

Proposal for process of consultation on principles for responsible agricultural investments within the CFS

by Hugo Verbist, Vice-Chair CFS

I. Background

a. On the development of principles for responsible agricultural investment

- The global surge of interest in investment in agriculture since the food crisis in 2008 can have profound implications for the global food security and world agriculture. **In particular, large scale acquisitions of farmland by foreign or domestic investors in natural resource rich countries with weak land governance** raise complex economic, institutional and ethical issues in relation to food security, poverty reduction and rural development objectives. Various stakeholders have called for principles, guidelines and even code of conducts to govern such investments, as well as an international framework or plan which translates the principles into action. There is a general consensus that urgent action is needed since the situation on the ground is quickly deteriorating.
- At the G8-summit in l’Aquila in June 2009, the G8, ‘with a view to ensuring a more food secure world’, committed itself as follows: “noting a growing trend of international agricultural investment, including land leasing and purchasing in developing countries, **we will work with partner countries and international organizations to develop a joint proposal on principles and best practices for international agricultural investment.**” In November 2009, the Declaration of the World Food Summit on Food Security in Rome expressed agreement “**to continue studying principles and good practices to promote responsible agricultural investment.**” (Par. 40).
- Since then, FAO, IFAD, UNCTAD and the World Bank have been working together to develop their set of draft principles for responsible agricultural investment (RAI). A synoptic version of seven “**Principles for Responsible Agricultural Investment that Respect Rights, Livelihoods and Resources**” was jointly published by the 4 organizations in February 2010 as a “*discussion note to contribute to an ongoing global dialogue*” and some events were organized where the principles were presented and discussed (side-event at UNGA (NYC, Sep 2009), side-events at FAO Regional Conferences for Africa, Asia-Pacific, Near East (May-Dec 2010), World Bank Land Policy Conference (Washington, April 2010), FAO Committee on Commodity Products (June 2010)). The principles proposed relate to: respecting land rights; not jeopardizing food security; transparency and good governance; consultation and participation; economic viability; social sustainability; environmental sustainability. It is however important to note that the **four involved organizations never formally submitted these RAI-principles to the approval of their governing bodies.**
- At the 36th session of the Committee on World Food Security in October 2010, the Committee: “**taking note of the ongoing process of developing Principles for Responsible Agricultural Investments that Respect Rights, Livelihoods and Resources (RAI), and, in line with its role, decided to start an inclusive process of consideration of the principles within the CFS**” (Par. 26 ii) CFS-Report). No details were provided on how this process of consideration of the principles should take place and what the end result should be.
- At the meeting of the CFS-Bureau of the 13th of December 2010, the vice-Chair of the CFS-Bureau, Hugo Verbist, has been designated to do some informal consultations so as to be able to present a concrete roadmap for this ‘*consideration*’ on RAI within the context of CFS.

Input was received from, among others, France, Germany, USA, Japan, Switzerland, FAO, the World Bank, Oxfam, Action Aid International, IPC, Roppa, Mijarc, ILC and the private sector (Keith Jones). Also comments during Bureau-meetings with the Advisory Group and with the Steering Committee of the HLPE have been taken into account.

b. Related processes and initiatives

Various other processes and initiatives are equally important in the development of principles for responsible agricultural investment.

