Land Tenure Working Paper 21

# PRIVATE INVESTMENT IN LAND

## IMPLEMENTING RESPONSIBLE GOVERNANCE OF TENURE

A 10,000 hectare agricultural investment in Gambella, Ethiopia, February 2011, showing:
i) natural ground cover of under-utilised land, ii) land clearance in progress, and iii) first rice planting

Andrew Hilton

In collaboration with the

Climate, Energy and Tenure Division (NRC)

November 2011

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

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Photography: Andrew Hilton

## List of abbreviations

| | |
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| AfDB | African Development Bank |
| AU | African Union |
| CFS | Committee on World Food Security |
| CIFOR | The Center for International Forestry Research |
| CSO | Civil Society Organization |
| CSR | Corporate Social Responsibility |
| DEZA/SDC | Swiss Agency for Development and Cooperation |
| DNTF | National Directorate of Lands & Forests |
| DUAT | Right of land use and benefit |
| EU | European Union |
| FAO | Food and Agriculture Organisation of the United Nations |
| FDI | Foreign Direct Investment |
| FLEGT | Forest Law Enforcement, Governance and Trade |
| FSC | The Forest Stewardship Council |
| GOM | Government of Mozambique |
| IFAD | International Fund for Agricultural Development |
| ITTO | The International Tropical Timber Organization |
| IVSC | International Valuation Standards Council |
| MCA | Millennium Challenge Account |
| MCC | Millennium Challenge Corporation |
| NGO | Non-Governmental Organization |
| OECD | Organisation for Economic Co-operation and Development |
| RSB | Roundtable on Sustainable Biofuels |
| REDD | Reducing Emissions from Deforestation and Forest Degradation |
| RFMO | Regional Fisheries Management Organization |
| RICS | Royal Institution of Chartered Surveyors |
| UNECA | United Nations Economic Commission for Africa |
| UNCTAD | United Nations Conference on Trade and Development |
| WB | World Bank |

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# 1. Introduction

FAO and its partners have been preparing draft voluntary guidelines to provide practical guidance on responsible governance of tenure of land, fisheries and forests as a means of alleviating hunger and poverty, enhancing the environment, supporting national and local economic development, and reforming public administration. A process of widespread participation of stakeholders through a series of regional and thematic consultation meetings as well as an electronic consultation resulted in a First Draft of the Voluntary Guidelines. It was subsequently handed over to the Open Ended Working Group of the Committee on World Food Security which is now leading the intergovernmental negotiations.

One of the recurrent areas of concern during the consultation process on the Voluntary Guidelines has been the impact of growing investments in land, fisheries and forests by the private sector. As a result, FAO held a two-day workshop in Rome on 28 February and 1 March 2011, primarily aimed at the private sector, to discuss this issue in depth. This paper, prepared by the Voluntary Guidelines Secretariat of the Climate, Energy and Tenure Division of FAO, draws on proceedings of the meeting in an attempt to capture the essence of the main issues discussed and to set out the findings in a narrative format. The purpose of this paper is to provide a record of the discussion topics from the private sector perspective and to assist FAO in developing the guidelines into implementable actions.

Broadly following the workshop format, the discussion paper is set out in three parts:
Section 1 provides the background and context which led to the workshop conception. It provides an overview of both the Voluntary Guidelines and the Responsible Agricultural Investment (RAI) Principles. It discusses the format of the workshop, its goals and objectives, and the work programme developed to achieve these.

Section 2 discusses the investment environment in the context of access to land, fisheries and forests and identifies the main drivers behind investment, what makes investments ‘tick’ and the issues that frustrate the goals of the various stakeholders.

Section 3 seeks to identify ways of finding the common ground between conflicting goals and interests in order to promote responsible investment. It proposes recommendations for concrete actions to improve procedural mechanisms that might in due course be developed into implementation guidelines for responsible governance of tenure.

Section 4 provides a conclusion to the discussion and makes suggestions for the way forward by building on the findings of the workshop.

The contents of this paper do not necessarily reflect the position of FAO, nor are they comprehensive in covering the wide variety of stakeholder concerns. It is hoped, however, that they offer an accurate reflection of the discussions that took place. Unless specifically referenced, quotes reproduced in this paper are based upon the notes of the rapporteurs and are not attributed.

## 2. Background, Context and Workshop Programme

### 2.1 Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests

Land, fisheries and forests provide a platform for livelihoods as a source of food and shelter, a factor of economic production and a basis for social, cultural and religious practices. There is growing global pressure on these resources. Increasing demand due to population growth, urban expansion, food exports and bio-fuel production is exacerbated by land degradation, climate change and displacements caused by violent conflicts.

Equitable access to land, fisheries and forests can reduce poverty by allowing families to produce food for household consumption and increasing household income by producing commodities for sale in the market. At the same time, this promotes environmental sustainability as farmers expecting to benefit from their investments are more likely to improve their land through soil protection measures, tree planting, etc. Equitable access to land, fisheries and forests also promotes a more reliable business environment, which in turn can attract responsible investors who are sensitive to environmental issues and the rights and customs of local communities.

**Tenure** is the relationship among people with respect to land, fisheries and forests. The rules of tenure determine which resources can be used, by whom, for how long, and under what conditions.

Equitable access to, and the secure tenure of, land, fisheries and forests is a governance issue. Responsible governance of tenure can help to reduce hunger and poverty and to support social and economic development. On the other hand, weak governance of tenure leaves people marginalized and vulnerable to eviction from their land. Inappropriate tenure policies can lead to over-exploitation and over-grazing, and hasty and irresponsible investing in land, fisheries and forests. Weak governance is found in both formal statutory land administrations as well as in informal and customary tenure arrangements. It flourishes where the law is complex, inconsistent or obsolete; where people who work in land agencies lack motivation and are poorly paid; where decision-making processes are not transparent and where civil society is weak. Weak governance of tenure discourages social stability, investment, widespread economic growth, and sustainable use of the environment. The impact of weak governance can be severe for vulnerable groups and for women who have weaker rights to land. Weak governance comes at a high price.

**Governance of tenure** comprises the mechanisms and processes according to which citizens and groups can articulate their interests, mediate their differences and exercise their legal rights and obligations in respect to land, fisheries and forests.

In response, CFS is currently negotiating Voluntary Guidelines[1], prepared by FAO and its partners, to enhance responsible governance of tenure of land, fisheries and forests. The Voluntary Guidelines intend to provide practical guidance on responsible governance of tenure as a means of alleviating hunger and poverty, enhancing the environment, supporting national and local economic development, and reforming public administration.

> The principles of participation, accountability, non-discrimination, transparency, human dignity, gender equity, empowerment and the rule of law apply to the approach of responsible governance.

The guidelines will constitute a framework for policies, legislation and programmes. They will emphasize universal, interdependent, indivisible and interrelated human rights. Being voluntary, they will not establish legally binding obligations nor replace existing national or international laws, treaties or agreements. They will be presented as a short document that describes principles and actions in simple and clear language. Additional detailed and technical information will be provided in a range of complementary guides.

