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Proceedings

ROUNDTABLE DISCUSSION ON LAND ACCESS AND RESPONSIBLE AGRIBUSINESS INVESTMENT

April 21, 2011

9:00— 12:30

Mr. Daniel Yohannes, CEO of The Millennium Challenge Corporation (MCC) opened the proceedings.

Purpose and Objectives of the Roundtable

Dr. Gregory Myers, Senior Advisor, Land Tenure and Property Rights, United States Agency for International Development (USAID)

USAID and MCC elected to convene this discussion because identifying common ground among various sides of the debate around land acquisition is difficult. There are divided views on the issue, even among different stakeholder groups, such as civil society and private sector.

Objectives: 1) Bring together various actors around one table; 2) Move discussion forward; Large-scale acquisition mistakes occurred; need to respect local rights, need of private sector to protect investments, large scale and small investors; limit predation; 3) meet concerns of civil society in participatory fashion; 4) To achieve the right balance of investment and rights protection to achieve food security, an important Millennium Development goal.

Harmful practices have occurred that do not respect local land rights or provide for participation. Markets don't solve all problems, and donors and governments have an important role to play in increasing food security and good land governance. Private sector actors need to be sensitive to local rights and local people as partners. Public sector must work to create enabling environment, and help secure local rights, limit depredation, facilitate foreign investment and good markets, while reducing corruption. Civil society role is critical for providing a voice, and checking abuses of power.

Providing the Context:

Several speakers opened with short presentations to provide a context and stimulate the discussion. They provided an overview as well as presented private sector, government, and civil society perspectives on the issue of responsible agricultural investment.

Deborah McCarthy, Acting Assistant Secretary of State for Economic, Energy and Business Affairs, noted that achieving food security on a global scale requires a 70% increase in food production, which will further require a 50% increase in investment in the agricultural sector. Land



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tenure security is a key objective so that rights-holders invest and gain benefits from investment, particularly women and vulnerable people.

Key issues include non-transparent land purchases and transfers are non transparent as well as land-grabbing. Addressing these issues and securing land rights increases land values and economic gains. Key interventions are important, such as strengthening judicial authorities, undertaking research, private sector partnerships, and involvement of civil society for checks and balances and noting risks.

Mark Bishop, Managing Director, Investment Banking Division of INTL Trading, Inc.

- Increase in the number of private sector institutions acquiring land and in the agribusiness sector; there are over 100 firms interested in this, an increase from only 10 or so a few years ago
- Biofuels, urbanization are key drivers of investment in agribusiness
- There is significant interest in frontier areas, where rule of law is a problem. Investors want to know that if their capital is invested, it can be taken out.
- Protectionism (Brazil and Argentina cited) is a concern for private investors, as are other barriers to foreign investment
- Fear of confiscatory taxes, curtailment of water rights (Australia cited) dissuades investors
- Right to take money back out, that assets/infrastructure will not be seized,
- Thus, investors, like smallholders, need certainty
- Investors need a template, a guide as to how to navigate the rapidly changing circumstances of agricultural investment in countries.

Arvind Khare, Executive Director, Rights and Resources Initiative

- Forest issues in Africa and Asia, 30 violent armed conflicts in last 20 years due in part to access to land and forest, affecting 127 million people;
- Clarity of tenure, enforceability, judicial confidence – this is a common position and desire of both CC and the private sector
- Private sector actors and governments are heterogeneous – not all act responsibly or with accountability and their bad practices create negative perceptions of all investors and governments;
- Out-grower schemes provide an example of successful private investment, but can think of no good examples in which outright acquisition of land has been positive for local communities
- Investment in a conducive policy framework can contribute to food security, economic growth
- In many cases, investors may not need the land itself, but what the land produces. Thus, leasing and out-grower schemes may be more suitable;
- In any case, clarity of ownership, alternatives/access for those who are not owners or leasees, and transparency of deals are all necessary for responsible investment terms;



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- Overseas direct assistance and other public funds are necessary to build land administration systems, such as records and judicial system to build the governance institutions that private funding won't support

9:30 – 12:00 Round Table Discussion: Getting the Equation Right: Investor Land Access, Food Security and Livelihoods

Facilitated by Tim Hanstad, Landesa

Dr. Mahendra Shah, Qatar Food Security Program

- Host countries are resource-rich but demonstrate poor governance or knowledge for negotiation; voluntary guidelines may be inadequate
- Guidelines on responsible agricultural investment (RAI) need to clarify the issue of leasing/buying land
- A transparent determination of the real value of land is essential for fair host/investor negotiations
- In addition to acquisition, research on science and technology as well as provision of direct investment to farmers is essential for achieving the production potential on currently underutilized lands.

