

Project title : Hydro-agricultural development with smart agriculture practices resilient to climate change in Niger

Country : Niger

Accredited Entity : Banque Ouest Africaine de Développement (BOAD)

ANNEX 9 : Legal due diligence

The Project is compliant with the regulatory documents listed in this Annex 9

Agreement and contract to be signed in the framework of the Project

CONTRACT/AGREEMENT	PARTIES CONCERNED	
Funded Activity Agreement (FAA) for project implementation	GCF	BOAD
Subsidiary Agreement for GCF Grant management	BOAD	Ministry of Plan Niger
BOAD loan Agreements	BOAD	Ministry of Plan Niger
Loan facility (GCF) management Agreements under Output 3	BOAD	Bank(s) and/or MFI(s) selected for the management of the loan facility
Project Steering Committee installation Decree	Ministry of Agriculture Niger	
Project management Unit installation Decree	Ministry of Agriculture Niger	
Agreement to exonerate Taxes	Ministry of Finance Ministry of Plan Niger	PMU under DGGR See page 5
Specific contract for project execution by ONAHA	Executing Entity	ONAHA
Adaptation and mitigation indicators supervision agreement	Executing Entity	GCF's National Designated Authority (NDA)
Goods, services, Consultance and works acquisition contracts	Executing Entity	Provider Companies See detail on page 3
Operating Agreement	ONAHA	Irrigation Cooperatives And Water users association
Contract of the plots occupation	ONAHA	Producers/famers

HOW TO ACQUIRE GOODS, SERVICES AND WORKS ACQUISITION CONTRACTS

The procurement will be done in accordance with the rules and procedures of the BOAD. The goods, works and services funded by the GCF Grant and Loan and the BOAD Loan will be acquired by :

- National restricted consultation for the acquisition of vehicles from **Component 4** "Project Management";
- Regional (WAEMU countries) consultation for the acquisition and assembly of water mobilization equipment (generator solar, solar pumps, boreholes - per batch of 20 water mobilization units) of **Component 1**;
- Regional (WAEMU countries) consultation for the works technic control (**Component 3**) ;
- Limited regional consultation at the corporate level of UEMOA countries for capacity-building activities (**Component 3**) ;
- Direct agreement with ONAHA through a specific contract for the formulation of technical complementary studies and the installation of irrigation water distribution networks and for the development of the sites (Activity 1.1.1; Activity 1.1.2; Activity 1.2.1.); the development of the sites (All the component 2); the some activities of capacity build (Activity 3.2.1; Activity 3.2.2; Activity 3.2.3) in accordance with the provisions of Decree No 2013 - 569/PRN/PM of 20/12/2013 bearing the code of public procurement and public service delegations, Article 6 of the Pluriannual Plan Contract on the contracting scheme;
- Limited regional consultation the formulation of the Tender Files (DAO) (under activities 1.1.1 and 1.1.2 of the **Component 1**);
- Direct agreement between the PMU and the firm that formulated the project, for the preparation of environmental and social impact studies of the selected sites as part of the implementation of the measures of the Environmental and Social Management Framework prepared for the project (Activity 3.4.1) ;
- Direct agreement between the PMU and CNEDD (GCF-NDA) for the supervision of works on climate change (Activity 3.4.1) ;
- Direct agreement between the PMU and BNEE (National Agency for environment management) for project environmental and social monitoring and control (Activity 3.4.1)
- Direct agreement between the PMU and General directorate for plant protection (DGPV) the implementation of the integrated pest management plan (Activity 3.4.1)
- National consultation for the implementation of the Gender Action Plan support (Activity 3.5.1) ;
- International consultation and preference for Regional (WAEMU countries) consultation for the Consulting support by the gender specialist for the PMU(Activity 3.4.1).

TAXATION AND REGULATION

In Niger the rate applied for taxes is 18%. As part of the project, the Government of Niger will bear the taxes. An agreement will be signed by the Ministry of Finance to exonerate taxes within the framework of the project whenever it will be necessary.