The Voluntary Guidelines can be used by a variety of stakeholders:

- Policy makers,
- Managers and staff of government agencies,
- Private sector specialists,
- Members of civil society organizations including community groups, national and international organizations, and professional associations.

The process of developing the Voluntary Guidelines was a consultative one, involving governments, civil society, private sector and academia. A series of fifteen multi-stakeholder thematic and regional consultation meetings were held between September 2009 and November 2010 assessing issues and actions to be included in the guidelines. This involved a total of 1,000 participants from 133 countries. These consultations provided the base for the preparation of the zero draft of the Voluntary Guidelines on which an *e*-consultation was organized. Comments from the *e*-consultation on the zero draft were considered in the first draft of the Voluntary Guidelines which was submitted to the open-ended working group of the Committee on World Food Security (CFS) for review. CFS-led intergovernmental negotiations took place on 12-15 July and 10-14 October. The negotiations have been adjourned and will be continued at a later date.

[1] http://www.fao.org/nr/tenure/voluntary-guidelines/en/

It is significant that, of the themes of governance of tenure that were discussed during the regional and thematic consultations, the impact of growing investments in land, fisheries and forests was the one of the hottest topics.

The work on Voluntary Guidelines is a part of FAO's broader mandate. The guidelines on responsible governance of tenure will be a further elaboration of the Right to Food Guidelines. They will also build on FAO's long-term work in improving secure access to land, fisheries and forests, including the 2006 International Conference on Agrarian Reform and Rural Development (ICARRD). In addition, the guidelines will be drafted in consideration of regional initiatives such as the Land Policy Initiative of AU, UNECA and AfDB, and FAO's involvement in the development of Responsible Agricultural Investment (RAI) Principles.

**Themes of Governance of Tenure discussed during Global Consultations**

- Tenure Security
- Tenure reform
- Land markets
- Land valuation
- Compulsory acquisition
- Agricultural investments
- Land administration
- Urban, rural/territorial planning
- Access to justice
- Land consolidation / land banking
- State land management
- Natural resources management (Forests, Fisheries & Water)

***The impact of growing investments in land and resources was a 'burning issue'.***

## 2.2 Responsible Agricultural Investment (RAI) Principles

Various stakeholders have called for principles, guidelines and even codes of conduct to govern foreign agricultural investments in the developing world. In response to this call, FAO, in conjunction with the World Bank, UNCTAD and IFAD, is currently developing principles for responsible agricultural investment.

Although still in the development phase, following a series of meetings and conferences, broad agreement has now been reached as to the aim and scope of the principles.

The overriding objective is to promote mutually beneficial situations for all and responsible investment in agro-enterprises (whether for primary production, processing, or other value addition activities) that optimize the impact of increased investment. By maximizing the benefits and minimizing the inherent risks for all involved, sustainable and inclusive agricultural development in receiving countries can be achieved. [2]

The broad aim of the RAI principles will be to provide:

- a legally non-binding international framework
- a reference point for international investment agreements
- guidance on investment contracts and CSR initiatives

[2] www.responsibleagroinvestment.org

- a checklist for assessing projects
- assistance to governments in developing laws and regulations

It has also been agreed that efforts in this regard should draw on the past good practices and experience gained and, where appropriate, content already developed by relevant guidelines, standard schemes or codes of conduct, whether public or private. Examples include the Equator Principles (social and environmental issues), the Extractive Industry Transparency Initiative (EITI), Santiago Principles, OECD Guidelines for Multinational Enterprises, and numerous commodity or theme-specific schemes. In particular, the RAI principles will be complimentary to the FAO *Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests*, and RAI Principle 1 (see box below) specifically provides that ‘Existing rights to land and associated natural resources are recognized and respected’. The process of formulating this international framework will also be in line with and compliment other food security initiatives.

The next steps in developing the RAI Principles will be for Committee on World Food Security (CFS) to start a consultation process among its members which will be supported by research and analytical input from all relevant stakeholders. In particular, the process will seek to generate support from the major countries where investment is taking place. The main output will be the refinement and further elaboration of the seven principles and the drafting of extended commentary and annotations. This will be followed by piloting in test countries. Continuing support for this process will be essential to its success. Technical assistance and capacity building for the application of the principles will be required, as will continuing research on Foreign Direct Investment (FDI) initiatives.

## Proposed RAI Principles

**Principle**

1. Existing rights to land and associated natural resources are recognized and respected.
2. Investments do not jeopardize food security but rather strengthen it.
3. Processes relating to investment are transparent, monitored and ensure accountability by all stakeholders within a proper business, legal and regulatory environment.
4. All those materially affected are consulted, and agreements from consultations are recorded and enforced.
5. Investors ensure that projects respect the rule of law, reflect industry best practice, are viable economically and result in durable shared value.
6. Investments generate desirable social and distributional impacts and do not increase vulnerability.
7. Environmental impacts are quantified and measures taken to encourage sustainable resource use, while minimizing the risk and magnitude of negative impacts and mitigating them.

## 2.3 Workshop motivation and work programme

There were primarily two motivations behind the private sector and investment workshop. Firstly, the level of concern regarding the impact of growing investments in land, fisheries and forests raised during the regional consultations highlighted the need to discuss this issue in detail from the private sector perspective.[3] Secondly, with the drafting of the Voluntary Guidelines underway, the focus has turned to practical implementation issues for which private sector consultation was deemed imperative.

To this end, FAO, with the support of the Swiss Agency for Development and Cooperation (DEZA/SDC)[4] organised a two-day event specifically targeted at private sector investors to discuss key areas of concern regarding the implementation of responsible governance of tenure. The objective of the meeting was to identify and discuss key issues, and to make recommendations for practical actions that will help FAO to plan for the scope and modalities of implementation. The workshop brought together high-level individuals from national and international companies active in the fields of food, agricultural and bio-fuel production, forest and paper industries and fisheries.

Three parallel themes were identified, each sharing similar increases in investment activity for natural resources, yet each with its own particular characteristics. Thematic working groups were therefore established which allowed small but high profile group discussion of the issues in a good level of detail:

- Agricultural Investments including biofuels
- Rural-urban/industrial conversion
- Forestry and Fisheries

The context for the discussions was provided by FAO presentations at the opening plenary session on the development of the Voluntary Guidelines and the RAI Principles, summarised above. This was followed by a series of five presentations by workshop participants with the aim of sharing their specific experiences in order to open-up the debate in a practical way. A presentation on human rights in the business environment[5] highlighted this important cross-cutting issue.

For the most part, the work-programme was based upon the three thematic working groups designed to promote in-depth discussions. Moderators for each group were selected from the participants in order to facilitate the debate and a framework of discussion topics was provided by FAO for general guidance. Resource persons and rapporteurs were also provided by FAO.

The workshop output will contribute to the on-going work on the Voluntary Guidelines and the RAI principles by identifying key issues affecting the private sector and, through its recommendations, assistance for practical implementation.