S. Payne – EmVest: A good relationship with government is essential. Their company won't operate without government "buy-in" at both national and local levels. They are transparent with their investors, providing all documents regarding meetings with communities and negotiated agreements with investors. A portion of each contract is given to the smallholder farmers with whom they work, as well as providing inputs and a salary to the farmers with whom they work in order to provide incentives for good production.

William Scott, Agland Investment: Developing a biofuel project in Central Mexico with 9000 hectares sugarcane and 15,000 hectares of sweet sorghum, with fallow land for rotation. They require a total of 45,000 acres and are working with local farmers and communities. They plan to build a 50 Megawatt (MW) co-generation power plant and processing facility to create a growth pole for economic development.

Bernd Schanzenbächer, EG Capital: Given the sensitivity of land, it may avoid concerns if investors lease rather than buy land, particularly given many restrictions against foreign purchase of land. Leasing is attractive in contexts where rule of law is weak, can minimize risk as easier to exit tenuous situations.

Duncan Pruett, Oxfam- Cited the Liberia experience, and the role of government in renegotiating contracts to improve clauses and outcomes for the host country and communities. Is this replicable, scalable? The development of the Roundtable for Sustainable Biofuels presents a possible model for how companies should act responsibly to contribute to food security and not undermine land rights.



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Graham Dixie, World Bank- Outgrowers schemes create fewer social problems, but are difficult to implement. There is a typology of investors and investment types that can help identify who are the “bad actors” to distinguish them from responsible investors. Investors are investing in existing farms. A continuum exists. Investments in new farms, new land, and crops are very risky and in many cases, investors may be directing funds toward improving existing operations. Mega-farm investments and consolidations are suspicious. Paradigm change occurring because international investors interested.

Gregory Myers, USAID: Transaction costs for investors to deal directly with small farmers are high. Investors find it easier to deal with governments to get land. Some firms trying to work with communities and small-holders.

Susan Payne, Emergent Asset Management- Certainty is important for both investors and smallholders, which we do by providing weekly payments to farmers and giving them a portion of their guaranteed contracts. This provides an important incentive for the farmers with whom they work.

Brian Mathis, Pine Street Alternative Asset Management- Scale is a key concern, question of who one deals with related to negotiating terms of acquisition. Contract negotiations are complex and difficult; even governments will hire lawyers to deal with the complicated aspects of negotiating deals for land. For some investors, “mega farms” needed at times as dealing with many smallholders can be a headache.

Lorenzo Cotula, IIED: Given the sensitivity of land, its cultural and economic importance, he cautioned that from the perspective of host communities, the consequences of a 99-year lease to host communities may be much the same as acquisition and ownership of the land in question and that such long term leases may be too long.

Renatto Barbieri, Galtere Investment: Farmland leasing contracts do not necessarily ensure the best use for farmland. In order to ensure best (sustainable) practices are always applied it is essential that interests are aligned. In practice, that is very difficult to ensure in a farmland lease contract. In addition, we need to clearly define what is meant by food security before we attempt to solve problems associated with it. Food security for a community does not necessarily translate into food security for a country or for the globe. Food security is a complex issue that involves many areas, including, but not exclusively, soil and activity suitability, water conservation, infrastructure and logistics. In order to fully tackle the issue of food security we need to ensure the participation of all affected under the guidance of unbiased experts in agronomy, geology, biology, ecology, economists and sociologists.

Pierre Ferrari, Heifer International: 70% of the world’s food produced by small-holders. Small-holders can scale-up; yields can increase. They require collection facilities, transport, access to water, processing for smallholders, but investors are not bringing money to smallholders. He questioned the drive to convert land when there is so much unrealized small-holder potential.

Jennifer Bromely, Global Witness: Need to ensure that existing guidelines are use and incorporated into this ongoing focus on land acquisition, citing the framework principles on Right to



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Food, developed by Olivier De Schutter and the Ruggie guidelines related to due diligence for businesses, to respect human rights.

