



***Roundtable on Promoting Responsible International Investment in
Agriculture
New York, 23rd September 2009***

Report to ILC members by the ILC secretariat

Background

The ILC secretariat was invited to a roundtable concurrent with the 64th United Nations General Assembly on **Promoting Responsible International Investment in Agriculture**. It was hosted by The Government of Japan, in association with a number of multilateral organisations, including 3 ILC members; the World Bank, FAO, and IFAD. The roundtable was intended to mark the first step towards establishing an **international framework** to promote responsible investment in agriculture.

Relevance to ILC

ILC members have long been engaged in identifying and implementing solutions to mitigate risks and realise opportunities to competition over land. ILC members noted that such competition was becoming more intensive in 2007, leading this being the focus of ILC's engagement with CSD16 in 2007. Many members are involved in the Commercial Pressures on Land Initiative of ILC, which in 2009-10 is facilitating a global collaborative study, with a view to providing direction for informed action by ILC members and others. At various seminars and workshops organised by ILC, members and partners have provided direction to this initiative.¹ ILC members at the 2009 Assembly of Members reiterated their support for this to be a priority area for common focus as ILC.

Members participating in these events have generally agreed that some form of regulatory or standard-setting mechanism would be beneficial in mitigating the risks and realising the opportunities of increasing investor demand for land. Nonetheless, ILC members have not taken a common position on an international framework to promote responsible investment in agriculture. Neither has broad consensus yet emerged among civil society as to the most effective instrument for mitigating risks and promoting opportunities. While there appears to be widespread support for some form of regulatory mechanism or standard-setting, debate is ongoing as to what it should contain and how it could be enforced.

This report is intended to inform members of the outcomes of the roundtable. It is also proposed as a starting point for discussion in ILC's membership as to what extent our members – individually or as a coalition – may want to engage in this process, and if so how.

Overview of roundtable

The meeting was chaired by the Government of Japan, and opening statements were made by the Managing Director of World Bank, President of IFAD, Director General of FAO, Executive Director of WFP and Government of Ghana. It was attended by representatives of various multilateral

¹ CSD16 workshop May 2007, IASC meeting June 2008, ILC Assembly of Members April 2009, and Utrecht seminar July 2009.

organisations, governments from the north and the south, a corporate investor and ILC. ILC was the only invitee to the roundtable with a substantial civil society constituency. Other ILC members participating included World Bank, FAO, IFAD, WFP and IFPRI. ILC donors participating were the European Commission, Switzerland, and Canada.

The World Bank made a presentation on 7 principles they tentatively propose should guide such a framework, arising from their ongoing 20 country study on international land transactions:

1. Respecting land and resource rights
2. Ensuring food security
3. Ensuring transparency, good governance, and an enabling environment
4. Consultation and participation
5. Economic viability and responsible agro-enterprise investing
6. Social sustainability
7. Environmental sustainability

Presentations were also made by FAO summarising considerations informing a framework and by UNCTAD on a web-based portal being developed on agricultural investment. This was followed by statements from the floor regarding the proposed framework.

Roundtable outcomes

Broad areas of **consensus** related to the opportunities and risks of investment, the need for some form of framework to promote risk mitigation and benefit sharing, and the main guiding principles upon which a framework should be built. There was general agreement with the seven principles outlined by the World Bank. In short, the following seemed to be agreed upon by most participants:

- The recognition of local land and natural resource rights is a key determinant of whether local populations will win or lose from agricultural investment.
- Some form of international framework for investment is necessary to enhance opportunities and mitigate risks, particularly as domestic law in many countries is inadequate to protect local interests.
- A wider range of stakeholders should be involved in developing a framework, particularly investors and civil society organisations.
- Particular attention should be paid to women's land rights.
- A 'do no harm' approach to investment should be adopted, but should be a minimum. At best, investment should bring benefits to all.
- A framework should support and be complementary to existing frameworks relating to land governance and trade. Mention was made of FAO's Voluntary Guidelines, AU's Framework and Guidelines, EITI, the Santiago Accord and the Equator Principles.

However, beyond the rationale for the framework, discussions were inconclusive, and differences of opinion or emphasis were evident on the following issues

- To what extent the guidelines will be shaped by a desire to facilitate investment (Korea, Saudi Arabia, Indonesia, to some degree Japan) or to promote equitable rural development and adherence to human rights principles (USA, France, Germany, European Commission). While the two are not incompatible and will both be motivating factors, the content and process of their development will depend on which imperative is primary.
- What kind of product the framework will be; a code of conduct, guidelines, benchmarks for best practice, or a 'tool-box' of different approaches. Associated with this is the relationship the framework will have with existing mechanisms, in particular FAO's Voluntary Guidelines for good governance of land and other natural resources.
- Whether further research is needed, or whether stakeholders have adequate information to develop a framework ('before the international community proposes principles, a better understanding is needed of who wins and who loses in investment' - USA).
- What role civil society organisations will have in the development of the framework. While the importance of civil society engagement was stressed by many, their absence at the

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roundtable was notable, and no concrete suggestions were made as to how to be inclusive of different civil society stakeholders.

