

IRBC Agreement on International Responsible Investment in the Insurance Sector

ESG INVESTMENT FRAMEWORK for the theme:

LAND RIGHTS

Version 2020



Ministerie van Buitenlandse Zaken



Ministerie van Financiën

Preamble to ESG theme-related frameworks

On 5 July 2018, the insurance companies affiliated with the Dutch Association of Insurers and the Dutch Association of Health Insurers concluded the International Responsible Business Conduct Agreement on Responsible Investment in the Insurance Sector¹ (hereinafter: the Agreement) with the Dutch government, NGOs and a trade union (hereinafter: the Parties). The purpose of the Agreement is to make a positive impact on themes relating to the environment, social conditions and governance (hereinafter: ESG²) and to strive to mitigate any adverse impacts. Insurers acknowledge their responsibility to act in accordance with international guidelines, specifically:

- UN Guiding Principles on Business and Human Rights (hereinafter: UNGPs). The UNGPs are the foremost international framework for human rights in the context of business;³
- OECD Guidelines for Multinational Enterprises (hereinafter: OECD Guidelines).⁴ The OECD Guidelines are one of the most important internationally recognised guidelines for International Responsible Business Conduct (IRBC). They address a wide range of issues, such as human rights, labour rights, the environment, corruption, taxation, health and safety.

Both of these frameworks form the basis for the provisions of the IRBC Agreement.

Based on these international guidelines, insurance companies are expected to define sector- and theme-specific investment policies. The Agreement documents this commitment. The policies define the ESG principles and standards that an insurer applies when investing in sectors and themes assessed as relevant and high-risk.⁵ Insurers are also expected to identify, prevent or limit the actual and potential adverse impact of their actions and explain how they deal with the risks. That applies as well to the insurer's own 'value chain' (for example businesses linked to the investee companies).

In the Agreement, the Parties have undertaken to seek out opportunities to improve the investment policy based on ESG themes, including those not or not conclusively covered by the international guidelines.⁶ This framework concerns the development and implementation of a responsible investment policy on the theme of **Land Rights**.

Due diligence

At the heart of any ESG theme-related framework are tools to assist in conducting due diligence on the investment portfolio.

The document *Responsible Business Conduct for Institutional Investors* is based on the OECD Guidelines (hereinafter: the Document).⁷ The Document describes the due diligence approaches available to institutional investors, including insurers. The *OECD Due Diligence Guidance for Responsible Business Conduct* offers a clear description of the steps involved in the due diligence

¹ Read the Agreement here: www.imvoconvenanten.nl/-/media/imvo/files/verzekeringssector/convenant-verzekeringssector.pdf. The English version can be found at <https://www.imvoconvenanten.nl/-/media/imvo/files/verzekeringssector/agreement-insurance-sector.pdf?ja=en&hash=FB556D9429722E8F362B3B012310391A>

² These terms and the abbreviation are used internationally.

³ https://www.ohchr.org/documents/publications/GuidingprinciplesBusinessshr_eN.pdf

⁴ OECD Guidelines: <http://www.oecd.org/daf/inv/mne/48004323.pdf>

⁵ By relevant, we mean that the ESG theme applies to your investments. The Agreement does not provide a framework for determining when a subject is relevant for an insurer. That is up to the insurer itself to determine.

⁶ The Agreement establishes the themes: animal welfare, children's rights, climate change, land rights and controversial weapons and the trade in controversial weapons.

⁷ <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>

process.⁸ We look at this more closely in Section 4.

Disclaimer

The Parties have examined the options for each theme in this framework in accordance with international standards, treaties and initiatives. The framework should **not** be seen as an obligation imposed on insurers. Rather, the Parties regard this framework as a **tool/guidance** to help insurers embark on a theme-specific investment policy. The framework will be subject to an assessment every other year.

The Parties are, of course, prepared to engage in further discussions with the insurer if questions arise.

⁸ <https://mneguidelines.oecd.org/Oeso-Due-Diligence-Handreiking-voor-maatschappelijk-verantwoord-ondernemen.pdf>

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1. Introduction

Land rights are a fundamental human rights and sustainability issue for companies and investors. Natural resources are being depleted and the world's population continues to grow. As a result, legitimate business interests may be at odds with the interests of local communities. Current patterns of land management and use are often unsustainable and have several, often cumulative, adverse impacts including ecosystem degradation, loss of biodiversity, depletion and/or contamination of groundwater and drinking water, human rights violations,⁹ greenhouse gas emissions¹⁰ and local conflicts.¹¹

Despite the crucial role that land and natural resources play in most people's livelihoods and culture, land rights are not well protected or properly defined in many countries. The growing pressure on land and water is a mounting problem for millions of people, and especially for women¹² and marginalised groups.¹³

⁹ Land-related human rights violations manifest themselves when people are deprived of their right to food, water, safety and/or participation.

