

IISD Commentary on the FAO–OECD Guidance for Responsible Agricultural Supply Chains

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Introduction

The Food and Agriculture Organization of the United Nations (FAO) and the Organisation for Economic Co-operation and Development (OECD) are jointly drafting a Guidance for Responsible Agricultural Supply Chains (Guidance). Within the context of the public consultation on the draft Guidance, the International Institute for Sustainable Development (IISD) is pleased to submit detailed comments to contribute to the drafting process. The IISD commentary provides 21 recommendations and proposes language to revise the current draft.

General Comments

Participation in agricultural supply chains does not automatically guarantee benefits for all actors involved along the chain, including governments, local communities and the private sector. Responsible agricultural supply chains can only happen through conscious policy choices, a robust legal environment and good practices.

The Guidance targets enterprises. The key challenge is to ensure that enterprises invest along agricultural value chains in a way that supports the development objectives of the country. This should be the starting point for the Model Enterprise Policy and incorporated into the introduction of the guidance in paragraphs 2 and 3.

1. **Re-orient the focus of the Model Enterprise Policy** – The Model Enterprise Policy (chapter 3) is the central pillar of the document. The current orientation is on how the actors in the supply chain (*business partners*) need to adapt themselves to comply with the enterprise's policy. But the starting point of the Model Enterprise Policy should be for the enterprise to engage in operations that support, or at very least do not undermine, the realization of the national development policy goals and strategies of the country. This would ensure that the enterprise's operations support the country's needs for economic development, poverty reduction and food security, and work with business partners who are furthering those goals.

*Suggested language for paragraph 2: "Enterprises operating along agricultural supply chains 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. **This is best achieved where enterprises match their own operations with the policy goals and national development strategies of the countries where they are operating.** At the same time [...]"*

*Suggested language for paragraph 81: "Strive to Enterprises will ensure that operations are **in line with the development priorities** and social objectives of the government and community where operations are located." This statement should be brought to the opening paragraphs of the Model Enterprise Policy and the introduction of the Guidance.*

2. **Reinforce the centrality of smallholder farmers in responsible agricultural supply chains** – There is a growing body of evidence from UN institutions and the World Bank that investing in smallholders is central to achieving food security and nutrition.¹ There is also a growing global political consensus, through bodies such as the UN Committee on World Food Security, G20 and G8,² that the best way to enhance food and nutrition security is by investing in smallholder agriculture. And yet, this is not reflected in the Guidance. Most of the document is not intended for smallholders, even though they are listed in the introduction as one of the intended groups of users. Where smallholders are the likely business partners for a supply chain operation, it is important to redraft the language to ensure it is adapted to the needs of smallholders, rather than trying to make smallholders adapt to the needs of the enterprise. See, for example, suggested language for paragraph 32.

Suggested language for paragraph 32: "[...] In such cases, enterprises will work with small-scale farmers and other suppliers to adapt the traceability system to the capacities and needs of small-scale farmers."

3. **Include the requirement of free, prior and informed consent** – Free, prior and informed consent (FPIC) is currently contained in parentheses in the Model Enterprise Policy and in Annex V. We recommend that this principle be included in the Guidance in order to remain consistent with existing international principles and standards.

¹ Deininger, K., Byerlee, D., Lindsay, J., Norton, A., Selod, H., & Stickler, M. (2011). *Rising global interest in farmland: Can it yield equitable and sustainable benefits?* Washington, D.C.: The World Bank.

² Committee on World Food Security. (2013). CFS 40 Final Report; G20 Food Security and Nutrition Framework, G8 Leaders Declaration: Responsible Leadership for a Sustainable Future.

Most recently, the Committee on World Food Security (CFS) reinforced the importance of FPIC in their *Principles for Responsible Investment in Agriculture and Food Systems*. These principles are referred to in the Guidance, and therefore we recommend including language used from the CFS in the Model Enterprise Policy.

Suggested language: "Effective and meaningful consultation with indigenous peoples, through their representative institutions, in order to obtain their free, prior and informed consent under the United Nations Declaration of Rights of Indigenous Peoples, and with due regard for particular positions and understanding of individual states."