- In the wake of the G8-summit of l'Aquila in June 2009, the United Nations Special Rapporteur on the Right to Food, Mr. Olivier De Schutter, had already proposed a **set of 10 principles based on human rights** that should guide large-scale transnational land acquisitions and leases. Earlier in 2009, important studies on the issues of transnational land acquisitions had also been published by IFPRI and by IIED/FAO/IFAD. It is said that the human rights-approach is somewhat lacking in the current version of the RAI-principles.
- **Voluntary Guidelines.** Since 2009, worldwide consultations took place for the development of *Voluntary Guidelines on the Responsible Governance of Tenure of Land and Other Natural Resources (VG)*. The 36th session of the CFS of October 2010: “*encouraged the continuation of the inclusive process for the development of the VG, building on existing regional processes with a view to submitting the guidelines for the consideration of the 37th session of CFS (October 2011)*”. At the same time, it “*urged governments and other stakeholders involved in the drafting process of both the Voluntary Guidelines and the RAI to ensure consistency and complementarity between the two processes.*” The link between the two processes is mainly to be found in Principle 1 of the RAI, which is dealing with respecting land rights, but links of the VGs with other principles are possible too.
- **HLPE.** The High Level of Experts on Food Security and Nutrition was mandated as follows at the 36th session of CFS: “*The Committee (...) requested the HLPE to undertake studies, to be presented at the 37th Session of the CFS (October 2011), on the following important issues:*
 - *the respective roles of large-scale plantations and of small-scale farming, including economic, social, gender and environmental impacts;*
 - *review of the existing tools allowing the mapping of available land;*
 - *comparative analysis of tools to align large scale investments with country food security strategies.*” (Par. 26 iv) CFS-Report)

On the 4th of April 2011, the Terms of Reference for the study as well as the composition of the Project Team which has been appointed by the HLPE Steering Committee to carry out the study have been circulated. The final report of the HLPE on Land Tenure and International Investment in Agriculture will be available in July 2011. The results of this study could have a direct impact on the content of the consultations on the principles for responsible agricultural investment.

- **G20.** At the Seoul Summit of the G20 in November 2010, the G20 “*encourage all countries and companies to uphold the principles of Responsible Agricultural Investment. We request UNCTAD, the World Bank, IFAD, FAO and other appropriate international organizations to develop options for promoting responsible investment in agriculture (March 2011 for preliminary report; June 2011 for final report).*” The link between G20 and CFS on this issue should be ensured.
- **The Partnership to expand Dialogue on Large Scale Acquisitions and their alternatives.** In April 2010, the International Land Coalition (ILC) formed a partnership with regional farmers’ organizations (ROPPA, AFA, COPROFAM) and NGOs (Action Aid and Oxfam) to

begin dialogue on large-scale land acquisitions and their alternatives. Several regional civil society consultations and meetings of the dialogue have been held in 2010 and are planned for 2011 and 2012 (see under III for further details). ILC is also completing a global study on commercial pressures on land. The results of these consultations and reports should feed in into the CFS-consultation process.

- There also are a number of potentially relevant initiatives with regard to *private sector agricultural investment*. These include the IFC's performance standards (current being revised in order to strengthen them further), and the related Equator Principles for banks, as well as the Ruggie process on business and human rights, and certain multi-stakeholder initiatives, such as the Roundtable on Sustainable Palm Oil.
- Likewise, relevant regional initiatives exist, such as the *AU land policy guidelines*, to ensure strong engagement in the process by groups of countries which are particularly affected.
- At the *World Social Forum* of February 2011, based on several conferences and foras on large-scale land investments, civil society organizations and social movements adopted the "Dakar Appeal against land grab". This Appeal calls on the CFS to definitively reject the Principles for Responsible Agricultural Investment (RAI) which are considered illegitimate and inadequate to address the phenomenon of land grabbing. Linked to this is the call for a moratorium on large-scale land acquisitions.
- Various other initiatives exist, such as the *Land Politics Deal Initiative*, which is a consortium of universities organizing an international conference in April 2011 to present 120 scientific papers on 'land grabbing' worldwide.

II. General scope of the Consultation Process

a. Urgency: need for a two-track approach (with only the first track, i.e. the consultation process, being under the umbrella of CFS)

Given the increasing number of large-scale land acquisitions particularly in food insecure countries, there is a general sense of urgency. Consultations can not go on for months while nothing is being done, allowing some current practices of illegitimate dispossession, evictions and displacements arising from such investments to continue. The urgency can partly be met by adopting the Voluntary Guidelines on Responsible Access to Land and Other Natural Resources at the CFS plenary session in October 2011.

