Comments on the zero draft of the principles for responsible agricultural investment (rai) in the context of food security and nutrition

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The Special Rapporteur welcomes the zero draft of the principles for responsible agricultural investment (rai) that will serve as a basis for discussion for the 16-17 May meeting of the Open-Ended Working Group, as well as for the consultation process that is to be initiated in the coming months. As a first contribution to this consultative process, the Special Rapporteur would like to make the following comments and observations on the zero draft.

(1) Is the Zero Draft an accessible document in terms of structure, style and language?

The Special Rapporteur acknowledges the efforts made to formulate the draft proposed principles in accessible and clear terms. However, in its current form, the zero draft is formulated in too general terms. It fails to include the necessary introduction describing the purpose and general orientation of the principles, a clear indication of the roles and responsibilities of the various actors concerned for each of the principles, and, where appropriate, references to relevant existing instruments. Unless this is remedied, the proposed principles may fall short of meeting their main objective, which is to provide practical guidance to all relevant actors, and in particular States, on how to promote, enable and regulate investments to ensure that these investments contribute to food security and nutrition and “support the progressive realization of the right to adequate food” (CFS 2012/39, Appendix D, para. 1).

(2) Does the Zero Draft adequately reflect the purpose of the principles as per the ToRs?

The zero draft currently does not adequately reflect the purpose of the principles as per the Terms of Reference. The draft principles for responsible agricultural investment should be substantially more detailed and more normative in their orientation. In particular, they should allow for a much clearer differentiation of the various roles and responsibilities of the State and non-State actors concerned, and a much more in depth description of the proposed policy and regulatory tools, incentives, mechanisms and processes allowing for responsible investments to be promoted and enabled. In addition, it is a source of concern that the draft zero does not account for the very high diversity of the most important subjects of responsible agricultural investments, i.e. the hundreds of millions of food insecure small scale producers whose ability to invest should be strengthened, and in priority women.

Although the zero draft comes with an annexed Background document that provides more details and clarity, it is unclear which document will serve as a basis for the upcoming consultations. The Background document presents the advantage of better describing the implications of each
of the proposed principles, of addressing the roles and responsibilities of state and non-state actors, and of including clear references to internationally agreed standards and international human rights law. However, the list of relevant existing instruments included in Annex 1 of the Background document should refer to other existing documents and internationally agreed instruments that provide appropriate guidance.

For example, reference to the following documents and instruments could usefully be mentioned:

**Principle 2:**
- VGRtF Guideline 8E on “Sustainability”;

**Principle 3:**
- VGRtF Guideline 8 “Access to resources and assets”;
- Report of the UN Special Rapporteur on the right to food, *Towards more equitable value chains: alternative business models in support of the right to food* (A/66/262);

**Principle 5:**
- VGRtF Guideline 1, “Democracy, good governance, human rights and the rule of law”;
- United Nations Convention against Corruption.

**Principle 6:**
- VGRtF Guideline 6 “Stakeholders”.

**Principle 7:**
- ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

**Principle 8:**
- VGRtF Guideline 17 “Monitoring, indicators and benchmarks”; Guideline 13 “Support for vulnerable groups.”

**Principle 10:**
- VGRtF Guideline 5 “Institutions”

(3) **Does the Zero Draft adequately reflect the nature of the principles as highlighted in the ToRs?**

The zero draft appears to leave out some essential aspects of the proposed principles as highlighted in the Terms of Reference (ToRs). Although the points raised below are in no way a comprehensive assessment of the proposed principles, they should be addressed as a matter of priority to ensure that adequate guidance is given to States and non-State actors on the types of investment that could best contribute to the realization of the right to food.

*Taking into consideration the human rights obligations and responsibilities of State and non-State actors*

The proposed principles are not adequately grounded in a human rights approach so as to clearly set out the human rights obligations of both investor and recipient States, and the human rights responsibilities of non-State actors (6d of the ToRs).

While the objective of supporting the universal realization of the human right to adequate food is mentioned in the Background document, such a reference is missing in the zero draft. This is a
regrettable departure from the ToRs (which highlight that the principles should build on the Voluntary Guidelines on the Progressive Realization of the Right to Adequate Food and on the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security). It also weakens the overall coherence and strength of the proposed principles, by failing to explicitly address, as the right to food would require, the need to identify and target marginalized and vulnerable groups, the need to ensure that investments have no discriminatory impacts, the need to put in place accountability and monitoring mechanisms, and the need to transition to sustainable and resilient agri-food systems.

Principle 1 should add a reference to the right to food, so that it would read: “Responsible agricultural investment enhances food security and nutrition for all and contributes to the realization of the right to adequate food.”

Grounding the proposed principles in internationally agreed human rights standards would help guarantee that responsible agricultural investment respect the human rights of potentially affected local communities, and in particular the rights of indigenous peoples. In that regard, an explicit reference to the principle of Free, Prior and Informed Consent (FPIC) for Indigenous Peoples (consistent with the UN Declaration on the Rights of Indigenous Peoples) would be useful. For example, the Principles could clarify that “in regard to Indigenous Peoples, the principle of free, prior, informed consent (FPIC) is always applied where the investment may affect their customary lands and resources or have other impacts on their rights.”

A direct reference to human rights standards would also help ensure consistency with other relevant instruments such as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (as required by point 7a of the ToRs).

As regards specifically transnational investments, the Special Rapporteur wishes to underline that the particular responsibilities of the State of origin of the investor, that principle 12.2 of the current zero draft acknowledges, have their source in international human rights law. The Committee on Economic, Social and Cultural Rights affirms that States parties should ‘prevent third parties from violating the right [protected under the International Covenant on Economic, Social and Cultural Rights] in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law’. Specifically in regard to corporations, the Committee has further stated that: ‘States Parties should also take steps to prevent human rights contraventions abroad by corporations that have their main seat under their jurisdiction, without infringing the sovereignty or diminishing the obligations of host states under the Covenant’. Similar views have been expressed by other human rights treaty bodies.

