guidance will be updated once these negotiations are finalised. Traditional knowledge has not been defined internationally, but is widely understood on the basis of CBD Article 8(j) as the ‘knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.’ See also Annex I, 10 and Annex III, 9.

<sup>65</sup> See also Annex III, 1.1.

<sup>66</sup> MNE Guidelines, III.1-3, VIII.2; CFS-RAI, Principle 9, Para 32 and para 60; VGGT, 12.3; Akwé: Kon Guidelines, 10-11; IFC Performance Standard 1, 29; UN Principles for Responsible Contracts appended to the UN Guiding Principles and endorsed by the UN Human Rights Council, Principle 10. This may also support the implementation of the Aarhus Convention, Article 5.6.

<sup>67</sup> Akwé: Kon Guidelines, 10-11.

<sup>68</sup> Inspired by Aarhus Convention, Article 5.1.c.

<sup>69</sup> MNE Guidelines, III.1.

<sup>70</sup> See also Annex III, 1.2.

<sup>71</sup> IFC Performance Standard 1, para. 27.

<sup>72</sup> IFC Performance Standard 7, paras. 13-17; Akwé: Kon Guidelines, 29, 52-53, 60; VGGT, 3B.6, 9.9; CFS-RAI Principle 9.iii; UN Declaration on the Rights of Indigenous Peoples, Article 10. As per IFC Performance Standard 1, para 33, where stakeholder engagement is primarily the responsibility of the government, enterprises should collaborate with the responsible government agency, to the extent permitted by the agency. Where government capacity is limited, they should play an active role during the stakeholder engagement planning, implementation, and monitoring. If the process conducted by the government does not meet the relevant requirements for meaningful engagement, they should conduct a complementary process and, where appropriate, identify supplemental actions. According to IFC Performance Standard 7, para 16, cultural heritage is defined as ‘natural areas with cultural and/or spiritual value such as sacred groves, sacred bodies of water and waterways, sacred trees, and sacred rocks’.

<sup>73</sup> VGGT, 3B.6.

<sup>74</sup> VGGT, 9.9 and 4.10; Akwé: Kon Guidelines, 14-17; PRAI principles, 1 and 4; IFC Performance Standard 1, 26-27 and 30-3.

<sup>75</sup> Akwé: Kon Guidelines, 17.

<sup>76</sup> Akwé: Kon Guidelines, 7-8.

<sup>77</sup> MNE Guidelines, VI.3 and VI.67.

<sup>78</sup> See also Annex III, 1.3.

<sup>79</sup> You can refer to sub-section 8 on ‘environmental protection and sustainable use of natural resources’ for further detail on potential adverse environmental impacts.

<sup>80</sup> CFS-RAI Principle 10; Akwé: Kon Guidelines, 6, 37 and 48.

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<sup>81</sup> CFS-RAI Principle 10.i; Akwé: Kon Guidelines, 14.

<sup>82</sup> IFC Performance Standard 1, paras 5 and 8-10.

<sup>83</sup> CBD Articles 8(j) and 10; ITPGR Article 9.2; Nagoya Protocol Article 5; ILO Convention 169, Article 15.

<sup>84</sup> An indicative list can be found in the Annex to the Nagoya Protocol.

<sup>85</sup> Akwé: Kon Guidelines, 46.

<sup>86</sup> See also Annex III, 1.4.

<sup>87</sup> CFS-RAI Principles 1.iii and 2, iv-vii; PRAI Principle 6; Akwé: Kon Guidelines, 46; IFC Performance Standard 7, paras 18-20.

<sup>88</sup> ILO MNE Declaration, para. 10.

<sup>89</sup> PRAI principle 6; Akwé Kon Guidelines, 46; IFC Performance Standard 7, paras 18-20.

<sup>90</sup> See also Annex III, 1.5.

<sup>91</sup> IFC Performance Standard 1, para 35.

<sup>92</sup> UN Guiding Principle 31, commentary.

<sup>93</sup> MNE Guidelines IV.46.

<sup>94</sup> MNE Guidelines, IV.1-3.

<sup>95</sup> MNE Guidelines, IV.37.

<sup>96</sup> See also Annex III, 2 below.

<sup>97</sup> Akwé: Kon Guidelines 13; IFC Performance Standard 7, para.8.

<sup>98</sup> MNE Guidelines, II.2 and IV.

<sup>99</sup> CFS-RAI Principles 3 and 4.

<sup>100</sup> CFS-RAI Principle 3; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

<sup>101</sup> CFS-RAI Principle 3.iii.

<sup>102</sup> Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

<sup>103</sup> See also Annex III, 4. CFS-RAI Principle 2 covers labour rights.

<sup>104</sup> ILO MNE Declaration 22; MNE Guidelines V.1.e. It is worth noting that the Convention on the Rights of Persons with Disabilities (CRPD) prohibits discrimination in employment on the basis of disability.