However, the choice is not whether to go for "implementation" of what is already on the table **OR** in stead to go for "further consultations". **The way forward is a two-track approach:** starting with a broad consultation process (*track 1*) while continuing to test the application of principles elaborated so far (*track 2*). But it has to be made clear that **only the first track, i.e. the consultation process, falls under the umbrella of the CFS.** The second track are the existing pilots and initiatives on principles for responsible agricultural investment which already have been initiated by some key international organizations. It would be a loss if those results were not to feed in into the consultation process. At the same time such feedback **shall not preempt the outcome of the consultations.**

- **TRACK 1 (the CFS-track):** A broad, inclusive and genuine consultation process on principles for responsible agricultural investment. This process should aim at offering policy guidance and a common understanding to all governments and international organizations, particularly those who are already working with the private sector on relevant issues, on what needs to be done to ensure that private investments in agriculture have a positive (or at least neutral) impact on food security. However, the consultation has to take place in accordance

with the decision by CFS plenary in October 2010, which has mandated the CFS Bureau during the intersessional period to set up an inclusive process of consideration of the RAI-principles within the CFS. This implies that the RAI-principles should be used as a basis for the consultations with the understanding that also the principles elaborated by other institutions should be duly taken into account with the possibility to amend, refine and/or complement them. This should lead to the final outcome of a set of principles with legitimacy and ownership from all stakeholders and practical applicability.

- **TRACK 2 (outside CFS):** Existing initiatives initiated outside the context of the CFS can be further pursued, such as **pilot testing in countries where the application of the RAI Principles, as proposed by the 4 initiating organizations, is being tested.** Testing should focus on how to make the principles operational, while identifying gaps and working out monitoring procedures. As said before, **the pilots should under no circumstances preempt the outcome of the broad consultations.** Instead, the testing of the principles in pilot countries should enrich the consultation process. Indeed, the current principles are at this stage ‘just’ guiding principles for the 4 organizations themselves, and NOT policy as none of the four institutions, as said before, formally submitted the RAI-principles to the approval of their governing bodies. Moreover, even if the principles are used now as guidance for giving advice by the 4 organizations to countries or private companies who ask for it, it is noted that many national government are not asking for advice and just unconditionally embrace foreign investment. Hence the need for principles with increase legitimacy and ownership.

In general, in order to have a well-informed consultation process, there is a need to, at the start of the consultation process to:

- do a **mapping** of what has been done so far and by whom, and what the results have been, also towards the private sector (building up knowledge on consultations and studies done by different stakeholders);
- **identify the remaining gaps and agree on a division of labour between the different international organizations and stakeholders;**
- get a clear understanding of what are the **best practices** (i.e. how to handle investment-failure, alternative ways of investment, ...).

b. Participation

- There is a general consensus that there hasn’t been enough dialogue on RAI - and on principles for responsible agricultural investment in general - so far and that a consultation with broad and deep participation is needed within the context of the CFS and on all levels (national, regional, global). In order to build **trust, legitimacy and ownership**, this process should be as inclusive as possible whereby all relevant stakeholders are adequately represented such as:
 - **governments of receiving countries**, in particular countries most affected by large-scale land investments as well as investing countries,
 - **international organizations**, in particular the 4 originally involved but also, among others, the High Level Task Force on Food Security and Nutrition (HLTF) and the Special Rapporteur on the Right to Food,
 - **civil society** through the Civil Society Mechanism as the recognized mechanism for facilitating the participation of CSO in all CFS processes, including local communities, NGOs, women’s and small scale farmers’ organizations. Platforms such as the ‘Partnership Dialogue on Large Scale Land Acquisitions and their Alternatives’ should also be involved.

