



Enabling legal environment for responsible investment in agriculture and food systems

“Leveraging investments in agriculture, including from the private sector, is key to lift millions of people from hunger and poverty in Africa and to ensure that enough food is produced and that enough rural jobs are created for the continent’s growing population”.

José Graziano da Silva, FAO Director-General

BACKGROUND

Increasing responsible investments in agriculture and food systems is widely recognized today as vital for securing adequate food and nutrition, poverty reduction and sustainable development. Achieving the Sustainable Development Goals (SDGs), particularly SDG1 to end poverty in all its forms everywhere and SDG2, to end hunger, achieve food security and improved nutrition, and promote sustainable agriculture by 2030 will not be possible without greater, more accountable, ethical, informed and sustainable investment in the areas of most need.

While increasing investments in agriculture and food systems are important for the realization of food security and nutrition, doing so irresponsibly can result in devastation to the environment and communities by threatening local production and the livelihoods of rural people, causing environmental destruction and land and

water scarcity, and in some cases damaging the reputation and image of governments and corporations. Governments and all stakeholders have an important role to play in ensuring that investments meet criteria that will strengthen sustainable development.

States have the obligation to respect, protect, promote and fulfil all human rights, regardless of political, cultural or economic systems. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. In case of abuses, states have the obligation to ensure a remedy (UN Guiding Principles for Business and Human Rights). Responsible Investment in agriculture and food systems should meet the implementation principles of human dignity, nondiscrimination, equity and justice, gender equality, holistic and sustainable

approach, consultation and participation, the rule of law, transparency, accountability, and continuous improvement.

THE CFS-RAI PRINCIPLES

In 2014, the Committee on World Food Security endorsed its **Principles for Responsible Investment in Agriculture and Food Systems**, known as the CFS-RAI. Bringing together the knowledge, experience and expertise of a wide range of stakeholders, the CFS-RAI establish a set of fundamental principles for Governments, inter-governmental organizations, financing institutions and donors, research organizations and academia, smallholders, businesses, civil society organizations, workers and their organizations, communities, and consumer organizations in relation to investments that among others aim to ensure food security and nutrition.

The CFS-RAI Principles are based on international frameworks that are put in place by States to govern and improve human rights standards throughout the world. Among these are international human rights treaties, as well as soft law instruments such as the UN Guiding Principles on Business and

Human Rights, and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. Although not legally binding, the CFS-RAI benefit from strong legitimacy given the extensive and inclusive consultations leading up to their development¹.

In Africa, the CFS-RAI Principles complement a number of relevant regional instruments such as the Guiding Principles for Large-Scale Land-Based Investments (LSLBI), the Maputo Declaration on Agriculture and Food Security and the Malabo Declaration on Accelerated Agricultural Growth and transformation for shared prosperity and improved livelihoods. These instruments demonstrate countries' commitments to securing fair and responsible investments to develop agriculture and food systems.

The 10 CFS-RAI principles aim to cover all elements of investment in agricultural and food systems, and set out a clear path for action. All stakeholders are considered to have a role in the application of the CFS-RAI Principles and governments in particular are called upon to implement policies and legislation to support their realization.

SUMMARY OF THE CFS-RAI PRINCIPLES

10 Principles ²	
1. Contribute to food security and nutrition	Agricultural investment should lead to increased sustainable production and productivity of safe, nutritious and culturally acceptable food. It should reduce food loss and waste, Incomes should be improved and poverty reduced, markets should be made more fair, transparent and efficient. The interests of small producers are paramount. Infrastructure should be improved and the resilience of food systems strengthened. Enhance access to clean water, sanitation and energy to improve the use of nutritious and safe food.
2. Contribute to sustainable and inclusive economic development and the eradication of poverty	This includes respecting workers' rights, implementing international labour standards and eliminating the worst forms of child labour, creating new jobs and fostering decent work, improving work conditions, adequate living wages and health and safety, training and career advancement, fostering entrepreneurship, equal access to market opportunities, rural development and social protection coverage, empowering small producers, women and men, and promoting their access to resources, improving livelihoods and sustainable consumption.

¹ For further information on the elaboration of these guidelines see <http://www.fao.org/cfs/home/activities/rai/en/>

² See <http://www.fao.org/3/a-au866e.pdf> for the full text of the CFS-RAI Principles as endorsed by CFS.

