

IISD Input to the LPI E-Consultation: Guiding Principles on large-scale land-based investments in Africa

The International Institute for Sustainable Development (IISD) is grateful for the opportunity to contribute to the Land Policy Initiative's e-consultation for the guiding principles on large-scale land based investment in Africa. The draft is ambitious and covers an impressive range of issues related to investment in land. It is an important contribution to building a framework for investment in agriculture in Africa. We strongly support the process and are pleased to provide some comments below.

1. There is some repetition of principles and issues in the document. The fundamental principles provide a good structure for the document. Maybe one option is to integrate the other principles within the different fundamental principles.
2. Section 1.1: This section refers to protections that investors receive "in the context of fiscal and trade regimes that favour globalization/liberalization." We recommend to also include reference to investment treaties and contracts that are the main legal tools that provide rights and protections for foreign investors under international law, and provide the possibility for foreign investors to sue states in international arbitration if there is an alleged breach of the contract or treaty provisions.
3. Chapter 3, principle 1: This principle importantly raises the issue of project viability. We recommend including a paragraph that says: *Investors should be required to conduct financial and economic feasibility studies that are verified by an independent third party before the contract is signed. The results of the feasibility studies should be used to develop a business plan. The study and subsequent business plan should be presented and approved by the government prior to concluding contract negotiation and the milestones incorporated into the contract itself.*
4. Chapter 3, principle 3: The principle refers to "plans to reduce, manage and mitigate envisaged risks." It could be useful to add a paragraph in the description about what is required from the investor to develop this plan. We recommend a sentence that says: *The results of the social and environmental impacts assessments should be used to develop plans to reduce, manage and mitigate envisaged risks. The plan should be presented and approved by the government. The investor should report annually on progress and challenges in implementing the management plans.*
5. Chapter 4: This chapter could be stronger in identifying rights and obligations of different stakeholders involved and affected by land investments. This would include issues such as land rights of local communities, as currently referred to in principle 5, but could go beyond that to talk about State rights and obligation and investor rights and obligations. State rights could include the right to access the project site to monitor and inspect. State obligations could include ensuring fair and equitable distribution of water resources. Investor obligations could include commitments to contribute to creating employment, training the local workforce, establishing processing industries, transferring appropriate technology and purchasing local goods and services.

6. Chapter 4, principle 6: This principle rightly discusses the need for a legislative environment and institutional arrangements. The description, however, only discusses land administration systems. To deal with land investments will also require legislation and institutions related to foreign investment, financial and tax incentives, environmental issues, labor laws, water laws, etc...
7. Chapter 4 and 5: There is some repetition in chapters 4 and 5. Principle 6 and principle 8 cover similar issues related to land administration. Principle 7 and principle 10 cover similar issues related to transparency.
8. Chapter 5: This chapter is correctly focused on land governance, but does not mention the importance of sound water management policies as a fundamental need to ensure that LSLBI do not undermine water rights of other users and ensures an equitable allocation of water resources. This issue closely linked to land governance and could be raised in this chapter.
9. Chapter 5, principle 11: This section could be expanded to include capacity-building support for other stakeholders as well. Capacity building may also be needed for government officials who are negotiating contracts with investors, and also the people responsible for overseeing the environmental and social impact assessments, and those responsible for monitoring and evaluating the project.
10. There is no reference to grievance mechanisms or judicial mechanisms. This is an important component of upholding the rule of law (fundamental principle 4). The current practice under international investment treaties and contracts that are signed with African states, is to refer disputes to international arbitration. Instead of following this approach, IISD recommends that in the event of a dispute between the government and foreign investors, domestic courts or tribunals or mediation centers, should be the first forums of choice for disputes. International arbitration should not be encouraged over domestic processes. In instances where international arbitration may be necessary, it should be preceded by an effort to settle the dispute amicably first, and through domestic processes prior to international arbitration. This ensures that a fair, balanced approach to the specific type of legal dispute at issue will take place.

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