



AN ACTIVIST USER'S GUIDE

To regional and international guidelines and principles
for large-scale land-based investments

Phyllan Zamchiya



UNIVERSITY of the
WESTERN CAPE

PLAAS 
Institute for Poverty, Land and Agrarian Studies



AUSTRIAN
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INTRODUCTION

As multinational corporations continue to invest in large-scale, land-based, commercial ventures in Africa, a need to regulate such investments to protect the rural poor, especially women, has been identified. A number of stakeholders have intensified efforts since 2009 to promote ‘responsible’ investment in land, in particular by deploying regional and international principles and guidelines on large-scale, land-based investments. The African Union (AU), the United Nations (UN), the UN’s Food and Agriculture Organization (FAO), the World Bank, the Group of Eight (G8), the Organisation for Economic Co-operation and Development (OECD) and the United States Agency for International Development (USAID) have developed a number of such instruments, which have been endorsed by various governments, although their implementation often remains haphazard at best.

This booklet identifies, describes and critiques seven of these instruments which have been developed from 2009. Although each of these frameworks focuses on a different set of principles, taken together they offer guidelines that may help to secure and promote food security; human rights; gender and women’s rights; more comprehensive land and tenure rights, including in relation to natural resources; a more sustainable environment; good governance; social sustainability; and due diligence in investments. In addition, notwithstanding the particular strengths and weaknesses of each instrument, they indicate a number of common problems. In this regard, it is important to note that these regulatory instruments were designed by global stakeholders to foster or regulate investments rather than to stop them. They tend to seek to promote the idea of win-win-win arrangements for governments, investors and local communities. Perhaps as a result of this impetus, the frameworks are flawed in a number of significant ways. First, it is evident that the guidelines are voluntary and non-binding, thus only constituting

‘soft’ law. Second, information about the existence and content of these principles and guidelines is not widely known by communities affected by large-scale based investments. Third, governments with weak governance systems will likely find it difficult to implement them. Fourth, only limited tangible benefits for the majority of the affected communities would likely derive from the implementation of a number of these frameworks. Fifth, they offer few alternatives for the development of land and land-based resources to those generally provided by large-scale investment. Last, some of the frameworks are designed in ways that would make it difficult to implement them in African societies differentiated by gender, social status, class and geography. However, while drawing attention to these concerns, this booklet does not focus on them. Rather, its goal is to provide easy reference to these guidelines and principles for activists and communities in support of their efforts to promote and entrench regulation of investments in land, in the absence of alternative, more progressive regulatory frameworks.

The seven frameworks referenced by the booklet are:

1. Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (PRAI) developed by FAO, the International Fund for Agricultural Development (IFAD), the UN Conference on Trade and Development (UNCTAD) and the World Bank (2009)
2. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) produced by the FAO and endorsed by the Committee on World Food Security (2012)
3. Principles for Responsible Investment in Agriculture and Food Systems produced by the Committee on World Food Security (CFS-RAI Principles) (2014)

4. Guiding Principles on Large Scale Land Based Investments in Africa produced by the AU, African Development Bank (AfDB) and UN Economic Commission for Africa (UNECA) (2014)
5. Operational Guidelines for Responsible Land-Based Investment produced by USAID (2014)
6. Analytical Framework for Land-Based Investments in African Agriculture produced by the G8 (2015)
7. OECD-FAO Guidance for Responsible Agricultural Supply Chains (2016)

What do the regional and international instruments propose?

Instrument 1: Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources developed by FAO, IFAD, UNCTAD and the World Bank (2009)

In September 2009, the World Bank, FAO, IFAD and UNCTAD developed the 'Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources'. They advocated seven main principles to promote 'responsible' large-scale agricultural investments.