3.Foster gender equality and women's empowerment	Treat all peoples fairly, eliminating all measures and practices that discriminate or violate based on gender. Advance women's tenure rights and their access and control over productive land, promoting access to extension, advisory and financial services, education, training, markets and information, enhance women's roles in leadership and participation in decision making, partnerships and equitable sharing of benefits.
4.Engage and empower youth	Advance their access to productive land and natural resources, provide appropriate training, education and mentorship programmes as well as access to decent work and entrepreneurship opportunities. Promote access to innovation and technology, combined with traditional knowledge.
5.Respect tenure of land, fisheries and forests and access to water	Investments should respect legitimate tenure rights and water uses and be in line with the VGGT and the GSSF.
6.Conserve and sustainably manage natural resources, increase resilience and reduce disaster risks	Prevent, minimize and remedy negative impacts on air, land, soil, water, forests and biodiversity. Support and conserve biodiversity and genetic resources and contribute to restoring ecosystem functions and service. Recognize the vital role played by indigenous peoples and local communities, reduce waste and losses in production and post-harvest operations, increase the resilience of agriculture and food systems, habitats and livelihoods of small producers to the effects of climate change, reduce and remove greenhouse gas emissions and integrate traditional and scientific knowledge with best practices and technologies through different approaches.
7.Respect cultural heritage and traditional knowledge and support diversity and innovation	Respect cultural heritage sites and systems, including traditional knowledge, conserve and make available genetic resources including seeds and respect the rights to save, use, exchange and sell resources, recognizing the interests of breeders. Promote fair sharing of benefits arising from use of genetic resources for agriculture and food and promote the application and use of locally adapted and innovative technologies and practices research and development and transfer of technology.
8.Promote safe and healthy agriculture and food systems	Promote safety, quality and nutritional value of food and agri-products, supporting animal health and welfare and plant health to sustainably increase productivity, product quality and safety, improve the management of agricultural inputs and outputs to enhance efficiency of production and minimize threats to the environment and to public health. Enhance awareness and communication regarding evidence based information on food quality, safety and nutrition and public health issues to strengthen capacity for agriculture and food systems. Enable consumer choice by promoting availability and access to safe, nutritious, diverse and culturally acceptable foods.
9.Incorporate inclusive and transparent governance structures, processes and grievance mechanisms	Responsible investments must respect the rule and application of law, free of corruption, be transparent and share information relevant to the investment in an inclusive equitable and accessible manner at all stages of the investment cycle. Engage with all those who may be affected by the investment decisions, prior to decisions being taken and respond to those contributions, taking into account power imbalances to achieve active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes in line with the VGGT and engage in effective and meaningful consultation with indigenous peoples to obtain free prior and informed consent with due regard to UN Declaration of rights of indigenous peoples. Ensure access to transparent and effecting mediation and grievance and dispute resolution mechanisms and respect human rights and legitimate tenure rights.
10.Access and address impacts and promote accountability	Mechanisms to assess and address economic, social, environmental and cultural impacts considering small holders, gender and age and respecting human rights. Applying mechanisms for independent and transparent assessments including participation of all stakeholder groups, define baseline data and indicators for monitoring and measurement of impacts, consider and identify measures for potential negative impacts, including the decision not to proceed with the investment, regularly assess changes and communicate results, implement compensatory actions or remedial actions where negative impacts or non-compliance with national law or contractual obligations.

AN ENABLING LEGAL ENVIRONMENT FOR RESPONSIBLE INVESTMENTS

Each of the CFS-RAI principles evokes affirmative legislative, policy, budgetary or institutional measures that States can take to foster an enabling environment for responsible investment in agriculture and food systems. Many of the legal measures should be generally applicable within a country, rather than specifically to investments, whether domestic or foreign.

Clarity of information and consistency can help all investors equally to have certainty in terms of making investments sustainable, enduring and beneficial to investors, the country and local communities (CFS RAI, para. 36).

States should consider taking **action** to:

- Give legal effect to the right to adequate food;
- Reduce gender inequalities and increase women's participation in decision-making, education, access to credit, land tenure and markets;
- Strengthening legal protection of rights at work, including living wages, health and safety and eradication of child labour, ensuring alignment with international labour standards such as the core conventions of the International Labour Organization;
- Enact food safety standards and establish institutional mechanisms to ensure safety of food for domestic consumption and export;
- Enhance security of tenure for all legitimate tenure rights;
- Protect soil and water from erosion, depletion and pollution;
- Promote food systems approaches to foster healthy, sustainable and nutrition-sensitive agriculture;
- Improve regulatory structures and strengthen conflict resolution mechanisms – facilitating respect for the rule of law, and creating strong independent

institutions that guarantee transparency and justice to help encourage responsible investment, prevent abuses of power and conflict escalation;

- Improve coordination mechanisms and increase equitable stakeholder participation in decision-making;
- Apply investment project criteria with safeguards, incentives, screening and model contracts, e.g., by developing standard mechanisms and criteria by which all potential investors can be screened;
- Ensure that the mandate of investment promotion agencies emphasizes responsible investment, consistent with the CFS-RAI.

