



VIGILANCE ON THE MENU

The risks that agro-industry
must identify

Comité Catholique Contre la Faim et pour le Développement - Terre Solidaire



TERRE
SOLIDAIRE
Soyons les forces du changement

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Last but not least: the best reporting tells the company's own story. Every company has unique operations and value chains that deserve – and require – tailored reporting. This tailored reporting can be a positive sign that the company has internalised important concepts, making it more likely to make the most appropriate decisions about the human rights risks it faces in reality.

”

Shift, *Human Rights Reporting in France, 2018*¹

INTRODUCTION

In March 2017, France adopted the *loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (“law on the duty of vigilance for parent corporations and contracting companies”) – hereinafter the duty of vigilance law. The bill was introduced by three members of parliament and six leading NGOs, including **CCFD-Terre Solidaire**, and marked a **historic step** towards the protection of human rights and the environment². **The first of its kind in the world**, the law requires French companies to comply with a **duty of vigilance** with regard to their actions and those of their subsidiaries and subcontractors, throughout their value chain. That duty of vigilance consists in **establishing, publishing and implementing** “vigilance measures capable of identifying risks and preventing serious violations of human rights and fundamental freedoms, the health and safety of people, and the environment”³. Two years after the law entered into force, **CCFD-Terre Solidaire** has noted that the measures detailed in the vigilance plans submitted by companies are **exceptionally brief**⁴.

This report seeks to confirm that, at a time when numerous states and international organisations are showing willingness to regulate transnational corporations and facilitate access to justice for victims of human rights violations linked to their activities⁵, companies in the agro-food sector cannot be allowed to publish such brief vigilance plans. The economic, social, societal, environmental and political controversies and scandals that are shaking the sector are evidence of very high citizen expectations.

1 Shift, *Human Rights Reporting in France: A Baseline for Assessing the Impact of the Duty of Vigilance Law*, September 2018, p.9.

2 Danielle Auroi, Philippe Noguès and Dominique Potier and Amnesty International France, CCFD-Terre Solidaire, Collectif Éthique sur l'étiquette, Les Amis de la Terre France and Sherpa.

3 Article 1 of the Duty of Vigilance law, French Commercial Code, L.225-102-4.

4 ActionAid, Les Amis de la Terre France, Amnesty International, CCFD-Terre Solidaire, Collectif Éthique sur l'Étiquette and Sherpa, *Loi sur le devoir de vigilance des sociétés mères et entreprises donneuses d'ordre. Année 1 : les entreprises peuvent mieux faire*, February 2019.

5 OECD Due Diligence Guidance for Responsible Business Conduct, 2018; United Nations High Commissioner for Human Rights, *Improving accountability and access to remedy for victims of business-related human rights abuse: the relevance of human rights due diligence to determinations of corporate liability*, 2018; ECCJ, *Evidence for mandatory HRDD legislation*, 2018; UN Human Rights Council, *Draft report on the fourth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, 2018.

The agro-food sector is the largest industrial sector in France, with a turnover of **180 billion euros in 2017** (+3.9% vs 2016)⁶. France is the second-biggest exporter (behind Germany) at the European level and ranks fourth in global agro-food exports, exporting **44.2 billion euros'** worth of food products in 2016⁷. At the start of 2018, the French Ministry of Agriculture confirmed its willingness to support and increase the export and internationalisation strategies of French firms in the sector. In the context of the launch of its international strategy, a series of tools must now be established with the aim of facilitating the efforts of these actors. Furthermore, the agro-food industry is the leading industrial investment sector in France. With that in mind, it is vital to ensure that the giants of the agro-food industry exercise their duty of vigilance in a spirit of transparency, comprehensiveness and sincerity in order to identify, prevent and remedy the impact of their activities on human rights, the environment and the commons.

From CSR to duty of vigilance: regulating transnational corporations in the 21st century

In a context of market liberalisation, companies have expanded their activities beyond national borders and have acquired unprecedented economic and political power. In 2012, the turnover of the three biggest transnational corporations – Royal Dutch Shell, ExxonMobil and WalMart – was higher than the GDP of 110 countries, i.e. **55%** of nation states. Shell, for example, is one of the biggest investors in the Niger Delta in Nigeria, and had a turnover of 484 billion USD in 2011: that figure is almost double the GDP of Nigeria, which at the time was the second-largest economy in Africa⁸. In 2015, **69 of the 100 global economic entities were transnational corporations** and not countries⁹. **At this rate, within one generation we will be living in a world entirely dominated by corporations.**

Companies are key actors of globalisation because of their ability to reshape the economy and influence the political decisions of certain policymakers; they carry out

activities that can have negative impacts on human rights, the environment and the climate. Moreover, they act within several jurisdictions; they multiply their subsidiaries and subcontractors in an international legal framework that is still ill-defined; and they sidestep or take advantage of certain rules, to which the most vulnerable populations and the environment fall victim first.

NGOs and social movements have been active since the 1970s, calling on states to end the impunity with which large companies operate, and to adopt an international legal regime designed to make transnational corporations effectively accountable for their actions throughout their value chain. The prospect of such a legal regime provoked such a fierce outcry from OECD member states and major international employers' organisations that, for decades, the focus remained on self-regulatory policies that favour voluntary initiatives under the term "CSR".

However, multiple social and environmental scandals in recent years have shattered the myth of self-regulation¹⁰, and it was in this context that UN Secretary-General Kofi Annan appointed Professor John Ruggie in 2005 as Special Representative on human rights and transnational corporations and other business enterprises. Three years later, John Ruggie published a report entitled "Protect, Respect and Remedy"¹¹, in which he established a framework for corporate regulation resting on three pillars: The state duty to **protect** against human rights abuses by third parties; the corporate responsibility to **respect** human rights; and the need to provide victims with better access to effective **remedies**, both judicial and non-judicial. John Ruggie defined corporate responsibility as due diligence requiring them to avoid causing or contributing to adverse human rights impacts or environmental damage. This definition was unanimously adopted by the UN Human Rights Council in 2011 in a series of Guiding Principles on Human Rights and Business. The OECD's Guidelines for Multinational Enterprises, the European Commission's definition of CSR and the ILO Tripartite declaration of principles were all then revised to be brought into line with the new normative framework.

In view of the fact that self-regulation, over a 50-year period, has failed to prevent human rights abuses and environmental damage, the definition of corporate responsibility has evolved towards a standpoint of impact management and accountability before the courts. Corporate self-regulation has been substituted with a **duty** for states,

6 Ania, "Bilan économique 2017 de l'industrie alimentaire", March 2018, available at <https://bit.ly/2RsaawV>.

7 French Ministry of Agriculture and Food, *Panorama des industries agroalimentaires*, 2018, p.10.

8 AWID, *Challenging corporate power: Struggles for women's rights, economic and gender justice*, September 2016, p.10.

9 Global Justice Now, "Corporations running the world used to be science fiction – Now it's a reality", 12 September 2016, available at <https://bit.ly/2S1qUut>.