¹⁰ There is a significant relationship between land use and climate change. Using land for 'other' purposes may involve unsustainable practices, for example deforestation and monoculture plantations.

¹¹ Baltissen et al. (2018). Addressing Land Governance in International Responsible Business Conduct Agreements, KIT Royal Tropical Institute.

¹² Several studies (Daley, 2011; Behrman et al., 2012) conclude that women's property rights are generally precarious. Investments in land, e.g. through purchases by private companies, may undermine women's access to land, with an adverse impact on food security. <http://www.fao.org/3/ca0182en/CA0182EN.pdf>

¹³ <http://www.fao.org/3/a-i5147e.pdf>

2. Relevance for insurers

In its CSR Sector Risk Assessment dating from 2014, KPMG identified ‘material risks’ (i.e. risks of material importance for humans, the environment or society) relating to land grabbing in all 13 of the sectors that it had pinpointed.¹⁴ The risks of land-related human rights violations are particularly acute in countries with weaker government institutions and/or countries where corruption is prevalent. The growing demand for land in regions where land rights are not properly guaranteed leads to clashes with local people who could lose their traditional territory.

It is important for insurers to consider not only the material financial risks but also the impact on those affected. Exposure to these issues is to a large extent determined by geographical factors and the sector allocation of a chosen investment strategy. In determining its priorities, it is important for the insurer to establish the extent to which its investments are exposing it to the risk of land rights violations. It is also important to identify opportunities to use its leverage on the investee company to reduce this risk.

2.1 Sectors

The main sectors with investable assets in which adverse land rights impacts could play a role are:

- agriculture, livestock farming and fisheries
- mining, oil and gas extraction
- infrastructure
- forestry
- energy sector

¹⁴ <https://www.rijksoverheid.nl/documenten/rapporten/2014/09/01/mvo-sector-risico-analyse>; for the English version, see <https://www.imvoconvenanten.nl/-/media/imvo/files/mvo-sector-risk-assessment.pdf?la=en&hash=E04F2533DE30CFF10A2C2D3C2E2D1327>

3. Frame of reference

3.21 Land rights and human rights

Human rights play a pivotal role in land rights issues. Communities facing threats to their land invoke such fundamental rights as the right to food, water and housing,¹⁵ all of which are protected under the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁶

The UN's former Special Rapporteur on the right to food, Olivier de Schutter, developed a set of core principles and measures to address the human rights challenge of large-scale land acquisitions.¹⁷ These principles include the idea that changes in land use can only take place with the free, prior and informed consent (FPIC) of the local communities concerned.¹⁸

3.2 Land rights for women

The most important international treaty on women's rights is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which dates back to 1979.¹⁹ The CEDAW is the result of worldwide consensus on the changes that must take place to achieve women's rights. In 2016, the UN Committee on the Elimination of Discrimination against Women emphasised that free, prior and informed consent is fundamental to the rights of rural women and that development projects must obtain women's FPIC.²⁰

3.3 Land rights for indigenous peoples

The UN Declaration on the Rights of Indigenous Peoples, dating from 2007,²¹ recognises the individual and collective rights of indigenous peoples, including the right to self-determination and the right to maintain and strengthen their distinct political, legal, economic, social and cultural traditions, among which their rights to their traditionally owned or otherwise occupied and used lands, territories and other resources. Indigenous peoples have the right to information and the right to free, prior and informed consent before any investment is made in their land.

3.4 International guidelines for responsible land management

Responsible land management is essential for managing investments in land-based activities. It was against this background that the Committee on World Food Security (CFS) drew up the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (hereinafter: VGGT) in May 2012, after extensive consultation with all stakeholders.²²

The VGGT offers international guidelines for sustainable and responsible land use. It respects all

¹⁵ The UN Commission on Human Rights (currently: the United Nations Human Rights Council) described forced evictions as a 'gross violation of human rights, in particular the right to adequate housing'. UN Commission on Human Rights, Forced evictions, (1993, March) E/CN.4/RES/1993/77. See <https://www.refworld.org/docid/3b00f0c514.html>

¹⁶ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with Article 27. See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg_no=IV-3&chapter=4&clang=_en

¹⁷ UN Office of the High Commissioner of Human Rights (2009), Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge. Mr Olivier De Schutter, Special Rapporteur on the right to food, Geneva, Switzerland: OHCHR. See <https://www.oecd.org/site/swacmali2010/44031283.pdf>

¹⁸ <https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/>. Section 4 and the Appendix look more closely at the FPIC.

