

**The Right to Adequate Food**



# **The Right to Food : A Framework to Guide Investment in the Agrifood sector**

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DanishChurchAid - Copenhagen, 5 September 2014

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## **1. A Brief History**

**Agriculture as a neglected sector: mid 1980s-2007**

**Increased interest in the agrifood sector, including in arable land – the trend towards vertical integration**

**Price volatility and pressures on resources: 2008-present**

### **Reactions**

Principles for Responsible Agricultural Investment that Respect Rights, Livelihood and Resources, Jan.-Sept. 2010 (World Bank, FAO, IFAD, UNCTAD)

Minimum human rights principles and measures on large-scale land acquisitions and leases, Special Rapporteur on the right to food (A/HRC/13/33/Add.2 (March 2010))

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (CFS, 11 May 2012)

Principles for Responsible Investment in Agriculture and Food Systems (draft, CFS, 8 August 2014)

## **A complex framework (1)**

1. No hierarchy, though most provisions (i) restate existing international norms (incl. International Covenant on Economic, Social and Cultural Rights and Declaration on the rights of indigenous peoples), or (ii) describe good practices that create expectations
2. No inconsistency, these guidelines complement each other
3. Different sanctions / consequences attached to non-compliance: (i) institutional sanctions where State duties are concerned – and in some cases where companies are concerned\*, (ii) the court of public opinion (NGOs), especially in global supply chains, (iii) shareholders' activism, and socially responsible investors (SRI), supported by non-financial reporting (new EU Directive on non-financial reporting, political agreement reached in April 2014: mandatory reporting on social, environmental and human rights risks for 6,000 large EU-based companies)

**NATIONS UNIES  
HAUT COMMISSARIAT DES NATIONS UNIES  
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**PROCEDURES SPECIALES DU  
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS  
OFFICE OF THE UNITED NATIONS  
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE  
HUMAN RIGHTS COUNCIL**

**Mandate of the Special Rapporteur on the right to food**

REFERENCE: AL Food (2000-9) OTH 1/2013

18 April 2013

Dear Mr. Hulings,

I have the honour to address you in my capacity as Special Rapporteur on the right to food pursuant to Human Rights Council resolution 22/9.

I would like to bring to your attention information I have received regarding oil exploration by USCapital Energy Belize Ltd. in the Sarstoon-Temash National Park and surrounding areas in the Toledo District of Belize. Today I have sent a letter to the Government of Belize expressing my concerns about alleged seismic testing and potential future exploratory drilling and oil exploitation activities by your company in the area. A

## **A complex framework (2)**

4. The parallel agenda of business and human rights, leading to the revision of the OECD Guidelines on Multinational Enterprises (inclusion of a human rights chapter) and the adoption of the Guiding Principles on Business and Human Rights (June 2011) and the establishment of the Working Group on Business and Human Rights
5. The rise of extraterritorial human rights obligations, see the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (28 September 2011)



## **2. The Many Faces of Investment**

**Different worlds of agriculture – with different investment needs**

**The combination of private and public investment**

**The balance between private and public goods**

**Investment in land and in food systems (in production, and upstream and downstream production)**



### **3. Improving the Investment Framework: Three Levels**

#### **The Role of Investment Treaties**

Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements, Report of the Special Rapporteur on the right to food: Addendum, UN doc. A/HRC/19/59/Add.5 (19 December 2011).

#### **The Role of Host Government Agreements / MoUs**

Addendum to the Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie – ‘Principles for Responsible Contracts: Integrating the Management of Human Rights Risks into State-Investor Contract Negotiations: Guidance for Negotiators’, UN Doc. A/HRC/17/31/Add.3 (25 May 2011).

#### **The Investment Decision**

"Towards more equitable value chains: alternative business models in support of the right to food", Interim Report of the Special Rapporteur on the right to food to the 66th session of the General Assembly, UN doc. A/66/262 (4 August 2011)



#### **4. The right to food framework**

**The World Food Summit 1996** – commitment 5.2 of the Rome Plan of Action: 1° to clarify the content of the right to adequate food; 2° to give particular attention to implementation