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<sup>105</sup> ILO MNE Declaration 36; MNE Guidelines V.1.c.

<sup>106</sup> MNE Guidelines V.1.d; IFC Performance Standard 2, paras. 13, 15, 21, 22 and 27.

<sup>107</sup> ILO MNE Declaration, 34; MNE Guidelines V.4.a & b.

<sup>108</sup> ILO MNE Declaration 25.

<sup>109</sup> ILO MNE Declaration, 26; MNE Guidelines V.6.

<sup>110</sup> Industrial relations systems, including collective bargaining at company and sector levels, can play an important role in preventing and addressing grievances.

<sup>111</sup> IFC Performance Standard 2, 14; ILO MNE Declaration, 17, 42-43.

<sup>112</sup> MNE Guidelines, II.9, V.1-3, V.6-8; ILO MNE Declaration, 41, 44, 47, 51-56.

<sup>113</sup> MNE Guidelines, V.4-5.

<sup>114</sup> ILO MNE Declaration, 16-18, 30-34.

<sup>115</sup> CFS-RAI Principle 4,ii.

<sup>116</sup> ILO MNE Declaration, 31.

<sup>117</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14 of 2000. Though the ICESCR is the main instrument codifying the right to health, it is also found in other instruments, including the EU Convention on the Rights of the Child (CRC), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention on the Rights of Persons with Disabilities (CRPD).

<sup>118</sup> The following countries and organisations have endorsed this approach: European Commission, US Department of State, US Department of Agriculture, US Centre for Disease Control and Prevention (CDC), World Bank, World Health Organization (WHO), FAO, OIE, and United Nations System Influenza Coordination (UNSIC). For further information, consult <http://www.onehealthglobal.net/>.

<sup>119</sup> See also Annex III, 5. For specific recommendations on consumer interests, see the MNE Guidelines, VIII.

<sup>120</sup> The IFC Performance Standard 3 defines ‘good international practice’ as ‘the exercise of professional skill, diligence, prudence, and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally or regionally. The outcome of such exercise should be that the project employs the most appropriate technologies in the project-specific circumstances’.

<sup>121</sup> IFC Performance Standard 4.

<sup>122</sup> IFC Performance Standard 4.

<sup>123</sup> PRAI principle 14. The Codex Alimentarius Commission, established by FAO and the World Health Organization (WHO) in 1963 proposes international food standards, guidelines and codes of practice to protect the health of the consumers and ensure fair practices in food trade. The Commission also promotes the co-ordination among various food standards developed by international governmental and non-governmental organisations. HACCP principles are part of the Codex. They are a systematic preventive approach to food safety and biological, chemical, and physical hazards in production processes that can cause the finished

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product to be unsafe, and designs measurements to reduce these risks to a safe level. The seven principles are as follows: (1) conduct a hazard analysis; (2) identify the critical control points; (3) establish critical limits; (4) monitor the critical control points; (5) establish corrective action; (6) verification; and (7) recordkeeping. The HACCP system can be used at all stages of a food chain, from food production and preparation processes, including packaging and distribution.

<sup>124</sup> For instance, schemes recognised by the Global Food Safety Initiative include the SSC 22000 Food Safety Management System and BRC Global Standards and International Featured Standards. The European Food Safety Authority also provides food safety standards.

<sup>125</sup> As per the Codex Alimentarius Commission of 2006, traceability is defined as the ability to follow the movement of food through specified stages of production, processing and distribution. The traceability tool should be able to identify at any specified stage of the food supply chain from where the food came (one step back) and to where the food went (one step forward), as appropriate to the objectives of the food inspection and certification system.

<sup>126</sup> ICESCR, Article 11.

<sup>127</sup> UN Committee on Economic, Social and Cultural Rights, General Comment 12 (1999), paras. 6 and 27.

<sup>128</sup> See also Annex III, 6.

<sup>129</sup> For further information, you can refer to the Access to Nutrition Index at [www.accesstonutrition.org](http://www.accesstonutrition.org).

<sup>130</sup> CFS-RAI Principle 1.i and iii, 2.iii, and 8.i; PRAI Principle 2.

<sup>131</sup> The CAO is the independent recourse mechanism for the IFC and the Multilateral Investment Guarantee Agency (MIGA). It responds to complaints from project-affected communities with the goal of enhancing social and environmental outcomes on the ground.

<sup>132</sup> Although tenure rights over land and other natural resources are not internationally codified human rights per se, they have important implications for the enjoyment of various human rights (VGGT) and are reflected in RBC standards. One important exception is the right of indigenous peoples to ownership and possession over lands they traditionally occupy, which is codified in ILO Convention 169 and promoted in the non-binding but widely cited UN Declaration on the Rights of Indigenous Peoples. These instruments also protect indigenous peoples' right to FPIC before any relocation from their lands.