¹⁹ <https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

²⁰ Committee on the Elimination of Discrimination against Women. 'General recommendation No. 34 (2016) on the rights of rural women'. 7 March 2016. CEDAW/C.GC/23. See <https://digitallibrary.un.org/record/835897>

²¹ United Nations Declaration on the Rights of Indigenous Peoples: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

²² See: <http://www.fao.org/3/a-i2801e.pdf>

forms of land use, whether public, private, communal, indigenous or informal. The guidelines define the responsibilities of governments, the private sector (companies and investors) and society. It is a worldwide benchmark establishing best practices for respecting, protecting and resolving land use rights.²³

A practical guide to the VGGT guidelines has been compiled for investors.²⁴ The guidelines make key recommendations for respecting land rights and land management in line with international human rights conventions.²⁵

²³ Critical VGGT chapters for investors selected by the IFC/RRI, pp. 36-41:
https://rightsandresources.org/wp-content/uploads/InterlakenGroupGuide_web1.pdf

²⁴ See: <http://www.fao.org/3/a-i5147e.pdf>

²⁵ See Appendix 1 for more information on international conventions and guidelines for implementation in line with the VGGT.

4. Due diligence

If an insurer is investing or considering investing in value chains relevant to land rights, the OECD Guidelines stipulate that it must undertake a due diligence process.

4.1 Embedding RBC measures in policy

If land rights are a significant factor in the insurer's investment portfolio, adequate policy measures should be adopted to manage the related ESG risks.

Points of concern for institutional investors can be found in the 'Investor actions' text blocks in the Document.²⁶

On the basis of the frame of reference provided in Section 3, the following specific policy elements are recommended:

- an explicit commitment to respect the rights of indigenous peoples, with reference to the right to FPIC;
- explicit reference to the principle of FPIC for local communities.²⁷

4.2 Identifying investment criteria

It is advisable to work with specific investment criteria under this theme. The Parties have a number of suggestions in that respect²⁸:

- the investee company has a formal human rights policy that makes explicit reference to land rights. It respects the land rights of indigenous peoples and local communities in accordance with the VGGT and the principle of FPIC;
- the investee company has committed to international guidelines such as VGGT, CEDAW and UNDRIP,²⁹ and is open about doing so;
- the company has formal programmes or initiatives to support implementation of the above guidelines and standards;
- the investee company is transparent about risks related to land rights, possible conflicts and how it deals with them;
- the investee company reports on human rights issues and related due diligence processes;
- the company performs environmental and human rights assessments in accordance with international standards,³⁰ so that sufficient information is available from all relevant parties and all parties have been involved and consulted in a gender-sensitive and non-discriminatory manner and have contributed to the negotiations;³¹
- the company avoids projects involving the transfer of land rights and/or land use by small farmers and/or local communities and leading to expropriation or eviction;³²
- the company's contracts with third parties explicitly provide for consultation with local people and respect for and implementation of the principle of FPIC.

²⁶ Pages 21 and 22: <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>

²⁷ This is being adopted as good practice by a growing number of sector-specific overarching bodies, for example the RSPO <https://rspo.org/news-and-events/announcements/free-prior-and-informed-consent-guide-for-rspo-members-2015-endorsed>, and the UN <https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/>, and is included as one of the rights of rural women (see Section 3).

²⁸ The NGO Party wishes to emphasise that it regards these as minimum criteria for this theme (e.g. the normative lower limit).

²⁹ United Nations Declaration of the Rights of Indigenous People (2007). See Appendix 1 for more information on the UNDRIP.

³⁰ See Appendix 2 for more information.

³¹ VGGT (12.11).

³² FAO: *Responsible governance of tenure: a technical guide for investors*, p. 83, <http://www.fao.org/3/a-i5147e.pdf>

4.3 Conducting a risk analysis

Screening can identify those companies in the investment portfolio that are exposed to land rights risks. Screening reveals:

- which companies in the investment portfolio are exposed to land rights risks;
- which companies are unable, or insufficiently able, to mitigate these risks.

