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POLITICAL BRIEF ON THE PRINCIPLES ON RESPONSIBLE INVESTMENT IN AGRICULTURE AND FOOD SYSTEMS





1 INTRODUCTION

On October 15, 2014, the Member States of the Committee on World Food Security (CFS), hosted at the United Nations Food and Agriculture Organisation, approved the “Principles on Responsible Investment in Agriculture and Food Systems”.² With the objective to “promote responsible investments in agriculture and food systems that contribute to food security and nutrition, thus supporting the progressive realisation of the right to adequate food in the context of national food security”³, the responsible agricultural investment or ‘rai principles’ are the outcome of a more than two year global consultative process, involving governments, civil society organisations, the private sector, UN agencies, development banks, foundations, research institutions and academia.⁴ The negotiation of the principles often proved arduous, reflecting the highly contested nature of investment in agriculture, and the economic and political interests that lie at the heart of this issue. While civil society organisations, supported at times by various Member States, argued for a set of human-rights based principles that would help mobilise public investments and public policies in support of small-scale food producers and workers and local food production systems, the private sector and a number of other governments pushed for a set of minimalist, regulation-light principles, in which large-scale (corporate) investments and market mechanisms predominate. The subsequent rai principles do not resolve this tension and thus, despite their laudable aim, do not move us much further in navigating the slippery terrain of defining ‘responsible’ versus ‘irresponsible’ investment - an ambiguity that could result in them doing more harm than good. It is therefore essential for civil society organisations to push back against a regressive use of the rai principles and monitor what other actors are doing in the name of the principles.

2 CONTEXT

For the world’s small-scale food producers and workers, the issue of agricultural investment is highly significant. As was articulated during the plenary address of the civil society mechanism at the very first session of the rai negotiations on July 2, 2012:

For us, investment in agriculture is not an object of study. It is what we ourselves do every day of our lives. It is what we benefit from when our governments get priorities, policies and regulations straight. It is what we suffer from when it is lacking or, increasingly, when it alienates us from the land, water and other natural resources on which we depend and attacks our resilient food systems. Consultations about agricultural investment are not academic or technical exercises for us. We negotiate about investment in agriculture with our governments, with development partners, with outside investors when we are given a chance. We mobilize around it in our communities and our capital cities when we are not consulted. This is why we have invested so much energy in the CFS’s considerations about agricultural investment thus far.

Indeed, as affirmed in CFS reports and policy documents as well as countless other scientific studies, small-scale food producers are responsible for the bulk of investment in agriculture and are the lynchpin to realising global food security.⁵ Their ability to do so is based on the distinctiveness of peasant family farming production which is characterised by a diversified set of practices tailored over time through a highly knowledge and skill intensive process to best suit particular agro-ecological contexts. Furthermore, given the intimate connection between production and reproduction in this model, the investments made by small-scale food producers serve to sustain land-based cultures, identities, and livelihoods.

Any set of principles dealing with agricultural investment can thus only claim to be 'responsible' to the extent to which investments by and for small-scale food producers are explicitly prioritised, strengthened and secured.

This perspective was sorely lacking in the FAO, IFAD, UNCTAD and World Bank designed Principles on Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (PRAI). Formulated in early 2010 in the midst of rising concern around land grabbing and the recent food price spikes, the PRAI were put forward as the global governance instrument to deal with the global land rush. Yet in failing to challenge the false premise that large-scale, corporate investment is necessary for rural development and instead facilitating this type of investment with minimal regulatory controls - a process that the former UN Special Rapporteur on the Right to Food, Olivier de Schutter, has called "responsibly destroying the world's peasantry"⁶ - the PRAI in fact paved the way for further corporate and state predation over peasant lands. Without a transparent and democratic mechanism having been included in their design process, the PRAI were seen as lacking both credibility and legitimacy by many civil society and producer organisations around the world. It is for this reason that they were rejected when submitted for approval at the CFS 36 plenary in October 2010. Instead the decision was taken that the CFS should initiate an inclusive process towards developing its own principles for responsible agricultural investment.

The defeat of the PRAI and the decision to empower the CFS to shape matters related to global food security and nutrition policies marks a significant victory for civil society organisations. Using the political collective of the International Civil Society Planning Committee for Food Sovereignty (IPC) as an organising platform, civil society organisations successfully mobilised and lobbied to reform the CFS in 2009 in order to open it up to social movements, producer organisations and other civil society actors. As a result of these efforts, civil society organisations - through the creation of the civil society mechanism (CSM) - can participate alongside governments and the private sector in CFS consultation processes, effectively providing them with an avenue to directly influence global food security and nutrition policies.⁷ The importance of such an initiative cannot be overstated, as this represents a unique governance model within the UN space.

