



# Land Watch Asia

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## Principles of responsible agricultural investments

Discussion Paper in the context of the Voluntary Guidelines on the Governance of Tenure (VGGT)

**Abridged Version<sup>1</sup>**

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Developed as a result of negotiations among different groups of stakeholders, the voluntary guidelines set out principles and internationally-accepted practices that may guide the preparation and implementation of policies and laws related to tenure governance. Land Watch Asia (LWA) believes that this will be possible with the strong commitment and cooperation of governments and other stakeholders. LWA will contribute in the process of building multi-stakeholder partnerships to enforce and monitor the implementation of the voluntary guidelines in several Asian countries.

In the Philippines, ANGOC has partnered with Philippine Development Forum - Working Group on Sustainable Rural Development (PDF-SRD), National Convergence Initiative (NCI), Food and Agriculture Organization-Philippines and GIZ to identify existing gaps in policies and programs on the governance of land and resource tenure in the Philippines, and to familiarize stakeholders on the voluntary guidelines.

This national initiative is also part of the national engagement strategy (NES) of the International Land Coalition (ILC), with the objective of creating conditions for inclusive and people-centered land-related policy change.



## Introduction

Private sector investments in agriculture are on the rise. In Asia, this is evidenced by the growth of foreign direct investments in the South, East and Southeast in recent years, and the increase in trading activities between and among Asian nations.<sup>2</sup>

Asian governments can take some of the credit. Having grappled with problems such as food security and poverty, these governments eased their investment regulations and started offering policy and fiscal incentives to eager investors. At no time was this more profoundly felt than during the global food crisis of 2008, when food-importing countries were forced to review their food security policies and encouraged to have direct investments in food production in other countries.

But food is not the only motivator for the increase in investments. Given growing public interest in human health and the welfare of the world, incentives are also being extended to encourage the production of biofuel and other agro-related sources of renewable energy.

This increase in agricultural investments is not happening uniquely in Asia. It is a global phenomenon that is expected to continue in the near future. While many developing countries welcome and encourage this development, it has also intensified competition for agricultural lands to the extent that reports abound of land grabbing, displacement of occupants, unfair deals and erosion of agricultural resources. Moreover, land has become vulnerable to commercial pressures from other sectors, such as tourism, migration, resettlement and industrialization.<sup>3</sup> These concerns have prompted the outpouring of serious proposals to improve land and resource governance to avoid conflicts and mitigate negative impacts.

The Committee on World Food Security (CFS), after conducting multi-stakeholder consultations on a global scale, produced the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* to guide its member governments. Section 4 of this document specifically discusses the transfer and changes to tenure rights and other duties to investments, market and other external interventions.

For its part, the World Bank (WB) in partnership with FAO, IFAD and UNCTAD published the *Principles for Responsible Agricultural Investment that Respect Rights, Livelihoods and Resources* (RAI) in February 2010 as a working document for global dialogue. But not one of them has submitted the RAI to its governing body for approval.

A number of Civil Society Organizations (CSOs) also did not see eye to eye with the World Bank. They strongly rejected the RAI because they considered it “a move to legitimize what is absolutely unacceptable: the long-term corporate (foreign and domestic) takeover of rural people’s farmlands”.<sup>4</sup> They have also come out with their own versions.

CFS is now leading another round of consultations on responsible agricultural investments (abbreviated here as *rai* to differentiate it from the WB’s initiative) in the context of food security and nutrition. The consultation and negotiation process is open to all sectors and will run until October 2014 when the output is endorsed for approval by CFS in its 41<sup>st</sup> Plenary.<sup>5</sup> On the other hand, on 10 June 2013, the Philippine Development Forum – Working Group on Sustainable Rural Development (PDF-SRD), United Nations - Food and Agriculture Organization Philippine Resident Office (FAO-Phils), Deutsche Gesellschaft fuer Internationale Zusammenarbeit (GIZ) GmbH, and the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) co-organized the “*Stakeholder Briefing on the Voluntary Guidelines and other Land Governance Mechanisms*” to provide an overview of the voluntary guidelines.