10 UN Special Representative for Business and Human Rights – John Ruggie – identified 320 cases of presumed human rights violations by transnational corporations between 2003 and 2007. John Ruggie, "Protect, Respect and Remedy: a Framework for Business and Human Rights", Human Rights Council, 2008, p.16. A report by Global Witness identified 207 murders of environmental defenders in 2017, most of which were linked to the agro-industry. See: Global Witness, *At what cost? Irresponsible business and the murder of land and environmental defenders in 2017*, 2018.

11 John Ruggie, "Protect, Respect and Remedy: a Framework for Business and Human Rights".

as guarantors of the general interest, to establish all the institutional and legal frameworks required for fair wealth creation and distribution, respect for human rights and the environment, transparency and corporate accountability to citizens. Corporate responsibility is now expressed as “CSR enshrined in law”¹², which is apparent at the national level from the adoption of section 1502 of the Dodd-Frank Act on conflict minerals in the United States in 2010; the Modern Slavery Act in the United Kingdom in 2015 and the duty of vigilance law in France in 2017; and at the international level, from the creation in 2014, within the UN Human Rights Council, of an intergovernmental working group on the “Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights”¹³.

Hard won after many years of mobilisation, these various legislative processes are evidence of a shared awareness of a sense of urgency and a duty to regulate these transnational actors through binding judicial mechanisms. In this context, it is hardly surprising that French National Assembly member Dominique Potier, rapporteur on the French duty of vigilance law, was invited to be the keynote speaker in the UN negotiations on the binding Treaty on Business and Human Rights in 2017 and 2018. Indeed, throughout the UN negotiations, numerous conferences and round-table meetings were held to discuss the French legislation in order to understand how France has legislated to make parent corporations and contracting companies accountable for human rights abuses and environmental damage caused throughout their value chain. The duty of vigilance law, while the first of its kind on this issue, is therefore part of a global movement pushing for regulation that goes beyond mere “good will” on the part of transnational corporations.

Enforcing the duty of vigilance law

In the spirit of the UN Guiding Principles adopted in 2011 in the Human Rights Council, and in contrast with legislation on the regulation of transnational corporations adopted outside France, the duty of vigilance law covers all sectors of activity and is based on a broad scope of application, including “serious violations of human rights and fundamental freedoms, the health and safety of people, and the environment”. All companies registered on French territory employing more than 5000 people in France or 10,000 people globally are required to develop and publish a public annual vigilance plan. This must detail all the due diligence measures adopted by a parent corporation or contracting company so as to identify risks and prevent human rights abuses and environmental damage resulting from its activities and those of its subsidiaries, suppliers and subcontractors with whom they maintain an “established business relationship”. According to the legal provisions, the annual vigilance plan must include several measures¹⁴:

1. A risk mapping that identifies, analyses and ranks risks;
2. Procedures to regularly assess the situation of subsidiaries, subcontractors and/or suppliers with whom the company maintains an established business relationship;
3. Appropriate actions to mitigate risks or prevent serious violations;
4. An alert mechanism that collects reportings of potential or existing risks;
5. A monitoring scheme to follow up on the measures implemented and assess their effectiveness.

The prevention of risks in terms of human rights abuses and environmental damage, in France and abroad, has therefore become a de facto legally binding obligation that makes parent corporations and contracting companies legally accountable in court. In doing so, this law makes it possible to force companies to better prevent the collateral damage resulting from their activities, and also to provide effective access to justice for victims, who, all too often “face a denial of justice in a host State and cannot access home State courts regardless of the merits of the claim”¹⁵.

12 Martin-Chenut & de Quenaudon, *La RSE saisie par le droit. Perspectives interne et internationale*, Paris: Pedone, 2016.

13 United Nations Human Rights Council, “Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights”, Geneva: UN Human Rights Council, 25th June 2014.

14 For a full legal analysis of the law, see: Sherpa, *Guide de Référence pour les Plans de Vigilance*, 1st edition, 2018.

15 John Ruggie, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework”, Geneva: Human Rights Council, 21st March 2011, paragraph 26.

Although the law enacted on 27th March 2017 envisaged a Council of State decree to complement the vigilance measures planned as well as methods for developing and implementing the plan, nothing has so far been published. Several non-governmental organisations and consulting firms have analysed the first plans published by companies covered by the law during 2018. Their assessment of those vigilance plans is somewhat negative: companies do not systematically provide a detailed risk mapping¹⁶; they have difficulty identifying the risks that are specific to their sector and type of activity¹⁷; or they refer generally to the risks already identified as part of their CSR policy¹⁸. The Groupe Alpha consulting firm concludes:

“In short, the 2018 generation of vigilance plans are characterised by a major absence in terms of risk definition, the scope of the value chain and the stakeholders involved. In addition, the methodology and perspective of the corporation are never clarified. Corporations therefore have considerable room for improvement. [...] Moreover, many companies have failed to understand the notion of risk. Indeed, the law refers to risks for relevant stakeholders and not for the company...”¹⁹.

The Forum for Responsible Investment and the A2 Consulting Firm, meanwhile, noted that risk mapping was very badly understood and observed, despite the fact that “high-quality risk mapping is an important pre-requisite for proper risk control with regard to duty of vigilance... and therefore respect for the law”²⁰.

The primary shortcoming in the vigilance plans therefore lies in the poor quality of risk mapping, which affects everything that follows. However, since the Guiding Principles were published, many academics and international organisations have established criteria and methodologies in order to adapt the duty of vigilance in operational terms. One example can be offered, as follows:

Identifying the various risks resulting from a business activity

1. Understanding what impact an activity has or may have: the company must assess, throughout its value chain, the economic, social, societal, environmental and political impacts of its activities on the environment, the global commons, its various stakeholders – employees and workers recruited by its subcontractors, residents, consumers, human rights defenders, land collectives, vulnerable or marginalised individuals or groups, trade unionists, research organisations, tax administrations and so on. By way of example (non-exhaustive), we might mention the impacts of an activity “in connection with the life cycle of its products or services, from the sourcing of components or commodities to its design, production, delivery and after-service. This includes hiring and/or contracting staff, contractors, suppliers, customers, governments, or others. Activities can include procurement, legal, compliance, sales, operations, human resources, R&D, among others”²¹. The impacts are **direct** or **indirect**, occurring at various stages along the value chain of a company, and linked to a very wide range of activities.

2. Examining the company’s involvement and the causal links: according to the United Nations Guiding Principles, a company must envisage three possibilities – **cause**, **contribution** and **link** – when assessing whether it is or could be involved in adverse human rights impacts or environmental damage. The company can **cause** an impact through its own activities: for example, by not respecting its employees’ rights at work or by polluting the environment around its production sites. It may also **contribute** to a violation by encouraging third parties to carry out the activity in question, or by contributing with others to a harmful activity in the context of a joint venture or subcontracting contract, as was the case in the Rana Plaza incident. Finally, it can be **linked** to impacts that are not its responsibility or directly related to its activities, but for which it could be held responsible on account of its business relationship with the criminally liable enterprise²².

16 Shift, *Human Rights Reporting in France*.

17 B&L Évolution and EDH, *Application de la loi sur le devoir de vigilance. Analyse des premiers plans publiés*, 1st edition of 25th April 2018, p.16 and p.21; Groupe Alpha, “Devoir de vigilance : quel bilan des premiers plans ? Comment se positionnent les parties prenantes ?”, *La Lettre du Centre Études & Prospective du groupe Alpha*, n° 34, June 2018, p.2.

