The right to food and investment in agriculture and rural development
(session brief prepared by Sisay Alemahu Yeshanew, Right to Food Mainstreaming Consultant, ESA, FAO)

Introduction

The human right to adequate food is an inherent right of human beings to have access to quantitatively and qualitatively sufficient food either by producing or procuring food items. It does not entail obligation to provide food handouts to everyone for free, but requires safety nets for those who are unable to feed themselves. The right to adequate food and to be free from hunger have been guaranteed in the International Covenant on Economic, Social and Cultural Rights (adopted in 1966 and entered into force in 1976) that has been ratified by 160 states. Under this and other international and national legal instruments, States have obligations to respect (not to interfere with), protect (from third party or private actors) and fulfill (adopt appropriate legislative, administrative, budgetary and other measures for the full realization of) the right to food. Together with the human rights principles of participation, accountability, non-discrimination, transparency, human dignity, empowerment and rule of law (known at FAO by the acronym PANTHER), the right to food offers a coherent framework for addressing critical governance dimensions in the fight against hunger and malnutrition. Departing from its constitutional mandate to “ensuring humanity’s freedom from hunger”, the Food and Agriculture Organization (FAO) has been working on the right to food for a while.

In 2004, the FAO Council adopted the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security. Strengthening food security governance through the implementation of the Guidelines is one of the organizational results (H02), under FAO’s Strategic Objective (H) of improved food security and better nutrition, which is led by the Agricultural Development Economics

1 Participation (free, full and meaningful participation of all stakeholders in the different phases of policies and programs), accountability (responsibility for the outcomes as well as the process, including through monitoring that is participatory, clear and accessible to all), non discrimination (avoiding discrimination on the grounds of race, ethnicity, language, religion, sex or other status, especially of vulnerable groups, in law as well as in practice), transparency (decision-making processes about policies and programs that affect people’s lives should be available and accessible to all), human dignity (respect for the values of dignity inherent in human beings), empowerment (increasing the capacities of right holders, especially the most vulnerable, to demand and exercise their rights effectively and to hold duty bearers accountable), and rule of law (any public institution taking action must have the legal authority to do so and independent administrative, judicial and quasi-judicial recourse mechanisms should be available).

Division (ESA). The Right to Food Team at ESA has been working to strengthen the capacity of states and other stakeholders to integrate the right to food into their food and nutrition security policies, legislation, strategies and programs. The work includes advocacy, capacity development, the promotion of multi-stakeholder dialogue and mainstreaming the right to food into FAO’s work. The right to food and the PANTHER principles that should govern decision-making and implementation processes have been embedded in later normative and policy documents of FAO including the Strategic Framework of 2009, the Country Programming Framework of 2011 and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security of 2012.

Applying human rights-based approaches to food security could contribute to ensuring the availability, accessibility, stability of supply and utilization of food in an efficient, effective and sustainable manner. Ensuring that everybody enjoys adequate food is an investment with enormous economic returns.³

Investment in agriculture and rural development (ARD) is of paramount importance to enhance food production and accessibility, and to reduce hunger and poverty.⁴ FAO promotes increased and effective public and private investment in ARD with a view to improve access to nutritious food and reduce rural poverty (FAO’s Strategic Objective L). The Investment Centre (TCI) leads this effort by cooperating, inter alia, with the African Development Bank, the European Bank for Reconstruction and Development (EBRD), the International Fund for Agricultural Development (IFAD) and the World Bank in the design, supervision and evaluation of various types of investments in ARD, including large-scale agricultural projects, rural infrastructure (irrigation and road projects), and value chain, community-driven and rural micro-enterprise development projects. It is engaged in hundreds of projects in most developing countries of the world. It also assists states in relation to their rural and agricultural investment plans and strategies.

In 2011, TCI developed guides to social analysis for agriculture and rural investment projects to address the needs of project managers, country-level practitioners and field officers to understand the complexities of social diversity, gender and the various dimensions of poverty. In addition, TCI is called upon to support (through supervision missions) the implementation of environmental and social safeguard policies of investment projects funded by the World Bank and other regional development banks.

³ Jacques Diouf, Forward to Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (FAO, 2005), iv. The Guidelines further require states to encourage investment in productive activities to improve the livelihoods of the poor and the hungry in a sustainable manner (paras 2.4, 2.7, 4.1, 12.4, 12.5).

Co-organized by officers involved in the right to food work of ESA and the social analysis work of TCI, this session has the general objective of exploring the interrelationship between the right to food and investment in ARD and how the two reinforce each other. The human rights approach promoted by the Right to Food Team at ESA considers poverty not only as an issue of income or assets but also as a question of marginalization, exclusion, vulnerability and the non-fulfilment of duties, and postulates that food security initiatives should meet internationally agreed human rights standards. The social analysis of TCI is also based on the recognition of the relationship between ARD investment and the social dimensions of poverty. Both approaches aim at ensuring people-centered, inclusive, equitable and sustainable development outcomes. The right to food and the PANTHER principles could therefore complement the social analysis (and safeguard policy reviews) that TCI conducts (or supports) as part of its involvement in designing, supervising, supporting and evaluating ARD programs and projects. Their foundation in internationally agreed human rights standards makes them particularly appealing. The Right to Food Team has prepared tools that can be used for the human rights-based appraisal of ARD investment projects and for advises in relation to investment plans and strategies of states.

The central issue that the session seeks to address concerns the relevance of the right to food and other human rights principles to the work of TCI in the design, implementation, monitoring and evaluation of ARD investment projects. It aims to answer the following specific questions from various perspectives:

- What is the relationship between the human right to food and investment in ARD, and how may they affect or reinforce each other? What are the pros and cons of large-scale ARD investment projects from a right to food perspective?

- Are there special human rights issues that arise from the involvement of foreign states and transnational corporations in ARD investment? Could there be actual or potential tensions between investment plans and agreements and human rights treaties?

- How may human rights-based approaches relate to the concept of “responsible agricultural investment”? What is the importance of existing and planned RAI principles for ARD investment?

- How may the right to food approach relate to the environmental and social safeguard mechanisms that are applied in some ARD investments financed by international development banks?”

The following sections shed light on some of these issues mainly from a human rights perspective.
The Relationship between ARD Investment and the Right to Food

Investments may be foreign or domestic, public or private, and small, medium or large-scale. TCI is involved in various agricultural and infrastructure projects as well as in value chain, community-driven and rural micro-credit development projects. Such investments are important for poverty reduction and for the achievement of food and nutrition security. Some ARD investments may, however, not be responsive to the needs of the poor, food insecure groups like small-scale farmers, pastoralists, the landless, women and indigenous people. They may rather adversely affect the ability of people to feed themselves. For example, forced eviction or involuntary resettlement of people resulting from infrastructure projects, including irrigation, road and dam projects may affect the ability of people to produce or buy food for their consumption. Large-scale acquisition and lease of land have been the main focus of discussions on the socio-economic effects of investment in ARD in recent years.

Large-scale lease and acquisition of land has been spurred, among others, by export-oriented food production (especially by investors from food importing countries) and the production of agrofuels, which are encouraged by fiscal incentives and subsidies in developed countries. An estimated 50-80 million hectares of land have been subjected to negotiations by international investors in middle and low income countries where close to a billion people are short of food and another billion suffer from various forms of malnutrition. More than 2 billion smallholders, many of whom are poor and food insecure, derive their livelihood from land by either producing food or getting the means to procure food from farmers in their vicinities. As part of the ‘land rush’, smallholders and customary occupiers and users of land, including women, pastoralists, ethnic minorities and indigenous peoples increasingly loose access to land, water and other resources. According to HLPE/CFS, there is very few evidence that such large-scale investment improves agricultural productivity and rural livelihood; it is rather damaging the food security, incomes, livelihoods and environment of local people. While large-scale investment may offer opportunities in terms of employment generation, infrastructure development, technology transfer, taxes

---

5 This is in addition to mineral exploration and speculative purposes.


7 Ibid.


9 CFS:2011/4 Add. 1
and export duties, these require good governance and the rule of law to protect the rights of local communities and to avoid natural resource degradation. A government would be acting in violation of the right to food if it uses, leases or sells land for investment in a way that deprives local population from access to productive resources indispensable to their livelihoods, unless appropriate alternatives are provided. Providing land for such agricultural investments as export-oriented food or agrofuel production, without ensuring that this will not result in food insecurity could also be in violation of the right. Export oriented food production presents a case of an attempt by rich countries to achieve food security adversely affecting the food security of countries where the investment occurs. While agrofuels (including food based fuels) are a renewable source of energy that may provide new employment and income opportunities for rural populations, they also lead to evictions, replace staple food production and cause high food prices which in turn increase the number of food insecure population especially in low-income countries. This may entail pitting food security against energy security.

Governments may sometimes find themselves in a situation where they have to balance their obligations relating to the right to food on the one hand and the benefits of investment in ARD in terms of increased employment or greater economic growth on the other. In such situations, they are expected to adopt human rights-friendly alternatives. The food security of the host country (and the right to food of its people) should be taken proactively in the negotiation of investment agreements. It should be asked if the investments bring positive outcomes or rather adversely affect the livelihoods of local people and generate social and environmental costs. The human rights obligations of states extend to creating the legal, policy, institutional and budgetary measures that enable investment in ARD to have socially and economically beneficial outcomes.

The application of human rights principles or PANTHER, including participation, transparency and accountability in the design, implementation, monitoring and evaluation of investment projects could help avoid or deal with actual or potential adverse effects of ARD investments.


11 J Graziano da Silva, Forward to SOFA 2012 & p 67.


13 Focus on: Right to food and Bioenergy, Right to Food Unit, FAO, 2007

14 De Schutter, 2009 (supra note 12)(e.g., promoting labor intensive investment to support local livelihood, choosing outgrower schemes over wage labor, requiring high environmental standards because of the strong link with food production)

15 CFS:2011/4 Add. 1
on the right to food. More so considering that recent cases of large-scale land acquisition and lease in food insecure countries were marked by the lack of transparency in the negotiation and agreement between host governments and incoming or domestic investors, the failure to engage with local and affected communities as part of the land transfer process, and the secrecy over the scale and terms of land acquisition which complicates scrutiny of performance and accountability to government, parliament, local people, CSOs or media.\(^{16}\) Socially and environmentally desirable outcomes for all stakeholders, it is argued, require, among others, meaningful participatory process that empowers smallholders and locals, transparency and information regarding ARD investment and land acquisition, and encourage ex-ante and ex-post monitoring and evaluation of social, gender and environmental impacts.\(^{17}\)

**Human Rights issues in Transnational ARD Investment**

Large-scale ARD investments involve foreign governments seeking an assured food supply, sovereign wealth funds, transnational corporations (TNCs) engaged in a variety of ARD investments including biofuel production and infrastructure development, commercial farmers expanding into neighboring countries, and financial institutions wanting to broaden their asset portfolio.\(^{18}\) Where such investments affect the human rights to food, it would be difficult to address the effects by establishing the obligations of the host state alone. The nature of the actors and actions involved raises extraterritorial human rights issues in terms of the responsibilities of a foreign state for the acts of its agents, the regulation of the conduct of TNCs abroad and the involvement of governments in the decisions of international financial institutions to fund ARD projects (e.g., in the Executive Board of the World Bank). TCI is not involved in large-scale private trans-national investments, but the issues discussed under this section are relevant at least to the involvement of TNCs in the implementation of ARD investment projects and the role of governments in decision-making within international development banks.

The extraterritorial human rights obligations of states can be established based on the provisions of the United Nations (UN) Charter and international human instruments on the commitments of states to bring about universal respect for human rights including through international cooperation.\(^{19}\) Accordingly, the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, which were adopted by a group of international experts in September 2011, provide for the *duties of states to regulate the operation of their agents and TNCs (incorporated or headquartered in them) abroad and to make sure that their decisions within intergovernmental organizations are*

---

\(^{16}\) IIED, FAO and IFAD, 2009 (supra note 10)

\(^{17}\) See SOFA 2012, 72.

\(^{18}\) SOFA 2012, 66-67; and CFS:2011/4 Add. 1

in accordance with their human rights obligations.\textsuperscript{20} It is also in this light that many criticized the expectation that TNCs ‘respect’ human rights in their own, based on ‘societies basic expectation’, and the consideration of the regulation of the extraterritorial activities of companies only as a ‘sound policy rationale’ by the Special Representative of the UN Secretary-General on business and human rights.\textsuperscript{21}

HLPE observed that home countries of business enterprises, investing nations or nations supporting investments in other nations must ensure that they respect and protect human rights in the host country.\textsuperscript{22} These include establishing environmental, social and human rights standards to be met by their nationals operating overseas and providing recourse mechanism for people in host countries. HLPE further underlined the legal responsibility of investors and business enterprises to respect human rights, to act with due diligence to avoid infringing with rights and to provide adequate non-judicial access to remedy for victims of human rights abuses. These are of course in addition to the obligations of host states to protect the rights of their people by regulating business enterprises and providing effective remedies to human rights abuses by investors or sub-contracted companies.

Transnational public and private investments are often supported by investment treaties that may limit the ability of states to carry out their human rights obligations. They may, for example, subject the host state to obligations against expropriation, fair and equitable treatment, compensation for loss of revenues etc. The question in these circumstances is whether it is the obligations under investment treaties or human rights instruments that prevail in cases of tension or conflict. The Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements that were submitted by the Special Rapporteur on the Right to Food to the UN Human Rights Council in December 2011 provide useful tools for states to avoid such conflicts.\textsuperscript{23} States are expected to make sure that the investment treaties they enter into do not contradict with, or limit their ability to comply with, their human rights obligations. Investment treaties signed with respect to ARD investment should not accordingly be in contradiction with what is required of a state to meet its obligations relating to the right to food (e.g., by regulating the conduct of TNCs).

While impact assessments are of proactive importance, conflicts may be recognized at the stage of implementation of investment projects. In those situations states should strive towards avoiding or at least keeping to the very minimum the human rights impacts of investment treaty implementation and to revise the human rights-impairing aspects of the

\textsuperscript{20} Available at <http://www.etoconsortium.org/nc/en/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23>


\textsuperscript{22} CFS:2011/4 Add. 1

investment agreement. Appropriate redress mechanisms should also be put in place with regard to unavoidable or incurred human rights violations.

The consideration of the possible effect of investment treaties on the human right to food is relevant to the work of TCI in advising states on ARD investment policy or strategy design. This may be taken as an opportunity to make sure that states do not enter into commitments that hamper their abilities to address human rights, social and environmental problems. Through social analysis conducted at this level, TCI may advise states to develop plans that allow targeted, efficient, effective and ultimately sustainable investment. This effect will be best attained if the analytical dimensions include considerations of problems of poverty, gender, the right to food and other relevant human rights.

**Principles on Responsible Agricultural Investment**

The concept of “responsible agricultural investment” (RAI) grew out of initiatives that aimed at avoiding or responding to the adverse effects of investment in ARD. With the aim of balancing opportunities and risks in major investments, FAO and UNCTAD have worked with IFAD and the World Bank to develop a set of Principles for RAI that respects rights, livelihoods and resources. They identified seven core principles: respecting land and resource rights; ensuring food security; ensuring transparency, good governance and a proper enabling environment (including monitoring, accountability and appropriate regulation); consultation with and participation of affected people; respect for rule of law, reflecting best practice, economic viability and durability of result; social and environmental sustainability. They are meant to guide the formulation of laws, regulations, investment contracts, international agreements or corporate code of conduct; but they do not define a specific monitoring system and some CSOs criticized them as being too weak especially due to their limited link to human rights. Some of the principles are nonetheless related to elements of the right to food and the PANTHER principles.