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[3] The London consultation, 25-26 January 2010, co-organized with the Royal Institution of Chartered Surveyors (RICS) was primarily aimed at the private sector; however, the large number of participants from different backgrounds and the wider agenda did not provide a suitable forum for in-depth discussion of this issue.
[4] http://www.deza.admin.ch/de/Home
[5] By John Morrison, Institute for Human Rights and Business.

The following Sections of this discussion paper provide a summary of the working group discussions and conclusions of the plenary sessions. The discussions, findings and recommendations are provided in the context of FAO's continuing work in emphasizing the importance of governance of tenure to the critical development concerns of food security, economic growth, social development and environmental protection.

# 3. The Investment Environment and Access to Land, Fisheries and Forests

## 3.1 Introduction

FAO estimates that additional investments of US$83 billion annually are needed if developing country agriculture is to meet its food needs in 2050[6]. Decades of under-investment in the agricultural sector of developing countries, particularly Africa, has resulted in low levels of productivity and potential for large-scale investment initiatives. In Sub-Saharan Africa alone, additional investment of at least US$21 billion annually (including US$7 billion from the public sector) are needed in agriculture to meet targets for reducing poverty and the numbers of malnourished.[7] Many developing countries recognise this investment gap and are actively seeking to attract private sector investment, both local and foreign, in order to achieve their development goals and improve domestic food security. On the other hand the scale and scope of investment in recent years has brought with it its own set of problems.

The starting point for this discussion is therefore the recognition that a) current international development assistance is clearly insufficient and is unlikely to increase significantly in the short-term, b) developing countries need private sector investment in order to bridge the investment gap, and c) agricultural investment should be undertaken in such a way as to maximise the benefits and minimise negative impacts to the recipient country.

The investment environment is a complex one, involving a wide variety of players and an intricate web of opportunities and risks, gains and losses, legal and institutional requirements and social and environmental impacts. The sub-sections that follow set out a discussion of the issues involved in the investment environment and how they relate to access to land, fisheries and forests.

## 3.2 Investment Opportunities

In order to fully understand the opportunities that arise from investments in land, fisheries and forests, it is necessary to identify the different stakeholders involved and to recognise the diversity of their goals and motivations.

**Investors** may be foreign governments, often in the form of sovereign wealth funds; philanthropic organisations (private funds used to attain public or social goals, for example The Gates Foundation); or more commonly, private companies (small, medium and large) made up of equity investors, private families, and individuals. Though much media attention has been given to foreign investors, local investors are also significant players.

The goals of the different investors are also diverse. The driving force behind investor governments is often the need to ensure food, energy, or water security, or a mix of all

[6] Source: *Capital Requirements in agriculture in developing countries to 2050*, J Schmidhuber, J Bruinsma & G Boedeker, 2009. Paper presented at the FAO Expert Meeting on How to Feed the World in 2050, 24-26 June 2009, Rome.
[7] FAO Commodity and Trade Policy Research Working Paper No.31, September 2010.

three. The recent involvement of the Saudi Arabian government in large-scale agricultural investment is cited as being partly due to a change of policy, reducing its own cereal crop production which is dependent upon irrigation from limited domestic aquifers[8], and partly due to the failure of the global food commodity market in 2007-8. Its reaction to being unable to secure food on the international markets, and volatility of prices, which has been exacerbated by some countries hastily imposing export bans and also by speculation, was to acquire agricultural land directly in countries where suitable land was available and to grow (and export) its own produce.

Other reasons why foreign governments have become involved include encouraging increased private sector activity with the objective of having a more outward looking private sector (for example, the Gulf States) and integration of their countries into the global economy. Additional reasons cited are industrial development through access to technology and markets, political influence in the host country, and, in the case of sovereign wealth funds, good business returns.

While the profit goal of *private sector* investors at first sight might seem obvious, investment decisions are complex, being based on the type of investor and their investment requirements. The realisation in recent years that the agricultural sector in developing countries is an important economic platform or asset class (whereas the previous three decades have been dominated by investments in the industrial sector) has led to the emergence of a range of investment vehicles, from outright equity purchases to hedge funds and share-options. Institutional investors may require short-term capital gains or longer-term sustainable cash-flows (or a mixture of both), high returns or profitable opportunities for portfolio diversification, depending on their investment profile. Opportunities identified by speculative traders, such as hedge funds, seeking the acquisition of assets to turn a quick profit are quite different to those identified by pension funds seeking low-risk long-term returns. On the other hand, large-scale multi-national food and beverage manufactures, such as Coca-Cola and Tesco look to secure reliable and economic sources of raw materials for their products, while those involved in direct crop production, whether food or bio-fuels, will seek long-term opportunities which can take advantage of their farming expertise. Meanwhile, smaller-scale local investors are often motivated by the opportunism afforded by changes in government policy with regard to access to affordable resources not previously available.

To some extent, the current wave of investment may also have been spurred by the sense that investment opportunities may not last. Changing global geo-politics have seen many countries transform from socialist to market economies. The resultant increased stability in Sub-Saharan Africa, together with changes in policies concerning access to land, fisheries and forests and the relatively cheap prices have spurred many investors to act now “before it’s all gone”.

**Hosts or recipients** also fall into widely differing categories. These include host governments, at national, regional and local levels; government officials working for their own profit; private farmers who may have either formal or informal land use rights; and local communities representing the local population in the vicinity of investments, local land owners and workers. These participants may or may not be

[8] Saudi Arabia used to be the sixth largest exporter of wheat but due to recent changes in policy it is now heavily dependent upon imports.

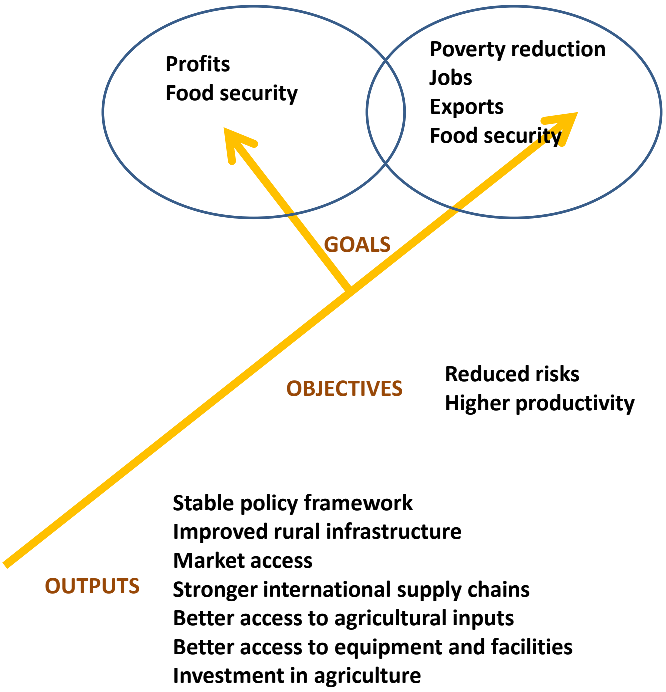
directly involved in the investment decision, but they will be affected in some way by the positive or negative effects of investment projects.