- **private sector** including companies working in agricultural production and investment funds . Creative ways have to be explored to ensure that all relevant players within the private sector are fully and actively involved in the consultation process.
- To ensure the broad participation as described above, an **Open-Ended Working Group (OEWG)** on responsible investment in agriculture will have to be set up by the CFS Bureau.
- There should also be a close link with the participants of the OEWG on the Voluntary Guidelines and with the HLPE, in particular the project team in charge of doing the land study (cf. part e.).

c. Format

- The consultation process can be mirrored to the one which was established for the VGs (which had 15 regional & thematic consultations in 16 months)
- The workplan should include both electronic consultations and plenary-type negotiation meetings around key issues on which consensus needs to be reached (cf. part d.). The existing website www.responsibleagroinvestment.com should be merged with - or include a link to - the CFS-website where a working space could be created for electronic consultations (for example, through a questionnaire) and exchanges of information. Special attention is needed for consultation with the private sector.
- At regular intervals, plenary meetings for all relevant actors could take place in Rome. The process could also include regional consultation where opportunity exists (coupled with existing events and initiatives).
- The consultation should build on the consultations which were already organized by the 4 initiating organizations as well as on the HLPE-study and on the work of platforms such as the Dialogue Partnership.

d. Content

- The consultation should deal with:
 - **content** of the principles elaborated by the 4 organizations, **while fully taking into account principles set out by other stakeholders** (principles elaborated by Special Rapporteur, GIZ, ...)
 - identification of the **'users'** (to whom is it aimed?)
 - the question whether these principles should be **endorsed, approved or supported** in any other way by the plenary of the CFS and/or other governing bodies

And in a second phase:

- **implementation** of the principles (promotion, communication, technical assistance, including of a legal nature, elaboration of practical guides, capacity building, 'labeling' of the principles, ...)
- the consideration of **strong and specific incentives** to support the implementation
- identification of **pilot countries** where feasibility and impact of implementation of principles can be 'tested'
- establishing a method of **follow-up, monitoring and accountability mechanism** to ensure implementation
- establishing a method of **further reviewing** the principles after evaluating their efficiency
- **There should be a possibility to amend, refine and/or complement the RAI-principles elaborated by the 4 organizations if necessary and on the basis of what is practical.** Whatever amendment is proposed has to be the result of abovementioned consultation process in close cooperation with the 4 organizations which are the original drafters of the

RAI-principles, as well as with the drafters of other principles. It is important to clearly identify themes and ideas which have been overlooked in the current set of principles and still need addressing (such as conflict resolution, alternatives to large scale farming for sustainable food and agricultural production, the grounding of the principles in the obligations of states under international **human rights** law, the inclusion of Free, Prior and Informed Consent, transparency, monitoring).

- **The principles are and remain voluntary by nature and can not as such be made enforceable.** However, incentives should be sought for the governments and private companies involved to take the principles into account when making their decisions and implement them. The consultation should also **consider ways to monitor and follow-up** the implementation of these international instruments.
- Large-scale acquisition might be the central theme, but the discussion should be put **into the context of the broader question about what kind of agricultural investment is most appropriate and needed to ensure food security and overcome hunger**. Alternatives to large-scale investment should also be looked at in the context of the consultation. Indeed, depending on the specific objectives pursued (food security, energy security, climate mitigation, ...), there exists a range of investment models which might not require land acquisitions but require instead working together with local producers on their own land.

e. Coherence with related processes and initiatives (track 2)

- To ensure consistency and complementarity of the principles on responsible agricultural investment and the **VGs**, a direct reference to the VGs should be included in the wording of the current first RAI-principle, which refers to recognition and respect of land rights. The VGs and the foreseen Implementation Guide on Responsible Land Acquisitions and Agricultural Investments as a means of implementation of the VGs will be the concrete implementation of principle 1. Overlaps between VGs and RAI are also possible for other principles, and, once the draft of the VGs is available, it should be closely examined whether there also should be made reference to the VGs in some of the other principles. To ensure the coherence between the two processes, representatives from each kind of stakeholders represented in the OEWG on Voluntary Guidelines should take part in the OEWG on the principles. A 4-day plenary session for finalizing the negotiations on the VGs will take place at the end of July 2011, with formal adoption at CFS session of October 2011.
- The reports on responsible agricultural investment prepared for the **G20** could also feed into the CFS-process if decided valuable by the CFS-membership in the pursuit of a better coherence at the global stage (preliminary report in March 2011, final report in June 2011, G20-summit in November); in the same vein and for the sake of consistency, the input of the HLPE might also be sought for the G20-reports, for example by organizing an expert-seminar on the issue.
- Since the **HLPE**'s land study is closely related to agricultural investment issues, this study should feed into the CFS-consultation process. On the 4th of April, the finalized terms of reference and the composition of the Project Team appointed by the HLPE Steering Committee for the study on Land Tenure and International Investments in Agriculture have been circulated. The project team is composed of: Camilla Toulmin (Team Leader, UK), Prem Bindraban (Netherlands), Jun Saturnino Borrás (Philippines) and Esther Mwangi (Kenya), while the Steering Committee's oversight on the Project Team is led by Prof. Rudy Rabbinge (the Netherlands). The team will elaborate a first version of its report by early May 2011, which will be submitted for expert input through an electronic consultation. The project team will then finalize its draft report by early June 2011 and submit it once more to external expert review. Final report will be approved by the HLPE Steering Committee in July 2011.

- The *Partnership to expand Dialogue on large scale acquisitions and their alternatives* was launched in April 2010 as a direct response to the lack of coordinated consultation and open dialogue involving those most affected on how to respond adequately to increased land-related investments. More concretely, this Dialogue Partnership is seeking to better understand the impacts as perceived by local land users of land-related investments, and how this can define a response that better takes into account the perspectives of all stakeholders. Now that the CFS has to some extent stepped into this gap, the dialogue partners are willing to adapt their strategy so as to use their resources to best support the CFS process and feed into it (see III. for the various activities planned).

f. Deadline – Final product?

A proper inclusive and participatory process will take time and has to build on ongoing (non-CFS) processes which will only see their finalization late 2011: adoption of the VGs, presentation of the report of the HLPE on land at the CFS October session of 2011, outcomes of G20-summit in November 2011, foreseen regional consultations, studies and pilot projects by the 4 organizations (FAO, World Bank, IFAD, Unctad), the Dialogue Partnership and others throughout 2011. Confusion with the current process of negotiation of the Voluntary Guidelines should be avoided. Therefore **adoption of the principles by the CFS plenary session of October 2012 (at the latest) seems most appropriate.** To make a clear distinction between the original set of RAI-principles and the ones obtained after an extensive consultation process, a change of name of the principles could be considered.

An OEWG, once set up, can already follow up and monitor the different ongoing processes in 2011, whereby the actual broad consultation within the context of the CFS is preferably started after the CFS October session 2011, during which the CFS plenary can make a clear decision to finalize this consultation process with ‘endorsement’ of principles at the CFS October session of 2012. In fact, whether these principles should be *endorsed*, *approved* or supported in any other way by plenary is still somewhat an open question which might need further discussion in the working group. Unlike for VGs, no formal approval procedure has yet been decided upon as far as the Principles on responsible agricultural investment are concerned. We should therefore not presuppose that the process will result automatically in an endorsement of principles.

At the CFS October session of 2011, progress till then can be presented together with the proposed roadmap for 2012 which the plenary session can approve (including the question of the ‘nature’ of the final project). At the session, the HLPE-report on land will also be presented and if possible also the report of the 4 international organizations prepared in the context of the G20.

g. Budget

The CFS-consultation on the principles (track 1) will, at least in 2011, mainly have to be funded by extra-budgetary resources, since the core-budget of CFS in the biennium 2010-2011, besides the fixed administrative costs, only can cover two CFS-activities which already have been identified, namely, the development of a mapping tool for mapping food security actions at country level and the development of the Global Strategic Framework. Important question is therefore which stakeholders are committed – also financially – to support such an inclusive process of consultation on the principles. Countries should be approached for active contribution to these consultations. In the light of recently announced extra-budgetary contributions, the funding for 2011 seems to be secured now, but funding for the biennium 2012-2013 is still uncertain. The financing of activities under track 2 falls outside the scope of the CFS.