The endorsement by a range of experts and organizations of the Maastricht Principles on the extraterritorial obligations of States in the area of economic, social and cultural rights, adopted

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3 See CERD, concluding observations on Canada, CERD/C/CAN/CO/18, para. 17; concluding observations on the United States, CERD/C/USA/CO/6, para. 30; Human Rights Committee, concluding observations on Germany, CCPR/C/DEU/CO/6, para 16.
on 28 September 2011, further confirms the existing consensus on the recognition of the extraterritorial duties of States in the area of human rights, including their duties to regulate the activities of corporations whose conduct they can influence.

_Give due attention to the situation of the most vulnerable_

While Principle 1.3 states that “responsible agricultural investment improves access to food, especially by the most vulnerable”, it would be important to integrate this important point further into other Principles, notably Principle 8.1 on impact assessment where there should be a requirement to pay special attention to assessing impacts on groups and households particularly vulnerable to food insecurity, through adequately disaggregated analysis and participatory assessments.

_Giving due consideration to gender related aspects_

Although the ToRs require the proposed principles to address the “gender related aspects” of responsible agricultural investment, including the “particular obstacles faced by women and girls” (6c-v of the ToRs), the zero draft fails to do so.

In the view of the Special Rapporteur, this is a most regrettable gap. The gap should be addressed by explicitly recognizing in the zero draft the specific forms of discrimination that women face, such as unequal access to productive resources such as land and to economic opportunities, such as decent wage employment; unequal bargaining position within the household; gendered division of labour within households, that result both in time poverty for women and in lower levels of education; and women’s marginalization from decision-making spheres at all levels. The importance of ensuring that investment benefits women is underlined in the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which has a specific provision on women in rural areas (Article 14(1)) and which aims to guarantee the rights of women to equal treatment, in particular, in access to productive resources such as land and agrarian reform as well as in land resettlement schemes (art. 14, para. 2(g)). Given the gendered nature of the agrarian transition, and considering the large number of women that depend on agriculture, it is both vital and urgent to improve their opportunities to thrive as producers. In the past, there has been a tendency to provide support to agricultural producers on a gender-blind basis, with the result that all were treated as if they were men: this has proven misguided. We must design explicitly gender-sensitive agricultural policies, as recommended also under Guideline 8.6 of the Right to Food Guidelines. A range of findings on this issue have been documented in the report of the Special Rapporteur on “Women’s rights and the right to food” (A/HRC/22/50). The report also emphasizes that States should make the investments required to relieve women of the burden of the household chores they currently shoulder. Responsible agricultural investment should include such considerations as a matter of priority.

_Targeting investments in small-scale food producers_

The zero draft does not adequately address the central role played by smallholder farmers in contributing to the realization of the right to food of all, and the specific ways in which smallholder farmers need to be supported to continue investing in agriculture. The proposed principles should be centered on the special interests and needs of smallholder producers with respect to research, development and technology transfer (as highlighted in 6b of the ToRs).
In addition, priority should be given to investments upstream and downstream of production, which have the potential to improve the productivity of and access to markets for agricultural producers, particularly small-scale producers. In his report dedicated to equitable value chains and alternative business models in support of the right to food (A/66/262), the Special Rapporteur has recommended that small-scale farmers be directly and indirectly supported through: the provision of stable and reliable infrastructure services such as roads, water, electricity and communications; traditional and wholesale markets; schemes allowing small-scale farmers to climb up the value chain, including by identifying at the local or regional level which partnerships could be established between producers, packagers, processors and retailers; an enabling environment for the development of local markets benefiting small-scale farmers and the creation of a range of options for connecting small-scale farmers in rural areas to urban consumers; the organization of farmers into cooperatives and other types of producers’ organizations that can improve farmers’ bargaining position; help them to move up the value chain into the produce packaging, processing and marketing operations; and help them to acquire inputs and sell their produce under better circumstances.

Securing access to land and natural resources

The Zero Draft gives too little attention to the potential impacts of investments on access to land and natural resources. The proposed principles should complement (and be consistent with) the VGGT and in particular its section 12, by insisting on the fact that responsible agricultural investments should generally not result in the transfer of tenure rights. Moreover, the Principles should explicitly address the recurrent problem of forced evictions related to agricultural investments. Safeguards and mechanisms must be in place to ensure that adequate attention is paid to the rights and interests of the communities affected and that adequate procedural safeguards are in place and adhered to, including with a view to mitigating adverse effects and ensuring adequate compensation for any harm that is caused.

Ensuring that responsible agricultural investment contributes to sustainable and resilient agri-food systems

The zero draft currently appears not to give sufficient guidance as to the types of investments that could best contribute to the sustainable use of natural resources and to an improved sustainable agricultural productivity (6c-vi and 6c-vii of the ToRs). The Special Rapporteur wishes to highlight the importance of prioritizing the provision of public goods, such as extension services, rural infrastructures and agricultural research. Moreover, as discussed extensively in his report on agroecology and the right to food (A/HRC/16/49), responsible agricultural investment should encourage a transition to agroecological methods of production, and the dissemination of knowledge through farmers’ organizations and networks.

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Olivier De Schutter was appointed the UN Special Rapporteur on the right to food in March 2008 by the United Nations Human Rights Council. He is independent from any government or organization, and he reports to the Human Rights Council and to the General Assembly. All reports are available on http://www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx. See www.srfood.org for a thematic classification of all reports and statements of the Special Rapporteur. The Special Rapporteur can be contacted at srffood@ohchr.org