Participated in by 124 representatives from government, CSOs and development partners, the forum: a) discussed the relevance of the VGGT in the Philippines, b) raised awareness on the state of governance of land, forests, fisheries, and ancestral domains in the Philippines, and c) highlighted initiatives to improve agricultural venture agreements in agrarian reform communities.

Following this event, from August 2013 to October 2014, ANGOC implemented the project “*Promoting Responsible Land Governance for Smallholders in the Philippines*” in partnership with the PDF-SRD, NCI, FAO-Philippines and GIZ.

A major component of this Project was the preparation of three desk studies to identify existing gaps in policies and programs on the governance of land and resource tenure in the Philippines, and to familiarize stakeholders on the VGGT. The three desk studies were presented and discussed in several forums: experts’ meetings, three regional consultations and a national conference participated in by 314 representatives from government agencies, policy-makers, CSOs, academic institutions and international development organizations.

## Objective, Process and Limitation

This paper is intended to recommend a set of principles for *rai* as a collective input of various stakeholders in the Philippines to the CFS-initiated global consultation.

In formulating the principles, three regional consultations (in Luzon, Visayas and Mindanao) were conducted, participated in by various stakeholders. Consolidated inputs were presented in a national consultation, which also took into consideration relevant documents, such as the CFS’ Voluntary Guidelines on the Governance of Tenure, WB’s Principles on RAI, zero draft of the on-going CFS global consultation on *rai*, CSO case studies on large-scale land acquisitions, assessment of the status of Philippine agriculture and land-related laws of the Philippines. All these activities were conducted from September 2013 to March 2014.

This paper proceeds through a series of brief sections initially to build context and understanding of agricultural investments in the Philippines. It progresses to discuss the prominent issues and challenges underpinning these investments as documented by CSOs and then finally concludes with the recommended principles.

A major constraint of the study in terms of reaching and getting inputs from relevant stakeholders is time. Considering that a number of agencies of varying capacities are handling agricultural investments, a consolidated input requires a longer period of time for gathering and processing the information.

## Private Investments in Agriculture

With low public spending in agriculture and complexity in land governance, private investments have also been slow in coming. Domestic investors are holding on to their money until such time that infrastructures (such as farm-to-market roads, ports and transportation facilities) are improved, long term financing is secured and the general policy environment is improved. Some prefer to invest their money somewhere else.<sup>6</sup>



The Philippines has also not been a priority destination of foreign investors, more so with agricultural investors. According to Bangko Sentral ng Pilipinas (BSP), the Philippines attracted a measly US\$2.8 billion in FDI, relatively small compared to other Asian countries (Tacujan, 2013). Critics blame the constitutional prohibition of 100% foreign-owned investments in the country as a major impediment. Instead, ownership of companies should be 60:40, in which majority of the shares is Filipino-owned (Sec 2, Art XII of the Constitution).<sup>7</sup>

Recent reports, however, show that agricultural investments continue to flow into the country. While a complete data sheet is not available and comprehensive data on agricultural investments are very limited, reports from some government agencies and field documentations by CSOs validate this increase in investments.

## Drivers of Investments

What seems to be driving these investments are the growing global demand for food, the incentives given to biofuel production and the opening up of the economy to agricultural trade and investment.

Food importing countries, alarmed by their experience during the 2008 food crisis, are now directly investing in food production to ensure their own food security. Similarly, the incentives for biofuel are attracting these investments. The Philippine government, for example, gives incentives as provided for in RA 9367 (Biofuels Act) and RA 9513 (Renewable Energy Act), in addition to the applicable incentives in the Omnibus Investment Code.

This rise in agricultural investments is expected to intensify in the near future with the increasing global trade liberalization. In ASEAN countries, a single market and production base will become a major platform starting 2015 with free flow of goods, services, investments, capital and skilled labor envisioned under the ASEAN Economic Integration, which will involve agriculture, food and forestry on top of other priority sectors (ASEAN Economic Blueprint, 2008).