**General Comment No. 12** of the Committee on Economic, Social and Cultural Rights on the right to adequate food (1999)

**The World Food Summit, *five years later* 2002**

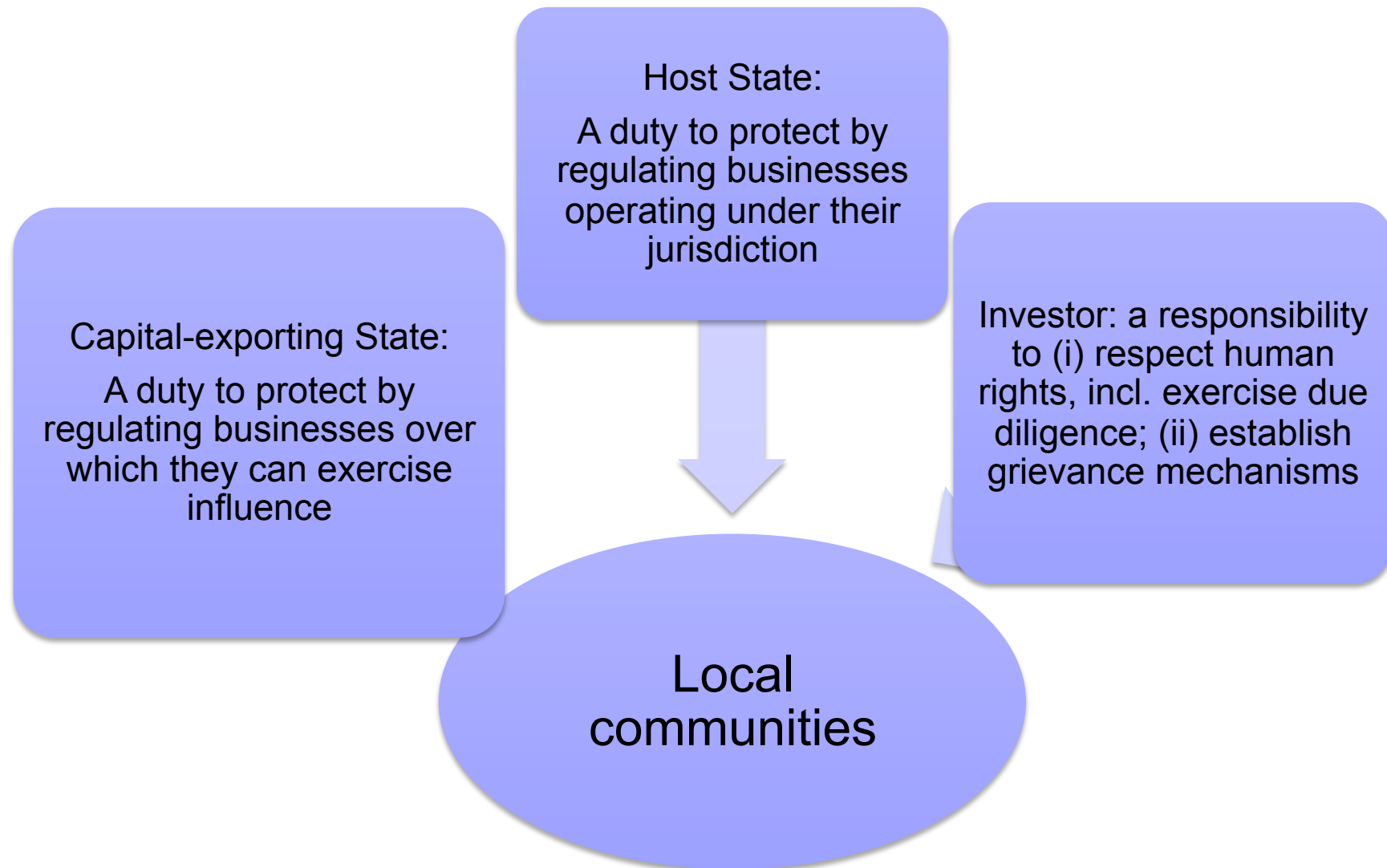
**Voluntary Guidelines** in support of the progressive realization of the right to adequate food in the context of national food security (FAO Council, 23 Nov. 2004)

**Rome Declaration of the World Summit on Food Security** (16-18 November 2009)

- **UN Committee on Economic, Social and Cultural Rights, *General Comment No. 12: The right to adequate food (Art.11)***
- The right to adequate food includes :
  - 1. A requirement of **availability**
  - 2. A requirement of **accessibility** (physical, legal and economic)
  - 3. A requirement of **adequacy** (not only macronutrients, also micronutrients: essential vitamins, zinc, iron, iodine) – diversity of diets
  - 4. A requirement of **absorption** (utilization): education about nutrition (including breastfeeding practices), health, social protection
  - 5. Requirements of **accountability, participation, empowerment, non-discrimination**

<b>DUTY TO RESPECT</b>	Abstain from interfering with enjoyment of the right	Evictions of farmers, pollution of soils / water, dumping disrupting local markets
<b>DUTY TO PROTECT</b>	Control private actors to ensure that they do not adopt conduct that leads to violations of the right to food	Regulate investors through the imposition of obligations related to respect for the environment, compliance with labor legislation (living wage), rights of local communities
<b>DUTY TO FULFIL (FACILITATE AND PROVIDE)</b>	Create conditions allowing markets to support access to food or, where people cannot have access to food for reasons beyond their control, provide them social protection or, in extreme cases, with food	Support agricultural development, provide public goods (storage, transport, extension services...)

## 5. Squaring the Triangle



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- **Guiding Principles on Business and Human Rights:** corporations should 'act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved'
- **Principle 15:** In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:... (b) A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights.
- **Principle 17.** In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:
  - (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships; ...

- **Guiding Principles on Business and Human Rights**

- **Principle 17.** In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.

Human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.