The first 'product' of this reformed CFS were the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security - referred to by many as the Tenure Guidelines. These Guidelines mark an important step forward for they are the first international instrument to apply an economic, social and cultural rights based approach to questions of tenure. While Chapter 12 of the Guidelines on the issue of investment proved to be amongst the most contentious and where most compromises had to be made, civil society did manage to win the inclusion of a number of important points.⁸

Following the approval of the Tenure Guidelines during a Special Session of the CFS in May 2011 and in consideration of the earlier rejection of the PRAI in 2010, it was affirmed during the 37th Session of the CFS in October 2011 that the Member States "Supported an inclusive consultation process within CFS for the development and the broader ownership of principles for responsible agricultural investment that enhance food security and nutrition" which will "...ensure consistency and complementarity" with the Tenure Guidelines.⁹ Furthermore, following an earlier Policy Roundtable on smallholder investment in agriculture in which civil society actively participated with considerable success, the CFS "urged the explicit recognition of smallholder-sensitive investment among the criteria for characterizing responsible corporate investment in agriculture".¹⁰

It is in this context of the recent shift toward recognising the importance and value of an inclusive process to determine global food policies that we must understand the birth and shortcomings of the rai principles.

3 CIVIL SOCIETY POSITION

Civil society thus entered into the rai consultations building on these earlier successes and on the basis that the CFS - as opposed to e.g. the WTO, the World Bank, G8/G20, OECD - is the premier forum for discussing food security and nutrition policies. As the plenary address of the civil society mechanism at the opening session of the rai consultations on July 2, 2012 states:

We welcome this consultation process, as the CFS is the legitimate platform to consolidate a single set of standards on investment developed through the food security lens and anchored in a human rights

framework. Only the CFS can do that, based on its vision to become the foremost inclusive international and intergovernmental platform for a broad range of committed stakeholders to work together in a coordinated manner towards the elimination of hunger and ensuring food security and nutrition for all human beings.

While recognising the added value of the CFS, civil society organisations also entered into the rai consultations with their eyes wide open, understanding that negotiated outcomes are contingent on the balance of forces in

the room and are constrained by the fact that ultimate decision-making power rests with governments.¹¹

Strong principles could become a powerful tool to stop and roll back various forms of land and resource grabbing, and to mobilise national policies and investment frameworks in support of small-scale food producers and workers. They could also help to limit the scope of undemocratic, agribusiness led initiatives such as the G8 New Alliance. Weak principles on the other hand could provide a cover for false agro-industry solutions to the food crisis, and legitimise policy reforms that lead to

Box 1 CSM's Vision for 'Responsible' Agricultural Investment

1. Investments must contribute to and be consistent with the progressive realisation of the right to adequate and nutritious food for all.
2. Investments in food and agriculture must ensure protection of eco-systems and environments.
3. All investments in food and agriculture must ensure decent jobs, respect workers' rights and adhere to core labour standards and obligations as defined the International Labour Organisation (ILO).
4. All investments in agriculture and food systems must ensure decent incomes, livelihoods and equitable development opportunities for local communities, especially for rural youth, women, and indigenous peoples.
5. Investments must respect and uphold the rights of small-scale food producers, indigenous peoples and local communities to access, use and have control over land, water and other natural resources.
6. All investments must respect the rights of indigoes peoples to their territories and ancestral domains, cultural heritage and landscapes, and traditional knowledge and practices.
7. All investments must respect women's rights and prioritise women in benefit sharing.
8. States must mobilise public investments and public policies in support of small-scale food producers and workers. Small-scale food producers, workers and their organisations must be meaningfully involved in the formulation, implementation, monitoring and review of these investments and policies.
9. States must protect small-scale producers and workers from market fluctuations and price volatility by regulating local, national, regional and international food markets, and curbing food price speculation.
10. States must respect and support timely and non-discriminatory access by small-scale producers, workers, indigenous communities, local communities and the public to justice, grievance mechanisms, fair, effective and timely mediation, administrative and judicial remedies, and a right to appeal.
11. Trade and investment agreements and treaties must not undermine or compromise the rights of small-scale food producers, workers, and indigenous peoples, and food sovereignty. States must monitor and assess the impacts of such agreements on the realisation of the right to food, and take appropriate action where necessary including through renegotiation or cancellation of the agreements/treaties.
12. States should enact appropriate national laws to regulate and monitor extra-territorial investments and investors. In so doing, they should apply the Maastricht Principles on Extraterritorial Obligations of States in the Areas of Economic, Social and Cultural Rights as the guiding document.
13. The effective, meaningful, and democratic participation of small-scale for producers, workers and indigenous peoples, particularly women, must be guaranteed in the planing and decision making around agricultural investments, area development, and land and resource use and management.

For a more detailed version of this document (as well as other CSM position papers and materials on the issue of agricultural investment) see: http://www.csm4cfs.org/files/SottoPagine/118/actions_and_policies_proposals_from_csm_en.pdf

further market concentration and the adverse incorporation of small producers and workers into global value chains or their exit from agriculture all together.

