Contribution to the workshop of the Open Ended Working Group on principles for responsible agricultural investments

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The Special Rapporteur welcomes the endorsement of the Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) by the Special Session of the Committee on World Food Security (CFS) on 11 May 2012. He notes with great interest that an inclusive consultation process will soon be initiated within the CFS for the development of principles for responsible agricultural investments which enhance food security and nutrition. He acknowledges the background document prepared by the Secretariat, which lists a number of initiatives relating to responsible investment in agriculture. He commends all those who have joined efforts to allow the discussion to be held in this inclusive format.

Due to earlier commitments, the Special Rapporteur is unable able to attend the workshop to be held on 2 July 2012 in Rome. He is, however, grateful to the Chair for her invitation to present his views to the distinguished delegates that shall be convening in the Open-Ended Working Group. The Special Rapporteur wishes to draw the attention of all CFS members and participants to the following points, in the hope that they will provide useful guidance to the discussions on the elaboration of terms of reference for such a consultation process.

1. The Special Rapporteur has identified a set of minimum human rights principles on large-scale land acquisitions and leases (see “Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge,” A/HRC/13/33/Add.2; hereinafter “Minimum Principles”). In its resolution 13/4 on the right to food, the Human Rights Council has expressed its appreciation for the Minimum Principles. These Principles are not imposing new norms. They restate existing international human rights obligations of States involved in large-scale investments in farmland, either as host States or as investors, the home States of which also bear a duty to regulate the conduct of these investors abroad.

The Minimum Principles seek to provide guidance to States to ensure that investment agreements on land do not lead to violations of human rights, including the right to adequate food. Indeed, investments by private actors, including investment funds, are increasingly channelled to agriculture, and increasingly involve speculation on farmland that could have a range of impacts on the right to food. In a similar fashion, the Minimum Principles are relevant as well for development banks, including the World Bank and its private sector arm, the International Finance Corporation. The International Bank for Reconstruction and Development and the International Finance Corporation are bound by international human rights law as part of general
international law (International Court of Justice, *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion (20 December 1980), ICJ Rep. 1980, 73, para. 37), and they should make their support to any large-scale investment in farmland conditional upon compliance with the Minimum Principles.

2. **Responsible agricultural investments that directly contribute to the realization of the right to food of local populations should be considered as the highest priority. This priority should be reflected in the scope and purpose of the consultation process.**

The Special Rapporteur has consistently insisted on the need for agricultural systems to support, as a priority, the production of food to respond to local needs. It is only to the extent that investments can improve local food security by improving food availability in food deficit countries and by increasing incomes among the local populations, while avoiding an increase in inequalities of incomes in rural areas, that they are justified.

3. **The Open Ended Working Group should fully take into account Principle 5 (rural poverty and employment) and Principle 6 (sustainable agriculture) of the Minimum Principles in elaborating terms of reference for a consultation process to develop principles for responsible agricultural investments.**

In Principle 5, the Special Rapporteur highlights the importance, for countries facing significant poverty levels, of ensuring that investments be directed at “promoting farming systems that are sufficiently labour-intensive to contribute to employment creation.” In Principle 6, the Special Rapporteur insists that “host States and investors should cooperate in identifying ways to ensure that the modes of agricultural production respect the environment, and do not accelerate climate change, soil depletion, and the exhaustion of freshwater reserves.” The VGGT similarly emphasize the importance of encouraging forms of investment that increase sustainable agricultural production (para. 12.1) and that support smallholders (para. 12.2).

4. **Agricultural investments should encourage sustainable agricultural production.** In his report on agroecological modes of production and the right to food (A/HRC/16/49), the Special Rapporteur recommended that States:

   a. **Re-orient public spending** in agriculture by prioritizing the provision of public goods, such as extension services, rural infrastructures and agricultural research, and by building on the complementary strengths of seeds-and-breeds and agroecological methods, allocating resources to both, and explore the synergies, such as linking fertilizer subsidies directly to agroecological investments on the farm (“subsidy to sustainability”);

   b. **Support decentralized participatory research and the dissemination of knowledge** about the best sustainable agricultural practices by relying on existing farmers’ organizations and networks, and include schemes designed specifically for women;

   c. **Improve the ability of producers practicing sustainable agriculture to access markets**, using instruments such as public procurement, credit, farmers’ markets, and creating a supportive trade and macroeconomic framework.
In its resolution 16/27 following an interactive dialogue on this report, the Human Rights Council stressed that “improving access to productive resources and investment in rural development” was essential for eradicating hunger and poverty, and that the promotion of investments “in programmes, practices and policies to scale up agroecological approaches” was a means towards achieving that end.