<sup>133</sup> Involuntary resettlement refers both to physical displacement (relocation from or loss of land) and economic displacement (loss of natural resources or diminished access to natural resources that leads to loss of livelihood) as a result of land acquisition and/or restrictions on natural resource use. Resettlement is considered involuntary when affected persons do not have the right to refuse land acquisition and/or restrictions on natural resource use (IFC Performance Standard 5).

<sup>134</sup> See also Annex III, 3.

<sup>135</sup> VGGT, 2.4; PRAI principle 1; Akwé: Kon Guidelines 13; IFC Performance Standard 7, para 8.

<sup>136</sup> Akwé: Kon Guidelines 13.

<sup>137</sup> VGGT, 12.4; IFC Performance Standard 5, para 8; ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169), Article 16.

<sup>138</sup> IFC Performance Standard 7, para. 13. Note that these standards are also referred to in the recent commitments of major agri-food companies on land grabbing.

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<sup>139</sup> PRAI, 6.2.1; IFC Performance Standard 5, paras. 9-10, 19, 27-28, and IFC Performance Standard 7, paras 9 and 14.

<sup>140</sup> IFC Performance Standard 5, para. 30.

<sup>141</sup> According to the OIE's definition recognised by more than 170 countries, animal welfare means how an animal is coping with the conditions in which it lives. An animal is in a good state of welfare if (as indicated by scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behaviour, and if it is not suffering from unpleasant states such as pain, fear and distress. For further information, you can check [www.defra.gov.uk/fawc](http://www.defra.gov.uk/fawc).

<sup>142</sup> For further information, see the Farm Animal Welfare Council's Five Freedoms at <http://www.fawc.org.uk/freedoms.htm>.

<sup>143</sup> See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>.

<sup>144</sup> These standards include: IFC Good Practice Note on Animal Welfare in Livestock Operations; Freedom Food of the Royal Society for the Prevention of Cruelty to Animals (RSPCA); Label Rouge; GAP 5-step; and the Soil Association's organic standards.

<sup>145</sup> OIE, Terrestrial Animal Health Code, Article 7.1.4. These risk mitigation measures appear in line with the substantive criteria of the Business Benchmark on Farm Animal Welfare ([www.bbfaw.com](http://www.bbfaw.com)).

<sup>146</sup> See also Annex III, 7.

<sup>147</sup> A pest management plan should aim to reduce pest development by combining various techniques, such as biological control by using beneficial insects or microbes, pest-resistant crop varieties and alternative agricultural practices such as spraying or pruning.

<sup>148</sup> MNE Guidelines, VI.1.

<sup>149</sup> IFC Performance Standard 1, paras 5 and 21-22.

<sup>150</sup> MNE Guidelines, VI.2-3.

<sup>151</sup> MNE Guidelines, VI.1, 4-5; IFC Performance Standard 1, 5 and 21-22; UN Global Compact, Principles 7-8; United Nations Framework Convention on Climate Change, Article 3.

<sup>152</sup> MNE Guidelines, VI.1, 4, and 5; IFC Performance Standard 1, paras. 5 and 21-22.

<sup>153</sup> MNE Guidelines, VI.2-3.

<sup>154</sup> IFC Performance Standard 6, para. 7; CBD Articles 8 and 9; CFS-RAI 6.ii.

<sup>155</sup> PRAI, Principle 7. For example, soil fertility can be preserved through appropriate crop rotations, manure application, pasture management and rational mechanical or conservation tillage practices.

<sup>156</sup> The CEO Water Mandate - a public-private initiative launched by the UN Secretary-General in 2007 designed to assist companies in developing, implementing and disclosing water sustainability policies and practices - requires setting targets related to water conservation, waste-water treatment and the reduction of water consumption. However, Rio +20 outcome document 'The Future We Want' rather focuses on increasing water use efficiency and reducing water losses.

<sup>157</sup> CFS-RAI, 8.iii.

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<sup>158</sup> CFS-RAI, 6.iii. Food waste should also be assessed, including by measuring it. Whenever feasible, waste should be minimised, for instance by transferring technology to third parties or raising awareness on food waste and its consequences. When waste cannot be avoided, food sent to landfills should be minimised by, for instance, using it for animal feed or transforming it into energy when appropriate.

<sup>159</sup> IFC Performance Standard 3.6.

<sup>160</sup> CFS-RAI, 6.v.

<sup>161</sup> While the sections on governance, technology and innovation are currently not specific to the agricultural sector, they will be developed further in the next versions of the guidance to tailor them to the specific challenges faced by enterprises operating along agricultural supply chains.

<sup>162</sup> MNE Guidelines, II.A.5 & 15, and VII.

<sup>163</sup> VGGT, 6.9, 8.9, 9.12, 16.6, 17.5.