For this reason, civil society deployed a carefully calibrated two-track, inside/outside strategy during the negotiations.¹² While the CSM remained engaged in the negotiations until the very end and meticulously scrutinised the various official texts, this was never at the expense of the principle of autonomy and the accountability of social movements of the CSM to their diverse constituencies, including peasants, fisher-folk, pastoralists, landless, urban poor, agricultural and food workers, women, youth, consumers, and indigenous peoples. As agricultural investment is something that many of the CSM participants undertook on a daily basis, their role was to inject an empirical 'dose of reality' into the rai consultations, bringing in their concrete experiences of investments within different political, socio-economic, and ecological contexts and accumulating an evidence base on the broad impacts of different forms of agricultural investments.

This wealth of experience of the CSM led to a broad-based consultation within the constituencies of the CSM for the production of an autonomous and visionary document that sets out CSM's position on the type of agricultural investment - and the actions and policies necessary to support such investment - that is truly 'responsible' (see Box 1). The production of this document served multiple functions: i) it helped to consolidate and harmonise CSM's position on what constitutes responsible agricultural investment, strengthening the common understanding of what CSM wanted to achieve out of the rai consultations; ii) it served as a tool by which to compare official negotiation texts and

evaluate the final outcome of the rai consultations; and iii) beyond the end of official negotiations, it can continue to function as a sensitisation and lobby document for civil society actors to mobilise around in order to influence decision and policy makers to prioritise investments which support small-scale food producers and workers.

This two-track, inside-outside strategy of engaging in official policy processes while also taking care to maintain one's autonomy and nurture an independent vision outside of these spaces provided protection against becoming lost in fine-grained text analysis and high-speed, high intensity negotiations. It is also a recognition that *policy* is not the same as *politics* - which takes place in many different arenas, from the fields right up to the highest international standard setting level - and that to conflate the two can result in a dangerous loss of identity and political orientation.

4 PROCESS

The rai principles were negotiated over a 2 year process spanning from the first meeting of the rai open-ending working group in July 2012 to their eventual approval by the member states of the CFS in October 2014.

Table 1. gives an overview of the time-line of the rai process which was divided into roughly three broad phases, including i) the negotiation of a Terms of Reference; ii) the production of a Zero Draft that served as the basis for the multi-stakeholder regional consultation and the global e-consultation; and iii) the production of a First Draft which served as the basis for two full weeks of plenary negotiations in May and August 2014.

Table 1 Time-line of the rai negotiations

| Date | Negotiation points and Outcome |
|--------------------------|---|
| FIRST PHASE | |
| July 2, 2012 | First meeting of the rai open-ending working group (rai-OEWG) of the CFS at the FAO in Rome. The purpose of the meeting is to share information and raise awareness about initiatives related to agricultural investment and to collect opinions from CFS stakeholders on the preparation of a Terms of Reference |
| July 25, 2012 | Second meeting of rai-OEWG. Discussion on the first draft of the Terms of Reference. |
| September 6, 2012 | Third meeting of rai-OEWG. Further discussion on the Terms of Reference. |
| October 2012 | CSM Annual Forum: decision to start autonomous consultation on agricultural investment. CFS 39: formal adoption of the Terms of Reference. |

| SECOND PHASE | |
|---|---|
| November 20, 2012 | Fourth meeting of rai-OEWG. Discussions on the first draft of the Annotated Outline. |
| January 22, 2013 | Fifth meeting of rai-OEWG. Finalisation of the Annotated Outline. |
| CIVIL SOCIETY AUTONOMOUS REGIONAL CONSULTATIONS March – September 2013 Civil society autonomous regional consultations took place in Africa, Latin America, South Asia, South-East Asia, North America, West Asia-North Africa, Western Europe in order to develop a civil society version of the principles. | |
| May 16-17, 2013 | Sixth meeting of rai-OEWG. Presentation of Zero Draft and an accompanying Background Document. |
| September 23-24, 2013 | Seventh meeting of rai-OEWG. Revised Zero Draft presented as basis for regional consultations. |
| October 5-6, 2013 | CSM Annual Forum. Decision to work on civil society's own 'maximum' document, setting out its vision for responsible agricultural investment, as well as a 'red lines' document on the absolutely key points that the rai principles must contain and that cannot be crossed. |
| REGIONAL MULTI-STAKEHOLDER CONSULTATIONS November 2013 - March 2014 Consultations held in Africa, Europe, Asia Pacific, North America, Latin America and the Caribbean, and the Near East. Objective of the consultations is to receive input and feedback on the Zero Draft. | |
| GLOBAL E-CONSULTATIONS January 13, 2014 - February 20, 2014. Electronic consultations on the Zero Draft submitted to the online CFS platform. | |
| THIRD PHASE | |
| April 29, 2014 | Eighth meeting of the rai-OEWG. Preparation for the first round of negotiations. |
| May 19-24, 2014 | First round of negotiations on the First Draft of the rai principles. First draft negotiated up to principle 7. Decision to hold second round of negotiations in August. |
| August 4-8, 2014 | Second round of negotiations. Conclusion of the rai principles, with the exception of Principle 9.4 on the free, prior and informed consent (FPIC) due to Canada's opposition. |
| October 11-12, 2014 | CSM Annual Forum: evaluation of rai principles and CS wins and losses. Preparation of CS statement on rai at CFS 41 and release of public statement on "No compromise on FPIC and the rights of indigenous peoples". |
| October 15, 2014 | Approval by governments of the "Principles for Responsible Investment in Agriculture and Food Systems" at CFS 41. |

N.B. For a more detailed time-line, with more information about what was discussed at each meeting, see the Annex.

