Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources

Abridged Version

A discussion note prepared by FAO, IFAD, UNCTAD and the World Bank Group to contribute to an ongoing global dialogue.

January 25, 2010

Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources

1. Background

Many studies show that investment to increase productivity of owner-operated smallholder agriculture has a very large impact on growth and poverty reduction. The fact (ASTI/CGIAR, 2009) that investment to bring about such productivity increases in Africa has historically been in 2005 PPP dollars only a fraction of what has been spent in Asia-Pacific and LAC countries is often seen as one of the reasons for Africa's lackluster record in terms of rural growth since the Green Revolution began. Thus any investment—public or private—in lower income countries and rural areas that can close this gap is desirable in principle. Yet even when investments seem to hold promise of raising productivity and welfare and are consistent with existing strategies for economic development and poverty reduction, it is important to also ensure that they respect the rights of existing users of land, water and other resources, that they protect and improve livelihoods at the household and community level, and that they do no harm to the environment.

A host of factors has recently prompted a sharp increase in investment involving significant use of agricultural land, water, grassland, and forested areas in developing and emerging countries. These include the 2008 price spike in food and fuel prices, a desire by countries dependent on food imports to secure food supplies in the face of uncertainty and market volatility, speculation on land and commodity price increases, search for alternative energy sources, and possibly anticipation of payments for carbon sequestration. The range of actors includes agro-enterprises in agri-food, biofuels, and extractive industries, private equity and other financial institutions, government-linked companies including sovereign funds, and individual entrepreneurs. Yet figures reported in the press and even by governments are often unreliable, partly because of data quality issues, partly because initial expectations have often not materialized, and partly because many transfers of resource rights are negotiated in private, which causes still further suspicion and speculation. Nevertheless, it is true that some countries have been confronted with informal requests amounting to more than half their cultivable land area, and other countries are actively seeking major investments as well, so the phenomenon seems to have traction.

Private investment in the agricultural sector offers significant potential to complement public resources. Many countries with reasonably functioning markets have derived significant benefits from it in terms of better access to capital, technology and skills, generation of employment, and productivity increases. Moreover, new technology, the emergence of value chains, demands for traceability, the need to adhere to rigorous standards, and consumer demands arguably favor greater scale and integration. Some large investments have managed to achieve broad-based benefits via contract farming, other outgrower arrangements, and joint ventures with local communities, by leasing rather than acquiring the land or by formulating innovative schemes for sharing both risks and rewards.

On the other hand, where rights are not well defined, governance is weak, or those affected lack voice, there is evidence that such investment can carry considerable risks of different types. Risks include displacement of local populations, undermining or negating of existing rights, increased corruption, reduced food security, environmental damage in the project area and beyond, loss of livelihoods or opportunity for land access by the vulnerable, nutritional deprivation, social polarization and political instability. Moreover, many large farming ventures attempted in the past have proven unsuccessful. Sometimes mistaken beliefs in economies of scale in agricultural production rather than value addition and better linkages to markets have saddled several countries with subsidy-dependent large farm sectors that provided few economic or social benefits.

To better spread the benefits and balance opportunities with risks in major investment programs, industry initiatives, such as the Extractive Industry Transparency Initiative (EITI), the Equator Principles, and the Santiago Principles, have formulated standards for specific subsectors or investor categories, and many institutions and large enterprises have made efforts at formulating internal codes of their own. Arguably, the magnitude of the present phenomenon and the hazards involved warrant a broader effort to build on ongoing private initiatives that involve some mix of guidelines, codes of good or best practice, and perhaps even independently verifiable performance standards coupled with benchmarking. However, the extent of actual application of such systems remains limited in general. And for land/water-intensive agro-investing, no agreement has been reached yet by private industry as to whether and how to adopt voluntary self-regulation. That probably reflects several realities: first, that agro-investing in the present context of multiple crises and future uncertainties is a very complex endeavor in itself; secondly, the fact that circumstances vary considerably between one county and another, or one deal and another; and third, because the investment objectives and the investor types are not homogeneous.