## Land Investment Arrangements

Despite policy restrictions and low ownership ceiling of agricultural lands, there are still a number of avenues by which land and/or use rights are acquired for large-scale investments in agriculture.

For public domain lands, the Constitution allows lease agreements but with a limit of 25 years, renewable only for another 25 years. In public forests, particularly in areas awarded with community based forest management agreements (CBFMAs), the mechanism is through joint venture agreements where investors are granted the right to use portions of the area for productive use. In ancestral lands covered by IPRA, a Free and Prior Informed Consent (FPIC) by the community is necessary before permission is given to develop portions of the ancestral domain (Eleazar, et al 2013).

In agricultural areas where CLOAs have been awarded, the mechanisms include, among others, lease, out-grower arrangements and management contracts between the CLOA holders and the investors.<sup>8</sup> The Department of Agrarian Reform (DAR) recognizes the importance of



agricultural investment in assisting the agrarian reform beneficiaries in fully developing their lands. It promulgated DAR Administrative Order 9 (AO 9), series of 2009 on rules and regulations governing agribusiness ventures in agrarian reform areas. The AO identified and recognized different types of agribusiness partnerships with specific governing policies.

## Issues and Challenges

This shift from public spending to facilitating private investment in agriculture poses new challenges to the local farming communities as well as to the government.

Local farmers and communities will have to take on an additional role, that is, from primary producers to becoming business partners. This requires certain business intelligence and shrewdness in contract negotiation, risk management and handling disputes, among others.

Government also needs to adjust its role from program implementers to regulators of private agricultural investments. On top of its current functions, it will have to establish an information database, a monitoring and evaluation system and mechanisms to settle disputes.

Case studies and field documentation conducted by CSOs on agricultural investments cited a number of issues related to contracting and investment arrangements, impact on the community and the environment, governance, and implications on livelihood.

### 1. Transparency and access to information

Important and basic documents, such as contracts between the investor and the farmers, have been found to be inaccessible. To make matters worse, farmers lack the technical or legal capacity to audit and examine financial documents. There were also reported cases wherein investors negotiated with spurious representatives of the community resulting to factions in the community. This only served as leverage to investors and put them in a position to take advantage of the divided community.

Notwithstanding, most of the agencies involved have clear institutional standards of ethical performance. What is seemingly lacking is the monitoring of agreements of government agencies especially those directly entered into between the farmers, IPs and local communities and investors.

### 2. Erosion of land tenure security and loss of livelihood

Under CARP, land use rights and restrictions are relatively clear and straightforward. The same can be said of the policies and operational procedures of DAR. DAR's AO9 series of 2006 on Agribusiness Ventures on Agricultural Lands recognizes land-related rights and defines procedures for transferring such rights in a manner that is transparent.

And yet, instances of physical and economic displacement of farmers still abound in agricultural investments, wherein investors impinge on the rights of farmers over their land. A case in point is the farmer cooperative in Davao del Norte. The farmers who were accorded with the Certificate of Land Ownership Award (CLOA) entered into a marketing agreement with its former landowner, who a year later assigned its rights over the contract to another corporation. At the end of the 10-year agreement, the farmer cooperative accumulated huge debts. As a way out, they entered into an agreement with the investor who took over the plantation's





operations and management. The agreement was for two years and subject to extension until the cooperative could pay off its debts. The cooperative's financial situation did not improve with the takeover in 2008, but more than doubled its debt from that year until 2012. Now, they are in danger of losing their land.

In some cases, investors in search of more profitable ventures would offer to pay off farmers in exchange for their farms. For several farmers in Gimalas, Batangas, this meant more than leaving their farms, but waiving their rights as owners of the land. In return, they got a huge sum and a small lot for their houses.

These examples run contrary to the policy of the State to pursue a genuine agrarian reform program. Instead of establishing owner cultivatorship of economic-size farms as the basis of Philippine agriculture, the outcome painted an entirely different picture: the ubiquitous proliferation of farmworkers and landless farmers.

### 3. Lack of support to farmers in dispute resolution

With overlaps in land tenure, murky negotiations, unfulfilled promises and deviations from the agreed development plan; it is not surprising for conflicts to arise in many of these agricultural investments.