5 CONTENT ANALYSIS

The rai principles are divided into three broad sections:

First, the introduction which includes the background and rationale; objective; purpose; nature and scope; and intended users.

Second, a conceptual framework followed by an elaboration of the ten principles. The titles of each of the ten principles are given in Box 2.

Third, a section on roles and responsibilities, distinguished according to the different stakeholders including states; intergovernmental and regional organisations; financing institutions, donors, foundations and funds;

research organisations, universities, and extension organisations; smallholders and their organisations; business enterprises including farmers; civil society organisations; workers and their organisations; communities; consumer organisations; and shared roles.

In what follows, the rai principles are analysed from the perspective of CSM's vision for a consolidated set of standards that safeguards against land and resource grabbing, prioritises investments by and for small-scale food producers and workers, and that delivers on its promise to promote investments that enhance food security and nutrition and help realise the right to adequate food for all.

Box 2 The Ten Rai Principles

Principle 1: Contribute to food security and nutrition

Principle 2: Contribute to sustainable and inclusive economic development and the eradication of poverty

Principle 3: Foster gender equality and women's empowerment

Principle 4: Engage and empower youth

Principle 5: Respect tenure of land, fisheries, forests and access to water

Principle 6: Conserve and sustainably manage natural resources, increase resilience, and reduce disaster risks

Principle 7: Respect cultural heritage and traditional knowledge, and support diversity and innovation

Principle 8: Promote safe and healthy agriculture and food systems

Principle 9: Incorporate inclusive and transparent governance structures, processes, and grievance mechanisms

Principle 10: Assess and address impacts and promote accountability

Rights under threat

Anchoring the rai principles in a human rights-based framework was an important red line for the civil society organisations participating in the negotiations. At first glance, the rai principles appear to live up to this. Human rights are referenced throughout the principles.

The Right to Food appears in the overall objective (paragraph 10) and in the headline paragraph of Principle 1. The core human rights conventions, including the Universal Declaration of Human Rights, the International Labour Organisation Declaration on the Fundamental Principles and Rights at Work, and the United Nations Declaration on the Rights of Indigenous Peoples are listed as part of the foundational documents underpinning the rai principles in the conceptual framework. The overarching values for implementation of the Principles in paragraph 20 are based on key human rights values including human dignity, non-discrimination, equity and justice, gender equality, holistic and sustainable approach, consultation and participation, the rule of law, transparency, accountability, and continuous improvement.

A very important "do no harm" clause was also secured by civil society under paragraph 20 which states that:

Responsible investment should respect and not infringe on the human rights of others and address adverse human rights impacts. It should safeguard against dispossession of legitimate tenure rights and environmental damage.

Although a statement of general intent, this paragraph does offer a certain baseline protection against any negative impacts of agricultural investment, something which the private sector, with their insistence on a set of 'optimistic' principles that spoke solely of the assumed benefits of investment, was unwilling to contemplate.

Furthermore, major gains were made with respect to workers rights under Principle 2 including the fact that responsible investment in agriculture and food systems should create new jobs and decent work, pay adequate living wages, and improve social protection coverage. This marks an important victory for the recognition of workers' rights within the CFS space. Also important is the mention of ending all forms of discrimination on the basis of gender and advancing women's equal tenure rights and access to and control over productive resources under Principle 3 and the commitment to engage and empower youth under Principle 4.

Nonetheless, the human rights foundations of the rai principles are undermined by repeated references to trade agreements and rules. Of particular concern is the listing of "relevant multilateral WTO agreements" in the conceptual framework as well as paragraph 33 which says that States should ensure that responsible investments in agriculture and food systems are consistent with international agreements related to trade and investment and paragraph 34 which says that "States should not apply the Principles in a manner that may create or disguise barriers to trade, or promote protectionist interests, or in a way which imposes their own policies on other nations".