18 EY, *Loi sur le devoir de vigilance : analyse des premiers plans de vigilance par EY. Quelles réponses à la loi ? Quels enseignements pour les entreprises ?* September 2018, p.7.

19 Groupe Alpha, “Devoir de vigilance : quel bilan des premiers plans ? Comment se positionnent les parties prenantes ?”, p.2.

20 A2 Consulting and FIR, presentation of the prize for best Vigilance Plan 2018 at the National Assembly.

21 The Global Compact, *The CEO Water Mandate*, January 2015, p.46.

22 See the case of Orange: CCFD-Terre Solidaire, “Les liaisons dangereuses d’Orange dans le Territoire palestinien occupé”, May 2015, available at <https://bit.ly/2Wz2zE2K>.

3. Sharpening the analysis collaboratively: the process must be carried out in conjunction with stakeholders or their representatives, particularly with respect for the principle of free, prior and informed consent.

Establishing priorities

SEVERITY	5					
	4					
	3					
	2					
	1					
		1	2	3	4	5
		PROBABILITY				

1. Assessing the severity of the impacts:

The UN Guiding Principles require companies to assess the severity of a specific impact by taking account of: **its scope**, in other words the seriousness of the impact; **its reach**, for example,

the number of people who are or will be affected by the impact; and the extent to which the harm suffered can be **remedied**, that is, the extent to which it will be feasible to restore the individuals or environment involved to a situation that is equivalent to their situation before the impact.

2. Assessing the likelihood that these impacts will materialise:

the company must assess the likelihood that the risk will occur or re-occur. This likelihood may be affected by: a) the sector of activity; b) the local context; c) the business relations established by the enterprise; d) the existing internal policies and management systems in the company²³.

3. Establishing an order of priority for addressing impacts:

when it is not possible to address all impacts at the same time, the company must categorise the impacts by order of **priority** according to their severity and likelihood, with the help of a table such as the one shown on the left. If these high-priority risks are ignored and/or they occur and do not lead to **adequate** remedies on the part of contracting companies, subsidiaries, partners and/or subcontractors involved, a **disengagement** of the business relationship may occur. Contracts must include clauses that cover sectoral exclusion and termination of business relations in order to establish the duty of vigilance throughout the value chains.

This risk mapping is vital for the company to be able to identify, prevent and/or remedy human rights abuses and/or environmental damage resulting from its activities throughout its value chain. Mighty Earth, Rainforest Foundation Norway and Fern, in their report entitled *The Avoidable Crisis*²⁴, highlight the environmental and health-related impacts of GM soybean crops in Argentina. The soy is sent to France to feed the livestock that will provide consumers with meat labelled "reared in France" and dairy products promoted as local and sustainable produce. In this type of situation, the duty of vigilance law is essential because it brings transparency to the agro-food industry and provides, among other things, tools to regulate it. Indeed, making parent companies responsible for activities carried out throughout their value chain would make it possible to understand and document the involvement of numerous companies, ranging from businesses selling seeds or growing soy to large-scale retailers that sell the products to consumers or import or transform soy. It is clear that there is significant room for improvement with regard to the law's real effectiveness, because the risk mapping carried out so far by companies covered by the law has shown itself to be overly brief and often insufficient. This report is therefore in line with recent research into the duty of vigilance that now falls to parent corporations and contracting companies, and the way in which those companies can make it **effective**.

The challenges of global hunger and the defence of food sovereignty and climate justice, on which **CCFD-Terre Solidaire** has been working for decades, are directly impacted by the activities of transnational agro-food corporations, particularly in France due to the scale of the sector there (as mentioned above). Evaluations of production systems have often been ignored by states, which prefer to rely on the use of high-yield crop varieties, with increased irrigation, the mechanisation of agricultural production, and the use of fertilizers and pesticides in order to address the problem of hunger. As well as bringing little improvement in nutritional results²⁵, these methods have led to adverse impacts and serious abuses²⁶. The spread of single-crop farming has caused significant loss of biodiversity²⁷ and soil erosion; the use of chemical inputs has caused pollution with both human and environmental impacts; the quest for ever-increasing competitiveness among companies and territories undermines the rights of

23 "Human rights due diligence [...] will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations" in United Nations, *Guiding Principles on Business and Human Rights*, 2011, p.18.

24 Mighty Earth, *The Avoidable Crisis. The European Meat Industry's Environmental Catastrophe*, March 2018.

25 In 2017, 2 billion people were suffering from a deficiency in essential micronutrients, 155 million children under the age of 5 had stunted growth and 52 million were extremely underweight. In 2015, 777 million people went to bed hungry, with that number rising to 815 million in 2016. In addition, 38 million people were facing a situation classed as food insecurity. At the same time, FAO estimates that every year around one third of all food produced for human consumption in the world is lost or wasted. See: FAO, *Food Wastage Footprint. Impacts on Natural Resources. Summary Report*, 2013, p.6; *Le Monde*, "La malnutrition n'épargne plus aucun pays dans le monde", November 2017, available at <https://lemde.fr/2T23AK>; *Le Monde*, "Après une longue période de recul, la faim progresse dans le monde", September 2017, available at <https://lemde.fr/2RTOcSV>.

26 See for example: IPES FOOD, *Too big to feed: Exploring the impacts of mega-mergers, consolidation and concentration of power in the agro-food sector*, October 2017.

27 For example, within 30 years, 80% of the rainforests in two Malaysian states have been destroyed by the timber trade and vast palm oil plantations. See: *Le Monde*, "Dans la jungle de Bornéo, des tribus se rebellent contre les bulldozers", 14 January 2019, available at <https://lemde.fr/25OnDvO>.

workers, residents and human rights defenders, and the examples do not stop there²⁸.

Companies in the agro-food industry are faced with a number of obligations²⁹: meeting the growing demand for food – in a context of overproduction and a diet increasingly based on animal protein – without harming the environment or abusing human rights; finding a balance between preserving biodiversity and guaranteeing economic development, which often requires the alteration or disappearance of certain habitats; and meeting needs related to agriculture,

industry and fresh water consumption, etc. Faced with these challenges, one of the first steps for companies is to identify and understand the ecosystem services they use or influence (including suppliers, partners, subcontractors, etc.). After reading the vigilance plans drawn up so far by agro-food companies, it appears that some risks – however crucial and characteristic of the sector – are not being dealt with³⁰. In this report, **CCFD-Terre Solidaire** proposes to address the duty of vigilance from the perspective of these “forgotten risks” not included on the risk mapping, by providing a representative case for each of them, namely:

RISK OF RESOURCE GRABBING: land and water

RISK OF VIOLATING FARMERS’ RIGHTS: contract farming

RISK OF HARMING BIODIVERSITY: seeds

RISK OF HARMING THE ENVIRONMENT AND HUMAN HEALTH: pesticide pollution

RISK OF CRIMINALISATION: human rights defenders

CCFD-Terre Solidaire has chosen, through its expertise, mandate and missions, to select these five risks and illustrate them with various examples. This work does **not claim to be exhaustive**, and these risks are obviously not the only ones that need to be included in the plan. However, it is important to focus on and develop these issues in order to show, through a detailed analysis, the relevance of this law for identifying the impacts of these corporate activities on human rights, the environment and the commons, in order to question public policies and companies’ business models, and to carry out relevant and effective actions to prevent such risks.