UN and World Bank principles for responsible agricultural investment¹

1. Existing rights to land and associated natural resources are recognised and respected. Existing use or ownership rights to land, whether statutory or customary; primary or secondary; formal or informal; group or individual, should be respected by investors.
2. Investments should not jeopardise food security but rather strengthen it. ‘Whenever there are potential adverse effects on any aspect of food security (availability, access, utilisation or stability), policy-makers should make provisions for the local or directly affected populations ensuring that they do not become food insecure.’
3. Processes for accessing land and other resources and then making associated investments should be transparent, monitored, and ensure accountability of all stakeholders within a proper business, legal and regulatory environment.
4. All those materially affected must be consulted, and agreements from consultations should be recorded and enforced.
5. Investors must ensure that projects respect the rule of law; reflect industry best practices; are economically viable and result in durable shared value.
6. Investments should generate desirable social and distributional impacts, and should not increase vulnerability among populations.
7. Environmental impacts due to a project are quantified and measures should be taken to encourage sustainable resource-use, while minimising the risk and magnitude of negative impacts or mitigating them.

Critique

- Uncritically promotes large-scale agricultural investments as a primary means of fostering rural growth and poverty reduction
- No specific principle promoting gender and women’s rights
- No specific principle on human rights²
- Voluntary and difficult to enforce, except in relation to issues covered by national laws and domestically ratified international instruments
- The principle of free, informed and prior consent (FIPC) is not clearly elaborated

¹ ‘Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources’, FAO, IFAD, UNCTAD and the World Bank, 2009.

² Timothy A. Wise and Rachel Gilbert, ‘Global Initiatives to Promote Responsible Agricultural Investment’, presented at a PLAAS regional workshop from 6-8 April 2016, University of the Western Cape (UWC), South Africa.

Instrument 2: Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security produced by the FAO and endorsed by the Committee on World Food Security (2012)

In 2012, the FAO developed ‘Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security’. The Committee on World Food Security sanctioned the principles. The VGGT were hailed as ‘an unprecedented human rights-based international soft-law instrument intended to promote respect for all legitimate tenure rights’.³ The purpose of the VGGT is ‘to serve as a reference and to provide guidance to improve the governance of tenure of land, fisheries and forests with the overarching goal of achieving food security for all and to support the progressive realisation of the right to adequate food in the context of national food security’.⁴

There was relatively wide consultation with civil society, private sector representatives, academics and researchers, and international organisations in the formulation of the guidelines, hence their endorsement by the Civil Society Mechanism.⁵ In addition, the UN General Assembly, in its resolution [A/RES/67/228]; the G20; the G8; and the Rio+20 UN Conference on Sustainable Development

all unequivocally urged states to implement the guidelines, adding to their importance in shaping the global agenda on this issue.⁶

The VGGT place substantial obligations on states. They propose that states should: recognise and respect all legitimate tenure-right holders and their rights; safeguard legitimate land tenure rights against threats and infringements; promote and facilitate the enjoyment of legitimate tenure rights; provide access to justice to deal with infringements of legitimate tenure rights; prevent tenure disputes, violent conflicts and corruption; and provide and maintain policy, legal and organisational frameworks that promote responsible governance of tenure for land, fisheries and forests.⁷ The VGGT also place substantial responsibilities on non-state actors. They propose that private-sector actors should bear responsibility for respecting human rights and legitimating tenure rights; and should provide and cooperate in non-judicial mechanisms to remedy, identify, and assess any actual or potential impacts on human rights and legitimate tenure rights in areas in which they are involved.⁸

The VGGT further outline principles of implementation to promote responsible governance of tenure of land, fisheries and forests.

³ ‘Analytical Framework for Land-Based Investments in African Agriculture’, G8, 2015.

⁴ ‘Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security’, FAO and endorsed by the Committee on World Food Security, 2012, p. 5.

⁶ Wise and Gilbert, ‘Global Initiatives to Promote Responsible Agricultural Investment’, 2016.

⁶ ‘Analytical Framework for Land-Based Investments in African Agriculture’, G8, 2015.

⁷ See section 3.1 of ‘Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security’, FAO, 2012.