To generate the empirical evidence needed to guide its staff and others in this area, early in 2009 the World Bank began an in-depth study ("Large-Scale Acquisition of Land Rights for Agricultural or Natural Resource-based Use") in some 20 of the most involved countries. It focuses on the policy framework, overall magnitudes, and detailed analysis of social, economic, and environmental impacts of specific cases. The principles recommended in this note are based on preliminary evidence from this ongoing work, as well as the accumulated experience of a broad set of informed observers and partners within and outside the World Bank Group, including FAO, IFAD, and UNCTAD. Considerable consultation has also occurred with all other relevant international agencies.

These organizations have joined together to recommend the principles presented below. The document concludes with anticipated next steps, which point toward a toolkit of best practices, guidelines, governance frameworks, and possibly codes of practice by the major sets of private actors. All interested stakeholders and observers will be encouraged to share their concerns and contributions via an open architecture knowledge platform that will subsume this toolkit but also offer additional functionality such as e-learning modules, a blog, and links to other resources.

2. Key principles

RESPECTING LAND AND RESOURCE RIGHTS

Principle 1: ***Existing rights to land and associated natural resources are recognized and respected.***

Existing use or ownership rights to land, whether statutory or customary, primary or secondary, formal or informal, group or individual, should be respected. This requires: (i) the identification of all rights holders; (ii) legal recognition of all rights and uses, together with options for their demarcation and registration or recording; (iii) negotiation with land holders/users, based on informed and free choice, in order to identify the types of rights to be transferred and modalities for doing so; (iv) fair and prompt payment for all acquired rights; and (iv) independent avenues for resolving disputes or grievances. While a countrywide systematic identification and registration of rights is desirable in the long run, countries with limited resources may do well to initially focus efforts on areas with high agro-ecological and infrastructure potential and expand from there.

Many investments requiring access to land on a large-scale focus on areas that outsiders have often considered to be 'empty' or 'marginal'. Yet it is important to recognize that there are few areas truly 'unoccupied' or "unclaimed", and that frequently land classified as such is in fact subject to long-standing rights of use, access and management based on custom. Failure to recognize such rights, including secondary ones, will deprive locals of key resources on which their wealth and livelihoods depend. Lands that have been abandoned by internally displaced persons or which could be used by them pose particular challenges. It is important that efforts to make land available to investors not undermine current or future livelihood opportunities for those displaced involuntarily.

Recognition of rights to land and associated natural resources, together with the power to negotiate their uses, can greatly empower local communities and such recognition should be viewed as a precondition for direct negotiation with investors. Specific attention to land rights by herders, women, and indigenous groups that have often been neglected in past attempts is critical to achieving a fair, inclusive outcome.

ENSURING FOOD SECURITY

Principle 2: ***Investments do not jeopardize food security but rather strengthen it.***

Whenever there are potential adverse effects on any of aspect of food security (availability, access, utilization or stability), policy-makers should make provisions for the local or directly affected populations certain such that: (i) equivalent access to food is assured; (ii) opportunities for outgrower involvement and off-farm employment are expanded to protect livelihoods and raise incomes; (iii) dietary preferences are taken into account if the mix of products grown may change; and (iv) strategies to reduce potential instability of supply are adopted. Moreover, whenever the proposed project is large enough to affect food security at the national level, project design and approval should also consider these four kinds of aggregate impact.

ENSURING TRANSPARENCY, GOOD GOVERNANCE, AND A PROPER ENABLING ENVIRONMENT

Principle 3: ***Processes for accessing land and other resources and then making associated investments are transparent, monitored, and ensure accountability by all stakeholders, within a proper business, legal, and regulatory environment.***

Lack of transparency creates distrust and deprives relevant actors of the possibility to resolve minor problems before they escalate into large conflicts. On the other hand, greater transparency will also reduce transaction costs for all involved, thus benefiting host countries and investors alike through more efficient competition. Clarity in the regulations governing investment incentives and the way in which they are applied also makes it more likely that host countries can attract investors who will make tangible contributions to long-term development.