<sup>164</sup> MNE Guidelines, XI.1-2.

<sup>165</sup> MNE Guidelines, X.2-3.

<sup>166</sup> See also Annex III, 8.

<sup>167</sup> MNE Guidelines, IX.1-2 ; CFS-RAI Principle 7.iv.

<sup>168</sup> CFS-RAI Principle 7.ii.

<sup>169</sup> MNE Guidelines, IX.

<sup>170</sup> For specific examples, see: Botswana agrifood value chain project: Beef value chain study by the FAO in 2013; A farm gate-to-consumer value chain analysis of Kenya's maize marketing system by Michigan State University in 2011; Value chain analysis of the cashew sector in Ghana by GIZ in 2010; or Rwanda's essential oils value chains: A diagnostic by UNIDO in 2012.

<sup>171</sup> For example, whether the financial service is primarily used to establish ownership over, finance or support the *general performance* of the client (e.g. general corporate loans or financing), or only its *specific performance* (e.g. project financing) may bear over the scope of the due diligence process recommended by the MNE Guidelines. In the first case, the financial institution is likely expected to respond to all adverse impacts associated with the activities of the client. In the last case, it may only be expected to respond to the impacts of the activities it finances or supports.

<sup>172</sup> For further information, please refer to the Note from the OECD Secretariat on 'Due diligence in the financial sector: adverse impacts directly linked to operations, products or services by a business relationship' available at <http://mneguidelines.oecd.org/globalforumonresponsiblebusinessconduct/GFRBC-2014-financial-sector-document-1.pdf>.

<sup>173</sup> Further guidance on designing and implementing grievance mechanisms can be found in CAO's Advisory Note (CAO, 2008).

<sup>174</sup> For further information, see <http://www.livestockdialogue.org/>.

<sup>175</sup> As of May 2014, these include Argentina, Brazil, Colombia, Costa Rica, Egypt, Jordan, Latvia, Lithuania, Morocco, Peru, Romania, and Tunisia. The European Community is an observer.

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<sup>176</sup> <http://www.un.org/News/Press/docs//2012/ga11332.doc.htm>.

<sup>177</sup> The text of the PRAI can be downloaded at [www.responsibleagroinvestment.org](http://www.responsibleagroinvestment.org).

<sup>178</sup> Inter-Agency Working Group on the Food Security Pillar of the G20 Multi-Year Action Plan on Development, ‘Options for Promoting Responsible Investment in Agriculture’, Report to the High-Level Working Group, September 2011.

<sup>179</sup> Inter-Agency Working Group on the Principles for Responsible Agricultural Investment, Synthesis report on the field-testing of the Principles for Responsible Agricultural Investment, October 2012.

<sup>180</sup> The Framework rests on three pillars: (i) the State duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, legislation, regulation and adjudication; (ii) the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved; and (iii) the need for greater access by victims to effective remedy, including judicial and non-judicial.

<sup>181</sup> These include the Roundtable on Sustainable Palm Oil, the Round Table on Responsible Soy Association, and the Roundtable on Sustainable Biomaterials. Some legal instruments go further by requiring FPIC of local communities and not only indigenous peoples, such as the ECOWAS Directive on the Harmonization of Guiding Principles and Policies in the Mining Sector of 2009, and the Resolution of the African Charter on Human and Peoples’ Rights of 2012.

<sup>182</sup> Relevant information includes: the nature, size, pace, duration, reversibility and scope of any proposed project; the reason(s) or purpose of the project; the location of areas that will be affected; a preliminary assessment of the possible economic, social, cultural and environmental impacts, including potential risks and benefits; personnel likely to be involved in the implementation of the project; and procedures that the project may entail.

<sup>183</sup> The following criteria highlighted by the ILO Convention may also be useful to identify indigenous peoples: self-identification as members of a distinct cultural group; traditional life styles; culture and way of life different from the other segments of the national population, e.g. in their ways of making a living, language, customs, etc.; own social organisation and traditional customs and laws; and living in historical continuity in a certain area, or before others “invaded” or came to the area. The World Bank provides a more practical definition which comprises the following characteristics: self-identification as members of a distinct cultural group and recognition of this identity by others; collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; customary cultural, economic, social or political institutions that are separate from those of the dominant society and culture; an indigenous language, often different from the official language of the country or region (WB, 2005).

<sup>184</sup> Although this Declaration of 2007 is non-binding unless enacted in national law, the 147 countries that have adopted it are expected to comply with it.

<sup>185</sup> This Convention of 1989 is binding on the 22 countries that have ratified it. It represents a consensus among ILO tripartite constituents about the rights of indigenous and tribal peoples and the responsibilities of governments to protect these rights. The foundations of the Convention are: respect for the cultures and way of life of indigenous peoples, recognition of their right to land and natural resources, and their right to define their own priorities for development. Its key principles are consultation and participation.