VGGT's principles for implementation

1. Recognise human dignity
2. Practise non-discrimination
3. Recognise equity and justice
4. Ensure gender equality
5. Adopt a holistic, sustainable approach in natural-resource administration
6. Consult with and ensure the participation of those affected
7. Respect the rule of law
8. Promote transparency
9. Promote accountability
10. Continuously improve mechanisms for monitoring and analysing tenure governance

Critique

- Difficult to implement in states with weak governance systems
- Limited dissemination and implementation of principles in Southern Africa
- The majority of affected communities are still excluded from enjoying the benefits of the principles
- Recommendations fail to advance the stated principle of providing alternative approaches to that of large-scale land acquisitions from the poor
- Voluntary and difficult to enforce, except in relation to issues covered by national laws and domestically ratified international instruments

Instrument 3: Principles for Responsible Investment in Agriculture and Food Systems produced by the Committee on World Food Security (2014)

The Committee on World Food Security produced the 'CFS-RAI Principles' in 2014. The purpose of these is to 'enhance food security and nutrition and support the progressive realisation of the right to adequate food in the context of national food security'.⁹ The principles prioritise 'investments in, by, and with smallholders [men and women], including those that are small-scale producers and processors, pastoralists, artisans, fishers, communities closely dependent on forests, indigenous peoples, and agricultural workers', as well as external investors.¹⁰ Ten main principles for responsible investment in agriculture and food systems were presented.

⁸ See section 3.2 of 'Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security', FAO, 2012.

⁹ 'Principles for Responsible Investment in Agriculture and Food Systems', Committee on World Food Security, 2014, p. 1.

¹⁰ 'Principles for Responsible Investment in Agriculture and Food Systems', Committee on World Food Security, 2014, p. 1.

CFS-RAI principles for investment

1. Contribute to food security and nutrition
2. Contribute to sustainable, inclusive economic development and the eradication of poverty
3. Foster gender equality and women's empowerment
4. Engage and empower youth
5. Respect tenure of land, fisheries, and forests and access to water
6. Conserve and sustainably manage natural resources; increase resilience; and reduce disaster risks
7. Respect cultural heritage and traditional knowledge, and support diversity and innovation
8. Promote safe and healthy agriculture and food systems
9. Incorporate inclusive, transparent governance structures and processes, and grievance mechanisms
10. Assess and address impacts and promote accountability



Critique

- Principles do not adequately differentiate agro-food systems as ‘they are designed to be applicable to all sectors and all stages of agriculture and food systems’¹¹
- Main focus is to advise elite investors rather than support the affected rural poor
- Voluntary and difficult to enforce, except in relation to issues covered by national laws and domestically ratified international instruments
- No alternative, redistributive rural development models are proposed
- Principles refer to existing unfair, inequitable international trade agreements¹²
- Principles do not clearly elaborate the FPIC principle

Instrument 4: Guiding Principles on Large Scale Land Based Investments in Africa produced by the AU, AfDB and UNECA (2014)

In 2014, the AU formulated the ‘Guiding Principles on Large Scale Land Based Investments in Africa’ after inclusive consultations. These are the outcome of a desire on the part of AU member states to ensure that large-scale land-based investments benefit governments, the private sector and local communities in a win-win-win manner. The AU principles ‘are a basis for commitment, solidarity and collective responsibility by governments, other stakeholders and investors to improve the governance of large-scale land-based agricultural investments in Africa’.¹³ The principles acknowledge the benefits that may be derived from land uses other than those generally promoted by large-scale investment. The instrument ‘identified a small number of fundamental principles to enable member states to derive the most benefit from investments through making well-informed decisions on such investments. These fundamental principles are overarching principles, from which other principles are subsequently derived.’¹⁴

¹¹ ‘Principles for Responsible Investment in Agriculture and Food Systems’, Committee on World Food Security, 2014, p. 4.

¹² ‘Principles for Responsible Investment in Agriculture and Food Systems’, Committee on World Food Security, 2014, p. 11.

¹³ ‘Guiding Principles on Large Scale Land Based Investments in Africa’, AU, AfDB and UNECA, 2014, p. 16.

¹⁴ ‘Guiding Principles on Large Scale Land Based Investments in Africa’, AU, AfDB and UNECA, 2014, pp. 17-18.

