



DOS AND DON'TS

Land and natural resource rights for agricultural projects



River-irrigated cropland in central Mali. 2015 © Alexandre Corriveau-Bourque

OVERVIEW

The purpose of this guidance document is to provide LFS practitioners with a quick checklist of Land and Natural Resource rights issues they must take into consideration while designing and implementing agriculture projects (including community or demonstration gardens, medium-large scale crop/fodder production, tree-growing, agroforestry, soil building or restoration, soil and water conservation, erosion control, watershed management, rangeland regeneration, seed and other agricultural input distribution, technical extension services, and/or landscaping). These tools are essential for ensuring that these kinds of projects both “Do No Harm” and are also sustainable.

The document identifies clear actions that practitioners must and must NOT do, including **RED LINES** that should compel them to reconsider proceeding on a particular site if encountered.

If the project requires irrigation, also refer to “Dos and Don’ts – Land and water rights for new boreholes, wells, and relevant water points” (forthcoming in 2022).

Intended Audience

The **primary audience** of this note are LFS staff who implement (assistants, officers, team leaders, or coordinators) or supervise projects (Area Managers, CC/Thematic Specialists and Managers) agriculture projects

The **secondary audience** include those who are responsible for verifying quality and compliance (Heads of Programmes, regional advisers, global managers, M&E teams).

Checklist of questions to inform project design

- Do you fully understand the environmental risks involved with this project for a given location?
- Do you fully understand the social risks (including conflict sensitivity) involved with this project for a given location?
- Do you know what regulations you need to follow and how to acquire the necessary permits?
- Do you have an exit strategy that includes:
 - Clear and secure land and water rights for project beneficiaries?
 - The identification of an institution to resolve any disputes that emerges over land or water?

ENVIRONMENTAL AND SOCIAL RISK & CONTEXT ANALYSIS

These should be done during the programming, identification, and formulation phases of the project management cycle (for NRC staff; for non-NRC staff).

- ✓ **DO** – Using the NEAT + platform or another relevant tool, conduct an assessment of environmental risks relating to agricultural projects in specific communities. Governments and donors may have specific procedures and regulations for this. If that is the case, follow those procedures and regulations – it may be necessary to partner with/hire qualified organisations who can implement these more robust assessments.
 - ! If there is a risk that a project will exacerbate the degradation of land, forests, wetlands, through clearance and/ or erosion, **proceed only if** the project can be adapted accordingly to mitigate these risks.
 - ! If there is a risk that the project will expose water sources to contamination from fertilizers, pesticides,¹ or soil runoff, **proceed only if** the project can be adapted accordingly to mitigate these risks.
- ✓ **DO** – Conduct an assessment of the social and political risks around land and water. Identify if land and water conflicts are common and what the underlying factors are.
 - ✗ If these risks cannot be adequately mitigated through negotiations and consultations with stakeholders, **DO NOT** implement an agricultural project when doing so could make a community the target of attacks and displacement by armed groups or increase inter and intra-community conflict.
- ✓ **DO** – Conduct an assessment of the formal, customary, and religious laws and regulations which define land and water rights which would have an impact on the implementation and long-term sustainability of the project.
- ✓ **DO** – Obtain any permits that are required for that type of agricultural project ahead of the implementation phase.

¹ Note that NRC recommends the use of organic, rather than chemical, fertilizers and pesticides. Runoff and pollution can be an issue with both, however, if not applied appropriately.

LAND RIGHTS

Depending on who the target population is and the type of project, the land rights considerations within project design will need to vary. All of these dimensions should be addressed BEFORE implementation begins (formulation and early implementation phase of the PCM.)