States, investors and other stakeholders can use the CFS-RAI principles as a checklist to apply in the development or amendment of national policy and legal and regulatory frameworks related to investments in agriculture and food systems. Technical teams responsible for reviewing policy and legislation and developing a national strategy for responsible investment, ensuring multi-stakeholder participation in the review process and identifying national concerns and priorities of all stakeholders could be established.

Food safety and quality legislation contributes to ensuring safe and healthy food and agriculture systems (CFS RAI Principle 8) by creating a system for the identification, monitoring and control of potential food safety hazards; promoting good hygiene and safe production practices, and introducing regulatory control over the use of ingredients, additives and substances in food production. Food safety and quality legislation also serves to fostering coordination in all stages of the food production chain, including at the central and the decentralized levels.

Examples: United Arab Emirates Federal Law 10/2015 and Bahamas Act 4/2016

States should be mindful that investment are not just large-scale financial/asset driven contributions, but also respects the vital role played by small producers and family farmers, women and men in agricultural production, food systems and the domestic economy. Their capacity to invest their skills and assets must be strengthened and secured. Responsible investment also includes treating smallholders and small-scale producers as priority investors, paying particular attention to women producers, communities, indigenous peoples, and agricultural workers,. All farmers should be recognized as key contributors to food security and nutrition and as major investors in the agricultural sector, in particular considering those family farms that invest their own capital and labour in their agricultural activity and yet are subject to frequent economic, social and political marginalization.

Burkina Faso's new agriculture investment code was enacted in June 2018 to promote productive investments in livestock, fisheries, forestry and fauna management. It is underpinned by the principle of sustainable development and the will to protect legitimate tenure rights holders. There is an explicit effort to protect smallholders and to secure advantages for them, balanced with the need to create a level playing field for national and foreign investors. The Code guarantees the protections afforded by national law by subjecting the entire Code to it.

Law No 017-2018/AN

PARLIAMENTARY ACTION CHECKLIST

African parliamentarians can use regional and international frameworks and standards to drive responsible investment in their countries and at the regional level. They can consider the following action:

- Promote and support the incorporation of the 10 CFS-RAI Principles into the domestic legal framework and follow up their implementation through their oversight mandate.
- Promote and support legal and regulatory initiatives to foster sustainable agriculture and food systems more generally, including through regulations regarding larger-scale investments (see above).
- Consider forming or joining a parliamentary alliance to promote the implementation of the CFS-RAI Principles, such as a parliamentary front against hunger (PFH), or put responsible investment in agriculture and food systems on the agenda of existing parliamentary committee or forum.
- Participate where possible in national reviews of the enabling environment to ensure that policies and laws of their country are in line with the requirements of responsible investment in agriculture and food systems.
- As part of parliamentary oversight, seek to hold governments to account for the negotiation and conclusion of agriculture and food system investment contracts, push for transparency and access to information.
- Support measures that promote gender equality and special protection or promotion of investments for small producers, women, youth and people in the most vulnerable situations, including through inclusive multi-sector coordination and consultation.
- Approve budget allocation for responsible investment in agriculture and food systems and seek action to improve gender disaggregated data collection, including on different types of investment (FDI, credit, public expenditure).
- Support efforts to disseminate the CFS-RAI Principles as widely as possible, considering regional and linguistic differences, and public information campaigns on specific topics regarding implementation.
- By way of oversight, ensure that investors in the country respect human rights throughout their operations, and that government applies the CFS-RAI Principles in its investment in agriculture and food systems at home and abroad as well as in its regulation of the conduct of investors in the country.
- Seek capacity building activities, understand the CFS-RAI Principles, human rights and relevant regional and international instruments; seek to raise awareness among other parliamentarians and their constituencies.

- Collaborate at the regional level in developing tools to facilitate national implementation and awareness of the CFS-RAI Principles and regional model contracts and legal tools.
- Look to South-South cooperation, learn from the experience of other parliamentarians or share your country's good practice examples.

REFERENCES/RESOURCES FOR FURTHER INFORMATION

Additional information can be found at:

Committee on World Food Security (CFS) Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI)

<http://www.fao.org/3/a-au866e.pdf>

<http://www.fao.org/in-action/responsible-agricultural-investments/en/>

FAO 2016 Promoting responsible investment in agriculture and food systems – Guide to assess national regulatory frameworks affecting larger-scale private investments

<http://www.fao.org/3/a-i6355e.pdf>

CFS Responsible Investment in Agriculture and Food Systems

<http://www.fao.org/cfs/home/activities/rai/en/>

Guiding Principles on Business and Human Rights –

Implementing the United Nations 'respect, protect and remedy' framework

https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf