



## Responsible governance of agricultural investments: a right to food perspective

The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (VGGT)<sup>1</sup> seek to “improve governance of tenure [...] for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security and progressive realization of the right to adequate food” (Paragraph 1.1). Simultaneously, experiences from the Right to Food Guidelines<sup>2</sup> have underlined the importance of a normative framework, based on international human rights law, for the VGGT.

### 1. Why is the right to food important for the responsible governance of agricultural investments?

In general, the media, NGOs, academics and international organizations, such as FAO and the World Bank, have increasingly reported on the global phenomenon of large-scale acquisitions, often referred to as land or water grabbing, in low and middle income countries, mainly in Africa, but also in Asia and Latin America. It is a complex trend that involves governments, multinational companies and other private investors, such as pension funds, real estate groups and finance capital, seeking scarce resources for different

purposes, including to produce food and agrofuels, to use forestry products and to extract minerals.<sup>3</sup> As a recent study shows, in Africa, many governments are transferring water rights to large investors for extensive periods, without thoroughly considering the impact on the millions of other users — from fishermen to pastoralists — whose livelihoods depend on customary access to water.<sup>4</sup> As a result, the High Level Panel of Experts (HLPE) of the CFS reported that an estimated 50 to 80 million hectares of land in middle and low income countries have been subject to negotiation by international investors,<sup>5</sup> while other sources double or triple these figures.<sup>6</sup>

This global competition for natural resources can exacerbate structural trends and tend to have negative impacts on people’s livelihoods, particularly of the most vulnerable, notably as a result of dispossession with inadequate or no compensation. While access to natural resources is intimately linked to the realization of the right to food,<sup>7</sup> as the latter requires that “every man, woman and child, alone or

<sup>1</sup> FAO. 2012. *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, Rome.

<sup>2</sup> FAO. 2004. *Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security*, Rome.

<sup>3</sup> HLPE. 2011. *Land tenure and international investments in agriculture*. A report by the High Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security, Rome, 2011, p.16.

<sup>4</sup> Skinner and Cotula, 2011. *Are land deals driving ‘water grabs’?* IIED.

<sup>5</sup> See note 3.

<sup>6</sup> Oxfam. 2011. *Land and Power: The growing scandal surrounding the new wave of investments in land* [available at [www.oxfam.org/en/grow/policy/land-and-power](http://www.oxfam.org/en/grow/policy/land-and-power)].

<sup>7</sup> This Information Note uses the shortened form “right to food” to mean the human right to adequate food as enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and elaborated in General Comment No. 12 of the Committee on Economic, Social and Cultural Rights (1999). FAO’s Right to Food Glossary is available at [www.fao.org/righttofood/kc/glossary\\_en.htm](http://www.fao.org/righttofood/kc/glossary_en.htm)

in community with others, has physical and economic access at all times to adequate food or means for its procurement”,<sup>8</sup> the Right to Food Guidelines and the VGGT also converge in considering vulnerable and marginalized people as their primary target group and in acknowledging the importance of land, fisheries and forests for their livelihoods.

In this context, there are several ways in which the right to food can play a crucial role, notably by reminding States to meet their international obligations with respect to people’s rights to land, water, forests, fisheries and livestock, without discrimination.<sup>9</sup>

## 2. How can the right to food contribute to responsible agricultural investments?

When it comes to the right to food, States have three types of obligations: to *respect*, *protect* and *fulfil* this human right. The obligation to *respect* requires that States refrain from taking measures that may deprive individuals of access to productive resources on which they depend to produce food for themselves.<sup>10</sup> As for the obligation to *protect*, it requires that States protect access to productive resources from encroachment by third parties,<sup>11</sup> which involves the protection of existing access to land, water, grazing and fishing grounds and forests. The obligation to *fulfil* implies that States will seek to strengthen people’s access to and utilization of resources and means to ensure their livelihoods, including food security.<sup>12</sup> Implementing land reforms is one such example.<sup>13</sup>

These obligations of States towards human rights are of paramount importance for responsible investments when considering investments as a tool to improve agriculture and food security. Questions arise on the kind of agricultural investments and the mode of food production that would best contribute to the main objectives of the VGGT, which are “food security and progressive realization of the right to adequate food” (Paragraph 1.1).<sup>14</sup> As an example, the parliament of Argentina recently passed a rural land law restricting the acquisition of rural land by foreign individuals and companies. The law, in light of the bilateral investment treaties applicable in Argentina, does not consider the acquisition of rural land as an investment, since land is understood as a non-renewable natural resource



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<sup>8</sup> CESCR. 1999. *General Comment 12*, The right to adequate food. E/C.12/1999/5.

<sup>9</sup> See note 2, Guideline 8.

<sup>10</sup> UN General Assembly, *Report of the Special Rapporteur on the right to food*, The right to food, 11 August 2010, A/65/281, p.3

<sup>11</sup> *Ibidem*.

<sup>12</sup> *Ibidem*.

<sup>13</sup> See note 2, Guideline 8.

<sup>14</sup> Künnean, R. 2009. *Foreign investment and the right to food*, in: Murphy and Paasch (eds.). *The Global Food Challenge. Towards a Human Rights Approach to Trade and Investment Policies*.

brought by the host country.<sup>15</sup> In this case, land investment is not seen as an end in itself, but rather as a way to contribute to agricultural and rural development, food security and ultimately, the realization of the right to food.

Addressing investment in land from a human rights perspective also means introducing a human rights methodology to assess international investment agreements.<sup>16</sup> Such a tool has the specific purpose of ensuring that States, by entering into new agreements, will not be facing inconsistent obligations and obstacles to the realization of human rights.<sup>17</sup> By preparing such tools, States can move closer to meeting their obligations. As States must *respect* human rights, they are not allowed to enter into investment agreements that would require the adoption of measures negatively impacting human rights.<sup>18</sup> As States are obliged to *protect* human rights, agreements should not put an obstacle to their ability to control private actors whose conduct may lead to the violation of the human rights of others.<sup>19</sup> As States should *fulfil* human rights, they should refrain from concluding investment agreements that will render impossible the adoption of policies that move towards the full realization of human rights, insofar as it relates to rights that are subject to progressive realization by States to the maximum of their available resources.<sup>20</sup>

Furthermore, it is extremely important that assessments are guided by the human rights



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principles of non-discrimination, participation, transparency and accountability. This means assessing whether the entire process of negotiating the investment agreement has affected human rights as well as if it has been participatory, inclusive and transparent.<sup>21</sup> Also, the VGGT emphasize that all forms of transactions in tenure rights as a result of investments should be done transparently (Paragraph 12.3). Additionally, the VGGT support the human rights framework regarding the responsibilities of business enterprises to respect human rights, including the right to food and legitimate tenure rights, notably by encouraging those enterprises to act with due diligence, to include appropriate risk management systems, to provide for and cooperate in non-judicial mechanisms, and to identify and assess any actual or potential impacts of their activities on human rights (Paragraph 3.2). An increased consideration for human rights assessments of investments on the part of investors could also lead to substantive beneficial impacts for them, such as a greater acceptability of their investments by local communities.

<sup>15</sup> The Argentine Land Law was sanctioned on 22 December 2011 and promulgated on 27 December 2011, see Article 11 [available at [www.mininterior.gov.ar/fronteras/fronteraArchivos/Ley%2026737%20Tierras.pdf](http://www.mininterior.gov.ar/fronteras/fronteraArchivos/Ley%2026737%20Tierras.pdf)].

<sup>16</sup> UN Human Rights Council. 2011. *Report of the Special Rapporteur on the right to food*, Guiding principles on human rights impact assessments of trade and investment agreements, A/HRC/19/59/Add.5.

<sup>17</sup> *Ibidem*, p.6.

<sup>18</sup> *Ibidem*, p.7.

<sup>19</sup> *Ibidem*.

<sup>20</sup> *Ibidem*.

<sup>21</sup> *Ibidem*, p.9.

Moreover, the obligations of States to *respect*, *protect* and *fulfil* all human rights to the maximum of their available resources<sup>22</sup> are not limited to their national boundaries. According to the UN Committee on Economic, Social and Cultural Rights, State parties to the International Covenant on Economic, Social and Cultural Rights should take steps 'to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required'.<sup>23</sup> In the current context of accelerated competition for scarce resources, it means that the obligation to *respect* requires States to ensure that their policies and practices do not negatively impact the realization of the right to food for people living in other countries; the obligation to *protect* requires States to ensure that third parties subject to their jurisdiction, such as their own citizens or transnational corporations, do not impede the realization of the right to food of people living in other countries. Governments also have a duty to support the *fulfilment* of the right to food abroad, which requires States, depending on the availability of their resources, to cooperate with other countries to support their *fulfilment* of the right to food.<sup>24</sup>

### **Lessons learned from small-scale investments**

Aside from providing safeguards against dispossession of legitimate tenure right holders, violations of human rights and environmental damages (Paragraph 12.4), the VGGT also recommend the promotion of investment models

that do not result in the large-scale transfer of tenure rights to investors (Paragraph 12.6). Recognizing that smallholder producers in developing countries are major investors and contribute significantly to food security, nutrition, poverty eradication and environmental resilience, the VGGT call upon States to support investments by and sensitive to smallholders (Paragraph 12.2).

In line with these provisions, it is useful to shed light on some alternative experiences of agricultural investments:

- 'Nested' markets in Brazil<sup>25</sup> is the creation of new markets as well as new and diverse investment strategies in land and agriculture through the interaction of social actors and the State. As a result, the State invests in public goods and opens up new markets for small-scale farmers through public procurement and other innovative methods, thus inching towards the fulfilment of its obligations.
- **National Programme for the Enhancement of Family Farming (PRONAF):** Created by the government in 1994, it provided more than 14.5 million loans, worth around \$ 31 billion, between 1996-2008. Family farming has grown as a result, with a 10 percent increase between 1995/96 and 2006 in both the number of family farm units as well as their gross value of production.<sup>26</sup>
- **School Meals Programme:** Each Brazilian municipality receives a daily subsidy for each student enrolled for 200 days per year with the requirement that 70 percent of the procurements be non-processed

<sup>22</sup> See Article 2.1 of the International Covenant on Economic, Social and Cultural Rights: 'Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.'

<sup>23</sup> See note 8, paragraph 36.

<sup>24</sup> See note 10.

<sup>25</sup> Kay, S. 2012. *Positive alternatives to large scale land acquisitions and leases*, Transnational Institute, Amsterdam. [available at <http://www.tni.org/paper/positive-land-investment-alternatives>]

<sup>26</sup> Schneider, S., Shiki, S. et al. 2010. *Rural Development in Brazil: Overcoming Inequalities and building New Markets*. *Rivista di Economia Agraria* 65(2), 225-259.

staple foods while 30 percent of the food be purchased from local family farms.<sup>27</sup>

- **The Government Food Procurement Programme (PAA):** It involves the public procurement of food produced by small-scale farmers grouped together in associations and registered with the National Supply Company, either by the State or by institutions such as schools, hospitals and restaurants. This is set to benefit over 300 000 poor family farmers - about 10 percent of the total number of family farmers in Brazil.<sup>28</sup>

- Agroecology is a mode of agricultural development combining agronomy and ecology consisting of a set of practices seeking to enhance agricultural systems by mimicking natural processes, conceptually and practically connected to the right to food.<sup>29</sup> The Malawian government created the 'Malawi Agroforestry Food Security Programme', a four-year programme launched in 2007 that aims to provide training and assistance to small-scale farmers on agro-forestry techniques.<sup>30</sup> Through this strategy, 200 000 households are now believed to be practicing agro-forestry techniques, thus covering around 40 percent of Malawi's districts. As a result, maize yields in Malawi have increased on average from 1 t/ha on unfertilized land to 2-3 t/ha with the integration of tree-fertilizer species. The benefits of agro-forestry are being witnessed throughout Southern Africa.<sup>31</sup>

<sup>27</sup> *Ibidem.*

<sup>28</sup> *Ibidem.*

<sup>29</sup> UN Human Rights Council. 2010. *Report of the Special Rapporteur on the right to food, Agroecology and the Right to Food, A/HRC/16/49*. The report provides more examples of investing in agroecology.

<sup>30</sup> Ajayi, O.C., Akkinifesi, F.K. *et al.* 2008. *Local Solutions to Global Problems: The Potential of Agroforestry for Climate Change Adaptation and Mitigation in Southern Africa*. TroFCCA Regional Meeting 'Knowledge and Action on Forests for Climate Change Adaptation in Africa. Accra, Ghana.

<sup>31</sup> See note 25.



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- Community supported agriculture (CSA) are arrangements between farmers and consumers in which both commit to support each other on a long-term basis. Direct selling through box schemes and farmer's markets is one prominent strategy through which farmers can receive a fairer share of the food price while this strategy also helps developing local food systems. In Europe, a number of guidelines are being prepared that include a commitment by CSA practitioners to the 'participatory guarantee scheme', a tool used by producers, consumers and other stakeholders to collectively define, monitor and evaluate standards and certification procedures.<sup>32</sup>

### 3. Conclusion

To conclude, this Information Note has underlined the importance of the existing obligations of States

under international law, as highlighted in the VGGT (Paragraph 2.2) in meeting its goals of "food security and realization of the right to adequate food" (Paragraph 1.1). In light of the current context of increased competition for natural resources, a human rights framework is thus fundamental to guide the implementation of the VGGT for agricultural investments. This framework is vital for States to determine the kind of investments that will best contribute to the realization of the right to food. A human rights assessment of investment agreements was presented as an important tool to help States meet their human rights obligations. Finally, some examples of alternative investment models have underlined the key role of public policies in promoting and facilitating investment models that focus on the most vulnerable, human rights and the environment. Now, the challenge is scaling-up such experiences.<sup>33</sup>

<sup>32</sup> *Ibidem.*

<sup>33</sup> *Ibidem.*



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The Food and Agriculture Organization of the United Nations (FAO) would like to thank the Governments of Norway and Germany for the financial support which made possible the development of this information note. To download: [www.fao.org/righttofood](http://www.fao.org/righttofood) • For further comments please contact: [Righttofood@fao.org](mailto:Righttofood@fao.org)