Some of the principles, especially the first one, have been incorporated and further developed in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT), which was endorsed by the CFS in May 2012 and FAO Council in June 2012. The VGGT provides, inter alia, that responsible investment should respect human rights, the principles of participation, non-discrimination, transparency, the rule of law and relevant international legal standards, and that when investments involve large-scale transactions of tenure rights, they should be preceded by independent impact assessment, among others, on the progressive realization of the right to adequate food. It sets out ways in which governments and other stakeholders might best ensure that ARD investments have socially and environmentally desirable impact, improve food security and respect the rights of actually or potentially affected people. The CFS Bureau and its Advisory Group supported by the joint Secretariat has begun an inclusive multi-stakeholder consultation process for the development and

---

24 visit <https://www.responsibleagroinvestment.org/rai/node/256>

25 SOFA 2012, 73.

26 VGGT, Guidelines 12.1-12.15.
broader ownership of principles for RAI that enhance food security and nutrition and support the progressive realization of the right to adequate food in the context of national food security.\textsuperscript{27} The definition of the RAI principles in existing and planned instruments exhibit their direct and indirect relationship with the right to food and the PANTHER principles. They should also be developed with a recognition that ARD investments that take human rights into account will be efficient, effective and result in sustainable outcomes. \textbf{The CFS guidelines are expected to lay down the details of what is required of ARD investment to be in accordance with the objectives of ensuring food security and realizing the right to food.}

\textbf{Relevant Mechanism within Partner Institutions}

As indicated earlier, TCI woks in co-operation with international and regional development banks, also including the Asian and Inter-American Development Banks. The \textit{regional development banks and the World Bank have policies that are meant to avoid or mitigate the environmental and social impacts of projects that are submitted to them for funding.} IFAD on the other hand conducts a rigorous work of targeting (with studies on gender, indigenous peoples’ and other social issues) whereby it identifies types and areas of projects it funds. The World Bank has the Environmental and Social Safeguard Policies, including on involuntary resettlement and indigenous peoples. The operational principles of these safeguard policies include the requirements of consultation with stakeholders in the design, implementation, monitoring and evaluation of projects as well as the formulation of mitigation strategies, the establishment of appropriate and accessible grievance mechanisms, particular attention to the needs of vulnerable groups, and full respect to indigenous peoples’ dignity, human rights, and cultural uniqueness.\textsuperscript{28}

While the decision to trigger the safeguard policies is solely within the discretion of the Bank’s committee that reviews projects, TCI is involved in the actual appraisal of projects either as leader or as contributor to missions. Even where the safeguard policies are not triggered, which is often the case, TCI may sometimes raise social issues (based on its own analysis) during supervisions.

\textbf{The safeguard policy reviews may be used as important entry points for the integration of the right to food considerations in the design of ARD investments.} The PANTHER human rights principles could also strengthen the requirements of participation, accountability, non-discrimination and human dignity that are included in some of the operational principles. However, the incentive structure for task team leaders of the partner

\textsuperscript{27} SOFA 2012, 73

international financial institutions values speed and timely board submission over the ‘softer’ (social and environmental) sides of the project design process. In addition, budgets for project design are shrinking. As a consequence team leaders prefer procedures that are less costly, less complicated and less time consuming. Safeguard policies – when triggered - mean more time needed for project preparation, more actors involved and more indicators to track during implementation. The incentive structures may relate to broader issues of organizational policy and culture, but it is believed that the integration of human rights principles in the implementation of safeguard policies would pay in terms of improved targeting, effective investment, sustainable results and, in the end, better economic return.