With regard to regulation, BOAD does not ask for a guarantee for public projects in member states

National Legal and Regulatory Texts Applicable to the Project

Legal and regulatory texts at the national level applicable to ONAHA within the framework of the project

- Order No. 78-39 of 29 December 1978 creating ONAHA ;
- Order No. 2014-01 of January 3, 2014 supplementing Order No. 78-39 of December 29, 1978 creating ONAHA;
- Decree N° 2015-354/PRN/MAG of July 10, 2015, amending and supplementing Decree 2015-218/PRN/MAG of April 18, 2015, approving the statutes of the National Office for Hydro-Agricultural Developments (O.N.A.H.A);

The Management Agreement No. 002 of August 8, 2016: the State of Niger entrusts ONAHA with the management of hydro-agricultural developments carried out by the public authority or with its assistance, including developed land and works for their development and exploitation, constitute public property of the State.

The multi-year plan contract of September 28, 2016 between the State and ONAHA: operational document based on the contractualization between the State, responsible for the public service, regulator and investor and ONAHA;

Order N°009/MAG/ONAHA/2016 of 21 January 2016 approving the standard contract for the occupation of plots of land in agricultural areas developed by the State or local authorities.

- Order N° 064 of September 29, 2016, approving the standard contract of exploitation on the agricultural development and exploitation of irrigated perimeters;
- Order N° 065 of September 29, 2016, approving the standard operating contract on the management of water and irrigation infrastructures and equipment on irrigated perimeters; - Order N° 065 of September 29, 2016, approving the standard operating contract on the management of water and irrigation infrastructures and equipment on irrigated perimeters;
- Order N° 063 of September 29, 2016, specifying the modalities of creation, missions, organization and operation of the Irrigation Water Users Associations (AUEI) of Hydro-Agricultural Developments; Order N° 063 of September 29, 2016, specifying the modalities of creation, missions, organization and operation of the Irrigation Water Users Associations (AUEI) of Hydro-Agricultural Developments;
- Order N° 340/MAG/EL/DIRCAB/SG/DL/ONAHA of November 7, 2017 approving the standard contract of emphyteutic lease on hydro-agricultural developments, in compensation of cropland for the expropriated persons: the State (lessor) allocates by emphyteutic lease to the lessee with a view to exploitation for agricultural purposes under the conditions well defined in the specifications the specified plot of land on its public lands developed for the practice of irrigated farming on the concerned perimeter.

National legal and regulatory texts applicable to the environmental project

- The constitution of 25 November 2010

Article 35 of the Constitution states that "everyone has the right to a healthy environment. The State has the obligation to protect the environment under the conditions provided by law in the interest of present and future generations. The State shall also ensure the evaluation and control of the impacts of any project and programme on the environment". In the light of article 35 of Niger's fundamental law, this project is subject to an environmental assessment.

Law No. 98-56 of 29 December 1998 on the Framework Law on Environmental Management

It provides the overall legal framework for environmental management through measures relating to the protection of the atmosphere, water resources, soil and subsoil, human settlements, waste management, harmful or dangerous chemical substances, noise and odour nuisance, industrial and natural hazards, combating desertification and mitigating the effects of drought.

Article 31 of the Framework Act stipulates that development activities, projects and programmes which, by virtue of their size or their impact on the natural and human environments, may adversely affect the latter are subject to prior authorization by the Minister responsible for the environment. Such authorization is granted on the basis of an assessment of the consequences of the activities, project or programme as updated by an environmental impact study prepared by the developer and approved by the Minister responsible for the environment.

Article 52 of the Act also provides that the soil, subsoil and the resources they contain, as limited resources, renewable or not, are protected against any form of degradation and are managed in a rational manner. Lastly, articles 53, 56, 57, 58, 62 and following deal with other aspects of the protection of the soil, flora and fauna. Articles 78 to 85 deal with the management of natural resources. In accordance with these provisions, the present project is subject to an environmental and social impact study.

- Law n°2018-28 of 14 May 2018 determining the fundamental principles of Environmental Assessment in Niger

Article 7 of this Law stipulates that "on the proposal of the Minister responsible for the environment, the Council of Ministers shall establish and revise by decree the types of policies, strategies, plans, programmes and the list of development projects for which the public authorities may not decide, approve or authorize the execution without a certificate of environmental compliance issued by the Minister responsible for the

environment or a written authorization duly justified in accordance with the texts in force".

- Law No. 2004-040 of 8 June 2004 on the forestry regime in Niger, which serves as the Forestry Code.

Article 18 of this law stipulates that the forest estate of the territorial collectivities is made up of forests legally acquired according to the means of written law or by means of concessions granted on the State's protected forest estate in accordance with the legislation in force.

Concessions are based on the following grounds, depending on the case:

- the need for local populations to be given responsibility for the rational management of the natural resources of their land, organized and prepared for this purpose;
 - the transfer of all or part of land restored or developed with a view to its management in ecologically sound conditions.
- Law n°2001-32 of 31 December 2001, on the orientation of the Regional Planning Policy.

The purpose of this Act is to establish the legal framework for any intervention that has the effect of structuring, occupying and using the national territory and its resources. Furthermore, it identifies and encourages the development of all potentialities likely to encourage the anchoring of populations in their areas. Thus, the present site development project must adopt approaches that allow the involvement of the affected populations, particularly the populations of villages located near the sites. Moreover, Article 19 stipulates that the land use planning policy shall create the conditions for the settlement of rural populations through, in particular, the strengthening of their food security, the improvement of their incomes and the establishment of equivalent measures likely to enhance the attractiveness of the rural environment. On the other hand, this law stipulates in its article 34 that "the State shall ensure that the environmental dimension is taken into account in the formulation of programmes and projects by including environmental impact studies integrating ecological, socio-economic and cultural aspects. It shall also ensure compliance with international conventions on environmental protection by all development actors".

- Law No. 2004-048 of 30 June 2004 on the framework law on livestock farming.

Article 6 of the Act stipulates that all measures must be taken to ensure a harmonious balance between wildlife and its habitat on the one hand, and domestic animals, particularly extensive livestock farming, on the other.

- Law No. 98-07 of 29 April 1998, establishing the hunting and wildlife protection regime and its implementing decree No. 98-295 PRN/MHE of 29 October 1998

This project will take all necessary measures to protect wildlife and avifauna during the work and even during site operations.

- Order No. 97-01 of 10 January 1997, institutionalizing environmental impact studies.

Article 3 of the Act states that "public or private equipment and operation activities must comply with the legal requirements for environmental protection". In addition, Article 4 of this Order applies to the site development project. Indeed, it stipulates that "for any project, which by the size of its dimensions or its impact on the natural and human environments, may affect the latter, is subject to prior authorization by the Minister in charge of the environment. This authorization is granted on the basis of an assessment of the consequences of the project's activities, updated by an impact study prepared by the promoter and approved by the Minister responsible for the environment".

- Ordinance No. 93-13 of 2 March 1993 instituting a public health code in Niger

Public health regulations prescribe general provisions on the protection or holding of waste that may harm the natural environment. Article 4 of the Public Hygiene Code prohibits any person from producing or holding waste in conditions likely to create harmful effects on the soil, flora and fauna, to degrade the landscape, in general, to harm the health of man, domestic animals and the environment, is required to dispose of it or have it disposed of or recycled. This ordinance is especially reinforced by Act No. 98-056 of 29 December 1998 on the framework law on environmental management in Niger, which provides for prohibitions on any form of nuisance or pollution of the living environment. It also provides in its article 80 that staff must wear adequate and specific protective equipment.

- Ordinance No. 96-039 of 29 June 1996 on the Labour Code

The Ordinance prohibits forced or compulsory labour, as well as discrimination in employment and remuneration on the basis of race, sex, social origin and other grounds. The Labour Code also deals with employment in its title II (chapter I, articles 8, 9, 10, 11 and 12) and the employment contract (articles 41 to 89). It lays down guidelines on the hiring of workers, the use of temporary employment agencies or private employment agencies, and the suspension or termination of employment contracts. In addition, the Ordinance establishes working conditions and remuneration (working hours, night work, child labour, weekly rest, paid holidays, health and safety at work, basic wages and

allowances, as set out in articles 127 to 146 of the Code), recognizes professional representation and collective bargaining, defines labour controls and bodies, procedures for settling labour disputes, as well as penalties for violations of the provisions of the Labour Code.