Although this guide can be used by companies to gain a better understanding of certain risks inherent to their sector, for the French government it is primarily an informative guide to the issues that require attention when analyzing vigilance plans and, more broadly, the risks that must be taken into account to improve or create new legislative frameworks for human and environmental human rights protection, which are vital for “a permanent and truly human life on Earth”³¹.

28 25 million people – of whom 71% were women – were victims of forced labour in 2016, which generated 150 million dollars of illegal profit annually in the private economy. See: International Labour Office, *Forced labour and forced marriage*, 2017, p.22; International Labour Office, *Profits and Poverty: The Economics of Forced Labour*, 2014, p.13.

29 Millenium Ecosystem Assessment, *Ecosystems and human well-being. Opportunities and Challenges for Business and Industry*, World Resources Institute, Washington, DC, 2005.

30 ActionAid, Amnesty International, CCFD-Terre Solidaire, Collectif Éthique sur l'Étiquette, Les Amis de la Terre France and Sherpa, *Loi sur le devoir de vigilance des sociétés mères et entreprises donneuses d'ordre. Année 1 : les entreprises peuvent mieux faire*, February 2019.

31 Hans Jonas, *Le Principe responsabilité : une éthique pour la civilisation technologique*, Paris: Champs Flammarion, 1990, p.40.

1

“

For with the land comes the right to withdraw the water linked to it, in most countries essentially a freebie that increasingly could be the most valuable part of the deal.

”

Peter Brabeck-Letmathe,
CEO of the Nestlé Group
from 1997 to 2008.³²

RISK OF RESOURCE GRABBING: Land and water

Given the determination of transnational corporations in the agro-food sector to expand in order to capture new markets, large-scale acquisitions, particularly of water and land, have increased. This has placed growing pressure on resources – particularly in developing countries – which in turn has had serious consequences for the environment, human rights and food sovereignty in particular.

Concurrently with a shift from subsistence agriculture to cash crops, led by transnational agrobusiness corporations among others, large-scale land acquisitions³³ have increased, especially over the last decade. In a context of **escalating** demand for food, cereals for livestock, agrofuels and plant fibre, companies are putting increasing pressure on land and land resources³⁴, particularly in developing countries, where they consider vast agricultural areas to be “unoccupied” or even “poorly exploited” by family farms which these same actors brand as “under-performing” and sometimes even “archaic”. These land pressures often lead to a phenomenon that is now beyond dispute: land and water grabbing.

32 Interview in Foreign Policy, “The Next Big Thing: H2O”, 28th September 2009, available at <https://bit.ly/2QGvHkm>.

33 “Large-scale land acquisitions are areas larger than 200 ha contracted for commercial agriculture, for the purpose of timber extraction, carbon trading, food, feed, and renewable energy production,” in Emma Li Johansson et al., “Green and blue water demand from large-scale land acquisitions in Africa”, *Proceedings of the National Academy of Sciences*, October 2016, p.2.

34 On this subject see the documentary by Alexis Marant, *Planète à vendre*, Arte France and CAPA Presse, 2010, 90 minutes.

Companies, duty of vigilance, and land and water grabbing

Most companies in the agro-food sector need land and water resources to carry out their activities effectively, making land and water grabbing a serious threat. In response to the controversy over land grabbing, international texts – including the Voluntary Guidelines for Responsible Governance of Tenure of Lands, Fisheries and Forests, and the Principles for Responsible Agricultural Investment developed by the Committee on World Food Security – have focused people’s attention on these issues and led to recommendations for public policies. While it is not compulsory to use these guides or implement the practices they encourage, they are nevertheless solid tools to assist with the development of vigilance plans. If companies are careful to follow the measures laid out in these guides, they can easily reduce the risk of land grabbing.

With regard to water grabbing, there is no universally accepted standard for setting meaningful and measurable markers and targets for controlling companies’ use of water and impacts. All the risks mentioned with respect to the management of water resources require coordination at local level between the different main actors. Risk mapping must therefore be closely linked to the context in which a company’s direct operations and supply chains operate. In order to determine the extent to which companies increase water-related risks for local populations and ecosystems, it is crucial to take into account (via relevant quantitative and/or qualitative indicators) the following factors **before, during and after their activities**:

- The risks that water stress poses to the population and more particularly to **the most vulnerable populations**: minorities, women, children, people with disabilities and indigenous peoples.
- The level of **water scarcity** and the **rate of malnutrition** in the country and region where the company’s activities are located. Companies need to map their water footprint and superimpose it to water scarcity areas to reveal the areas most at risk. This map must take into account **current and future** crop and production **intensity**, based on source of inputs, water use, and production, distribution and marketing infrastructure. The parent corporation or contracting company must also ensure that its subsidiaries, subcontractors and other partners with whom it has an established business relationship have the means to conduct such an investigation satisfactorily.
- If the water resources seem at first sight sufficient, a company must ascertain which other actors are active in the area and what their needs are. If the company’s activity in isolation does not pose a risk to the people and the environment, the analysis must take into account all **local activities** with a potential impact on the area’s water resources. The company cannot ignore the risk of a **cumulative effect** of water resource use.

2

“

Clearly, the power balance in these partnerships is tilted toward the firm, more often than not. This is the baseline from which we need to consider threats to contract farming with smallholders in developing countries.

”

Martin Prowse,
Contract Farming in Developing Countries
– A Review.³⁵

RISK OF VIOLATING FARMERS' RIGHTS: Contract Farming

State intervention in the production and marketing of agricultural products has decreased in recent decades, resulting in a significant decline in public investment in agriculture on all continents. Faced with this drop, and usually following appeals from the government in the aftermath of the food crises of 2007-2008 and 2011-2012, private corporations have become more involved throughout the agricultural value chains, from production, storage and processing to agricultural exports and consumer sales.

However, while in the early 2000s private actors favoured direct investments, particularly through large-scale land acquisitions, the controversies sparked by the increase in land grabbing by private investors led these large transnational corporations to favour another – older – model presented as “win-win”: **contract farming**, or **contractualisation**. This is a “a contractual arrangement for a fixed term between a farmer and a firm, agreed verbally or in writing before production begins, which provides resources to the farmer and/or specifies one or more conditions of production, in addition to one or more marketing conditions, for agricultural production on land owned or controlled by the farmer, which is non-transferable and gives the firm, not the farmer, exclusive rights and legal title to the crop”³⁶. These contracts with small producers generally only cover the harvest and include services provided by the company which are then invoiced to the farmer: supply of inputs and seeds, technical itinerary, mechanisation, etc. The companies that use contractualisation are mainly large-scale producers, exporters, trading companies or retail companies.

³⁵ Martin Prowse, *Contract Farming in Developing Countries – A Review*, À Savoir n° 12, Agence Française de Développement, April 2013, p.69.

³⁶ Martin Prowse, *Contract Farming in Developing Countries*, p.12.

Companies, duty of vigilance, and contractualisation

The risks of contractualisation for small farmers, households and local communities are numerous. Nevertheless, although certain risks are inherent in the process itself, some could be avoided provided that companies are vigilant when they decide to use contracted farmers. Companies must therefore ensure that contracts do not adversely impact human rights and the environment. Olivier de Schutter lists a series of elements that contracts must integrate: **long-term economic viability; support for small-scale farmers in**

negotiations; gender equality; pricing; quality standards; environmental sustainability; mediation and dispute settlement. For example, it is imperative to ensure that contracts requiring long-term investments or specialised materials are not short-term; and that contracts are not shorter than the time required to bring seedlings to maturity. In this context, if a company, its partners and/or subsidiaries use contract farming, the risk mapping must mention the risks posed by contract farming. The company must then:

- Ensure that contracts respect human rights, in particular based on the criteria of UN Special Rapporteur Olivier De Schutter. It must ensure that the **risks are shared** between the farmer and the company, and that the **obligations** and **remedies** of each are **clearly defined**.
- Ensure that the farmer signs the contract **with full knowledge** and after clear, transparent negotiations that respect his/her rights. In such situations, the principle of free, prior and informed consent must be used.
- Ensure that the farmer's **right to life and to food** are not jeopardised by the contracting process. To do so, the company must ensure, for example: that part of the land is reserved for the food crop needed to support the household; that the prices negotiated with the farmer will help meet the household's needs; and that there is a low risk of trapping the farmer in a cycle of debt. There must be real **risk sharing** between the company and the contracted farmers.
- Ensure that there is no child labour throughout the supply chain.
- Ensure that the clauses of the contract do not pose a risk to **biodiversity** or the **environment**, particularly in the case of crops grown from GM seeds and/or use of chemical inputs.

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“The sheer number of varieties is often reduced when commercial varieties are introduced into traditional farming systems (p.33). The replacement of local varieties or landraces by improved and/or exotic varieties and species is reported to be the major cause of genetic erosion around the world (p.34).”

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FAO, *First Report of the State of the World's Plant Genetic Resources*,³⁷

RISK OF VIOLATING FARMERS' RIGHTS: Seeds

In just under a century, the activity of seed selection³⁸ gradually distinguished itself from farming in most industrialised countries to become a separate sector of activity. The period following the Second World War marked a turning point for many northern countries. This was especially true in France where, throughout the three decades of the post-war boom, the state organised the **professionalisation of the sector** by relying on public research actors and private seed corporations to the detriment of selection by farmers, which decreased significantly³⁹ as farmers were “strongly encouraged to abandon the production of their own farm seeds and become mere consumers of selected seeds”⁴⁰. In most northern countries at the time, the selection and production of seed were organised within a sector bringing together companies, research actors and farmers to carry out the selection, production and distribution of seeds among small-scale farmers and gardeners using them. In 2011, the global market for industrial seeds was estimated at USD 31 billion⁴¹.

While selection and modification techniques did evolve during the 20th century, the logic remained the same: concentrate innovation and research efforts on a few varieties and encourage the use of **standardised seeds** as much as possible. The preferred varieties were often **homogeneous** varieties (particularly adapted to monoculture and

37 FAO, *The First Report of the State of the World's Plant Genetic Resources for Food and Agriculture*, 1996, pp.33-4.

38 We understand seeds to mean grains – or other plant reproductive organs (such as seedlings, cuttings, scions, bulbs, tubers) – intended to be sown for harvest.

39 On this subject see the documentary *Seeds of Freedom*, available at <https://bit.ly/2pIHj8l>.

40 Bonneuil & Thomas, *Semences : une histoire politique*, Éditions Charles Leopold Mayer, 2012, p.64.

41 Total value of industrial seeds marketed worldwide. This figure comes from the International Seed Federation, but it has proven impossible to find a direct trace of this organisation's communication on this figure. Nevertheless, the fact that the figure was quoted by media outlets and serious organisations such as In'OGM would suggest that such a publication does exist.

mechanisation) with **high yields** (to guarantee profitability of the farms), or varieties resistant to increasingly long distribution chains and adapted to transformation by agribusiness⁴². In 2010, FAO made the following observation: "Crop varieties have been bred to meet the needs of high-input production systems, industrial processing and strict market standards"⁴³.

The expansion of seed selection and the reconfiguration

of the seed production industry over the last 30 years deserve special attention. It is important to distinguish between the seed production industry and the seeds themselves. The former gives us an understanding of how the industry is structured and how this structuring and the operating methods of seed giants pose a threat to human rights and the environment; the latter shows the risks inherent in the use of standardised seeds and GMOs in modern farming.

Companies, duty of vigilance, and seeds

The risks caused by the standardisation of seeds and the reckless use of GM crops with no regard for biodiversity, health or food sovereignty are evidence of the need for companies to include this issue in their vigilance

plans. In order to provide comprehensive and relevant risk mapping, seed production companies must pay particular attention to:

- Mechanisms for **transparency and democratic control** in the areas of research, information, subsidies and lobbying. This includes maintaining the **regulatory independence of parties**; and **providing** regulators, scientists and consumers with relevant **information** on the risks of GM seeds for the environment and health.
- **Publishing the results of studies** in their **entirety** so that citizens and consumers can be aware of the impacts of seeds on their health and the environment.

Companies using industrial seeds must pay particular attention:

- To the **type of seeds** used by their suppliers, subcontractors and throughout their value chain as well as to **policies for the protection and promotion of biodiversity**.
- To the **seed policies of subsidiaries, partners and subcontractors**. The recent scandal in France involving 1,900 hectares of land contaminated by transgenic rapeseed banned in the EU⁴⁴, or the recent discovery that tons of food intended for consumption by cattle – particularly French – contained a GMO that was banned in Europe and posed a high risk to animal and human health⁴⁵, highlight the need for companies to remain vigilant throughout their value chain. Companies and their entire value chain importing and exporting products within the EU must comply with European regulations, adopt a moratorium on seeds banned in Europe and be prevented from export and/or import such seeds.
- To verifying and ensuring **adequate long-term monitoring** of the environment and public health, develop research and put in place public early warning mechanisms.

The state, when granting funding to companies, must guarantee – as mentioned in the 2014 Law on Development and International Solidarity Policy – the **exclusion** of GMOs for any company receiving public funding in the context of development projects, throughout

the value chain. In view of France's ratification of the Cartagena Protocol on Biosafety in 2000, it must ensure that the companies to which it grants aid and funding respect the principles of precaution and prevention with regard to the seeds they select and use.

42 Jean-Baptiste Malet, *L'Empire de l'or rouge. Enquête mondiale sur la tomate d'industrie*, Fayard, 2017, 288 pages.

43 FAO, *The Second Report of the State of the World's Plant Genetic Resources for Food and Agriculture*, 2010, pp.221-222.

44 Inf'OGM, "France : 1 900 hectares contaminés par du colza transgénique", November 2018.

45 *Le Monde*, "Un OGM interdit détecté dans des tonnes d'aliments pour animaux d'élevage en Europe", 22nd November 2018.

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Future historians may well be amazed by our distorted sense of proportion. How could intelligent beings seek to control a few unwanted species by a method that contaminated the entire environment and brought the threat of disease and death even to their own kind? Yet this is precisely what we have done.

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Rachel Carson, *Silent Spring*, 1962.

RISK OF HARMING THE ENVIRONMENT AND HUMAN HEALTH: Pesticide pollution

Pesticides in the form of synthetic molecules were developed by industrial corporations in the 20th century⁴⁶. First used in the 1950s with the aim of protecting crops and ensuring food security by increasing yields, the World Bank reports that the use of agro-chemicals in Argentina, particularly glyphosate, has increased by **1000% over the last 20 years**⁴⁷. This rise in the production and consumption of pesticides has been seen all over the world. **In the last decade, Bangladesh, for example, has increased its use of pesticides by four times, while Rwanda and Ethiopia have increased theirs by over six times. This amount goes up to ten times in the Sudan**⁴⁸. The pesticides market has **doubled in 20 years**, rising from USD 22 billion in 1991 to USD 44 billion in 2011⁴⁹. More than **90%** of the pesticides marketed today are for agricultural use⁵⁰. Nonetheless, it is clear that while the use of pesticides is on the increase, the intensity of their use varies greatly according to the agricultural models and practices in question.

46 Justine Marie Cruz, *Étude de la contamination par les pesticides des milieux eau, air et sols : développement de nouveaux outils et application à l'estuaire de la Gironde*, University of Bordeaux, 2015, p.25.

47 Mighty Earth, *The Avoidable Crisis*, p.11.

48 Rodriguez-Eugenio et al., *Soil Pollution: a hidden reality*, Rome: FAO, 2018, p.22.

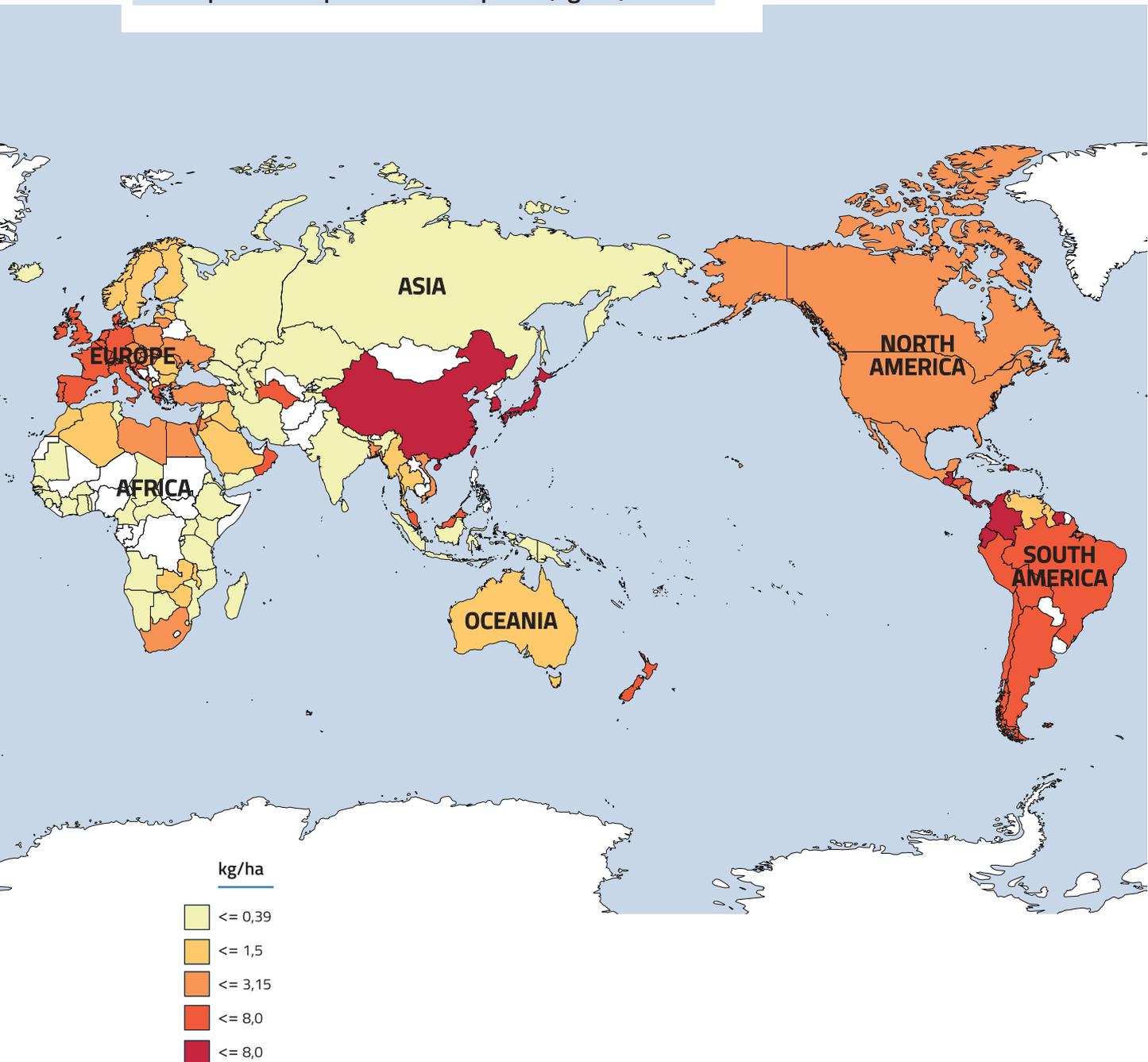
49 Christine Silvy, "quantifications... le phytosanitaire", *Courrier de la Cellule Environnement de l'INRA n° 18*, 1992, available at <https://bit.ly/2FFG6aZ>; *Basta Mag*, "Industrie chimique, sociétés de biotechnologies et géants du trading contrôlent la chaîne alimentaire mondiale", 7th November 2013, available at <https://bit.ly/2sF1kK>; ETC Group, "Putting the Cartel before the Horse... and Farm, Seeds, Soil, Peasants, etc. Who will control agricultural inputs, 2013?", Communiqué n° 111, September 2013, p.10.

50 Stehle and Schulz, "The impact of pesticides on our freshwater resources", *Encyclopedia of the Anthropocene*, 2018(5), p.127.

Although manufacturers and many farmers highlight the benefits of pesticides to protect crops from insects and vector-borne diseases, their negative impacts on the environment, biodiversity and human health are now widely documented⁵¹. As recently demonstrated by the

mass signing of the European Citizens' Initiative on glyphosate⁵², the "We want poppies" anti-pesticides mobilisation in France⁵³, and the decisions taken by El Salvador and the State of Sikkim in India⁵⁴, pesticides are proving to be a major concern for citizens around the world.

Use of pesticides per area of cropland (kg/ha) in 2016⁵⁵



51 For example: United Nations, *Report of the Special Rapporteur on the right to food*, A/HRC/34/48, 24th January 2017; Silvia Di Cesare, *Anticipating the effects of pesticides on farmworkers health based on real practices – The case of banana plantation*, Business administration, University of Montpellier, 2018; Bhatia R. et al., "Organochlorine Pesticides and Male Genital Anomalies in the Child Health and Development Studies", *Environmental Health Perspectives*, 113(2), 2005, pp.220-224.

52 The European Citizens' Initiative "Stop glyphosate", launched on 8th February by a coalition of environmental NGOs, attracted over 1 million signatures across Europe – one of the greatest successes for this type of citizens' initiative in the European Union. The petition has legal force, requiring the European Commission to follow up on it. The Commission has nonetheless re-authorized glyphosate for another 5 years.

53 <https://nousvoulonsdescoquelicots.org/>

54 France 2, "Salvador : les pesticides hors la loi", 13th November 2017, available at <https://bit.ly/2DWt5HO>; France Info, "Bienvenue à Sikkim, le premier État 100% bio en Inde et dans le monde", 16th January 2019, available at <https://bit.ly/2UPLdJh>.

55 FAOSTAT, Pesticides - Use per area of cropland (kg/ha) 2016, available at <https://bit.ly/2PknqxO>.

Companies, duty of vigilance, and pesticides

Although the health and environmental risks associated with the use of pesticides are broadly documented, developed countries are increasingly sensitive to these issues and many pesticides are now banned. France is active on this issue, and so it is therefore consistent for French companies and/or companies established in France to focus particularly on these

issues. The environmental and human damage caused by pesticides is proof that companies need to include their policies on pesticide use, and those of their subsidiaries, in their vigilance plans. In order to map these risks in a relevant way, companies must pay particular attention to:

- The governance of pesticide flows, involving the **choice** and **references** of pesticides **marketed and used**.
- **Storage** methods and rules (including procedures to follow if a pesticide is banned while in stock), methods of **application** and **safety equipment** for workers throughout the value chain.
- Management of **health and safety information**, the methods by which this information is transmitted and the provision of services (e.g. through training). It is essential for companies to know whether their subcontractors are properly trained to be aware of the risks associated with pesticides and to limit their impacts. The same information must be made available to every individual who wishes to access it.
- The **environmental and health impact of production methods** for raw materials purchased by large agro-food companies and their suppliers. Companies must ensure that the materials and products resulting from their value chain have not caused adverse impacts for human rights and the environment, and that they **meet the standards** of the countries in which they are used and/or marketed.
- The **coherence** of their policies: companies must not use in their value chain / must not **export** / must not **import** products banned under French and European legislation.
- The environmental impact caused by the use of pesticides in their activities. **Pesticide levels in different media** (air, water and soil) must be measured. The effects of introducing a pesticide into an ecosystem occur at different levels of biological organisation and, as a result, biological parameters must be measured at these different levels and be taken as signs indicating that pollution has occurred. In Europe, environmental quality standards (EQS) are associated with these substances. According to the definition given by INERIS (French National Institute for Industrial Environment and Risks), it is the "concentration of a pollutant or a group of pollutants in water, sediments or biota that must not be exceeded, in order to protect human health and the environment". Since molecules are often tested individually, the results are not representative of the media, since pesticides are present in complex mixtures with other types of molecules. In this situation, **tests offering a representative study of the environment are necessary**⁵⁶.

56 Justine Marie Cruz, *Étude de la contamination par les pesticides des milieux eau, air et sols*, pp.38-39.

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When the rights of human rights defenders are violated, all of our rights are put in jeopardy and all of us are made less safe.”

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Kofi Annan,
UN Secretary-General, 1998.⁵⁷

RISK OF CRIMINALISATION: Human rights defenders

The UN Declaration on Human Rights⁵⁸ celebrated its twentieth anniversary in 2018. It was a bitter-sweet occasion given that, 20 years on, the situation for defenders of human rights and the environment is of grave concern⁵⁹. According to the United Nations, **one defender was killed every day** between 2015 and 2017⁶⁰. The Business and Human Rights Resource Centre (BHRRC) recorded 388 attacks against human rights defenders in 2017 and declared agrobusiness to be the second most dangerous sector and the first in terms of murder victims⁶¹. Global Witness, in a 2018 report, listed 207 murders of environmental defenders, making **2017 the deadliest year recorded**. The UN has drawn the same conclusions as the BHRRC, stating that no industry is **more deadly** than agrobusiness which, with 46 murders, has for the first time overtaken the mining industry. Almost **a quarter** of the defenders of land and the environment murdered in 2017 were protesting against agricultural projects. This was a **100%** increase on the previous year, and murders of defenders continued at a steady pace in 2018, with 321 murders in 27 countries, according to Front Line Defenders⁶². These figures are a frightening illustration of the **deadly consequences of the shady dealings and complicity between governments and agrobusiness companies**⁶³. Moreover, it is important to note that all

57 In his speech delivered for the adoption of the United Nations Declaration on human rights defenders, in United Nations, *Situation of human rights defenders*, A/73/215*, July 2018, p.9.

58 United Nations, *Resolution adopted by the General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, A/RES/53/144, 8th March 1999.

59 See for example United Nations, *Situation of human rights defenders*, A/73/215*, July 2018.

60 At least 1,019 human rights defenders, of whom 127 were women, were killed in 61 countries between 2015 and 2017. See United Nations, *Progress Towards the Sustainable Development Goals*, E/2018/64, para. 131.

61 Business & Human Rights Resource Centre, *Key Findings*, February 2018, available at <https://bit.ly/2m7NAci>.

62 Front Line Defenders, *Global Analysis 2018*, 2019, p.7.

63 Global Witness, *At What Cost?*, pp.42-43.

the organisations surveyed about attacks on defenders remind us that the real figures are certainly much higher, particularly considering that many cases are not sufficiently – or not at all – brought to light, acknowledged and documented.

Companies, duty of vigilance, and human rights defenders

In October 2018, 150 human rights defenders from around the world gathered in Paris. Following the summit, the Human Rights Defenders World Summit 2018 Action Plan was adopted, offering a vision of how the protection of human rights defenders might progress in the coming years⁶⁴. The Action Plan highlights the importance of adopting an intersectional approach to protect defenders, underlining the responsibility of governments, companies, financial institutions, donors and intergovernmental institutions to foster a safe environment for the defence of human rights. In order to stop the global erosion of human rights, and to ensure that human rights defenders can work safely on

business and human rights issues, governments and companies must be proactive in creating an environment that is safe and conducive to their work, refraining from any action likely to restrict or threaten that environment, and punishing any action that would hinder their work. Corporate responsibility also includes making it unlawful to harm human rights defenders, restrict their rights or interfere with their legitimate activities. On the contrary, companies have a duty to consult defenders and work alongside them to identify, mitigate and remedy the adverse human rights impacts of their activities. In the framework of the duty of vigilance law, companies must:

- Adopt a **declaration of principles** on human rights and human rights defenders. These declarations must be communicated in clear terms throughout their value chain so that each actor can understand and apply them.
- Respect the right of human rights defenders and other civil society actors to express their views on, and to disagree with, protest and organise against companies' activities. They must ensure that companies or contractors acting on their behalf do not participate in any threats or attacks against defenders. They must adopt a **zero tolerance** policy for acts of violence, threats or intimidation committed against defenders who oppose or express their views on the company's projects.
- If these incidents do occur, companies must **suspend** the project implementation until a safe environment for defenders is guaranteed in the long term. They must be prepared to **disengage** from the business relationship before the contract is signed, and must do so if human rights abuses are brought to light and not considered a "major challenge" by the companies, subsidiaries, partners and/or subcontractors⁶⁵.
- **Refrain** from invoking criminal defamation laws and/or from initiating criminal defamation proceedings against those who criticise or oppose their activities. When assessing the appropriateness of bringing a civil action for alleged defamation, a company must be aware of the **potential negative impact** of its action on human rights and on human rights defenders in general.
- **Work together** with all actors to reduce the risks faced by defenders. In circumstances where the behaviour of a third party (such as the state in which they operate) is linked to their activities and where lack of action on their part would lead to avoidable harm, companies must act. Observing the local laws of the host State is **not a sufficient**

64 Human Rights Defenders World Summit 2018, *Action Plan*, 2018, available at <https://bit.ly/2C1q5Jh>.

65 United Nations, *Situation of human rights defenders*, A/72/170, July 2017, p.19.

reason for transnational corporations to violate the rights of defenders or fail to stand up against attacks and restrictions on defenders' work. For example, in 2014, senior executives from six global clothing brands issued a joint letter to the Cambodian government in which they expressed concern over injuries and killings of striking workers by security forces. In 2015, Leber Jeweler and Tiffany & Co. issued statements calling on the Angolan government to drop charges against Rafael Marques, a journalist tried for defamation after condemning abuses in the diamond industry⁶⁶.

Implement **adequate due diligence processes** as defined in the UN Guiding Principles on Business and Human Rights, to guarantee the rights of all people and individuals impacted by the activities of parent corporations or those of their subsidiaries, subcontractors or suppliers. In addition to respecting these principles, companies must consult the Akwé: Kon Guidelines⁶⁷ (adopted by the Conference of the Parties to the Convention on Biological Diversity) when making cultural, environmental and social impact assessments of development projects to be implemented on sacred sites or which may have an impact on these sites and on areas of land and water traditionally occupied or used by indigenous and local communities.

Be certain to include the **gender** and **gender-specific risks** faced by female defenders and empower them to address and remedy these risks.

Hold **constructive consultations** and **meetings** with human rights defenders during the critical stages of project planning and implementation, and **disclose** all relevant information on business projects in good time, including potential impacts on human rights and the environment. For companies, this means complying with the principle of **free, prior and informed consent**.

 **NOTE:** The protection and prevention measures adopted must be **individual and collective**⁶⁸. While it may seem obvious that the most vulnerable individuals require protection, given that the objective is to protect all those who are involved in the defence of rights, it is nonetheless **essential** to adopt a collective approach. This involves recognising that these defenders are linked to communities and groups and that, if one defender is impacted, others (community members, parents, colleagues, etc.) will also be affected and vice versa. In addition, focusing only on a designated individual may increase the risks and dangers that person may face.

66 Tiffany & Co. and Leber Jeweler, *Open statement calling for charges to be dropped against journalist Rafael Marques de Morais in Angola*, 22nd April 2015, available at <https://bit.ly/2TLG5Fi>.

67 Secretariat of the Convention on Biological Diversity, *Akwé: Kon Guidelines*, 2004.

68 Protection International, *Collective Protection of Human Rights Defenders. A collective approach to the right to defend human rights*, 2018.

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Politics and business have been slow to react in a way commensurate with the urgency of the challenges facing our world. Although the post-industrial period may well be remembered as one of the most irresponsible in history, nonetheless there is reason to hope that humanity at the dawn of the twenty-first century will be remembered for having generously shouldered its grave responsibilities.

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Laudato Si' Encyclical of Pope Francis, paragraph n° 165, 2015.

CONCLUSION

With the adoption, on 27th March 2017, of the French duty of vigilance law, large companies in France now have a legal obligation to exercise vigilance with regard to their activities and those of the economic actors involved in their value chain. In addition, they have an obligation of transparency because they are required, in their vigilance plans, to implement and publish:

1. A risk mapping that identifies, analyses and ranks risks;
2. Procedures to regularly assess the situation of subsidiaries, subcontractors and/or suppliers with whom the company maintains an established business relationship;
3. Appropriate actions to mitigate risks or prevent serious violations;
4. An alert mechanism that collects reportings of potential or existing risks;
5. A monitoring scheme to follow up on the measures implemented and assess their effectiveness.

It is clear that if risk mapping is not carried out with care, the rest of the plan will not be of high quality. **Thus, without an exhaustive, specific and documented risk mapping, the rest of the vigilance plan is, ipso facto, unusable.**

CCFD-Terre Solidaire has chosen to address five basic (but not exhaustive) risks that companies in the agro-food sector may cause to workers, local populations or the environment: the risk of resource grabbing; the risk of impacting workers' rights, biodiversity, the environment and human health; and the risk of criminalisation. Each of these risks has been illustrated by a specific example respectively: land and water grabbing; contract farming;

seeds; pesticides; and human rights defenders. While it was not relevant to catalogue all the specific risks of the agro-food sector in this report, the methodology adopted in this report serves as an example in order to understand how a risk materialises, and what actions for its mitigation or prevention constitute the most relevant response. It was therefore not a question of drawing up an exhaustive list of the risks that **CCFD-Terre Solidaire** wishes to see included in the vigilance plans but, rather, of giving guidance on the methods that must be followed to **identify** and clearly **document** the risks that a company can cause to human rights and the environment. This work has shown that the vigilance plans – which so far are conspicuous in their reduced length and their overly brief risk mappings (if, indeed, these are included at all) – must, on the contrary, establish detailed risk mappings and actions for mitigation and prevention.

At a time when biodiversity is steadily declining and the pressure on agricultural land is constantly increasing, when water access is a vital issue for populations, when inequalities are growing at a staggering rate and when, despite all attempts, world hunger has not been eradicated and is indeed rising once more, a duty of vigilance is imperative for all actors, whether they be individuals, governments or private corporations. While international law was not designed to regulate the conduct of non-government actors⁶⁹, the duty of vigilance law and the UN negotiations led by the intergovernmental working group for an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights show that, in a context of social and environmental crises, these normative frameworks are vital tools for planning equitable development and the continuation of life on our planet. For this reason, it is **imperative** that French public institutions guarantee the correct application and effectiveness of this law, and support European and international initiatives that hold companies accountable for their actions.

69 Claire Cutler, "Critical reflections on the Westphalian assumptions of international law and organisation: a crisis of legitimacy", *Review of International Studies*, 27(2), 2001, pp133-150.



As a long-term agent of change in over 60 countries, CCFD-Terre Solidaire takes action against all forms of injustice. We strive to ensure that the fundamental rights of all human beings are respected: eating one's fill, living with dignity, working in a healthy environment, choosing where to live one's life... A fairer and more united world is already underway because all human beings carry a force for change within them. Our commitment to greater justice and solidarity is rooted in the social thought of the Church. Through our individual and collective action, we offer and support both political and field solutions.

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beneficiaries

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