As is well known, unjust trade rules such as dumping, the removal of subsidies in many developing countries, and the imposition of controversial trade-related intellectual property rights have had an adverse impact on the human rights of small-scale food producers, workers, and the most poor and marginalised.¹³ They also immobilise (and sometimes even render illegal) public protection for small-scale producers, their investments and their local markets. The fact that the rai principles appear to subordinate human rights to

the international trade regime severely compromises their capacity to promote responsible investment to achieve the Right to Food and fulfil basic human rights

The thorny issue of FPIC

A particular point of controversy emerged around the principle of FPIC: the right of indigenous peoples to exercise free, prior and informed consent regarding developments that take place within their territory. Although this principle is enshrined in the United Nations Declaration on the Rights of Indigenous Peoples as well as the ILO Convention No.169, Canada in particular consistently refused to endorse this point, forcing the text to be bracketed at the conclusion of the final round of negotiations in August and essentially holding the negotiations hostage until the CFS 41 plenary in October. Recognition of the hard won rights of indigenous persons was one of CSM's red lines as the CSM's public statement issued on this point in the run up to the CFS plenary made clear.¹⁴

In the end, the rai principles as a whole were approved by the governments at the CFS 41, with Canada registering its objections to FPIC in written comments submitted for inclusion in the report of the proceedings. Although Principle 9 iv) on FPIC in the rai principles did therefore go through, the wording of this point is certainly not as strong as it could be. Furthermore, efforts to rescind these rights and undermine the human rights foundations of the rai principles set a dangerous precedent.

Who is a "smallholder"?

Civil society argued strongly for the term "small-scale food producers and workers" as the umbrella term for referring to the various constituencies. Despite this, civil society was unable to block adoption of the term "smallholders" instead of small-scale food producers and workers- a non-sensical term since a number of the constituencies covered by a term such as agricultural workers do not 'hold' (in the traditional understanding of managing or owning a small plot of land) anything. Its definition in the rai principles is also inconsistent with the way the term smallholders has been elaborated in other FAO documents.¹⁵

The struggle over smallholders or small-scale food producers is not merely a semantic one but relates

to a deeper struggle to carve out space within CFS policy processes for the interests and position of those most affected by hunger and food insecurity to be represented and strengthened. In the First Draft of the rai principles for instance, smallholders were placed in the same category as 'private sector enterprises' in the Roles and Responsibilities section, thereby grouping together a hugely diverse set of actors from an artisanal fisher to a transnational agri-food company. There was also a concerted push by the private sector mechanism to subsume all kinds and sizes of food producers under the category of 'farmers', thereby negating the key differences between them. Civil society successfully managed to include a separate section in Roles and Responsibilities for "smallholders and their organisations" and another one for "business enterprises" in order to clearly distinguish between these two categories. Farmers, it is asserted, can belong to either category, based on the nature of their investment i.e. whether it is primarily profit-seeking or whether it corresponds to family-farming principles.

On governance structures and processes

Principles 9 and 10 of the rai deal with governance structures and processes including issues related to participation, consultation, information disclosure, grievance mechanisms, remedies and accountability. While civil society did not manage to win all the points it wanted to see in here, a number of positive elements were successfully fought for. These included foremost:

- Principle 9 ii) which states that the sharing of information relevant to the investment should take place in an inclusive, equitable, accessible and transparent manner at all stages of the investment cycle. Securing a commitment to information disclosure as formulated was an important win given that the private sector mechanism as well as a number of governments wished to significantly restrict the scope of this point by adding the words "non-confidential" and "appropriate" in front of "information". While information disclosure in and of itself does not guarantee that small-scale food producers and workers will benefit, it is an essential starting point for them to claim and defend their rights.
- Principle 10 iii) which states that responsible investment in agriculture and food systems includes

mechanisms to assess and address economic, social, environmental, and cultural impacts by “Identifying measures to prevent and address potential negative impacts, including the option of not proceeding with the investment”. The recognition that not all risks can be mitigated and that in some cases the investment should not proceed (thereby also challenging the notion that any investment is automatically positive) is a potentially quite powerful point that civil society can leverage in defending the rights of small-scale producers and workers.

What role for the state?

As recognised in the FAO’s 2012 State of Food and Agriculture Report and the High Level Panel of Experts report on Investing in Smallholders, effective public policies and public investment that support and defend small-scale producers, workers and local food systems are one of the pillars of global food security.

The rai principles are however uncertain about what role the state should play in this regard. On the one hand, in the section on the roles and responsibilities of States, the rai principles recognise that:

- “States should take measures to address all agriculture and food system workers’ labour rights, in line with applicable international labour standards and in social dialogue with their respective organizations and employers, when formulating and applying labour laws” (paragraph 37)
- “States have a key role in enabling, supporting and complementing investments by smallholders...” through, inter alia, “Addressing the needs and constraints of smallholders, both women and men, in a gender sensitive manner in policies, laws and regulations, and strategies to address capacity development through improved access to inputs, advisory and financial services including insurance, education, extension, training, and infrastructure” (paragraph 39, i)
- States have a key role in “promoting innovative technologies and practices, including smallholders’ own innovations, such as through awareness raising and technical assistance, farmer to farmer skills sharing, as well as the transfer of technology as mutually agreed among individuals, local, national, or international parties” (paragraph 41, ii).