- Order 2010-54 of September 17, 2010, on the General Code of Local Authorities, as amended by Order 2010-76 of December 9, 2010.

Local and regional authorities shall ensure the sustainable management of natural resources with the effective participation of all stakeholders. Therefore, the implementation of this project must be carried out with the involvement of local authorities (administrative and communal).

- Ordinance N°2010-09 of 1st April 2010 on the Water Code in Niger. This Ordinance recognizes the fundamental right of every citizen to have access to water (article 4), and it recognizes in article 6 that water is an ecological, social and economic good whose preservation is of general interest and whose use in any form whatsoever requires everyone to contribute to the efforts of the community and/or the State to ensure its conservation and protection. While Articles 43 and 45 of the same Ordinance make waterworks and, in general, the installations, works, works and activities carried out by any natural or legal person, public or private, subject to authorization, declaration or concession for the use of water.
- The Ordinance 93-015 of 2 March 1993 fixing the guiding principles of the Rural Code (domanial and land tenure).

This text determines the conditions in terms of conflict management related to the management of natural resources and determines the authorities competent to settle disputes relating thereto. It thus defines the legal framework for agricultural, forestry and pastoral activities from the perspective of land use planning, environmental protection and human development. It also ensures the security of rural operators through the recognition of their rights and promotes development through the rational organisation of the rural world (Article 1). This Ordinance also defines land resources as "all land intended for agriculture, stockbreeding, afforestation as well as developed land, classified land and vacant land", and water resources as "all surface waters falling within the domain of the State and the Territorial Communities, groundwater and private waters". This Ordinance also deals with rural hydraulics (Title II) and determines that the use of water and the creation, modification and use of hydraulic works in rural areas must be designed within the hydrogeological and hydrological basin in order to cause the minimum disturbance to the hydrological cycle, water quantity and quality. Chapter 1 of the Act is devoted to agricultural development. Thus, Article 45 stipulates that any operation to develop land by the contribution of water resources, whatever the technique used, constitutes a hydro-agricultural development.

- Decree No. 2000-397/PRN/ME of 20 October 2000 on the administrative procedure for evaluating and examining environmental impacts. This decree determines the administrative procedure to be followed to assess and examine the environmental impacts of a project, similar to development projects. The decree also specifies the content of the environmental impact study and the mechanism for public consultations.
- Decree No. 2000-397/PRN/ME/LCD of 20 October 2000, determining the list of activities, works and planning documents subject to environmental impact studies;
- Decree n°2009-224/PRN/MU/H of 12 August 2009, fixing the modalities of application of the specific provisions of Law n°61-37 of 24 November 1961 regulating expropriation for public utility and temporary occupation, modified and completed by Law n°2008-37 of 10 July 2008, relating to the involuntary displacement and resettlement of populations;
- Decree No. 96-408/PRN/MFPT/E of 4 November 1996 on the modalities for the creation, organization and functioning of health and safety committees;
- Decree n°2019-027/PRN/MESU/DD of January 11, 2019 on the modalities of application of Law n°2018-28 of May 14, 2018 determining the fundamental principles of Environmental Assessment in Niger.

Decree n° 2014-507/PRN/MH/A of July 31, 2014, adopting the document of Operational Strategy for the Promotion of Hygiene and Basic Sanitation (SOPHAB) 2014-2018;

Decree No. 96-409/PRN/MFPT/E of 4 November 1996 on the terms and conditions of the recruitment declaration;

Order n°149/MH/E/SG/DL of July 12, 2012 on the organization and functioning of the Office of Environmental Assessment and Impact Studies, and setting the attributions of its director;

Order n°14/MMH/MDR/MI/MTP/T/U/MAECI of November 1, 1976 enacting the general prescriptions to which dangerous, unhealthy or inconvenient establishments must be subjected.

Order n°0115/MEE/LCD/SG/DL of 15 October 2010 adopting the Guide to Drinking Water Supply Services in Niger in the field of Rural Hydraulics;

Order n°006/MH/A/SG/DGA of January 16, 2016 on the creation, attributions and composition of an interministerial coordination committee of the hygiene and sanitation sub-sector;

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