Screening ultimately yields a list of companies for which the insurer must devise an appropriate approach.

Given the specialist and time-consuming nature of this exercise, it may be advisable to outsource screening to an external party.

4.4 Identifying and prioritising risks

Based on the screening results, the insurer will have to prioritise the risks. In this exercise, the gravity of the land rights violations will depend on their scale, duration and severity.³³ The risk factors identified in Table 1, Appendix 2 can serve as a guide for prioritising portfolio risks. The process of prioritisation should ultimately identify a specific group of companies with which the insurer can either engage or exclude in advance. The size of this group should depend on the insurer's investment universe and capacities.

Appendix 2 lists a number of high- and medium-risk factors that significantly increase the likelihood of land-related human rights violations. These are risk factors that play an important role in risk prioritisation. To identify which companies are exposed to these risk factors, insurers can make use of controversy analysis, which considers companies' involvement in land-related human rights risks. In prioritising companies according to their exposure to land-related human rights risks, an insurer should determine which companies are active in a sector with a heightened potential for land-based human rights risks and which of these companies have no or no adequate policies and programmes and/or are involved in a controversy regarding land-based human rights violations.

4.5 Implementing policy to minimise impact and to mitigate identified risks

Depending on the screening results and how they are interpreted, the insurer may:

1. actively adapt its voting behaviour accordingly;
2. engage with the companies concerned;
3. exclude the companies concerned.

By **voting (1)** at shareholders' meetings, the insurer can influence the policy of companies in which land rights are a factor. The insurer must, of course, decide on its own voting behaviour, which can range from voting against management decisions to introducing or supporting resolutions aimed at improving land rights in business operations. The insurer can also endorse collaboratively organised shareholders' resolutions, for example through the UN-supported PRI.

Engagement (2) on land rights involves the insurer entering into a dialogue with investee companies that do not comply with the insurer's policy. The aim is for the company to make structural improvements. There are many different ways to achieve effective engagement.

In engagement, it is advisable to work with as many like-minded (institutional) investors as possible with regard to one and the same company. The greater the investment capital they represent, the more leverage they will have on the company in question. Other possibilities are to join or participate in industry initiatives or to benefit from existing knowledge-sharing

³³ See the VGGT (12.10).

platforms.³⁴ For more information, see the Document.³⁵

Examples of engagement questions:

- Before the project, was there a proper FPIC process with the communities concerned?
- What impact is the investment having on the land and/or user rights of the local communities concerned? Does the company recognise the possible cultural and spiritual value of land?
- How does the company monitor the agreements made with local communities?
- Has a plan been drawn up and are there clear contractual agreements on the roles of different stakeholders and their responsibilities?

If engagement fails to deliver satisfactory results within a reasonable timeframe, e.g. three years, or if a company turns out to be involved in practices that are already covered by the insurer's exclusion list, the company may be **excluded (3)** from investment.

4.6 Measures aimed at preventing and/or mitigating actual and potential adverse impacts

The purpose of due diligence is to identify and prevent risks, but it is still possible for an investee company to have an adverse impact on the land rights of a local population.

Insurers usually hold a minority stake in investee companies and are therefore unlikely to have 'contributed to' an adverse impact on land rights (the term used in the OECD Guidelines). Nevertheless, in most cases it is possible to establish a link between the insurer's investment and the adverse impact caused by the investee company ('directly linked' in the OECD Guidelines terminology). In that latter case, the insurer is expected to use its leverage to persuade the company to take appropriate action. For more information, see the Document.³⁶

It is important that any community whose land rights may be disadvantaged by an investment has guaranteed access to an independent grievance mechanism. Investment transparency is an important part of this because it allows local communities to find out who is investing in their land and where they can seek compensation and remedy.³⁷

4.7 Monitoring risks and the results of the mitigation strategy

The due diligence policy should be monitored at regular intervals. It is advisable to pay particular attention to:

- the way in which the established land rights criteria have been effectively applied when screening investments for theme-related risks and the choices to which this has led;
- progress on and results of the chosen engagement and/or mitigation strategy addressing land rights;
- how the investee company actively reports on the status of free, prior and informed consent throughout the duration of a project and/or the situation of local communities and their living environment.

³⁴ See: <https://www.unpri.org/social-issues/tackling-human-rights-risk-in-the-cobalt-supply-chain-through-industry-initiatives/2980.article>

³⁵ See Box 7 on page 27: <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>

³⁶ See Figure 1, 'Addressing adverse impacts under the OECD Guidelines for Multinational Enterprises' on page 35: <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>

³⁷ See VGGT (3.2; 12.14).