Barbara Bramble, Roundtable on Sustainable Biofuels: We have developed voluntary standards and certification indicators, all negotiated between civil society and businesses. The process is applicable to agricultural. Food security, land rights, labor, rural development, biodiversity principles with guidance documents for environmental and social impact assessment, involving medium and largescale investors. No success stories yet, but investors are approaching them how to use them and get certified. They learned from other processes, such as the FSC experience, etc.

Ruth Meizen-Dick, IFPRI: Journalists have succeeded in picking up and reporting on the negative cases and consequences. Research findings are showing negative cases. IFPRI wants to document “positive” cases but investors are often reluctant to provide information or cooperate. Thus, good examples and practices aren’t reported. Investors are now interested in allowing research. Cited the long history in Africa of failed agriculture and need to draw lessons from it.

John Buchanan, Conservation International: Good success stories are emerging for protecting capital investments in agriculture, while safeguarding the environment.

Paul Munro/FAO: The Voluntary Guidelines being developed are high level, but need technical implementation guidelines. An important question is how one implements guidelines? Countries often have weak capacity to enforce or address guidelines. Policy and law can exist, but how to build capacity of all stakeholders to implement.

Graham Davies, Altima Partners: 80% of output in Africa is from smallholders. A combo of investment and smallholders will be the way forward. Understanding needs of local actors, government and local investors is essential. Investors need to be realistic, don’t oversell the potential of what they can do. Also, there is an ongoing problem of investors focusing only on the short-term. Private sector hasn’t been transparent in HOW money is invested. Need combination of smallholder and corporate.

Investment structures: 1) Context specific. Government and private sectors overpromise. 2) Short-termism – short-term opportunism a problem; 3) Transparency needed.

Mahendra Shah, QFSA- Drylands offer an opportunity for greenhouse hydroponics vegetable production.

Arvand Khare, RRI - FS and investment in ag are two different things. Investment does not automatically contribute to food security. How can investment be made so that a wider set of people can benefit? Even then, investment may not contribute to household food security.

David Deng - In South Sudan in last 4 years, 10% of land has been earmarked for private interests. It is a very uncertain investment scene in the world right now with a great many “cowboy” investors. It may be helpful to have a moratorium in South Sudan until rule of law is stronger.



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Delilah Rothenberg, Herakles Farms – Their company is trying to create large-scale employment generation and developing strategies to work with small-holders. Need to find right partners to help. Need support from small-holder specialists; financial support from small-holder specialists to build complementarity between large-scale and small-scale producers.

Building Capacity for Negotiation of Agreements

Choosing successful investment structures that align incentives among investors, governments and local communities to achieve sustainable, long-term financial returns

Chaired by Bernd Schanzenbächer - It is difficult to construct agreements that balance the different interests and powers. Negotiating processes are difficult. In emerging economies, government actors may have no experience in negotiating deals. Deal making is important, but must be perceived fair by all parties.

Sapna Shah, Investors Council, Global Impact Investors Network- Their network includes for-profit investors interested in investment for positive impacts and a few have formed a working group for agriculture investment in Africa. Investor interests in this sector are diverse – they invest to support production, small and medium enterprises, storage, processing, and marketing. For-profit investment can play an important role in scaling up existing grant-funded efforts. Savvy investors realize that they need relationships with the community and smallholders. Civil society and government can play a role in increasing the transparency around which participants are most appropriate for any given negotiation. Currently the market does not differentiate between responsible, impactful, and irresponsible investors, creating an investment disincentive for those impactful and responsible investors whose capital is necessary for African development. The Network is working with investors to figure out how to make their portfolios and methods more transparent so that the market differentiates impact investors from others.

Jennifer Bromley, Global Witness- Extractive industry has some interesting models for “frontier” markets. Extractive Transparency Initiative (ETI) could be a good model for land issues, creating a platform in which public, private, civil society all at the same table. EITI follow international rules of self regulation. Compliance with standards is mandatory. There is agreement to rules, adopted by countries, and compliance with standards verified by third party.

Land issues could follow this model, however two important differences: negotiations under the EITI assume the proposed extraction is sound. There may be no assessment of a proposed land deal prior to negotiation; the negotiation itself may be unjust, making transparent process essential. EITI addresses the revenues itself, not the physical land, which requires political consensus, readiness to change, and clear stakeholders to involve in negotiation.

Lorenzo Cotula, IIED- Posed key questions and issues relating to contracts for agricultural investments:

- Decision-making: Who decides, who participates? Who is a party to the contract? Govt? If so, what safeguards on local consultation? Local community? Even where land is owned by govt, communities may see it as theirs. But then what capacity and accountability for local leaders?