The following considerations are addressed by theme below:

TARGET POPULATION

IDPs and refugees often face barriers to accessing adequate land to produce food (crops or to graze livestock). Host communities can be hesitant to allocate parcels to them, especially in areas where there is already a great deal of competition and pressure on land. In situations where IDPs and refugees are allocated plots of land, five features commonly appear in agreements, which have negative impacts on livelihoods, the environment, and security of tenure:

1. Plots are often on 'marginal' plots that are either small, whose soils are of poor quality, are far from water sources, are on steep hillsides, etc.
2. The costs for the use of the land can be exorbitant in cases where local-level informal agreements are made. This can create a relationship of exploitation between the IDPs/refugees who are working the land and the host community who control the land.
3. The duration of the agreement can be vague or extremely short. This disincentivizes stewardship of the plots, including investments in improving the quality of the soil or implementing measures to reduce erosion.
4. Users' rights are often based on informal agreements and their rights can be arbitrarily extinguished, even right before a harvest, or after the user has made improvements to the land/soil.
5. Users are restricted to planting specific types of annual crops – with cash crops, perennials, and tree crops being restricted to some rights-holders in host communities (see box below on growing trees).

Women from IDP and refugee communities and even host communities often have roles as agricultural labourers but face barriers to accessing land to grow crops or graze animals that they control. Women's access to agricultural land is often facilitated through their relationships with men – their fathers, husbands, brothers, uncles, etc. Because their access to land is dependent on these relationships, these male relatives can often impose what is planted, what inputs are used, and how the money from sales is used. Women are also frequently denied the ability to inherit land from male relatives and can lose their use rights if they are widowed or divorced.

Because of economic and social barriers, women also face challenges to buy land for themselves or even procuring agricultural inputs. In many parts of the world, women organise together and pool their resources to collectively access agricultural land. Even with pooled resources, women's tenure agreements often have the same five features as those listed above for IDPs and refugees. Extension services tend to overlook women.

- ✓ If the project is targeting members of these populations **DO** – determine common features of current land agreements and the potential impacts these features have on livelihood viability, on the environment, and the parties' security of tenure.

² Long-term IDPs and refugees who have integrated in host communities may still have insecure rights to land that they have been working for many years, especially if the original rights-holder has died. The children of that rights-holder may try to 'reclaim' the land, whereas the IDP or refugee may assert that they are now the rightful owner of the land.

- ✓ **DO** offer to facilitate the establishment of clear and fair agreements (see [Demystifying Tenure Guidance Notes](#)) for users. Among the main features to negotiate for include:
 - Fair cost for the use of the land. Agreements should also establish a basis for the reduction of costs for farmers in exchange for proper stewardship and/or investments to improve the parcel of land.
 - A minimum duration of 5 years, with the ability to renew.
 - Identifying a legitimate third party who can witness the agreement and resolve disputes if they arise.

! **IF** the above conditions cannot be met, **RECONSIDER** whether agriculture is the most appropriate approach to support livelihoods for this target population.

- ✓ **DO** focus more on the content of the agreement (fairly balanced rights and responsibilities between parties) than its form (written versus unwritten). In some contexts, pushing parties to have written agreements may be counter-productive to project goals. (see [Demystifying Tenure Guidance Notes](#))

! **IF** necessary, refer the parties to a qualified legal service provider to ensure that their respective rights are secured.

- ✓ **DO** encourage approaches for production where host communities and IDPs/Refugees can work on the land together. For example, the displaced people can be supported to produce annual food crops on the parcel while the host community rights-holder grows perennial crops or trees, improving soil quality, water retention, and reducing erosion. They can work together to implement other improvements to the parcel like terracing, rainwater harvesting, and/or erosion control. Members of either displaced or host communities who have animals may also be invited to graze these sites once harvest is complete (and if the trees/perennial crops are protected from grazing) to introduce organic fertilizer (manure) into the soil. Encouraging integrated modes of production can help reassure the host community that they still have rights to the parcel in question, and can improve social cohesion between displaced and host communities, can improve environmental outcomes, and can overcome some aspects of land scarcity.

! **IF** the land is jointly worked by more than one party, it will be necessary to add provisions to the tenure agreement around the fair allocation of labour and sharing of harvests.

As a final category, **returnees** also often face distinct challenges related to agricultural livelihoods, namely, encountering others using the parcels of land and resources that they had used or controlled before displacement. These other users may be neighbours, other displaced populations, or even family members. In some situations, armed groups or governments will have resettled their supporters in territories under their control, or allocated lands to private investors. Also, they may find their lands and resources heavily degraded.

✗ **IF** returnees' land is under the control of armed groups or private investors, livelihoods practitioners should **NOT** intervene in the area in question with agricultural projects until armed groups have withdrawn, and/or a legal resolution has been found.