On the other hand, this same section is extremely weak on regulation. States are said to have a key role in “supporting the development of markets for rural economies” (paragraph 39, v) and “fostering public-private partnerships” (paragraph 40, iii) with very little recognition for the need to address power imbalances that exist within these partnerships or markets which mean that they often work against small-scale producers and workers. Where power imbalances are acknowledged, the language and the measures suggested to deal with them are very weak. States should only “strive” to prevent unfair market practices (paragraph 39, iv); they only “should set out clearly the expectation that” investors domiciled in their territory or jurisdiction should respect human rights (paragraph 32); and similarly, they are only “encouraged to” set up monitoring, assessment and reporting systems to address the impacts of investments (paragraph 43). This weak regulatory role of the state is even more concerning in light of the section on the private sector, about which the rai principles have very little to say, devoting only two paragraphs to the roles and responsibilities of business enterprises.

A dangerous balancing act

As the above analysis shows, cross-cutting the rai principles is a dangerous commitment to ‘balance’: human rights principles are placed alongside international trade and investment rules; smallholders are conflated with largeholders; the key role of the state is mentioned but then undermined through weak language. Other examples abound: farmers’ rights are twinned with breeders interests (paragraph 27, ii); civil society fought hard for the inclusion of agro-ecology, only for this to appear alongside reference to sustainable intensification (paragraph 26, vi).

This balancing is not simply a way to cover all bases but entails real choices and has real implications. As McMichael and Muller (2014) explain, “Hidden behind the terms agro-ecology and sustainable intensification, two opposing models for the future of agriculture are thus amalgamated: a corporate-led model of high-tech agriculture and a model building on the creativity and ingenuity of small-scale producers supported by participatory agronomic research, as the States, unable to take clear decisions, manoeuvred in between these two models”.¹⁶

Whether this balancing act is the inevitable consequence of a multi-stakeholder politics where only lowest common denominator outcomes can prevail is up for debate.¹⁷ The ultimate result is that, despite their aim being to do so, the rai principles are unclear about what type of investment, made by whom and for whom, is responsible. Merely calling them the Principles on Responsible Investment in Agriculture and Food Systems does not in fact automatically make them 'responsible' without an agreed upon definition and understanding of what responsible investment looks like. There is thus a danger in empowering and holding these principles as *the* standard of 'responsibility'.

6 MONITORING

The ambiguous nature of the rai principles elevates the already critical role of monitoring to even greater importance. As the public statement by the CSM read out during the CFS 41 forum stated:

*Civil society is concerned that the weakness and incoherence in the Principles will be used to legitimise irresponsible investments. We remind States that they have an obligation to act according to the highest human rights standards. We call upon the CFS to accept responsibility for monitoring what is done in the name of the Principles.*¹⁸

The rai principles themselves make only cursory references to monitoring with minimal oversight by the CFS and unclear roles for FAO and IFAD. Civil society had called for the establishment of national multi-stakeholder platforms to allow for monitoring and assessment systems to be set up with the direct involvement and participation of those most affected by investments while the CFS would act as the forum for global assessment and periodic review of the Principles. Unfortunately, this was rejected with only a (rather vague) reference to the role of the CFS in monitoring being accepted.

Following their adoption by governments, it still remains to be seen how the rai principles will be used by different actors in different contexts and how they will relate to other international standards, guidelines, and initiatives. Whether and how the rai can actually be used by people at the front lines of struggles to defend their rights - or conversely whether they will be used by powerful actors to further entrench the status quo and accelerate towards a state of regress - will be a major test of their worth.

The failure of the rai principles to truly provide a framework for normative guidance for agricultural investment that is based on human rights suggests that civil society must be extremely vigilant in aligning themselves with any efforts to use or implement the rai for it is only through such a framework that more democratic and just food systems across the world can be arrived at.

Annex Detailed time-line of rai negotiations

| Date | Negotiation points and Outcome |
|--------------------------|--|
| FIRST PHASE | |
| July 2, 2012 | First meeting of the rai open-ending working group (rai-OEWG) of the CFS at the FAO in Rome. The purpose of the meeting is for "sharing information and raising awareness about ongoing initiatives related to responsible agricultural investment, and collecting suggestions and opinions from CFS stakeholders on the preparation of a Terms of Reference" including sections on i) purpose; ii) intended recipients; iii) type of instrument; iv) scope/themes; v) process. Plenary address given by civil society (CS) on the importance of investment by and for small-scale food producers and workers. |
| July 25, 2012 | Second meeting of rai-OEWG. Discussion on the first draft of the Terms of Reference, in particular on the nature of the document (principles or guidelines) and the timeline (1 or 2 year process). No consensus reached. Chair and CFS Secretariat will develop a draft ToR to be released in August with two proposals (one shorter, one longer) on the timeframe. CS develops its own process proposal. |
| September 6, 2012 | Third meeting of rai-OEWG. Rejection by most governments of guidelines rather than principles, but agreement on 2 year process. No agreement reached on point 12 on the draft ToR on reference to relevant WTO agreements (point bracketed); additional meeting to resolve this issue scheduled for September 12. |