III. Proposed Roadmap

2011

- ❖ May 2011: Establishment of a Open-ended working group (OEWG) along the lines mentioned above to:
 - **keep track on the ongoing (non-CFS) developments in 2011 (track 2)** which will serve as input for the **broad consultation within the context of CFS (track 1)** to be started after the CFS-October session of 2011. In that context, the WG will need to do a mapping of what has been done so far and by whom (and what the results have been), identify the remaining gaps and get a clear understanding of what are the best practices. This will help to identify what are the key issues which remain to be addressed.
 - **open a web-based working space for facilitating electronic information exchanges** on new developments. This working space, preferably on the CFS-website, needs to be linked to or preferably merged with the existing website on the principles on agricultural investment (www.responsibleagroinvestment.com) which is now being managed by the Global Donor Platform for Rural Development.
 - keep an eye on the **budgetary implications** of the CFS-consultation process and in particular on the question of how the financial requirements will be met.

The existing activities (**track 2**), which are not CFS-activities but on which the CFS-consultation process will be able to build upon, are, among others:

- **Negotiation on the Voluntary Guidelines** with adoption at CFS October session 2011.
- **Report by the HLPE on land** to be presented at the CFS October session 2011.
- **Action Plan to be agreed upon by FAO, IFAD, UNCTAD, World Bank, including:**
 - **Reports by the 4 organizations in the context of the G20-process:** preliminary report in March 2011, final report in June 2011. G20-summit in November.
 - **Foreseen events by the 4 organizations**
 - Consultation with private sector (2nd March 2011)
 - Annual World Bank Meeting on Land and Poverty (Washington, 18-21 April)
 - Consultation with LDC countries (UN LDC Conference, Turkey, May 2011)
 - Consultation in Latin-America and Caribbean (autumn 2011)
 - **Foreseen pilots with countries and with private sector** by the 4 initial organizations where the principles in their current draft are ‘tested’ on their practicability; the results of these can feed in into the consultation process. The choice of the pilot-countries considered and a joint concept for the pilot testing should be presented by the 4 organizations, specifying the respective role of each of them.
- Activities being planned by ‘**the Dialogue on Large Scale Land Acquisitions and their Alternatives**’ (ILC and others) on large-scale land acquisitions and their alternatives are:
 - National consultations in up to 4 countries in Asia led by AFA, and a potential Regional Asian meeting
 - National consultations in 2 countries per region in central, west, southern and eastern Africa, led by regional farmer organizations
 - Pan-African Conference on Women’s Land Rights and Large Scale Land Acquisitions in late May/early June 2011 by Action Aid/Oxfam to be held in Nairobi, Kenya).
 - Africa-wide consultative meeting in early 2012.

- **Other relevant initiatives mentioned under I.b.**
- ❖ September 2011: Informal seminar to all the Permanent Representatives and other stakeholders on state of play as far as the principles is concerned.
- ❖ October 2011: CFS plenary session: presentation of HLPE-report and G20-process, general progress report of the CFS Working Group and approval of the foreseen consultation process up to October 2012 as proposed by the Working Group.
- ❖ November 2011: start-up of the broad consultation process in Rome. Details will still need to be worked out by the Working Group during 2011, but consultation should include:
 - electronic consultations based on the key issues identified in 2011 to prepare the actual working group-meetings;
 - consultations in Rome as well as regional consultations;
 - 5 to 10 full-day working group meetings between November 2011 and June 2012 with a CFS led open-ended plenary review and finalization of the discussion by end of July 2012.
- ❖ October 2012: Endorsement/Adoption/Agreement at the CFS plenary session 2012.

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