✗ **IF** returnees' land is occupied by neighbours, other displaced populations, or by family members, **DO NOT** deliver assistance until these disputes are fairly and legitimately resolved. However, **livelihoods programmes can work closely** with the institutions that are resolving disputes to offer solutions that could benefit all/most of the parties to the dispute and help bring about resolution. For example, offering to support approaches for production and land restoration where the different parties can work on the land together.

⁶ Ideally, the representatives of the dispute resolution institution should not have an interest in the water point itself (not have use rights).

Agriculture and the commons

Agricultural projects often privilege the use rights of individuals or households over a particular parcel of land. This can especially cause conflict if the project privileges one type of land use over others, and leads to the encroachment on or clearance of common resources.

In many parts of the world, forests, rangelands, wetlands, and are held as community 'commons' – where multiple parties can use and manage the land and resources. This tends to promote higher biodiversity and support a wider range of livelihoods.

Women and other marginalized populations such as Indigenous Peoples and pastoralists often rely on these common resources for their livelihoods, whereas lands exclusively used for crop-based agriculture (especially cash crops) tend to privilege men and communities who control governance of land and resources.

While these landscapes can support agriculture, but the promotion of agriculture cannot come at the expense of other uses, livelihoods, and ecological services such as biodiversity. If possible, design projects that support more than one kind of livelihood over the same parcel of land in ways that are culturally and ecologically appropriate. Within this, consider some inclusive and diverse forms of agriculture, such as:

- *Agropastoralism*
- *Agroforestry*
- *Silvo-pastoralism*

DO - *Work with communities to map out community commons on which agricultural production is strictly NOT allowed. If commons have been degraded, projects can help with their restoration.*

PROJECT TYPES

Not all project types have the same physical “footprint” or long-term effects as others and therefore, the land and natural resource rights issues encountered may differ. Of course, all of the guidelines below must also be connected to those above, based on the target community.

LIGHT & MEDIUM FOOTPRINT PROJECTS




The **distribution of seeds and farming inputs and technical extension services** can fall under the category of “lighter” interventions **IF** the land and resource rights of the target population are already clear and secure.

In this case, the following issues should still be taken into account:



DO use appropriate environmental impact assessment methodologies to make sure that the seeds, inputs and technical services offered are culturally and ecologically sound and relevant to the range of plots and landscapes in the project area.


A good practice is to map the plots where the assistance will be used to verify that the farmers who are receiving seeds and inputs have land that they can farm, and will not require clearing forests, draining wetlands, or encroaching on rangelands.


 **IF** the land and natural resource rights of the target population are NOT clear or are weak then NRC has two possibilities:


Potential Solution 1: Reconsider whether agriculture is the most appropriate approach to support livelihoods for this target population.


Potential Solution 2: NRC takes an active role to facilitate the clarification and strengthening of these rights. In this case, refer to the guidance in the section above (Target Population). This approach will become a medium-footprint intervention and may require a longer time horizon (two years).


The establishment of a **community garden or a demonstration site is also a medium-footprint intervention.**


 **DO NOT** start this type of project unless there is a *minimum* of two years of funding for it.


 **IF** there are two or more years of funding available, then consider the following:


 **DO** prioritize establishing the garden/demonstration site on a parcel that is controlled by the target communities or are on public land (land controlled by public institutions like schools³ may also be appropriate, as long as they have long-term rights).


 **DO** establish a management committee for the garden/demonstration site that is representative of all users.

 **DO** – When relevant, refer the management committee to a qualified legal practitioner to register their group as a legal entity.

 **DO** – When relevant, refer the management committee to a qualified legal service provider to ensure that these rights on community or public lands will be secured for a ***minimum of 10 years with the potential to renew, in exchange for fair compensation.***

 **DO NOT (Unless necessary)** establish on land that is controlled by a company or individuals. Land under the control of a religious institution may also be appropriate in exceptional circumstances.⁴ If no alternative viable site exists –

 **DO** - Verify the land rights and site-specific environmental risks before implementing. (See [Due Diligence for Land and Natural Resource Guidance Note](#))

 **DO** – Consult with a qualified legal services provider to make sure that the agreement between the management committee and the rights-holder(s) is clear and fair to all parties. (See [Demystifying Tenure for further guidance](#)) Among the provisions that should be included in the agreement are as follows:


- The community will have secure long-term use rights to this parcel of land in question. This can be done through a long-term lease – of a ***minimum of 10 years with the potential to renew, in exchange for fair compensation.*** The rights-holder(s) of the land cannot extinguish or infringe on the community's land during this period under any circumstances.