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- Economic Issues: What model of agricultural investment (taking over existing plantations, new plantations, joint ventures, contract farming etc)? Commercial viability key. Some deals are not commercially viable. Failed deals leave much local resentment.
- Fairness: What does local community get? Benefit for local economy? Revenues, infrastructure, jobs, business links often mentioned, but need for scrutiny. E.g. do deals really generate jobs, what kind, and how do job numbers and types compare to previous use of land?
- Social and environmental safeguards: Arbitrary land loss? What impact assessment process and what standards? Water rights for investors key, but what safeguards for local farmers for water?
- Food security: For whom? Global? National? Local? What safeguards for local food security?
- Implementation: What mechanisms to ensure proper implementation? Who monitors? Government? Civil Society? Communities? Capacity challenge.

Sohi Adelaja, Land Tenure Institute, Michigan State University- Stressed the rapid changes happening in the pattern and scale of land acquisition and need for current information. Research needs to occur now to understand these drivers and be quickly applied for policy and action.

Brian Mathis, Pine Street Investment- Average length of minister's tenure is 11 months in Africa: it is difficult to adapt to these rapid political changes. Requirements of due process and complex negotiations can hold up countries' ability to access funds unless they hire advisors to assist with these processes.

Susan Payne, Emergent - All governments are now competing for funds from private sector, so they need to use advisors, put systems in place to be more transparent. Countries should not export if they can't feed their own populations.

Arvand Khare, RRI- Imbalance in negotiations. Private sector advisory firms needed to back up host countries in negotiation with international investors. Governments lack info on how to negotiate around agriculture deals. Knowledge base or knowledge capacity needed to do this effectively

Sapna Shah, Investors Council- Some investors are already willing to share data on the social and environmental impact of their investments and the demand for mainstream investors to disclose their impact is also increasing. Ultimately, it is important that the market uses disclosure to differentiate impactful from irresponsible investment, and that the market is structured to reward impactful investors over irresponsible investors.

Manfred Kaufman, Swiss Cooperation- Opportunity here at this forum is to set up mechanism to share information on contracts AND processes for setting up contracts. Sharing info on processes are important. Need to distinguish the "responsible" and "non-responsible" but disclosure of processes could create a risk for companies for reputations and possible access to markets. Sharing information can help reduce reputational risks.

Richard Ferguson, Renaissance Capital- Investment firms do want to invest in and support "bad" actors; it undermines their long-term sustainability. Easy to raise money for shady investments but will lose opportunities once bad investments become apparent. Deals take enormous work for Africa so one does not want a disreputable client.



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Graham Dixie, World Bank- A balance must be found between giving away business secrets and models and sharing the information that people need. There is a need for a forum for dispute resolution and mediation.

Jose Minaya, TIAA-CREF- Investors have to know that sharing information won't "backfire", need an organized forum to share how to negotiate good deals. Investors are afraid to share info because the case could blow up in their face.

John Buchanan, CI- Paradigm is changing. New partnerships between civil society and business around palm oil now emerging. This gives credibility and support from NGO's defending "good job." Palm oil sector is now showing good partnerships for using best practices.

Joao Carrilho, MCA Mozambique- Investors need to face realities of difficult negotiating environment and help build negotiating capacity of local communities. Communities can revolt and resist if they feel they've been treated unfairly. Transparency not enough; capacity to solve conflict is key! Some lawyers and firms can provide help to investors to understand local situations and local communities. A company that deals fairly will face fewer problems and resentment later. Investors need to understand local rules; not set rules!

Brian Mathis, Pine Street Investment – India, Chinese, Brazilians are not acting to be transparent or engage local stakeholders. Are they suffering any loss of opportunity or greater problems as a result of not working more responsibly? Are competing investors who do not worry about these issues facing consequences? There is concern about acting responsibly if competitors are not.

Moving from Discussion to Action

Klaus Deininger, World Bank- Better access to information, transparency can reduce risk for investors and governments, benefits the negotiating capacity of both sides. EITI is a good model, though tailoring it to governance of land sector has some challenges.

Investors have suffered from bad land deals with no transparency. Investors do not know whom to negotiate with if land ownership is not clear. Key questions: How can we bridge knowledge gap? What are most important mechanisms to bridge gap? Intermediaries need to bridge knowledge gaps but using what guidelines? How does one resolve disputes? How does one liquidate bankrupt companies? How does one build capacity for transparency? How to identify good land for investments? How to identify "good" investors and distinguish them from bad investors?