To create a proper enabling environment, policies, laws, and regulations affecting the investment climate should be benchmarked against and brought into line with globally accepted best practices, even as institutions responsible for implementing them are strengthened. Specific steps worth mentioning in this regard include: (i) ensuring that all relevant information, including land potential and availability, core elements of prospective investments, and resource flows or tax revenues, be publicly available; (ii) helping institutions that handle investment selection, land transfers and incentives to follow principles of good governance, develop the capacity to operate efficiently and transparently, and be regularly audited; and (iii) making sure that an independent system to monitor progress towards a better investment climate is in place.

CONSULTATION AND PARTICIPATION

Principle 4: ***All those materially affected are consulted, and agreements from consultations are recorded and enforced.***

Sustainability of investments and realization of synergies from allocation of public assets to major projects as well as provision of complementary public goods by the investor require that such investments be designed in a participatory manner, consistent with local people's vision of development. Even in countries that already require local consultations as a precondition for project approval, the impact of such requirements is often limited by a lack of clarity on process, the nature and recording of outcomes, and ways to enforce agreements reached in the course of consultations.

To make consultative processes more effective: (i) definitional and procedural requirements in terms of who represents land holders and what is a quorum for local attendance need to be clarified; (ii) the content of agreements reached in such consultations (e.g. by providing model agreements/contracts) should be documented and signed off by all parties; and (iii) methods for enforcement and sanctions for non-compliance should be specified. Incentives to adopt such a process can be greatly enhanced if taxes to be paid by investors are clearly specified, independently monitored, and accrue at least in part to local governments responsible for making available local public goods.

RESPONSIBLE AGRO-ENTERPRISE INVESTING

Principle 5: *Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically, and result in durable shared value.*

As key players in this sensitive arena, investors have a special responsibility to apply high standards in the design and execution of their projects. Economic viability, which in turn rests on technical feasibility, is a precondition for the generation of benefits that can then be distributed among shareholders and cooperating stakeholders. Fairly assessing likely viability, and then taking steps to make sure it is achieved, are both in the interest of all involved, not just the private investor. Where the resources in question are publicly owned, or if other public assets such as tax breaks and complementary infrastructure are being offered as incentives, cognizant governmental agencies have an obligation to carefully check the feasibility analysis to ensure that host countries, affected communities, and local stakeholders are all likely to benefit. National or regional bodies may have to assist states, provinces or municipalities that are technically unable to review major projects proposed within their jurisdiction. On the recipient country side there is also a need to integrate the proposed enterprise into broader strategies.

As far as the investors are concerned, aside from conducting proper due diligence and project analysis, they should be expected to: (i) comply with laws, regulations, and policies applicable in the host country (and ideally with all relevant international treaties and conventions); (ii) adhere to global best practices for transparency, accountability and corporate responsibility in all sensitive areas; and (iii) strive not only to increase shareholder value but also to generate significant and tangible benefits for the project area, affected communities, and host country.

SOCIAL SUSTAINABILITY

Principle 6: *Investments generate desirable social and distributional impacts and do not increase vulnerability*

Even economically viable and sustainable projects may have undesirable social consequences if they involve uncompensated displacement or if benefits bypass vulnerable groups or are captured by local elites. A thorough understanding of cultural context, sources of vulnerability, potential for conflict, and livelihood and food security strategies, can help identify design options to reduce risks and maximize positive impacts at the project level.

Social sustainability can be enhanced if: (i) relevant social issues and risks, as well as strategies to mitigate these and increase social benefits, are identified during project preparation and adequately addressed by government and investors; (ii) the interests of vulnerable groups and women are considered explicitly; and (iii) generation of local employment, transfer of technology, and direct or indirect (e.g. via taxes) provision of local public goods is part of project design.