The Special Rapporteur believes that the above listed elements should form a solid basis for the discussion on the scope and purpose of the consultation process on responsible agricultural investments that will be launched.

5. **Agricultural investments should be sensitive to the needs of smallholders.** In this regard, instead of investments resulting in shifts in land rights that are highly sensitive and politically and socially risky, priority should be given to investments upstream and downstream of production, which have the potential to improve the productivity of and access to markets for agricultural producers, particularly small-scale producers. In his report dedicated to equitable value chains and alternative business models in support of the right to food (A/66/262), the Special Rapporteur recommends that States support small-scale farmers by:

   a. **Providing stable and reliable infrastructure** services such as roads, water, electricity and communications;

   b. **Supporting traditional and wholesale markets**;

   c. **Establishing schemes allowing small-scale farmers to climb up the value chain**, including by identifying at the local or regional level which partnerships could be established between producers, packagers, processors and retailers;

   d. **Creating an enabling environment for the development of local markets** benefiting small-scale farmers and the creation of a range of options for connecting small-scale farmers in rural areas to urban consumers. The more farmers have alternatives for accessing markets, the stronger their position will be in negotiating the terms of agreements with private entities for contract farming or joint ventures;

   e. **Supporting the organization of farmers into cooperatives** and other types of producers’ organizations that can improve farmers’ bargaining position; help them to move up the value chain into the produce packaging, processing and marketing operations; and help them to acquire inputs and sell their produce under better circumstances.

The Special Rapporteur believes that these elements should form a central part of the discussion on the scope and purpose of the consultation process on responsible agricultural investments that will be launched. The opportunity costs of large-scale investments in farmland should be considered when examining their impacts, both negative and positive: the question to be asked is whether investments thus conceived are the most effective at reducing rural poverty and at improving food security at the local level, or whether other forms of investment could achieve this better.

6. **The consultation process on principles for responsible agricultural investments should respect and promote human rights principles:** participation,
accountability, non-discrimination and equality, transparency, empowerment, the rule of law, and a focus on the most disadvantaged and marginalized.

The Special Rapporteur urges CFS members and participants to take into account these human rights principles in the elaboration and implementation of the consultation process, in particular when identifying the structure and format of the consultation process, and the intended recipients. Human rights principles should be integrated in order to ensure that future agricultural investments will indeed lead to improvements in the lives of the poor and most marginalized. In addition, CFS members and participants are encouraged to assess the impacts of various kinds of agricultural investments on the most marginalized segments of the population, rather than look merely at their potential impacts in terms of increases in the aggregate production of agricultural products, or in macro-economic indicators.

Finally, the Special Rapporteur maintains that the Minimum Principles are just that – minimum principles. This means that a large-scale investment in land will not necessarily be justified even though it may comply with all the eleven minimum principles. For the reasons outlined above, the Minimum Principles call for Governments to carefully examine the opportunity costs involved in ceding land to an investor (principle 1); to examine alternatives to agreements that have an impact on land tenure (principle 4); and to perform a participatory impact assessment prior to the conclusion of such agreements (principle 9).

In the vast majority of cases of large-scale investments examined by the Special Rapporteur, the benefits of the investment (in terms of creation of infrastructure, marketing opportunities, and access to credit) could be achieved — and work for the benefit of both the investor and the producer — by the use of other business models such as contract farming, without any change being made to the rights over the land. Such alternatives should be explored prior to any shift in rights over the land. Unless such alternatives are prioritized, the development of large-scale land acquisitions or leases will result in nothing less than an agrarian counter-reform; such a consequence would be completely unacceptable and run directly counter to the realization of the right to food, further marginalizing the communities that depend on access to land for their livelihoods.