AU principles on large-scale land-based investments in Africa

1. Large-scale land-based investments on the continent should respect the human rights of communities; contribute to the responsible governance of land and land-based resources, including by respecting customary land rights; and be conducted in compliance with the rule of law.
2. Decisions on such investments should be guided by a national strategy for sustainable agricultural development that recognises the strategic importance of African agricultural land and the role of small-holder farmers in achieving food security, poverty reduction, and economic growth.
3. Decisions on such investments and their implementation should be based on good governance principles, including transparency; subsidiarity; inclusiveness; prior informed participation; and the full consent of affected communities.
4. Such investments should respect the land rights of women; recognise their voice; generate meaningful opportunities for women alongside men; and positively address the marginalisation of women.
5. Decisions on the desirability and feasibility of such investments should be based on independent, holistic assessment of the associated economic, financial, social and environmental costs and benefits across the lifetime of the proposed investment.
6. Member states should uphold high standards of cooperation, collaboration and mutual accountability to ensure that such investments are beneficial to African economies and populations.

Critique

- Voluntary and difficult to enforce, except in relation to issues covered by national laws and domestically ratified international instruments
- Promotes the model of large-scale investment in land although it questions the extent to which this produces benefits for local communities
- Difficult to implement in some African states with weak governance systems

Instrument 5: Operational Guidelines for Responsible Land-Based Investment produced by USAID (2014)

In 2014, USAID developed 'Operational Guidelines for Responsible Land-Based Investment'. These focus on regulating investors in New Alliance countries, which include Benin, Burkina Faso, Côte d'Ivoire, Ethiopia, Ghana, Malawi, Mozambique, Nigeria, Senegal and Tanzania.¹⁵ The guidelines advise private sector firms on how they can 'responsibly' acquire land and natural resources.

¹³ 'Guiding Principles on Large Scale Land Based Investments in Africa', AU, AfDB and UNECA, 2014, p. 16.

¹⁴ 'Guiding Principles on Large Scale Land Based Investments in Africa', AU, AfDB and UNECA, 2014, pp. 17-18.

¹⁵ The New Alliance for Food Security and Nutrition was launched in 2012 by the G8 (now G7) to support sustained and inclusive agricultural growth in Africa and help raise 50 million people out of poverty by 2022. The New Alliance is a partnership of governments, donors and the private sector. Ten African governments have joined the alliance. For more information, see: <http://www.fao.org/family-farming/detail/en/c/384055/>



USAID's principles for responsible land-based investment

1. Due diligence: Investors must conduct robust land-tenure due diligence prior to embarking on any project activities to understand the local land-tenure framework, and continue diligence throughout the lifecycle of a project. In addition, investors should hire independent experts to conduct environmental and social impact assessments, as well as human rights impact assessments.¹⁶
2. Pre-implementation community engagement: Before beginning contract negotiations, investors should engage stakeholders, particularly local communities and vulnerable groups, in a participatory, transparent manner in order to raise awareness about, and produce mapping for, the proposed project.¹⁷
3. Contract negotiations: A crucial part of contract negotiations will involve discussions about how best to compensate the local community for any losses to their land or land-related economic activities. Land acquisition models may include concession; direct purchase; fixed-price lease; land for equity; or other benefit-sharing arrangements.
4. Project operations: Investors should continue to interact with stakeholders, as operations are undertaken, monitoring impacts and offering grievance resolution.

Critique

- The guidelines note that FPIC 'is subject to varying interpretations within the international community',¹⁸ which leaves the terms of this crucial concept open to interpretation by investors
- No specific principle promoting gender and women's rights
- No specific principle on human rights
- Voluntary and difficult to enforce, except in relation to issues covered by national laws and domestically ratified international instruments
- Main focus is to help elite private companies operating in G7-funded countries

Instrument 6: Analytical Framework for Land-Based Investments in African Agriculture produced by the G8 (2015)

In 2015, the G8 developed an 'Analytical Framework for Land-Based Investments in African Agriculture'. The framework is designed to 'help investors ensure that their land-based investments are inclusive, sustainable, transparent, and respect human rights'.¹⁹ The authors of the framework stress that they do not support ongoing, large-scale land based acquisitions but 'rather, [the document] is produced in recognition of the fact that large-scale land based investment is occurring and in an effort to provide advice and highlight best practices related to structuring investments in the most responsible way possible'.²⁰

¹⁶ 'Operational Guidelines for Responsible Land-Based Investment', USAID, 2014, pp. 5-6.

¹⁷ 'Operational Guidelines for Responsible Land-Based Investment', USAID, 2014, p. 8.

¹⁸ 'Operational Guidelines for Responsible Land-Based Investment', USAID, 2014, p. 8.