The goals of host governments in providing investment opportunities are often related to the broader political goals of their national economic development programmes that include investment in the rural economy. Increases in the productivity of under-productive land and the better use of natural resources to release potential capital are often cited as main drivers, as is host country food security, although there is little evidence yet in support of this latter point. Others see the provision of rural employment, the development of physical as well as social infrastructure and the transfer of skills and technology (including the development of a market-driven work ethic) as being major benefits to be derived from investments. Host governments particularly view FDI as a way of developing their commercial activities, creating innovative business models, improving the quality of life of its citizens, creating a more even distribution of wealth, engaging with world trade and gaining new market linkages. In addition, the financial motivation of increasing central or local government revenues from direct land sales or rents, taxes on profits and export earnings cannot be discounted, though there is conflicting evidence in view of what are generally seen as 'low' land prices and generous corporate tax breaks. Of course, the goals of government officials working for their own profit are self-evident.

In some sectors, the increasing global interest in investing in natural resources is seen as an opportunity to create or improve upon certification schemes and to create new relationships between commercial investors and small-scale growers and fishermen. In forestry, implementing FLEGT and REDD mechanisms in Africa (for example, in the Democratic Republic of Congo) are important drivers. Creating partnerships with local stakeholders can help them to achieve regulatory compliance and lead to further improved investment opportunities. It is also an opportunity to strengthen regional fisheries management organizations to improve transparency and accountability. However, it has been noted in the forestry and fishery sectors that the high costs associated with certification can have adverse effects on investment opportunities.

The goals of private farmers and local communities in the host country are also worthy of note. Although these are rarely the driving force in creating the investment environment, they are often seen as being the main beneficiaries of (and those most at risk from) investment initiatives. More and more, their goals will influence individual investment decisions as local consultations become an integral part of the process of responsible investment. The potential opportunities afforded to local communities and land-holders, in the form of employment, provision of local infrastructure, and diversification of their own agricultural products and revenue sources, usually influences their acceptance of new investment proposals.

By analysing the motivations for the different players involved it becomes clear where their commonalities lie and where their paths split. The outputs generated from investment projects in general benefit all, and even the broad objectives of increasing productivity and reducing investment risk are held in common. It is really at the level of specific goals that the road diverges, with investors seeking profits or food security while governments may be motivated by expectations of poverty reduction, job creation, and so on.




### 3.3 Investment Risks

As with the assessment of opportunities, the risks attached to investments vary with each stakeholder category. The terms 'risk' and 'reward' are key for investors, representing the two sides of the same coin. In simple terms, the higher the perceived risk the higher the reward (or return on investment) that is required.

For many serious investors, the option to join the 'land-grab' is not as obvious as it would at first seem, as the risks associated with this type of investment are many-fold. It must be remembered that return on investment is by no means guaranteed and financial risk is dependent upon many factors. Of prime consideration is the lack of clarity over land rights and land use. Rights over natural resources are even less well defined. Large-scale investments often represent a commitment of large amounts of capital, not only in purchasing and leasing land, but also in land and infrastructure development. The lack of security of tenure in many developing countries represents a major risk to investors, particularly where they originate from more sophisticated and tenure-secure backgrounds. The risk associated with unclear land rights extends to potential disputes with other land-right claimants, boundary disputes, community negotiations, endless bureaucracy and fear of central government land policy reversals. Legal protection of investments and the relative lack of stable political environments in general are cause for concern to many investors when undertaking risk analysis, as are such threats as the introduction of export controls, tax increases and loss of rights to repatriate profits. Overly complex government administrations create a risk of expensive delays or even refusal of permits and provide ample opportunity for corrupt officials.

On a more practical level, investors often must deal with poor national or rural infrastructure, which may include immature or unreliable support services, poor access to markets and lack of viable transport routes. Where investors enter into partnerships with government, there are high risks of delays or failure to deliver. Dependence on local labour of limited skills and capacity, or potentially unreliable out-grower farmers, as well as difficult farming conditions, create potential liabilities that are often difficult to quantify. Investors are also often left unsupported by host administrations in resolving disputes with local communities such as conflicting claims over use rights, squatters, etc.

In recent years, one clearly vocalised risk that has emerged is that of reputational risk to multinational investors. This has grown partly as a result of intense media coverage, for example, of poorly conceived or implemented large-scale agricultural land investments (Daewoo in Madagascar); the use of child labour in manufacturing brand-name products (Nike in Bangladesh); or disputes with local communities or indigenous peoples (Aracruz in Brazil). This relatively recent phenomenon of prioritising reputational risk by multinationals is a pragmatic response to the ethical concerns of both their shareholders and product consumers which ultimately affect their 'bottom line'.

**Risk-Averse Investors Pull-Out**

Investors from Saudi Arabia and Qatar have stated that the investment risks in Africa are just too high. Government and private sector funds are actively seeking viable and secure investment opportunities - and are willing to develop local infrastructure and provide other benefits – but actual deals are few. Perceptions of reputational risk together with the lack of an established investment environment (weak institutional, policy and legal frameworks) in host countries has meant that opportunities have been lost where risks have out-weighed opportunities.

There are risks too for both the host/recipient country and its local communities. There are many examples of investors failing to carry out any development whatsoever, resulting in land, fisheries and forests standing idle, promised employment not materialising and lack of contributions to expected government revenue flows, either by way of rental payments or tax receipts. In any event, large-scale agro-food investment projects often do little, if anything, to contribute to the food security of the host country, as investors usually aim to export the produce back to their own countries. They may even result in adverse effects on local food security and prices as increasingly large tracts of land are taken out of food production and planted for bio-energy or in the case of urban expansion, developed for non-agricultural purposes. Unintended consequences may also occur, such as increasing land prices, both urban and rural, thus reducing accessibility to local vulnerable groups.

There is also the risk that investors will fail to act responsibly when implementing investment projects, either due to lack of clear procedural guidelines (government or investor-based) or failure to diligently comply with due processes. One of the most common complaints arising from investment projects is the negative impact on local communities caused by the *process* of implementation. Community consultations are often meaningless in reality, individuals who are denied access to their livelihoods or who are removed from the land are often paid inadequate compensation, and evictions are often swift and with little prior notice. Other complaints include poor employment conditions which often do not comply with basic human rights standards and project developments which cause irreversible environmental degradation. There are therefore significant risks of local community disapproval where the implementation process is viewed as unfair, local rights are not respected, or environmental damage is caused to the resources they use, which can, and often does, lead to civil unrest.

Even when acting ‘responsibly’ and in accordance with agreed development plans and due processes, there is a risk that large-scale changes in land use will have damaging effects on water, soil, air and biodiversity. In addition to displacements of indigenous people, loss of grazing land for pastoralists, access to forest products and other adverse social impacts, the opportunity cost, financial, social and environmental, of tying-up natural resources for decades in new land-use patterns is at present unknown.