As a means of addressing them, DAR is vested with jurisdiction over all matters involving the implementation of agrarian reform (Sec. 50 CARPER, Quasi-Judicial Powers of the DAR). Disputes involving ancestral lands are settled through the indigenous communities' own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices that are compatible with the national legal system and with internationally recognized human rights laws (Sec.15 IPRA). Meanwhile, cases related to the environment are taken care of by the DENR while those involving labor disputes are handled by DOLE (Eleazar, et al 2013).

Yet, given these mechanisms for lodging complaints, there is a perceived lack of support in prioritizing farmers, particularly in providing them with the much-needed legal support. Moreover, there is no systematic monitoring on how these conflicts are resolved or if investors complied with the agreement.

### 4. Degradation of the Environment

Encroachment of agriculture plantations in the watershed of Cagayan de Oro has been cited as a major contributory factor in the massive flooding during Typhoon Sendong (Washi), an occurrence that was unprecedented in the history of the city. Chemical contamination of the rivers and water system by pesticides has also been reported.

Up north in Semirara Island in Caluya, Antique, seaweed farms are being threatened not just by potential tourism development but by coal mining operations as well. When currents flow from Semirara, the coal dusts impact the seaweeds throughout Caluya resulting in disease and crop losses.

But government laws are not wanting. PD 1151 or the Philippine Environmental Policy prescribes guidelines for EIA and compliance with environmental standards. What is needed is a strong monitoring and compliance mechanism towards a systematic review on how these environmental standards are being adhered to.

## Recommended principles on responsible agricultural investments (rai)

The recent increasing global demand for food and bio-fuel has brought back agriculture into the economic agenda. Investments are back and on the rise despite constitutional and policy constraints. This is further pushed by the nation's commitment to ASEAN Economic Integration by 2015, which is seen to open up the nation's economy to regional competition including that of agriculture.

Unfortunately, reports on expanding private agricultural investments have not been received well by some sectors. Obscure negotiations, non-compliance with existing policies and overlapping jurisdictions of agencies threaten the tenure security and rights of farmers, fisher folks and indigenous communities.

This sends an alarm bell as agriculture is not simply a business proposition but carries with it significant social agenda for national development. It is recommended that government institute the necessary regulatory systems and mechanisms to govern land investments.

While crafting specific policies and programs will have to take a number of factors into consideration, a set of principles can be agreed upon as guide and reference. The seven principles outlined below are based on regional and national consultations participated in by various stakeholders, and take into consideration relevant global documents, CSO case studies on large-scale land acquisitions, assessment of the status of Philippine agriculture and land-related laws of the Philippines.

#### Principle 1

**Responsible agricultural investment has free, prior and informed consent (FPIC) of communities that will be affected by the investments.**

Concerned individuals and communities should give free, prior and informed consent to any proposed investment. To realize this, mandated government agencies should require investors to provide sufficient and correct information (including market information). Investment proposals should then be subjected to consultations through appropriate mechanisms, such as the Fisheries and Aquatic Resources Management Councils and other similar bodies.

Prior to any agreement, investment contracts should be directly negotiated with farmers/communities under the supervision of the mandated government agency. These agreements should be signed by all parties and made publicly accessible.

In support of these processes, government agencies, including local government units, must have the necessary regulations, clear standard procedures and reliable record systems that are applied consistently and free from political influence. They should ensure that investments have an unquestionably positive impact on the community and that the benefits and risks are properly shared.

#### Principle 2

**Responsible agricultural investment upholds land tenure security and respects human rights.**



Investment agreements must not in any way diminish the tenure status and security of the farmers, their spouses, family members and other rightful owners of the land. Arrangements and mechanisms, such as joint ventures, management contracts and marketing agreements, should be assessed, monitored and reviewed regularly to avoid farmers unknowingly surrendering these rights in legal documents.

Investments, particularly in project implementation, should not infringe into their basic human rights. Investors must adhere to international treaties and national government regulations and laws. This way, child labor is avoided and male and female workers are treated in a fair and non-discriminatory manner.