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| October 2012 | CSM Annual Forum: decision to start autonomous consultation on agricultural investment based on the fact that the CSM's position should be informed by reality on the ground and social movement struggles rather than a negotiated text. CFS 39: formal adoption of the Terms of Reference. |
| SECOND PHASE | |
| November 20, 2012 | Fourth meeting of rai-OEWG. Discussions on the first draft of the Annotated Outline. Differences of opinion on how quickly to move towards the production of a Zero Draft. CS prefers to base (regional) consultations on the Annotated outline to allow for more free and open consultations where all issues can be raised. Chair and others pushing to move ahead after January with a Zero Draft. |
| January 22, 2013 | Fifth meeting of rai-OEWG. Finalisation of the Annotated Outline. CS loses argument to base consultations on Annotated Outline. Instead Zero Draft being prepared by consultant with a technical support team drawn from the 3 Rome based agencies (FAO, IFAD, WFP). |
| CIVIL SOCIETY AUTONOMOUS REGIONAL CONSULTATIONS March - September 2013 Civil society autonomous regional consultations took place in Africa, Latin America, South Asia, South-East Asia, North America, West Asia-North Africa, Western Europe. These autonomous consultations led to the production of a civil society version of the principles to give CSM a strong, legitimate basis for relating to the official negotiations on the rai principles. | |
| May 16-17, 2013 | Sixth meeting of rai-OEWG. Presentation of Zero Draft and an accompanying Background Document. Confusion among stakeholders around which document should serve as the basis for regional consultations. Decision by Chair to work on a revised Zero Draft based on comments and inputs received. CS identifies and delivers its key priority points, argues strongly for considering the rights-based approach as a tool rather than an obstacle to responsible agricultural investment |
| September 23-24, 2013 | Seventh meeting of rai-OEWG. Revised Zero Draft presented as basis for regional consultations. |
| October 5-6, 2013 | CSM Annual Forum. Reports from all CS autonomous regional consultations presented and discussed. Decision to work on civil society's own 'maximum' document, setting out its vision for responsible agricultural investment, as well as a 'red lines' document on the absolutely key points that the rai principles must contain and that cannot be crossed. |
| REGIONAL MULTI-STAKEHOLDER CONSULTATIONS November 2013 - March 2014 Consultations held in Africa, Europe, Asia Pacific, North America, Latin America and the Caribbean, and the Near East. Objective of the consultations is to receive input and feedback on the Zero Draft. Outcomes of the consultations are a Chair's summary which contributes to the preparation of a First Draft by a consultant and technical support team. | |
| GLOBAL E-CONSULTATIONS January 13, 2014 - February 20, 2014. Electronic consultations on the Zero Draft submitted to the online CFS platform. | |
| THIRD PHASE | |
| April 29, 2014 | Eighth meeting of the rai-OEWG. Preparation for the first round of negotiations and tabling of key issues. |
| May 19-24, 2014 | First round of negotiations on the First Draft of the rai principles. Negotiations take place in Plenary, with especially contentious issues negotiated in Friends of the Chair and Language Harmonization groups. First draft negotiated up to principle 7. Decision to hold second round of negotiations in August and informal meetings on July 15-16 to solicit further views on the remaining text. Chair decides to prepare a Chair's proposal for the Roles and Responsibilities (R&R) section. |
| August 4-8, 2014 | Second round of negotiations. CS considers Chair's proposal for R&R to be weaker than First Draft, attempts to reinsert points lost from First Draft. Conclusion of the rai principles, with the exception of Principle 9.4 on the free, prior and informed consent (FPIC) due to Canada's opposition. |
| October 11-12, 2014 | CSM Annual Forum: evaluation of rai principles and CS wins and losses. Preparation of CS statement on rai at CFS 41 and release of public statement on "No compromise on FPIC and the rights of indigenous peoples". |
| October 15, 2014 | Approval by governments of the "Principles for Responsible Investment in Agriculture and Food Systems" at CFS 41. Canada registers its objection to the point on FPIC. Civil society reads out its statement on CSM's position on the rai principles. |