³ Building on school grounds may require restrictions on access to the broader community during school hours to avoid disruptions to learning.

⁴ This can be the case as long as religious affiliation is not a criterion to benefit from the project or participate in its management. The agreement between the management committee and the religious institution should contain the same provisions as outlined for those of an individual land rights-holder.

If they transfer the land to another party (sale, inheritance or other), that party will need to be bound to the same terms. If the rights-holder wishes to transfer the land - the community should have the right of first refusal.

- An independent and neutral third-party institution⁵ is identified to resolve any disputes (ideally through mediation – but arbitration is acceptable) between the land rights-holder(s) and the management committee.


 **DO NOT** proceed with the project at that location if the rights-holder(s) does not agree to the above conditions, since the project's sustainability cannot be ensured.


 **DO** – Work with management committees to identify which institution has the authority and legitimacy to resolve disputes over the garden.

HEAVIER FOOTPRINT PROJECTS

Implementing projects including large scale **tree growing, restoration (of watersheds, grazing lands, forests, and/or wetlands), and/or landscaping (erosion control) tend to have heavier footprints on land and natural resource rights, and longer-term impacts.** These are not strictly humanitarian interventions but may be necessary to mitigate the impacts of displacement on host communities or to facilitate durable returns. These are NEXUS-type projects that would require partnering with qualified development actors who can provide complementary skills like land use planning and securing collective (community-scale) tenure rights, among others. These types of projects are still being piloted in humanitarian contexts – and guidance will need to be developed in a separate note from this one.

MONITORING:

 **DO** – Conduct follow-up visits on the infrastructure to make sure that it is still accessible, usable, & safe for users (accessibility audit). During these visits, **DO** include monitoring of conflicts over land and water access, use, and management as well as environmental impacts.

 **DO** – Collect lessons learned during the design and implementation to be shared with the country/regional LFS Specialist/Advisor.

Planting vs. Growing Trees

Tree planting is increasingly being cited as a method to minimize the environmental impacts of displacement. However, a planted tree in itself is not an outcome, a tree that is mature and delivering a broad range of livelihood and environmental services, is. Successfully growing trees requires identifying species that:

- Are appropriate for the planting site
- Able to survive and grow healthy under variable conditions
- Does not overdraw local water resources

Success also requires clear buy-in and led by local stakeholders. This means asking questions about who is allowed to plant and benefit from what kinds of trees. In many communities around the world, the act of planting specific tree species can be seen as making a permanent claim to that plot of land, which can cause conflict, if certain members of the community (displaced persons or women) may not have the ability to make such a claim under local customs.

Some trees have sacred or spiritual significance, while the fruits of others may be seen as belonging to everyone in the community.

One way to encourage the growth of trees is through farmer-managed natural regeneration. This is an effective and low-cost way to restore tree cover by supporting farmers to protect trees that are already on their land.

⁵ Ideally, the representatives of the dispute resolution institution parties should not have an interest in the water point itself (not have use rights).



Agroforestry Parcel in Equateur Province, DR Congo. 2018 © Alexandre Corriveau-Bourque

OTHER RESOURCES

- [Preserving the environment, NRC webpage](#)
- [EHA Connect – Key environmental issues linked to food security, nutrition, and livelihoods programming](#)
- [CIFOR-ICRAF Principles for Successful Tree Planting](#)
- [World Resources Institute: The road to restoration – 3 steps for transforming landscapes](#)
- [ICRAF - Meeting Refugees' Energy Demands](#)
- [ICRAF – The Golden Rules for Restoring Forestland](#)
- [UN-Habitat – Tenure Responsive Land Use Planning](#)
- [GIZ – Land Use Planning – Concept, Tools, and Applications](#)