### Principle 3

**Responsible agricultural investment settles disputes in a fair, effective and timely manner.**

Conflicts, whenever they arise, must be addressed transparently, expeditiously, fairly and in a non-discriminatory manner. This presupposes that justice grievance mechanisms to settle disputes are present, equally accessible (preferably done at the local level) and affordable to all individuals or groups potentially affected by agricultural investments.

A mechanism must be instituted that will systematically monitor compliance with resolutions or agreements reached by contending parties. Government should provide the necessary support for farmers, fisher folks and indigenous communities to have proper representation.

### Principle 4

**Responsible agricultural investment uses natural resources sustainably contributing to climate change mitigation and adaptation.**

Agricultural investments should promote sustainable agriculture practices and efficiency of food system along the goals of the Organic Agriculture Act. Positive impacts and externalities in the environment should be considered and strengthened.

Environmental policies and systems such as environmental impact assessments should be strictly complied with to determine potential positive and negative impacts. Investors and government agencies should recognize differential impacts of climate change and institute provisions for risk-sharing and social protection. Multi-stakeholder monitoring for compliance should be encouraged and instituted.

Resilience of agriculture, food systems and related livelihoods to short- and long-term effects of climate change are increased through mitigation and adaptation measures. In this regard, assess, to the extent possible, the People's Survival Fund Law, to check on prioritization criteria for adaptation interventions (RA 10174).

### Principle 5

**Responsible agricultural investment respects women, cultural heritage, landscapes, traditional knowledge and customary laws.**

Responsible agricultural investment should recognize the vulnerability of women and other disadvantaged groups, and establish the necessary precautionary measures to protect their rights and interests.



Agricultural investments must respect the diversity of rural lifestyles and landscapes, acknowledging their long-term economic, social and environmental benefits. In particular, investments should value and support traditional knowledge, preservation of endemic flora and fauna, and cultural heritage around local food systems. Also, religious sites should be safeguarded.

### Principle 6

**Responsible agricultural investment improves the livelihood of men and women, people's food security and nutrition.**

Subsistence farmers and small-scale producers, many of whom are women, constitute the backbone of Philippine agriculture, and as such, ensure the country's food security. In turn, land provides them employment, livelihood and habitat for decent community life and contentment. Agricultural investments should improve their livelihoods and create jobs consistent with the policy framework of inclusive growth.

Agricultural investments must enhance the productive capacities of smallholder farmers and producers. This is achieved by strengthening value generation at different stages in agriculture and food systems, improving access to markets and satisfying nutritional needs. Research to support these initiatives should be supported.

Overall, agricultural investments should contribute and strengthen national food security and nutrition.

### Principle 7

**Complementary policies and programs support responsible agricultural investment.**

The objective of enhancing food security and nutrition must be addressed consistently and not undermined by other policies and regulations particularly those covering governance of resources. Investment policies, such as those implemented by DTI-BOI, PEZA and LGUs, should be attuned with *rai* principles. Complementary policies such as Comprehensive Land Use Plan and the Philippine Organic Agriculture Act should be promoted. Provision of incentives for good practices is recommended.

Relevant public-sector institutions at national and local levels must be informed, be provided the necessary training and resources, and act in a coordinated manner to create synergy and avoid conflicting measures. All relevant services should be accessible with special attention and priority given to the vulnerable groups.

A substantial number of laws exist to ensure responsible agricultural investments. An effective monitoring mechanism needs to be instituted to ensure that these laws are complied with and implemented.

## Postscript

At the time of the printing of this publication, the Committee of World Food Security on its 41st Session (Rome, Italy; 15 October 2014) adopted the Principles for Responsible Investment in Agriculture and Food Systems.

This paper is forwarded, however as a reference document that can be used not only by CFS but also by different stakeholders in reviewing documents, proposed policies and development programs to improve agricultural investments in the country.