### 3.4 Investment Decisions and the Investment Process

Recent increases in the scale and scope of investments in land, fisheries and forests are not merely the result of the availability of ‘cheap’ deals. Certainly, changes in host government policies making access to resources more readily available at relatively low prices have attracted investor attention. Indeed, some Heads of State in developing countries such as Ethiopia have stated in the media that land is knowingly being offered at low prices in order to attract investors. As noted above, investment criteria will depend upon the type of investor and the nature of the business, but perhaps the main question investors ask themselves is “Can we do business here in the way we want to do business?”.

Pre-investment decisions include the structuring of the investment, the geo-location of the proposed project, access to information and the preparedness of the host country in facilitating the deal. Of prime concern to investors in land, fisheries and forests is not only their access to those assets but the legal security of retaining them. Therefore investors take a close look at the transparency of the legal framework and the land and financial markets of the host country before committing themselves to an investment project.

Ultimately though, the private sector is profit-driven and project proposals must be financially viable, therefore, return on investment, however it is measured, will be one of their main objectives. The required financial returns are based on the balance between opportunities and risks appropriate to each category of investor. Venture capital funds requiring short-term capital gains often operate by acquiring, developing and “flipping” investments (that is, selling on at a profit after having added value in a relatively short period of time). In the western world this might translate into internal rates of return in of say 5-6%, however in developing countries returns in the region of 25-30% might be required in order to offset the high risk. While such high returns have led to criticisms of exploitation, there are many stories of failures that do not receive the same degree of media attention. Others view such risk-taking investors as pioneers paving the way in emerging market economies. Regardless, short-term speculators look very closely at the capital and financial markets in host countries and in particular at factors such as policies on repatriation of not only profits but also capital, that are likely to affect their exit strategy.

On the other hand, investors requiring longer-term involvement are more interested in financial sustainability, which in turn requires a more organised investment environment. In the vast majority of cases, investors in developing countries are dealing directly with national or regional governments as land, fisheries and forests are often owned by the State. Yet these same governments are often unable to provide suitable investment climates, suffering as many do, from unclear development policies, insecure land tenure systems, poor regulatory frameworks, opaque bureaucratic processes, weak technical capacity, gender discrimination and systemic corruption. Investors stated that they prefer to deal with well governed administrations and welcome clearly defined standards guiding the investment process so as to encourage sustainability and also enhance, or at least reduce the risk, to their brand reputation. Where governance is weak and corruption is overt, many trans-national companies are now preferring to look elsewhere, though unfortunately, there will always be those who are prepared to take advantage of such situations. One interesting investor observation was the problem of coping with “corruption without delivery”.

Political instability and the presence of local conflicts can have a significant impact on investment decisions. Brazil, for example, has attracted high foreign investor interest in forest plantations projects, however, potential investors are discouraged due to on-going local conflicts. Instead, they are investing in more stable areas but which have less productive and often degraded lands. As a result, the total planted forest areas in the country is less than 1%.

Investors involved in land conversion and property development, whether multi-national or national, are particularly concerned about the investment framework and the complexity of administrative processes through which they must make their way in order to bring their projects to fruition. In recent years, extensive areas of rural land have been converted for housing and other non-agricultural purposes in India and China in response to changes in urban expansion and social housing policies. Property development, though generally driven by similar profit motives, has its own set of issues, mainly concerning the regulatory framework in which it operates. Property developers make their investment decisions, in part, based upon their assessment of the transparency of the property market and the state of the planning and legal system. In a business that is particularly susceptible to factors affecting cash flow, procedures for speedy approvals and permits, and policies on enforcement of controls, are as important as robust land title and registration systems. Stability of banking systems, policies on collateral and foreclosures, and predictability of exchange rates are also material considerations.

Investors often require good quality local partners for joint-ventures and local small-scale farmers who are willing to participate in new and innovative schemes. In India, local communities are taken on board to participate in successful ‘farm forestry’ arrangements between small farmers and investor companies.

Investment processes are also affected by the quality of negotiations with governments and local stakeholders (administrations, communities, land users, et al). In some countries, deals are struck at Ministerial level and above, which often, especially in the case of negotiation of foreign investor fishing rights, take no account of local associations or communities. In others, such as Ethiopia, special government units have been set up to deal with foreign and local large-scale investors and they have produced guidelines and environmental standards to facilitate the investment process. However, negotiations are often one-sided, with host administrations having little experience of high level business investments nor the real value of the resources being acquired. Countries such as Mozambique have legal requirements to involve local communities in a consultation process prior to agreeing deals, but in practice, well-intentioned procedures are not well implemented, and even when meaningful consultation does take place there is usually a gross imbalance of power. In addition, government administrations, especially at the regional and district levels, often lack the human and material resources to effectively evaluate business plans or monitor investment compliance.

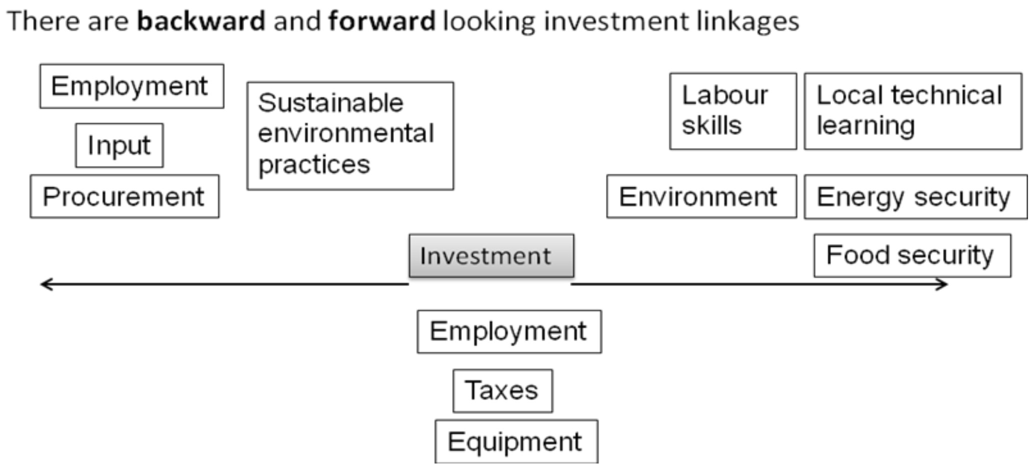
Customary rights are not taken into account in forestry negotiations between the investor and the State in the Congo Basin region. They are considered only in the certification process. Concession deals are particularly challenged by overlapping customary rights. REDD negotiations should improve this issue by imposing participatory zoning.

Initiatives such as the Voluntary Guidelines and RAI Principles put forward by policy-makers, development agencies and others, while largely driven by concerns for vulnerable groups and the natural environment, also make good business sense. Investors have stated that they are more readily attracted by a stable and well-developed investment environment than by the offer of ‘cheap’ land. Similarly, recent EU requirements for widespread stakeholder consultation with local society representatives as a prerequisite for FLEGT has met with industry approval. This augers well for achieving the win-win scenario that is so often proclaimed. However, many administrations merely react to ad hoc approaches and a need has been identified for host countries to be more pro-active and to effectively “take the driving seat” when dealing with investors. Systematic and well organized management of the investment process reduces the risk of doing business in developing countries, making them more attractive to investors. This needs to start at the highest level with clear government policies and land use strategies and well defined development strategies, as found in Ghana and Burkina Faso.