5. Accountability and reporting

The OECD Guidelines request the insurer to report publicly on its due diligence policy and associated results at regular intervals, preferably annually. The OECD Guidelines describe this as:

- knowing: tracking the insurer's performance against its own investment policy;
- showing: publicly communicating the same. The Document sums up the procedures for this step.³⁸

The insurer identifies the most appropriate indicators for reporting on its efforts to address land rights in its investment policy. The insurer is responsible for selecting relevant indicators (taxonomy) for tracking its performance against its policy.

An insurer can also report on its engagement with, or exclusion of, investee companies. This could possibly send an important signal to other investors, the investee companies and its own customers.

When an insurer invests in a mutual fund, it can ask the (external) asset manager to provide taxonomy-related information on the impact of its investments on land rights issues. If and when available to the insurer, the insurer can then use this for its own accountability and reporting purposes.

This section will be elaborated in more detail over the term of the Agreement.

³⁸ See 'Investor actions' on page 43: <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>.

Appendix 1

International standards for land rights, including practical tools for implementation.

1. **OECD Guidelines for Multinational Enterprises (2011)**
Companies have a duty to protect human rights. In land-based issues, there is a risk of the following human rights being violated: the right to development, the right to property, the right to information, the right to a decent standard of living, the right to cultural heritage, the right to equal treatment, the right to food, the right to water, the right to self-determination.
2. **OECD-FAO Guidance for Responsible Agricultural Supply Chains (2016)**³⁹
This document offers guidance to companies (and investors) for responsible business practices in the agricultural value chain. It refers to FPIC, land rights and access to natural resources.
3. **The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007)**⁴⁰
Adopted by 144 countries in 2007. Article 10 commits the signatories to respecting the free, prior and informed consent (FPIC) of indigenous peoples, thereby protecting and promoting their collective rights and their right to self-determination, land and other property. FPIC gives indigenous peoples the right to make their own choices, based on their own standards, values and customs. They have the right to consent or not to consent to an investment before it is approved by governments, industries and/or other stakeholders. This includes any project that has an impact on the land, territory and/or natural resources owned or used by indigenous peoples.
4. **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (2012)**⁴¹
Guidelines for sustainable land management in line with the VGGT:
 - a. **Respecting Land and Forest Rights (2015)**⁴²
A guide for companies developed by the Interlaken Group and the Rights and Resource Initiative. Practical guidance to help land-based sectors align with the VGGT.
 - b. **The Analytical Framework for Land-based Investments in African Agriculture (2015)**⁴³
Assembled by the New Alliance for Food Security and Nutrition and Grow Africa. A framework designed to give practical guidance on structuring land-based investments in the most responsible way possible, in line with the VGGT (Grow Africa, 2015).
 - c. **Responsible governance of tenure: a technical guide for investors (FAO, 2016)**⁴⁴
Summarises land-related risk factors and advises investors on how to manage and mitigate risks.⁴⁵
 - d. **The Principles for Responsible Investment in Agriculture and Food Systems (CFS, 2014)**⁴⁶
The Principles are meant to promote responsible investment in agriculture and

³⁹ <http://www.oecd.org/daf/inv/investment-policy/rbc-agriculture-supply-chains.htm>

⁴⁰ <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

⁴¹ <http://www.fao.org/3/a-i2801e.pdf>

⁴² https://rightsandresources.org/wp-content/uploads/InterlakenGroupGuide_web_final.pdf

⁴³ https://www.growafrica.com/sites/default/files/Analytical-framework-for-land-based-investments-in-African-agriculture_0.pdf

⁴⁴ <http://www.fao.org/3/a-i5147e.pdf>

⁴⁵ See the specific recommendations in Appendix 2.

⁴⁶ <http://www.fao.org/3/a-au866e.pdf>

food systems. They address the challenge of large-scale land acquisitions and land grabbing. The Principles are consistent with the Principles of Implementation described in the VGGT.