ENVIRONMENTAL SUSTAINABILITY

Principle 7: *Environmental impacts due to a project are quantified and measures taken to encourage sustainable resource use while minimizing the risk/magnitude of negative impacts and mitigating them.*

Despite the potential importance of possible negative impacts on availability or quality of key natural and environmental resources outside the immediate project area or beyond the project's lifespan, investors have little incentive to take such impacts into account. Thus, regulation at the level (i.e. either local, national, or global) where externalities arise will be desirable to ensure that such goods, which may include local access to forest products, water, or soil quality, are not jeopardized. This will need to include impacts on natural resources that may be located far from the project site, such as river basin impacts or social dislocation resulting from the project causing deforestation elsewhere. Capacity to monitor will be particularly important due to the fact that such effects will materialize only in the course of project implementation and investors may renege on previous agreements.

Investors and government need to collaborate to ensure that: (i) independent environmental impact analysis to identify potential loss of public goods, such as biodiversity or forests, is conducted prior to approval; (ii) preference be given to reclaiming or increasing productivity on areas already used rather than clear new land; (iii) the most appropriate production system is selected to enhance the efficiency of resource utilization while preserving the future availability of current resources; (iv) good practices in agriculture, processing and manufacture are followed; (v) provision of desirable ecosystem services is encouraged; and (vi) negative impacts are addressed through regularly monitored environmental management plans and compensated where appropriate.

3. Conclusions and Next Steps

Agreement was reached in September and October of 2009 among the main international agencies (World Bank, FAO, UNCTAD, and IFAD) that a set of principles for responsible agricultural investment involving significant acquisition of resource rights is warranted, and that the seven principles contained herein are essentially the right ones (although certain details will continue to be refined).

Agreement has also been reached among the same entities that a consultative process begun separately by the various agencies on this theme should now be expanded and carried out jointly. Commentary, suggestions, research and analytical input should be elicited from a broad swath of stakeholders (multilateral and bilateral donor agencies, civil society organizations organized thematically or geographically, all major investor categories (whether private or government-linked)). Moreover, to the extent possible, the process should generate support from all major countries from which investment initiatives are emanating and toward which such initiatives are directed. Making such a process as inclusive as possible will be critical to incorporate existing experience, generate buy-in, and ensure convergence on principles that are acceptable to the relevant stakeholders and can thus be implemented on the ground. The details of the requisite consultative process are now being worked out.

Following this, the principles will then need to be translated into actions for investors, governments, donors and international agencies, at different levels. While the scale and scope of the phenomenon may be new, and the economic context uniquely challenging, a large body of evidence and best practice can be drawn upon to assist in areas where action is required. Three areas that are likely to be of particular importance include: (i) analysis to identify ways in which agricultural investment can be used to best contribute to national strategies for development and poverty reduction and how incentives for different actors can be structured to achieve this; (ii) legal, regulatory, and institutional changes required from governments and ways in which they can most effectively strengthen their capacity to secure land rights, enforce rules, and empower local stakeholders; and (iii) ways for the private sector to incorporate social and environmental concerns specific to this type of investments in project identification and implementation.

Publicizing good practice on how to address specific principles will be important to demonstrate that compliance is not only possible but in many cases serves stakeholders’ long-term interests. Civil society can have a major role in helping to improve transparency, build stakeholders’ capacity at the local level, and help those affected to make their concerns heard. Provision of assistance to identify priority areas for improvement and foster synergies, as well as options for making incremental progress towards meeting them would be important.

To ensure that agreement on principles, guidelines, governance frameworks and perhaps eventually codes of good or best practice is not just an empty declaration of intent, independent monitoring of the extent to which they are adhered to will be critical. The impact in terms of changed behavior of simply making information on performance or compliance public is evident from recent initiatives such as the World Bank’s ‘Doing Business Indicators’ program, which regularly publicizes information on performance within and across countries. Investing firms and supporting governments are likely to be equally concerned about their reputation. Civil society can have an important role in helping local people to get heard, thereby strengthening investors’ and source countries’ resolve to agree on and move towards implementation of verifiable standards of responsible performance. And of course, recipient countries want to make sure that approved investments are succeeding.