Investment planning should also take into consideration not only the direct impact of inward investment on the host economy but also the associated backward and forward linkages[9] (see diagram below). Direct project effects include the level of created employment at the investment project, purchases of local construction materials and equipment for project establishment, and the payment of taxes. Backward linkages relate to the purchase of locally manufactured inputs for the project operation and the

[9] This concept was originally developed in the exploitation of the Norwegian North Sea oil fields.

associated employment (rather than importing equipment and labour) and forward linkages arise from increased local food security and local skills development. Responsible investors and governments can maximise the positive impacts of inward investment by managing these linkages, either, for example, through regulations that govern company procurement practices, or by working with local vendors to ensure that the quality and timeliness of their products meet investor requirements.




**3.5 Key Issues affecting investor access to land, fisheries and forests**

According to the workshop participants, the issues affecting access to land, fisheries and forests and the factors that prevent investments achieving best practice standards are many and varied and depend upon the goals of investors and host governments and many other variables. There are however, recurrent themes that can be identified in order to help to plan for the way forward:

Clarity over land use and resource tenure is a key determinant for investments. Investors are more willing to intervene in areas where questions of use and ownership are settled and robust systems of titling and registration exist. Where customary rights are in conflict with development projects, investors are often expected to deal with communities having unfamiliar cultures, with little if any support from local administrations. What is more, unfamiliar local situations can be complex, for example, where land and trees are owned by different parties (a situation known as legal pluralism) and may not be easy to resolve.

The current trend in land acquisition has moved away from direct ownership in favour of leasing. However, commercial leasing periods are often 30 or even 50 years or more and are renewable, thus effectively creating permanent changes in land use and ownership patterns. Leases bring their own challenges to weak administrations in agreeing lease terms, assessing rental levels at periodic intervals, and collecting and distributing revenue to appropriate levels of government or local communities.

Increasing productivity is a shared objective for both investors and hosts.

Negative social and environmental impacts from irresponsible investment projects are becoming more high profile and are of concern to investors as well as hosts.

Short-term profit seekers are more likely to take advantage of weak governance and tend to be less concerned about the adverse impact of their actions. Businesses investing for the longer term have more to gain from working in a responsible and sustainable manner and have a real opportunity to find common ground with host governments and communities.

Weak government structures and institutions responsible for the investment environment is perhaps one of the most commonly raised issues by investors. Inconsistent investment policies, lack of competence, administrative inefficiency, overlapping jurisdictions, excessive bureaucracy, corruption, and lack of technical capability and capacity have been cited as frustrating genuine investment opportunities and adding to operational risk and cost.

Lack of local infrastructure represents investor risk, higher operating costs, or even reason for not investing at all. Lack of infrastructure can include physical infrastructure such as adequate road and rail transportation and power supply; under-developed institutional and support services, from capital markets to machinery repairs; and an unskilled labour pool.

Business is willing to invest more responsibly but needs a framework within which to work. Many investors welcome the introduction of standards or certification systems as long as they are clear and there is a level playing field in that they are applicable to all. Standards and certifications are not an end in themselves and there are associated problems regarding the multiplicity of standards, especially in the forestry sector, excessive costs of compliance, and inconsistent monitoring and enforcement.

In the fishery sector, partnership agreements (such as the EU legal framework) and joint ventures (based on third country jurisdiction) are key issues in accessing third countries’ water resources.

## 4. Finding Solutions

### 4.1 Lessons can be learned from the marketplace

Not all investors should be labelled as “the bad guys”. Many investors recognize that public opinion is one of the main drivers for business practices and therefore responsible actions are good for business. Conversely, activities generating negative impacts and images can hinder business opportunities and favour the activities of competitors. Responsible businesses in the agriculture, land conversion and forestry and fishery sectors are conscious of their brand reputation and are not only willing, but prefer, to participate in markets operating with clear sets of principles and guidelines. Some private sector companies, for example, Sime Darby Plantation of Malaysia, have developed their own sets of standards and guidelines, specifically for dealing with boundary disputes. Often such guidelines are initiated by large businesses but also by trade and commerce associations, for example, the Round table on Sustainable Palm Oil[10] and the Forest Stewardship Council, and are promoted as part of their internal marketing strategy or monitored by the media and other CSOs and NGOs.

There has been a trend in recent years moving away from the traditional acquisition of ownership of land in favour of lease-based investments. This trend has progressed further, with many investors moving away from acquisition-based investments altogether by entering a wide variety of partnerships with existing land users and local communities. In effect, the focus is on accessing the produce rather than the land (as a means of production). Participants at the workshop provided practical insights into how the marketplace is providing its own solutions and is leading the way for others.

For example, Nandan Biomatrix Ltd, a leading sustainable energy company in India which invests in projects both nationally and internationally, has developed a flexible approach to its business models in order to promote its jatropha production. In addition to conventional long leases of state-owned land, it has also adopted a farmer franchise model; a rural employment scheme model where user rights are vested in the farmer; and a public-private partnership model for bringing wasteland into production.

Similarly, Mali Biocarburant SC is not interested in land acquisition. Its strategy, based on local production, local transformation and local consumption, is simply to buy jatropha nuts from farmers and convert them into biodiesel for the local market. This innovative model is based upon the principle that rather than acquire 10,000 ha to farm commercially, it extends its share-holding to 10,000 local farmers (previously in the informal sector) each farming their own single hectare. This initiative is proving successful in both Mali and Burkina Faso and though its financial viability is largely due to donor partnering, this type of ‘seed money’ approach to empowering local small-scale farmers could prove interesting if rolled-out on a larger scale.

The Qatar National Food Programme has, in recent years, acquired farmland in established markets such as Australia, Ukraine and USA, as these provide less risky investments. At the same time, it is calling for a new paradigm in partnering with developing countries by searching for common ground between investors, host countries and host communities. This is not based upon land acquisition but on a

[10] RSPO has recently included ‘Free Prior and Informed Consent’ among its principles and investment criteria.

'sharing' model based on land that is already occupied. By using scientific methods to assess potential crop production, agreements can be reached in dividing the produce, for example, in Sudan, where production of say 5 tonnes per hectare is shared in the proportion of 2t for Qatar, 2t for Sudan and 1t for the development of infrastructure.

The Roundtable on Sustainable Biofuels (RSB) is an international initiative coordinated by the Energy Center at the Ecole Polytechnique Fédéral de Lausanne. It has developed a global, multi-stakeholder certification standard on sustainability and biofuels which is applicable to all feed-stocks and biofuel types. This was developed and approved by 120 members from more than 40 countries representing numerous private sector stakeholders and NGO's. The standard is based upon 12 Principles & Criteria (including local food security, job creation, land and water rights, and community consultation) which it uses to differentiate between sustainable and unsustainable biofuel production. It serves as a third-party certification scheme covering the entire supply chain and applies to all feed-stocks and it is capable of geographic and crop-specific adaptations. The RSB tool includes additional documents, such as indicators, guidance and guidelines that provide operators and auditors direction during implementation and monitoring of the standards.