¹⁹ 'Analytical Framework for Land-Based Investments in African Agriculture', G8, 2015, p. 3.

²⁰ 'Analytical Framework for Land-Based Investments in African Agriculture', G8, 2015, p. 4.

G8 principles for investment in African agriculture

1. Investors should identify and recognise all legitimate land-rights holders, including those with customary, secondary, seasonal and other use rights.
2. Investors should ensure the participation of affected communities in consultations and negotiations.
3. A mechanism for resolving grievances and disputes should be made available. This should provide effective, accessible means for all parties to resolve disputes over tenure rights; and provide affordable, prompt enforcement of outcomes. The mechanism may involve judicial authorities or adopt other approaches.
4. Transparency and a commitment to anti-corruption should inform the processes of stakeholder engagement, consultation and building solid relationships with the community.
5. The investment should not harm local food security but aim to improve it. It should comply with national and international laws on human rights. It should ensure the sustainable use of natural resources. It should do no harm to local people's livelihoods and complement national development efforts.

Critique

- Voluntary and difficult to enforce, except in relation to issues covered by national laws and domestically ratified international instruments
- No alternative, redistributive rural development models are proposed
- No specific focus on gender and women's rights

Instrument 7: OECD-FAO Guidance for Responsible Agricultural Supply Chains (2016)

In 2016, the OECD-FAO produced its 'Guidance for Responsible Agricultural Supply Chains'. The framework was developed to help 'enterprises observe existing standards for responsible business conduct along agricultural supply chains'.²¹ It sought to target 'all enterprises operating along agricultural supply chains, including domestic and foreign, private and public, small, medium- and large-scale enterprises'.²² It found justification in the idea that upholding 'responsible' investment would ensure that 'agriculture continues to fulfil its multiple functions, including food security, poverty reduction, and economic growth'.²³ It proposed ten main investment principles.

²¹ 'OECD-FAO Guidance for Responsible Agricultural Supply Chains', 2016, p. 5.

²² 'OECD-FAO Guidance for Responsible Agricultural Supply Chains', 2016, p. 5.

²³ 'OECD-FAO Guidance for Responsible Agricultural Supply Chains', 2016, p. 11.



OECD-FAO principles for investment

Investors should:

1. Conduct due diligence and implement responsible business conduct (RBC) principles and standards. RBC principles oblige businesses to make a positive contribution to economic, environmental and social progress with a view to achieving sustainable development; and prevent or mitigate adverse impacts directly linked to their operations, products or services. In pursuing these principles, firms should conduct risk assessments; disclose information as appropriate; engage in consultations; seek to share benefits; establish grievance mechanisms; and promote gender equity.
2. Observe human rights by respecting the human rights of others and addressing adverse human rights impacts when they occur.
3. Respect labour rights, including the freedom of association and the right to collective bargaining, including for migrant workers; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.
4. Promote health and safety by adopting appropriate practices to prevent threats to human life, health, and welfare in business operations, as well as threats deriving from the consumption, use or disposal of goods and services produced by the investor, including by adhering to good practices in food safety.
5. Contribute to food security and nutrition through enhancing the availability, accessibility, stability and utilisation of safe, nutritious and diverse foods.
6. Respect legitimate tenure-right holders and their rights over natural resources, including public, private, communal, collective, indigenous and customary rights, potentially affected by the firm's activities. Natural resources include land, fisheries, forests, and water.
7. Support animal welfare by striving to ensure that the 'five freedoms' for animal welfare are implemented, that is, freedom from hunger, thirst and malnutrition; physical and thermal discomfort; pain; injury and disease; fear and distress; and freedom to express normal patterns of behaviour.
8. Protect the environment and promote the sustainable use of natural resources.
9. Prevent and abstain from any form of corruption and fraudulent practices; and comply with both the letter and spirit of domestic tax laws and regulations.
10. Contribute to the development and diffusion of appropriate technologies, particularly environmentally friendly technologies and those that generate direct and indirect employment.

Critique

- Voluntary and difficult to enforce, except in relation to issues covered by national laws and domestically ratified international instruments
- No alternative, redistributive rural development models are proposed
- No specific focus on gender and women's rights