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Endnotes

- 1 This political brief was written by Sylvia Kay. She would like to thank Hannah Twomney for her editorial support and Nora McKeon, Shalmali Guttal, Philip McMichael and Gilbert Sape for their comments on an earlier draft of this brief.
- 2 To download and read the rai principles in full, see: http://www.fao.org/fileadmin/templates/cfs/Docs1314/rai/CFS_Principles_Oct_2014_EN.pdf
- 3 As stated in paragraph 10 of the rai principles as the objective
- 4 For the official background and further documentation related to the rai principles, refer to: <http://www.fao.org/cfs/cfs-home/resaginv/en/>
- 5 Small-scale food production is the dominant and most important form of food production worldwide: 85% of the food that is grown is consumed within the same local environment or, at least, within national borders and most of it is grown beyond the reach of multinational food chains. The food consumed by over 70% of the population of the world is produced by small-scale food producers: peasants, fisher folk, pastoralists and indigenous people, who are mainly women: women play a pivotal role in producing much of the food worldwide.
- 6 See: <http://www.fian-nederland.nl/01/news03.pdf> for De Schutter's analysis of the flaws of the PRAI. Simply claiming that agricultural investment is 'responsible' is not enough. At the core are serious issues around the distribution of power, prevailing ideologies, and the balance of political forces which must be tackled. In this respect, see also De Schutter's remarks on the process for developing principles on responsible agricultural investment delivered at a high-level session of the UNCTAD Commission on Investment, Enterprise and Development on 26 April 2010: "The challenge, I repeat, is not just to ensure that agricultural investment will develop 'responsibly'. It is also to create the policy environment that will ensure that it will not produce the disruptive effects that, all too often, it has led to in the past. We cannot afford more dispossessed, greater inequalities in the rural areas, and more smallholders driven off their land because farming shall have ceased to be viable for them. We cannot allow for pastoralists to lose access to their grazing areas, and more fishers to be cut off from their fishing grounds. We cannot tolerate more indigenous peoples being victims of the destruction of the forests they depend on, or being fenced off from these forests as a result of carbon sequestration projects."
- 7 The constituencies of the CSM include peasants, fisher-folk, pastoralists, landless, urban poor, agricultural and food workers, women, youth, consumers, indigenous peoples, and NGOs.
- 8 These include the importance of promoting alternatives to the large-scale transfer of tenure rights, the implementation of safeguards such as prior, independent impact assessments, and the recognition of the principle of free, prior and informed consent for indigenous peoples, amongst others. Civil society managed to argue successfully for most of these points to also be included in the rai principles, in particular paragraph 12.4 of the Tenure Guidelines on the definition of responsible investment which states that "Responsible investment should do no harm, safeguard against dispossession of legitimate tenure right holders and environmental damage, and should respect human rights". This was included (with a slight modification) as paragraph 20 of the rai principles. Principle 5 of the rai on the issue of tenure is also explicitly based on the Tenure Guidelines.
- 9 CFS (November 2011). Final Report of the Thirty-seventh Session of the CFS, p.7, point 29(ix).
- 10 *Ibid*, p.7, point 29(x).
- 11 Civil society organisations, through the civil society mechanism, can negotiate on an equal footing with governments and the private sector up until the moment of decision-making when it is only the Member States who vote. This means that when consensus is reached amongst Member States on a particular point, there is no further negotiation. While this does, to some extent, act as a constraint on the power of civil society to influence outcomes, this is the preferred mode of politics of the CSM based on the fact that ultimate accountability and responsibility for CFS decisions rests with governments as the duty bearers when it comes to the respect, protection and fulfilment of human rights.
- 12 To be completely transparent, this two-track/inside-outside strategy of engagement but maintaining autonomy defines CSM's relationship to the CFS generally, not just to the rai negotiations.
- 13 PANAP (2014). Three Reasons Why the 'rai Principles' Undermines the Right to Food, Land and Resources. November.
- 14 CSM (2014). No Compromise on the Rights of Indigenous Peoples to FPIC in the CFS!. October. As this statement, signed by over 100 civil society organisations, argued: "Canada's actions to block FPIC in the Principles for Responsible Investment in Agriculture and Food Systems are unacceptable and a step backwards in the global governance of resource rights. They risk seriously undermining the rights of indigenous peoples worldwide, further weakening the Principles and diminishing the credibility of the CFS as a space to advance the progressive realisation of the right to food."
- 15 In an FAO (2012) fact sheet on Smallholders and Family Farmers smallholders are defined as "small-scale farmers, pastoralists, forest keepers, fishers who manage areas varying from less than one hectare to 10 hectares. See: http://www.fao.org/fileadmin/templates/nr/sustainability_pathways/docs/Factsheet_SMALLHOLDERS.pdf
- 16 McMichael, Philip, and Birgit Müller. 2014. "The land-grab trap: Is there a will to govern global land grabbing?", FocaaBlog, September 19, www.focaaBlog.com/2014/09/19/philip-mcmichael-birgit-muller-the-land-grab-trap-is-there-a-will-to-govern-global-land-grabbing.
- 17 McKeon, N. (2014). Global Food Governance in an Era of Crisis: lessons from the Committee on World Food Security. Conference paper delivered at 'Mapping the State of Play on the Global Food Landscape' in Waterloo, Canada.
- 18 For the full CSM public statement on rai, see: http://www.csm4cfs.org/news/cs_expressing_concern_for_the_rai_principles_content_and_their_future_implementation-189

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Women beside the Apple Tree.