Delilah Rothenberg, Herkales Farms- There is a need for industry standards such as social infrastructure budgets, tax payments, etc. Different contracts will pay different things. As you make terms more transparent, how do you guide investors of how to provide beneficial terms? There is a need to focus on the entire contract. Focusing only on certain provisions without understanding it in context of the entire contract may lead to judgment that is it unfair but fail to note other compensatory or beneficial terms.



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Duncan Pruett, Oxfam- There is not only a knowledge gap but a confidence gap which must be bridged. There is still a lot of suspicion about this discussion, also from many group not present. It is important not to create divisions within civil society - some of the actors most critical are not being ideological, but coming from the perspective of the now well-documented "losers" from investments we have seen so far. Adequate efforts to eliminate bad investment practices have not occurred and private sector actors and governments need a very strong political statement about "bad" practices, as a precondition to depolarise the debate, and proceed with the discussion with more confidence.

Susan Payne, Emergent- Their company works out their agreements in detail with community elders. Couldn't operate with communities if they'd not worked out the terms with communities first. The net is closing on bad investors. Governments need to take responsibility and don't let investors come in and take what they want.

Jenny Bromley, Global Witness- Investors need to bring to the table other issues like investment in water, infrastructures, and other elements. EITI has multilayered platforms for oversight of investment deals; discussions within platform can help to deal with conflicts. Tripartite dynamic that is voluntary leads to interesting situation about reporting payments for mining under new US laws. A legal binding mechanism to report on revenues creates a new dynamic in extractive industries. How does one compete with companies like Chinese?

David Deng- A sourcebook for private investors on how to do it responsibility should be something that can adapted for local, context-specific uses.

Mahendra Shah- Transparency is not being asked in oil or energy sector! Why is it being required in the agricultural sector? How does one strengthen capacity of the host countries to negotiate and address the power imbalance between investors and communities in negotiation?

Barbara Bramble- Voluntary guidelines and implementation documents are not going to get bad actors out. However, it can raise expectations among host communities and may lead to a premium on products.

Sohi Adella- Need to close the research gap. Help foster better understanding of alternatives and motivations among govts. Help to identify what kind of deals will benefit a country and which won't? Conditions for what type of deals might work in some settings, but not in another. What are examples of contracts that make sense for nations? Under what type of geographical situations does it make sense to NOT invest?

Eleanor Nagy, U.S. State Department: Guidelines and best practices do have an impact. China is doing some unexpected work, establishing a Poverty Reduction Institute that is being advised by WB. It is Setting up hubs, including one in East Africa, to work with a Chinese investor to develop a CSR program, so it can look at how to benefit communities in which they invest.

For consultative processes, Brazil serves as a model. Its school feeding program consultations can serve as a model for other governments.



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Klaus Deininger: Need to build confidence. Developing countries are starting to negotiate better, but still a huge gap. World Bank wants to develop a source book on how to invest responsibly in agriculture. Welcome inputs from all actors.

Closing Remarks

Karol Boudreaux, USAID: Convergence points exist: Expectations can be raised around what best practices should

- Need to raise expectations re. land acquisition
- Need to strengthen ability of communities, govts to engage in vetting agreements
- Need for improved transparency to improve governance and accountability
- Strengthening farmers organizations for smallholders involvement in agreements
- Need to document success stories better
- Need to be more modest in claims of success or what can be achieved
- Build in EITI or RSB models
- Create expectations from best practices

Julie Howard, Deputy Coordinator for Development, Office of the Coordinator, Feed the Future

Good energizing mix of actors. Need to continue. Congratulations. Feed the Future is a program to respond to root causes of food insecurity. FtF thinks it important to have multilateral cooperation and work across these institutional structures. Administrator Shah wants “thought leadership” on how to leverage private sector partners, but include civil society partners. Need to have cross-cutting discussions. Source book could be very helpful.

Ambassador Ertharin Cousin, Permanent Representative to the United Nations Agencies in Rome

Dialogue must take place. By 2050, the world will have 20 billion; private sector involvement is key. Not enough money in public sector to respond. Private sector input must come into Voluntary Guidelines to help embrace. Involvement must continue. Work still in front of us but need to continue the process in future!