

Technical Committee



A committee composed of decision-makers, experts and researchers providing international support for land policies in developing countries

# Guide to due diligence of land-based investment projects that affect land and property rights

‘Land Tenure and Development’  
Technical Committee

*Conference on Land Policy in Africa, 11-14 November 2014,  
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FINANCED AND  
MANAGED BY:



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Professionals for  
Fair Development

[www.foncier-developpement.org](http://www.foncier-developpement.org)

An aerial photograph of a rural landscape. A dirt road winds through a green field. In the distance, a small village with red-roofed buildings is visible. A group of people is standing in the field near the road. The image is overlaid with a semi-transparent white circle containing the text.

# **1. Technical committee on « land tenure and development» and objectives of this guide**

# What does the committee do?

- The 'Land Tenure and Development' Technical Committee is a working group created by the French Cooperation in 1996 **to discuss rural and urban land issues** in developing countries across Africa, Asia and Latin America.
- It operates under the auspices of **the Ministry of Foreign Affairs and International Development (MAEDI) and the French Development Agency (AFD).**



# What is its mission?

- **To support the formulation and implementation of land policies** that effectively address key land issues in developing countries (promoting equitable access to land and functional land management mechanisms).
- **To increase recognition of the multiplicity of land rights** and the need for **multi-actor dialogue** around land issues.
- **To stimulate debate and inform thinking** and actions by land policy actors and their partners in different countries and continents.



# Formalising frameworks for land-related analysis and action

- Facilitating multi-actor reflection in two main areas:
  - **Formalising rights and responsibilities:** analysing the tools, benefits, risks and shortcomings of policies to formalise rights, and their implications for security of tenure.
  - **Transparency and contract negotiations:** providing a framework for ex-ante analysis, and training materials to assess the quality of previous agreements for agro-industrial projects that affect local land rights

# Objectives of the work on « transparency and contract negotiation»

Provide an analytical framework to assess the legality, legitimacy and equity of land relations in agricultural investment projects

- Relations between different stakeholders
- Negotiation process, legality of transactions, specific clauses in the contracts, institutional framework
- Equity and sustainability criteria

Draw operational recommendations for the French cooperation on due diligence that should be included in land-based investment projects

- Support negotiation process
- Structure and clauses of contracts
- Mechanisms for monitoring and implementing commitments

# Different steps of the project



**June 2013** : presentation of the methodology



**July 2013** : review of existing voluntary guidelines and case study selection



**July-August 2013** : 10 case study analysis



**September 2013** : presentation of the conclusions drawn from the case studies



**October 2013** : case study finalization, elaboration of analytical framework draft  
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**November 2013** : Presentation of AFD and Proparco's internal procedures to the  
Committee members



**December 2013** : Specific interviews with key informants within AFD and  
Proparco



**February 2014** : presentation of analytical framework draft 2 – interviews with  
project officers within AFD/Proparco



**May 2014** : presentation of final results (analytical framework and operational  
guide) and recommendations

Pays	Description
<b>Mali</b>	Sugarcane production project. South African company controlled by a British firm and the Malian government.
<b>Libéria</b>	Oil Palm production project. The main shareholder is a Singaporean company. Contract signed by the central government.
<b>Sénégal</b>	Agrofuel production (sweet potatoes and sunflower). Project delocalized after a violent conflict that had led to several victims. Implication of local collectivities.
<b>Cameroun</b>	Oil palm production. US company and central government (initially targeted area of 73 000 ha between several conservation areas; multidimensional impact analysis realized with an international NGO
<b>Ghana</b>	Jatropha production. Norwegian company. On going project. Customary authorities involved.
<b>Sierra Leone</b>	Sugarcane production, Swiss investor, BAD involved, implementation phase of the contract. Land transaction with customary rights owners, contract with the government too. RSPO certification.
<b>Laos</b>	Eucalyptus and acacia production, Swedish company, on going contract, very small scale project with extension plans. Innovative approach with interesting dispositions such as those concerning small scale contract farmers.
<b>Ethiopie</b>	Horticultural production, Indian society, start up phase in different parts of the country.
<b>Côte d'Ivoire</b>	Hevea production. Interesting feasibility study that have shown lake of awareness about land based relations in agreements. Project abandoned by the company.
<b>Madagascar</b>	Jatropha production, Italian company. Division in small parcels to avoid including land with crops or settlements. Lack or badly carried consultations of local population. Uncertain legal status of pastures that undermine the legalization of customary rights.