4. **Provide clearer arguments on the benefits of responsible agricultural supply chains** – Explain why enterprises should read this and how they can benefit from it. Encourage a shift from the current paradigm of corporate social responsibility, where profit and socioenvironmental objectives are seen as mutually exclusive, to a more holistic approach, where profit and socioenvironmental objectives are complementary; in other words, moving beyond the business case to account for ethical considerations.³
5. **Clarify the sequencing an enterprise needs to follow** – The sequence of events that an enterprise needs to follow is not clear. It would be useful to lay out, ideally using a figure, the key steps an enterprise is required to take, and when, in order to ensure responsible agricultural supply chains. Specifically, focus on community consultations and engagement, impact and risk assessments, and management plans. What should be undertaken and when? What needs to happen prior to operations? And what steps should be taken during operations? It seems that most of the document relates to steps during operations. If so, we would recommend adding a section on steps to be undertaken prior to commencing operations or entering into a contract with a business partner, and generally cover all steps from product design to sourcing, production, distribution and end-of-life.
6. **Consider re-structuring the document** – The document would flow better if it started with the content of the Model Enterprise Policy and then moved on to the process issues of how to implement the policy. We also recommend merging the three annexes into one, so it is clear that the annex is serving as a more detailed explanation of what is contained in the main sections. This may also help avoid some of the repetition in the document.
7. **Develop figures, tables and boxes** – Whenever possible, we recommend using figures, tables and boxes to illustrate and summarize key points and to help visualize the holistic approach promoted through the use of supply chains. For example, Figure 2 on page 44 could be further developed and brought into the main text.
8. **Avoid repetition** – Annex 1 repeats a number of the issues that come up in chapters 2 and 3. This makes the document rather confusing. It would be useful to clearly state how enterprises and business partners are expected to use the document and the relationship between chapters 2 and 3 and Annex 1.

Areas of repetition:

- Monetary and non-monetary benefits (paragraphs 55, 80, 81)
- Grievance mechanisms (paragraphs 82, 140–141, 36–38)
- The sections in Annex 1 on human rights, labour, health, rights to adequate food, tenure rights, animal welfare and environmental protection all overlap with the risk and impact assessment process.
- Impacts and plans (2.2, 3.3, and paragraphs 51, 57, 68, 69, 76–80, 83, 84, 93, 96, 106, 108)

³ World Economic Forum. (2015). *Beyond supply chains*. Empowering responsible value chains.

Comments on Chapter 1

9. **Use language from existing international standards where possible** – Where international standards already exist and are widely accepted or used by supply chain enterprises, it would be better to simply refer to the particular standard rather than developing new language. This seems to be the intention of the drafters, but there are a few places in the document where new language is developed for existing standards. For example, the sections on grievance mechanisms, paragraphs 36–38 and 56, use language similar to the International Finance Corporation (IFC) Performance Standards, but do not cover all aspects, for example, making grievance mechanisms timely and culturally appropriate.

*Suggested language for section 1.5, paragraphs 36–38: “Establish, in consultation and collaboration with relevant stakeholders, an operational-level **grievance mechanism**, based on principle 9 of the CFS Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI), and IFC Performance Standards 1 (paragraphs 35 and 36), 2 (paragraphs 20 and 26) and 5 (paragraph 11).”*

Comments on Chapter 2

10. **Clarify the sections on risk and impact assessment and make them more coherent** – There is some confusion with the issue of risk and impact assessments and management plans throughout the document. Below is a list of the issues we identified mainly from chapter 2 (but also from chapter 3 and Annex I):
 - What is the difference between risk assessment and impact assessment? And what is the difference between the risk management plan and the environmental and social management plan? It would be useful to clarify this at the beginning of the document. Is the enterprise expected to prepare multiple documents? How do the different processes interact? For example, in paragraph 76 under risk mitigation measures, impact assessments and risk assessments are used interchangeably.
 - Step 2 of the five-step framework is about risk and impact assessments. But the issue of risk and impact assessment is then brought up a number of times throughout the Guidance, in slightly different ways each time. This creates some confusion. It would be useful to ensure consistency throughout the document. The simplest step might be to simply refer to Principle 10 of CFS-RAI and Performance Standard 1. This would also help to avoid confusion and overlap about what the standard of practice for this area is.
 - Step 2 of the five-step framework envisages an assessment process for existing operations, but impact assessments should take place prior to operations commencing, because of domestic law requirements, or because it is a requirement in an investment contract, or because the state or enterprise have adopted global principles such as the CFS-RAI, the Principles for Responsible Agricultural Investment (PRAI), the principles for responsible contracting, IFC Performance Standards, and so on.
 - Section 2.3 should first refer to the applicability of a relevant legal instrument as the starting point for all assessment-related activities of the enterprise (ideally the applicable domestic law on impact assessments, and if this does not exist or is not comprehensive, then the contract or other standard, such as Principle 10 of CFS-RAI or IFC Performance Standard 1).