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### Endnotes:

- <sup>1</sup> This abridged paper is one of the studies prepared for the ANGOC-implemented project "Promoting Responsible Land Governance for Smallholders in the Philippines" undertaken in partnership with the PDF-SRD, NCI, FAO-Philippines and GIZ. The full paper can be found at [www.angoc.org/portal](http://www.angoc.org/portal)
- <sup>2</sup> UNCTAD, 2005.
- <sup>3</sup> Ravanera and Gorra, 2011.
- <sup>4</sup> See <http://www.focusweb.org/content/stop-land-grabbing-now> and <http://www.fian.org/resources/documents/others/stop-land-grabbing-now/?searchterm=stop%20land%20grabbing>
- <sup>5</sup> The said document has been subsequently renamed to "Principles for Responsible Investment in Agriculture and Food Systems."
- <sup>6</sup> The Wall Street Journal - Saturday, October 12<sup>th</sup> published an article "Del Monte's Philippine Spinoff to Buy Parent for \$1.68 Billion" that says "Philippine-based **Del Monte Pacific Ltd.**, majority-owned by the country's wealthy Campos family, will acquire the canned-food business of U.S. Del Monte Foods in a \$1.68 billion deal, the latest in a string of U.S. acquisitions by homegrown Asian companies".
- <sup>7</sup> For rice and corn, Presidential Decree No. 194 (1973) authorizes corporations and similar entities owned in whole or in part by foreigners to engage in the rice and corn industry.
- <sup>8</sup> The various mechanisms allowed by DAR are elaborated in DAR AO9.





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Founded in 1979, ANGOC is a regional association of 15 national and regional networks on non-government organizations (NGOs) in Asia actively engaged in food security, agrarian reform, sustainable agriculture, participatory governance and rural development. ANGOC member networks and partners work in 14 Asian countries with an effective reach of some

3,000 NGOs and community-based organisation (CBOs). ANGOC actively engages in joint field programs and policy debates with national governments, intergovernmental organizations (NGOs), and international financial institutions (IFIs).

ANGOC is a founding member of the International Land Coalition (ILC), regional convener of the Land Watch Asia (LWA) campaign and the Asian Alliance Against Hunger and Malnutrition (AAAHM-Asia). ANGOC is also a member of the Global Land Tool Network (GLTN) and the Indigenous Peoples' and Community Conserved Territories and Area (ICCA).

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Land Watch Asia (LWA) is a regional campaign to ensure that access to land, agrarian reform and sustainable development for the rural poor are addressed in national and regional development agenda. The campaign involves

civil society organizations in seven (7) countries – Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan, and the Philippines. LWA aims to take stock of significant changes in the policy and legal environments: undertake strategic national and regional advocacy activities on access to land; jointly develop approaches and tools; and encourage the sharing of experiences on coalition-building and actions on land rights issues.



Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH is an international development organization of the Federal Government of Germany working in more than 130 countries

worldwide. The organization is guided by the concept of sustainable development with areas of expertise in economic development and employment promotion; governance and democracy; security, reconstruction, peacebuilding and civil conflict transformation; food security, health and basic education; and environmental protection, resource conservation and climate change mitigation. Know more about GIZ at [www.giz.de](http://www.giz.de).



FPE is the first and largest grant-making organization for civil society environmental initiatives in the Philippines.

Its support goes primarily to protecting local conservation sites and strengthening community and grassroots-led environmental efforts in more than 65 critical sites through more than 1,400 projects. The establishment of FPE on January 15, 1992 was meant to abate the destruction of the country's natural resources. As many as 334 NGOs and grassroots organizations, along with 24 academic institutions, helped set its course through a process of nationwide consultations. Subsequently, Philippine and United States government agencies and NGOs raised the foundation's initial \$21.8-million endowment through an innovative "debt-for-nature" swap. Today, FPE remains committed to fulfilling its roles as a catalyst for cooperation, grantmaker, and fund facilitator for biodiversity conservation and sustainable development. Know more about FPE at [www.fpe.ph](http://www.fpe.ph).



ILC is a global alliance of intergovernmental, governmental and civil society organizations working together with the rural poor to increase their secure access to natural resources, especially land. Know more about ILC at [www.landcoalition.org](http://www.landcoalition.org)



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