An aerial photograph of a vast green agricultural field, likely a rice paddy, with a dirt path winding through it. In the distance, a small village or town is visible, surrounded by more fields and some trees. The overall scene is rural and agricultural.

## **2. Analytical criteria, main conclusions and valorization**

# Analysis of the national framework for land governance

## Status of land and recognition of local land rights

- Dynamics of evolution of agrarian systems on the territory
- Recognition of local land rights
- Effectivity of land governance rules and institutions in charge

## Regulation of land transactions

- Regulation and transparency of land transactions
- Institutional capacity to critically assess investment projects
- Consultation with affected communities
- Environmental and social impact studies

# Analysis of the project and associated land contracts: contract negotiation and management

## Contract negotiation

- Nature of the transaction
- Parties to the contract and strategic actors
- Local consultation and popular consent
- Preliminary studies
- Transparency in the negotiation process

## Contract management

- Contract management, including mechanisms for monitoring and implementing commitments
- Exit and renegotiation clauses
- Conflict resolution mechanisms

# Analysis of the project and associated contracts : economic evaluation

## General context

- Current dynamics and relevance of the project
- Consistency between the project's stated objectives and national and international development objectives
- Business model

## Financial and economic analysis

- Financial evaluation
- Jobs and opportunities for small producers
- Income generation and tax revenues
- Development of economic and social infrastructures or services
- Distribution of added value between different actors
- Monitoring and implementing commitments

# Analysis of the project and associated contracts : social component

## Recognition of local land rights

- Social impact assessment
- Recognition of affected people with a socio-land survey
- Use of the minimum of necessary resources and analysis of alternative solutions
- Conditions for resettling and compensating local people for expropriated land

## Working conditions

- Comply with national labor law and international norms
- Monitoring and implementing commitments

# Analysis of the project and associated contracts : Environmental considerations

## Equitable access to natural resources

- Environmental impact assessment
- Conditions of natural resource use and priority conditions to assess

## Environmental safeguards

- Project reversibility
- Protection of water resources, analyze of competition risks
- Clauses applicable in the event of environmental damages
- Monitoring and implementing commitments

# Conclusions

## Main findings

- Compliance with national legislation does not automatically protect local people's rights
- All projects that will displace people should be subject to an economic evaluation
- The transparency and inclusiveness of the processes to negotiate contractual arrangements is an indicator of more equitable agreements
- The need for a process to rebalance asymmetric relations between private investors, the State, local governments and local people
- Contractual clauses need to be specific with clear conditions for their implementation, monitoring control

# Conclusions

## Main findings

- Capacity building for civil society actors is still a key issue
- Priority should be given to the creation of a network of experts on land matters
- Thinking about large-scale investment raises broader questions about the local governance and agricultural models the should be promoted for the future
- Technical and financial partners play a key role in helping governments and private enterprises respect the principles of the voluntary guidelines



# Way forward

## Several activities

- Integrate these criteria in the social and environmental due diligence of AFD and Proparco supported projects (example of a project in Ghana)
- Presentation of this operational guide to the French private sector
- Debate with other donors (GDPWL)

# Thank you for your attention

The screenshot shows the homepage of the 'Foncier & Développement' portal. At the top, there is a navigation bar with the logo and the text 'Portail Foncier & Développement'. Below the logo are four circular buttons labeled 'THÈMES', 'PAYS', 'ACTEURS', and 'ACTUALITÉS', followed by links for 'OUTILS' and 'QUI SOMMES-NOUS ?'. The main content area is divided into three columns. The left column features a 'FOCUS' section with a photo of a meeting and the title 'Journées d'études du Comité technique « Foncier & Développement »'. The middle column is titled 'L'ACTU DU FONCIER' and lists 'Nouvelles publications' and 'Revue de presse'. The right column is titled 'Comité technique' and includes a search bar, a subscription button, and an 'AGENDA' section with upcoming events. At the bottom left, there is a grid of partner logos including afd, UEMOA, IRD, aGter, CNRS, IGRE, and cirad. The text 'LE PORTAIL FONCIER & DÉVELOPPEMENT' is displayed in a blue box on the right side of the partner logos.

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