- The current language of paragraph 2.3 is vague. Evidence increasingly shows that while investors do conduct environmental and social impact assessments, the quality is poor and they are not translated into operating plans or business plans. They are generally one-off exercises and are not accompanied by ongoing monitoring.⁴ There should be more emphasis on providing guidance on the content of impact assessments and mitigation and management plans. See *The IISD Guide to Negotiating Investment Contracts for Farmland and Water* for further information.
 - Paragraph 76 under risk mitigation measures refers to “environmental management plans,” but should also refer to management plans for social or human rights issues.
 - The impact assessment section of Annex 1 should also refer to human rights impact assessments.
 - The sections in Annex 1 on human rights, labour, health, rights to adequate food, tenure rights, animal welfare and environmental protection all overlap with the risk and impact assessment process.
 - Paragraph 96 undermines the other sections on impact assessments because it says, “To the extent possible, consider the impacts of operations....” This language should be corrected to be consistent with the other parts of the guidance.
11. **Increase references to national laws and international standards** – Paragraph 43 refers to conformity with “relevant national laws and international standards.” We recommend that this language be used throughout the document to ensure the primacy of national laws. For example, under the subheading “Regarding labour rights,” there is already a bullet point on the applicability of international standards. We also recommend reference to “*applicable* national laws” rather than “relevant.” We recommend including the following bullet point under each subheading in the Model Enterprise Policy: “This section is subject to applicable national laws and international standards.”
12. **Avoid weakening existing human rights standards and obligations** – In some parts of the Model Enterprise Policy, the language serves to weaken existing human rights obligations, particularly the right to adequate food and international standards, particularly related to tenure rights. We recommend avoiding such language and where possible using existing international standards, as listed in the Guidance.
- Suggested language for paragraph 62: “We will ~~strive to~~ ensure that our operations and those of our business partners do not lead to food insecurity [...]”*
- Suggested language for paragraph 64: “~~To the greatest extent possible, we~~ We will commit to transparency and information disclosure [...]”*
- Suggested language for paragraph 66: “[...] we will ~~seek to~~ ensure that such holders receive a fair and prompt compensation of their tenure rights being negatively impacts by our operations, according to Principle 10 of CFS-RAI and IFC Performance Standard 5.”*
13. **Change how red flags are addressed** – The red flags identified do not describe situations that are exceptional, but rather describe the norm in many developing countries, for example, “considered as weak governance,” “where tenure rights are weakly defined and/or contested,” “where some communities are food insecure or face water shortages,” and “affected by environmental degradation.” This would mean that heightened managerial care and additional due diligence would be required of enterprises operating in many developing countries. It does

⁴ Mirza, H., Speller W., Dixie, G., & Goodman, Z. (2014). *The practice of responsible investment principles in larger-scale agricultural investments: Implications for corporate performance and impact on local communities*. Washington, D.C.: World Bank Group and New York: United Nations.

not make sense to make this a special “red flag” category. We recommend deleting the red flag category and integrating the heightened managerial care requirements and the additional due diligence steps into the Model Enterprise Policy and process.

Comments on Chapter 3 and Annex I

14. **Integrate gender-sensitive language throughout the document** – Importantly, the document integrates gender considerations at various points. This could be strengthened by replacing vague terms such as “affected communities” with more specific language such as “women and men in affected communities.” A key issue in promoting gender equality is making sure that women have a meaningful chance to be heard in community consultations. Over and over, one experience that stands out is the need for separate consultation sessions to be held with women in the community. This enables the participants to speak openly and express issues that the men in the community may not be supportive of hearing. These women-only sessions are often the only way to ensure all voices are truly heard.

Being heard is, of course, of little value if it is not followed by actions. Issues identified in the consultations must be reflected in the design of the social and economic development provisions of the contract, and in any Community Development Agreement between the company and the community. In many instances, ensuring that women are specifically represented not just in initial consultations, but also in ongoing consultations between the government, company and community, and on the management committees for these processes, will be central to long-term success in addressing the identified issues. Governments have a special leadership role to play in this regard.⁵

Suggested language for paragraph 55: “[...] through sharing money or monetary benefits, or both, with women and men from local and indigenous communities [...]”

Suggested language for paragraph 77:

- “[...] Where applicable, the plan should include differentiated measures to allow the effective participation of those identified as disadvantaged or vulnerable, particularly women.”
- “Organise separate consultation sessions with women in the community to ensure their voices are truly heard.”
- “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. *Ensure that women are among the group of community representatives.*”

Suggested language for paragraph 73:

- “We will contribute to the development and diffusion of appropriate technologies, particularly environmentally-friendly **and gender-sensitive technologies** and those that generate direct and indirect employment **(especially for women).**”

⁵ Hill, C., & Newell, K. Oxfam Australia. (2009). *Women, communities and mining: The gender impacts of mining and the role of gender impact assessment*. Oxfam Australia; Ozkan, U.R., & Beckton, C. (2012). *The pathway forward: Creating gender inclusive leadership in mining and resources*. Ottawa, Canada: Centre for Women in Politics and Public Leadership.