Mondi is a leading international paper and packaging group with operations across 31 countries and more than 30,000 employees. Its forestry operation in South Africa has responded to that country's particular land use circumstances, where at least 50% of all afforestable land is subject to land claims or restitution, by re-thinking land ownership as a key asset. It has overcome government inertia, delays, bureaucracy, financial mismanagement, litigation and project frustration, by developing partnership models that sign-up to the Forestry Charter and the legal requirements of Broad-Based Black Economic Empowerment. They have used 'sale and lease-back' agreements and forestry contracts which identify and separate the values of land and trees (in a 25/75% split). Their pilot community forestry businesses established at Kranskop was the first commercial forestry settlement in South Africa. Mondi's key to sustainability is based upon access to opportunities within the value chain through partnership, job creation, mentorship, corporate social investment, and innovative access to working capital.

Emami Paper Mills Ltd, the largest newsprint manufacturer in India, has also pursued a multi-stakeholder partnership model which it has applied to a variety of different land cover from degraded forests to community land. It helps local villagers living close to their mills to establish agro-forestry farms on an out-grower-type basis. Emami establishes its own nurseries and then offers the farmers saplings at reasonable prices with buy-back guarantees for the matured plants. It provides ongoing support in the form of research and development, field support and technical guidance for plantation and protection. It also carries out regular monitoring of the plantation sites and administrative support such as helping farmers to get loans from banks on the strength of their buy-back guarantee. The cumulative total of tree plantations supported by the pulp mills in the last 12 years is now 370,000 ha.

Examples from the marketplace show that it is possible to establish viable partnerships with local communities and engage in benefit-sharing. Rather than leasing land from the state for long periods of time, communities that are ready to engage in partnerships are being approached and suitable land for cultivation is being identified jointly with them. This results in the *farmers* becoming the recipients of income from their farmland and are also able to benefit from add-on investments from seed production, etc.

Certification initiatives are also adopted widely. They work best where they are market-driven and where a particular type of market (mainly Europe) requires them[11], though their importance is less valid for fast growing markets like China. The role of CSOs and NGOs is very relevant in this scenario as the main driving force, but as they have developed, so have they gained momentum through ethical customer demand. This is a relevant lesson if some sort of certification for responsible investment is sought. Certification also tends to work well for big companies or investors though it is less feasible for small businesses and might even back-fire for the small local investors, simply because certification schemes can be expensive and complex to implement[12].

The market has also reacted to consumer demand at the investor/shareholder level. Private, corporate and charitable organizations have become increasingly aware and increasingly active with regard to socially responsible investment. Their demands are having a significant influence on business behaviour, particularly with regard to certification and the sourcing of ethical investment funds.

Lessons have also been learned from investors engaging in transparent negotiations with government, open and genuine consultations with local communities and the payment of fair compensation. Such approaches have resulted in the successful implementation of projects and fewer threats to long-term sustainability.

On the other hand, host government policies, procedures and bureaucracy have on many occasions frustrated genuine potential investments. Procedures for conversion of land, for example, are often complicated, slow, expensive and risky. The lack of transparency and access to information make risk assessment difficult. Governments are often slow to react and have limited capacity to make significant change and are sometimes inhibited by vested interests.

Therefore, while the profit motive means *some* businesses are willing to operate in virtually any circumstances, many are prepared to participate in the development of efficient and well-regulated investment environments. The ability of the private sector to adapt and change and create innovative solutions should be harnessed in order to ensure win-win scenarios.

### 4.2 Innovative Approaches should be adopted

Lessons from the marketplace show that there are many examples of the private sector developing innovative business models in response to changing market conditions. These are generally tending to move away from outright acquisition and more towards access to produce through partnership arrangements. Such innovative approaches should be encouraged and rolled-out on a larger scale, and made available to others who want to follow in their footsteps. Although these innovations are to some degree developing their own momentum, real growth is likely to be slow without the

[11] In fisheries, for example, certification is usually compulsory.
[12] It should be borne in mind, however, that no small business representatives participated in the workshop.

involvement and support of the donor community in facilitating discussion, providing technical assistance and pump-priming new investments.

That investors do not need to purchase land but can access tenure through long-leases has been discussed. The terms and conditions attached to such lease agreements are therefore vital. There is a need for template lease documentation with strong protective conditions to be provided if inappropriate and ad hoc agreements are to be avoided. Model lease clauses could be included to address a series of concerns, for example, length of term, rent reviews, development compliance, repossession, environmental protection, etc.

In addition, rather than allocating land, fisheries and forests at fixed rents that bear no relation to market values, governments should adopt more market-oriented approaches in the management of their assets. Where practical, competitive bidding, through sealed bids or open auctions should be encouraged and the results should be made public. Developing active and transparent markets will help to resources have meaningful value, deter speculators seeking cheap deals, and generate realistic and significant revenues which can in turn be used to improve land management systems and provide infrastructure to benefit local communities.

Host governments should also be encouraged to develop the ‘investment-pack’ approach, providing investors with systematically identified land parcels, and comprehensive documentation and information in order to help them evaluate investment opportunities.

More rigorous evaluation of investment proposals should be developed, using check-lists agreed with all stakeholders such as banks and industry associations (at national and international levels).

Promotion of large-scale mono-cropping, which has in recent years created ‘African prairies’, should be avoided in favour of smaller but commercially viable farms. The use of ‘core-farm’ models with extensive use of small-scale out-growers or local community equity partnerships should be piloted for wider adoption. Template agreements could also be developed to facilitate these.

Innovative approaches, whether driven by the market or by host government criteria, will require external stimulus. In addition to donor community support, public and private sector stakeholders should join together to provide workshops for training and the dissemination of best practice models to small-scale farmers. Participation by investors in such activities could form part of the contractual obligations for new investments.

### 4.3 Measures to minimize social and environmental impacts and maximise benefits to stakeholders

Host governments must develop investment environments which have clear development strategies, policies, and land use plans. They need to provide efficient, effective and transparent processes for dealing with investors which minimise bureaucracy and the opportunity for corruption, create a clarity of institutional roles and the empowerment of government institutions at the local level.

Stricter evaluation of investment proposals are required and host governments must learn to say "no" to proposals that do not meet their minimum criteria or that do not provide sufficient local benefits. Sustainability and the recognition of existing rights should be considered as prerequisites to any investment. Policies should be developed that clearly prioritise these and specifically set out government requirements with regard to benefits such as local employment and developing local skills. In India, capacities have been developed through public-private partnerships and schemes for rural people, while EU fisheries programmes include requirements that people should be employed at the local level.