- To what extent the development of the framework is likely to be a technically-led and relatively rapid process, or a longer and more inclusive process. Time frames of 6 months to several years were implied by different speakers. While some statements expressed caution in developing a framework too hastily, others argued for its rapid development, to take advantage of current interest and the momentum generated.

In closing the meeting, the Chair (Government of Japan) stated that they are not seeking to initiate an overly formalised or structured process, but to provoke a discussion that may in its initial stages be largely informal.

The main achievements of this initial roundtable therefore appear to have been:

- To establish that there are **common concerns** that potential benefits for local land users from land-related investments are not being adequately realised, and that safeguards to mitigate the significant risks are not in place
- To **initiate discussions** between governments and multilaterals on possibilities for a framework on international agricultural investment and generate some momentum towards considering a framework
- To **provoke some consensus** between governments and multilaterals on some of the principles on which such a framework should be based

Commentary and recommendations

Will a framework be developed?

The key questions of whether a framework will be developed, if so how, and what will it look like remain as yet unanswered. Governments - including the government of Japan - gave **no firm commitments** to participate in, or to fund, its development. The three multilateral members of ILC sponsoring the roundtable indicated willingness to 'support' the process, but only the World Bank has thus far taken deliberate steps - through developing 7 principles on which it could be based - towards its development. Although it appears **likely** that a framework will be developed, there is no widely-based and clearly defined decision as yet to do so.

What kind of framework would it be?

Considering the plurality of viewpoints on the form the framework should take, and also considering various reservations expressed about the risks of re-inventing the wheel or being over-regulatory, it appears unlikely that there is currently sufficient support to begin developing a fully-fledged code of conduct. It is more likely - particularly in the early stages - to involve the formulation of guidelines, benchmarks of best practice, or various tools for socially- and environmentally- responsible decision making by investors and governments.

What role would civil society have in the framework development?

The evidence so far suggests that while bilaterals, multilaterals and investors may agree in principle to wide consultation, there appears some hesitancy in light of the 'risks' of polarising debate and extending the time frame. It is therefore likely that the role civil society will have in the framework development will depend on the extent to which civil society organisations themselves demand such a role and organise themselves as such.

What will the next steps be?

No next steps in the development of the framework were announced, other than mention of possible upcoming fora that will be bringing stakeholders together as opportune moments for moving the process forward. These include an upcoming investment seminar hosted by the Government of Japan, FAO's Food summit in November 2009, the European Development Day in November 2009 and the World Bank Land Meeting in April 2010.

Recommendations to ILC for the way forward

ILC is already implicated in the search to find solutions to mitigating risks and realising opportunities from increased commercial pressure on land. ILC multilateral members have so far taken the lead in considerations of a possible framework, and are likely to continue being the main drivers. Whether and how to engage as a coalition in a process towards a framework for land-related investments deserves serious consideration as a coalition

The as yet relatively unstructured nature of the process presents the open opportunity to different stakeholders to take the initiative, in liaison with organisations already involved, to propose products or modalities for particular aspects of the framework. This means that options for ILC and other organisations include not only becoming a voice in initiatives which they may not be leading, but also to themselves lead processes or products that could contribute to the overall aims.

Rather than being a highly structured code of conduct at this stage, it appears more likely that the framework will develop more as a gradual process, defining intermediate products, or milestones, which could provide the building blocks towards the possibility of an eventual code of conduct. Such building blocks could include products already under preparation, such as FAO's Voluntary Guidelines and World Bank's 7 Principles. Additional products that could be developed in the short to medium term may include, for example:

- models of best practice in socially inclusive investment
- models for obtaining Free, Prior and Informed Consent
- approaches to building the capacity of local land users to represent their interests effectively in decisions over land-based investment
- refinement of cost-effective tools to register land rights – particularly collective rights - in areas under consideration for investment

This approach would not require a single unified and overly-coordinated initiative, but for different stakeholders to pursue particular products that would contribute towards a common aim. Ideally, there would be sufficient liaison/coordination between different initiatives to maximise complementarities and their ability to all contribute towards an eventual possible code of conduct.

The momentum generated at this point towards a framework provides a positive context for ILC to make significant contributions. Considering the different options that exist, ILC secretariat recommends initiating a discussion among members on possible modes of engagement, which could lead to a decision by the December Council meeting of ILC as to whether and how ILC may become involved. Questions to consider could include:

- What form of international framework do ILC members consider would be most effective in realising opportunities and mitigating risks of land-related investments?
- Can ILC members develop a common position on the main substance and process of developing a framework?
- Should ILC's focus be on a product(s) aimed specifically at international investment in agriculture, or on wider drivers of land acquisition (including domestic and non-agricultural)?
- How can ILC better contribute to existing related processes, including World Bank's principles for international investment in agriculture and FAO's Voluntary Guidelines for good governance of land and other natural resources?
- Should ILC focus on leading the development of any particular 'building blocks' of a possible framework as a specific contribution to such a framework?
- How could ILC best work with other important civil society stakeholders outside of its membership in contributing to civil society perspectives on a possible framework?
- Should ILC wait until the outputs of its global study (mid-2010) to inform possible actions towards a framework, or could the two take place concurrently?