*Suggested language for paragraph 84: “take appropriate measures to eliminate **discrimination against women**, through compliance with the Convention to Eliminate all Forms of Discrimination Against Women, [...]”*

15. **Continual improvement of environmental performance** – We recommend adding a paragraph on the need to continually upgrade methods of production.

Suggested language for paragraph 69: “[...] enhancing the productive use or ensuring a safe handling, storing and disposing of chemicals, pesticides, fertilizers and fuel, and for residues of bio hazardous materials.”

Suggested language for section 8, annex 1: “The enterprise commits to continuous improvements in methods of production, in response to the availability of local knowledge, resources and techniques and new information and technology, in order to reduce the end exposure to pesticides and fertilizers, increase water efficiency, increase nutrient use efficiency, control soil erosion and protect biological diversity. The enterprise shall outline in the Environmental Management Plan the specific priority areas as well as a list of indicators and time- bound targets to improve methods of production. The enterprise will monitor and introduce best management practices where applicable to the given production systems and agro-ecological conditions, including those based on investigation of local agricultural knowledge and techniques. The enterprise will review and update the priority areas, indicators and time-bound targets, on a bi-annual basis. The enterprise will report annually to the state on measures undertaken to comply with this provision, including the quantitative results.”

16. **Include a specific section on climate risks in the Model Enterprise Policy** – Risks from climate variability and change can affect the operations of a business and its supply chains from production to consumption through losses in the quality and quantity of agricultural products, destruction of infrastructures, increased costs of storage and packaging to maintain optimal conditions, and so on. To be sustainable, businesses and their supply chains need to reduce their exposure and vulnerability to current and expected climatic changes. Developing countries are particularly vulnerable to the negative impacts of climate variability and change, due to weak infrastructure, governance systems and capacities, among other factors. We recommend including a specific section on climate risks in the Model Enterprise Policy. This is important, considering that to date the engagement of the private sector in climate adaptation remains limited. In addition, climate change is a development issue; it can affect the development objectives of a country (all sectors of the economy can be affected). It should not be seen as a purely environmental issue; it can have direct and indirect negative impacts on all elements of supply chains, not just access to natural resources.

17. **Suggest that community relations should go beyond information sharing and consultations** – We suggest using the term “community engagement” rather than “consultation,” because it is broader. It includes the negotiation of enforceable community-based agreements, for example. Enterprises should have a plan detailing how they intend to, or how they have already, engaged with local communities. This should be presented to the government for verification and approval. In the Principles for Responsible Contracts, the UN Special Representative on Business and Human Rights proposes an effective community engagement plan through the project’s life cycle, starting at the earliest stages (Principle 7). We recommend referring to this principle in dealing with community engagement.

Suggested language for paragraph 53: “good-faith, effective and meaningful engagement with communities”

Suggested language for heading of part 1.2, Annex 1: “Community Engagement (~~Consultations~~)”

Suggested language for paragraph 100, risk mitigation measures: “~~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” (otherwise this undermines other references to consultations in the document).

18. **Emphasize that enterprises should not seek additional tax benefits** – We recommend including the following point in section 9.2, Annex I: “the enterprise will not seek to attain tax and financial incentives in addition to those existing under applicable law, in contracts signed with the government to establish operations.”

19. **Clarify who is responsible for compensation** – As far as the IISD is aware, the UN Guiding Principles do not say that the primary responsibility for providing compensation rests with the government, as is stated in paragraph 100. We recommend that you remove this reference, redraft the paragraph, and refer to Principle 10 of CFS-RAI and IFC Performance Standard 5 to deal with issues of compensation.

20. Strengthen language on local employment

Suggested language for paragraph 89, risk mitigation measures:

- “Employment practices of the enterprise will conform to applicable national law.”
- “The enterprise will hire citizens or residents from the host state for unskilled labour positions.”
- “The enterprise will give preference for employment at all levels of financial, accounting, technical, administrative, supervisory and senior management positions and other skilled positions to qualified citizens or residents of the host state as and when they become available.”

Comments on Annex III

21. **Strengthen the quality of Annex III** – The annex is quite weak. First, the majority of information comes from one World Bank and UNCTAD study, so the analysis would benefit from a greater diversity of lessons and best practices. Second, and more importantly, all the examples, with the exception of the animal welfare case from a 2006 IFC study, deal with primary agricultural production (and occasionally with processing facilities linked to the production). The annex would benefit from providing a range of examples of lessons learned and best practices right across the supply chain and not focused on production. This may require considerable further research and resources. If this is not possible, we recommend removing the annex and including the examples in Annex I to illustrate the issues raised in Annex III.

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