

# IISD Input to the CFS-RAI E-Consultation

The International Institute for Sustainable Development (IISD) is grateful for the opportunity to contribute to the Committee on World Food Security's e-consultation for the zero draft of the principles for responsible agricultural investment (CFS-RAI). We are also participating in the process through the Civil Society Mechanism. The zero draft covers an impressive range of issues. It is a useful contribution to creating a normative framework for investment in agriculture. We strongly support the process and believe the zero draft achieves many of the objectives set out by the CFS. Please find below some comments.

## 1. Are all relevant issues and areas related to fostering responsible agricultural investments adequately addressed in the Zero Draft? If not, what should be changed?

- Principle 1 focuses on investment in food production as the means to achieve food security and realize the right to adequate food. IISD believes that achieving these objectives goes beyond investment in food production and can include investment in non-food crops, such as cotton, rubber, and biofuel crops, which are also an important source of livelihood for small-scale producers. Linked to this point, the zero draft uses the term "small-scale food producers and processors." IISD believes the principles are also relevant for small-scale producers and processors of non-food crops. You may want to consider the term "small-scale agricultural producers and processors" or "small-scale producers and processors."
- Importantly, the zero draft integrates water issues throughout. Reference to water could be strengthened under principle 3. The reference to "more sustainable and efficient production," could also include water efficiency (alongside energy efficiency).
- In principle 3, IISD recommends adding other elements for sustainable agricultural production including:
  - » Reducing end-exposure to chemicals, pesticides and fertilizers,
  - » Controlling soil erosion,
  - » Increasing use of agricultural by-products,
  - » A commitment by investors to continuous improvements in production methods and use of modern technology throughout the duration of activities.
- Principles 2, 4 and 5 refer to "legitimate tenure rights." It would be useful to include or refer to the definition of legitimate tenure rights from the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries*, to make it clear which tenure rights are recognized.
- Principle 6 refers to free prior and informed consent for indigenous peoples. You may want to consider expanding this to include other affected communities where the investment takes place. In addition, the objectives section of principle 6 could also include a reference to "monitoring and evaluation" to make sure that after the investment takes place there is a process to monitor and evaluate the investors commitments (for now there is only reference to review and accountability).

- Principle 8 does not specify on what issues the impact assessment should be. IISD recommends referring to social, environmental and human rights impact assessments. It is also important to specify which type of investor is required to undertake an impact assessment. These usually apply to large, commercial investors (foreign or domestic), and would not typically apply to small-scale producers.
- Linked to the impact assessments, the objectives of principle 8 refer to “remedial actions or remedial changes if negative impacts or shortcomings are identified.” IISD believes it is important for investors to use the results of the impact assessments to develop plans to manage and mitigate the identified impacts. The management and mitigation plans should be binding and enforceable on investors, as are the impact assessments. All impact assessments and management plans should be verified by independent third parties and made publicly available. Wherever impact assessments are referred to in the zero draft, this can be accompanied by reference to management and mitigation plans.

## **2. Are the roles and responsibilities of relevant stakeholders clearly defined in order to facilitate implementation of the principles? If not, what should be changed?**

- Stakeholders should not only ensure policy coherence by harmonizing their efforts and activities (principle 5, rationale), they should also promote a shared vision for what constitutes responsible agricultural investment. International organizations, financial institutions and other actors can give different and sometimes contradictory recommendations to developing countries in terms of how to attract and regulate investment in the agriculture sector.
- There could be a role for regional organizations to ensure their members act in accordance with the principles when developing agricultural investment policies or concluding investment treaties and contracts. Regional organizations can also encourage the harmonization of laws and policies in the regions, according to the principles, to reduce competition between states to attract foreign investment.
- There could also be a responsibility for international financial institutions to respect and implement the principles when deciding what types of agricultural projects to finance and promote.
- The roles and responsibilities between different types of investors are unclear. It seems that in most cases the roles and responsibilities apply to large investors (foreign or domestic) and not to small-scale producers. This is especially the case under part III. It might be useful to distinguish roles and responsibilities for different types of investors.
- The text calls on States to “develop, establish and implement transparent and predictable policies, laws and regulations ...” We suggest deleting “predictable” as this may suggest a need to constrain responsible policy-making by “freezing” the development of laws and policies.
- The roles and responsibilities for part II could include a separate section for “States of origin of transnational investors.” The text says “States are called to respect, adhere to, apply and promote their respective obligations under international law, including when negotiating investment treaties with other countries” This sentence could also include a reference to contracts since states of origin could promote responsible contracting to their investors. Linked to this, the zero draft can also encourage States to include clauses in investment treaties and contracts that emphasize the right of States to introduce policies, laws and regulations for responsible agricultural investment.

- Either under Principle 7 or under the roles and responsibilities for part III, the CFS could acknowledge the existence of investor-state dispute settlement and emphasize the importance of prioritizing domestic judicial mechanisms. The current practice under international investment agreements and contracts is to refer disputes to international arbitration. IISD recommends that in the event of a dispute between the government and foreign investors, domestic courts should be the first forums of choice for disputes. International arbitration should not be encouraged over domestic processes. In instances where international arbitration may be necessary, it should be preceded by an effort to settle the dispute amicably first, and through domestic processes prior to international arbitration. This ensures that a fair, balanced approach to the specific type of legal dispute at issue will take place.

### **3. Does the Zero Draft achieve the desired outcome to promote investments in agriculture that contributes to food security and supports the progressive realization of the right to adequate food in the context of national food security? If not, what should be changed?**

- The rai principles will be voluntary, so it will be vital for all stakeholders, particularly States to commit to implementation at the national level and to integrate them into national policies and priorities. Regional economic organizations will also have a role to play. Other mechanisms, such as the Comprehensive African Agriculture Development Programme (CAADP), could provide a vehicle to integrate the principles in national and regional agricultural investment plans.
- The role of different legal and policy frameworks for investment is crucial. The priority for States is the development of comprehensive national policies, laws and regulations that promote responsible agricultural investments. Domestic law will govern all issues that may arise in relation to foreign investment, including the issuing of licences and permits for agricultural operators, tax and other incentives, dispute settlement, etc. The zero draft could reinforce the importance of domestic legal and policy frameworks as the most effective tool to promote responsible agricultural investments.
- Another mechanism to strengthen compliance with the principles is for the CFS to require States, the private sector and civil society to periodically report on how they are respecting and implementing the principles.

### **4. The principles are intended to provide practical guidance to stakeholders; therefore:**

#### **Are the current structure and language used clear and accessible for all relevant stakeholders to apply? What steps need to be taken for the CFS-RAI principles to be used and implemented by different stakeholders after endorsement by CFS?**

- The CFS has a difficult task to produce, on the one hand, a short and concise document that will be read by a large group of stakeholders and, on the other hand, provide the necessary depth to give practical guidance. The longer document may need a short simple version to accompany it.
- The language is clear and accessible. However, the language chosen is at a general level, so it might be difficult to apply in practice. Additional interpretation may be required for stakeholders to apply the principles in their specific contexts. A next step could be for the CFS to develop practical implementation guidelines that allow for context-specific application.

Published by the International Institute for Sustainable Development.

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