- e. **Landesa Business Enterprise Guidebook (2018)**⁴⁷
Instructions and tailorable tools for business professionals seeking to design and implement an agricultural investment in a socially responsible manner that recognises and protects community land rights.
5. **IFC Performance Standards**
 - a. **Performance Standard 5: Land acquisition and involuntary resettlement**⁴⁸
Avoid involuntary resettlement wherever possible and minimise its impact on those displaced through mitigation measures such as fair compensation and improvements to living conditions.
 - b. **Performance Standard 7: Indigenous Peoples**⁴⁹
The company must obtain the FPIC of the affected communities of indigenous peoples, documenting: (i) the mutually accepted process between the client and affected communities and (ii) evidence of agreement between the parties as the outcome of the negotiations. FPIC does not necessarily require unanimity.
6. **United Nations Committee on the Elimination of Discrimination against Women (CEDAW)**
General Recommendation No. 34 on the rights of rural women (2016): Under the Convention on the Elimination of All Forms of Discrimination against Women, rural women have the right to FPIC before projects are carried out on their land.⁵⁰
7. **World Bank Environmental and Social Framework ESS7: Indigenous Peoples / Sub-Saharan African Historically Underserved Traditional Local Communities (2018)**⁵¹
Refers specifically to obtaining the free, prior, and informed consent (FPIC) of local communities.
8. **Guiding Principles on Large Scale Land Based Investments (LSLBI) in Africa (2014)**⁵²
Tool for investors developed by the African Union to inform their engagement with various forms of governance, including traditional authorities in Africa. These Guiding Principles highlight the importance of State agencies and investors securing the prior and informed participation and consent of communities in all aspects of LSLBI which can impact the rights and livelihood of communities.
9. **UN Principles for Responsible Investment and PSI Principles**⁵³

⁴⁷ https://ripl.landesa.org/model_guidebooks/1

⁴⁸ https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps5

⁴⁹ https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps7

⁵⁰ <http://www.fao.org/family-farming/detail/en/c/386972/>

⁵¹ <http://pubdocs.worldbank.org/en/276101511809520481/ESS7-FactSheet-WB-ESF.pdf>

⁵² https://www.uneca.org/sites/default/files/PublicationFiles/guiding_principles_eng_rev_era_size.pdf

⁵³ <https://www.unpri.org/>; <https://www.unepfi.org/psi/vision-purpose/>

Appendix 2

Table 1: High- and medium-risk factors associated with land-related human rights violations⁵⁴

High-risk factors associated with land-related human rights violations:
<ul style="list-style-type: none"> a. There are a significant number of existing or recent disputes or claims involving the land that cannot be resolved. b. The government originally acquired the land by expropriation, or the project requires expropriation to make it available for development, causing, in either case, local people to be evicted. c. The project design requires the large-scale transfer of land rights from local people, possibly resulting in many people being involuntarily or even voluntarily resettled. d. The locality where the project may be situated has significant corruption problems and corrupt activities have been observed in relation to the proposed project that cannot be mitigated effectively. e. There is an active, ongoing conflict in the project area. f. The operator/direct investor has not and will not carry out participatory stakeholder mapping or a comprehensive environmental and social impact assessment (ESIA). g. Where a ESIA has been done, it reveals negative impacts on the local community's food security that cannot be mitigated adequately. h. Indigenous communities have not given their free, prior and informed consent (FPIC). i. The site has forests or is in an area of high conservation value that is likely to be destroyed or harmed by the project.
Medium-risk factors associated with land-related human rights violations:
<ul style="list-style-type: none"> a. The project land area is very large and appears to exceed what can reasonably be put under production over the life of the project, thus raising concerns about speculative motives. b. The project is situated in a post-conflict setting. c. Human rights violations have been reported in the area. d. Indigenous peoples reside in or near the project site. e. The project will be situated in an area where land rights tend to be undocumented and/or governed by customary law, and the operator has yet to do participatory mapping to identify all legitimate rights holders. f. The communal land targeted by the investor is wrongly categorized as unused or uninhabited. g. The local community has not been involved in the project planning phase. h. Affected stakeholders have not yet been engaged in an effective, culturally-appropriate, gender-inclusive and transparent consultation process. i. Local communities that lack the capacity to represent themselves are not represented by competent advisors or advocates. j. An independent ESIA has not been completed. k. The ESIA reveals the likelihood of significant negative effects on land rights, food security, human rights or the environment if the project is not revised. l. A comprehensive written agreement on the terms of any transfers of legitimate formal and customary land rights has not been completed.

⁵⁴ Responsible governance of tenure: a technical guide for investors, <http://www.fao.org/3/a-i5147e.pdf> translates the principles of the VGGT into practical mechanisms, processes and actions.

m. The project involves a relationship with a politically exposed person who may be deemed to be more susceptible to bribery and corruption.