Host governments must adopt international best practice social and environmental standards, but just as important, they must increase their level of skills and capacity to ensure adequate evaluation, monitoring, and enforcement. There are sufficient existing regulatory models that can be adopted and if necessary modified to form the legal basis for this, for example, Human Rights legislation. Minimum wages could also be considered. Model environmental standards and guidelines should likewise be adopted and environmental impact assessments and measureable environmental management programmes should be mandatory for all large-scale investment proposals *prior* to granting investment licences. Investors should be required and must be able to demonstrate in measurable terms that they have complied with due processes.

Genuine and meaningful participation of local communities and families affected by proposed investments must be introduced as part of the investment process. Where potential conflicts arise, solutions should be sought through dialogue and compromises to create a balance between formal and customary rights. This may require the registration and regulation of existing (informal) rights, for example, in the fishery sector, the activities of non-professional fisher-folk.

Of particular importance, host governments should adopt equitable and internationally accepted standards for compulsory acquisition procedures and assessment of compensation where the use of land, fisheries and forests is taken.

It needs to be recognised that much of the investment taking place is not 'large-scale' or 'foreign', but local commercial investment by nationals of the host country. Such investors may be ignorant of the latest best practices and normally produce for local markets where consumers are not concerned about the origins of the produce they purchase. Even if they are aware, small-scale farmers are not in a position to undertake lengthy and costly social and environmental studies. Governments should therefore facilitate responsible smaller-scale investment by pro-actively preparing for such investments. This can be done by undertaking all necessary investigations such as crop suitability, social and environmental impact assessments, etc., prior to demarcating and marketing the land, fisheries or forests. Costs can be recouped from realistic, market-related rents.

Notwithstanding arguments put forward by investors for economies of scale, very large-scale investments should be avoided. When identifying suitable sites for investment, areas of human settlement, ancient forests, wetlands and national parks should be excluded. To help bio-diversity, the use of 'bio-strips' between land parcels should be encouraged. Regular monitoring should be undertaken and penalties enforced for transgressions.

Where grants are used to encourage the start-up of new activities these should include conditionalities on socially and environmentally responsible development.

Investors should take the initiative by developing stronger corporate social responsibility policies and should be willing to incorporate these into the contractual conditions for new investments. Associations should promote good practice certification for their products, as seen with eco-labelling in fisheries and RSB in biofuel production, in order to capitalise on share-holder and consumer concerns.

### 4.4 Allocation of responsibility

Many of the actions required to bring about change and improvement are clearly the responsibility of host governments, yet often governments in developing countries are poorly placed to undertake such actions due to limited human and financial capacity and institutional inertia. As a result, the measures required to create stable and efficient investment environments that promote sustainability, maximise benefits to the local economy and minimise adverse effects are often beyond their scope.

The development of standards, guidelines and model regulatory instruments at an international level for adoption at the national level helps developing nations to move forward more quickly and in line with international best practice. In this regard, the efforts of FAO and its partners in developing the *Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests* and the *Responsible Agricultural Investment (RAI) Principles* constitute a major step in the right direction.

However, voluntary standards, sets of principles and other forms of guidelines on their own are insufficient. They must be followed-up by practical guidance on implementation. Host governments will also require technical and financial assistance in order to implement them effectively. Skills upgrading will be required in land use planning, cadastral measurement, land registration, land management, valuation, and legal, financial, social and environmental practices. This will not merely require training activities but significant institutional capacity-building which will require support. Organisations such as FAO and donor agencies must bear this responsibility.

Participants concluded that there is scope for organisations such as FAO to collaborate more with different private and public sector agencies, to act as facilitator or mediator, or provide a 'whistle-blowing,' 'name and shame' role in highlighting bad practices, for example in land conversion. The donor community should support research into and piloting of new and innovated practices, recruiting the private sector where possible. Some sectors have multiple associations, for example, the forestry sector's CIFOR[13], ITTO[14] and FSC[15] which would benefit from closer collaboration possibly facilitated by an independent body, in order to coordinate guidance and guidelines, define best practices, monitor local practices and promote solutions.

[13] **CIFOR** – The Center for International Forestry Research is a non-profit, global facility dedicated to advancing human wellbeing, environmental conservation and equity.

[14] **ITTO** – The International Tropical Timber Organization is an intergovernmental organization promoting the conservation and sustainable management, use and trade of tropical forest resources. Its members represent about 80% of the world's tropical forests and 90% of the global tropical timber trade.

[15] **FSC** – The Forest Stewardship Council sets forest management standards for the UK and provides an information service.

The private sector must also accept responsibility by taking the lead in proposing responsible investments and in its negotiations with host governments. This can be achieved through individual dealings with host government, but it would be more effective if industry associations could take a lead in promoting joint action. FAO could facilitate the bringing together of stakeholder associations, financers, land owners, developers, investors, public institutions, NGOs and others, for consensus-building, developing implementation guidelines and checklists, and for training and disseminating best practice models.

At the same time, host governments must 'take the driving seat' in influencing their own futures. There are significant actions that can be taken even where capacity is low, for example, increasing transparency in decision-making processes and dealing with corruption at the higher levels. Host governments should take responsibility for meaningful community consultation and ensuring that investors are not left to deal with conflicting claims over user rights, having previously been promised 'vacant possession'.

Some host administrations are already taking their responsibilities seriously and government officials have expressed a desire to see how other countries are coping with the phenomenon of this new wave of investment. Study tours can be useful, but there is a need to bring host country representatives, both at a high-level and also at a technical-level, together in order to bring this discussion to the forefront. This could be done on a regional basis, which would facilitate the sharing of common problems and encourage the joint support for implementing solutions.

## 5. Conclusion and Next Steps

The discussions held during the private sector investment workshop on implementing responsible governance of tenure, and particularly the contribution of representatives from large-scale private investment organisations, have provided valuable insight into the motivations, operations and aspirations of the private sector with regard to investment in land, fisheries and forests. This will hopefully help to provide a balanced view in the ongoing debate. Perhaps surprisingly, the discussions shed light on how a significant proportion of investors are seeking sound and sustainable investments; that host governments often fail to provide adequate investment environments; and that many development opportunities which could have benefitted host countries have been lost.

Perhaps also, the starting point for future discussions and actions should be the explicit recognition that developing countries need private sector investment as current international development assistance is insufficient to meet their development goals. Further, that food and other commodity markets are global and that there is also global pressure for national governments to sign-up to sustainable energy targets. Therefore, notwithstanding the genuine concerns of stakeholders regarding the negative impacts of investments and their increasing scale in recent years, it is the responsibility of the international community to help developing countries to secure private sector investments in a responsible manner. It is clear that many investors are willing and actively seeking new ways in which to collaborate with local partners. Indeed, lessons from the marketplace have shown that the private sector has been innovative in amending traditional business models in order to realise lower-risk and more sustainable investments – and that it makes business sense to do so.

Whilst this is encouraging and provides hope for the future, the harsh reality is that responsible investment models are not yet the norm, host governments are often under-capacitated, inefficient or corrupt and there will always be opportunist investors whose only goal is to maximise profits – at any expense. It will therefore be necessary to make provision for both the ‘stick’ and the ‘carrot’ when searching for improved ways of doing business.

One of the key messages from the private sector has been the need for a regulated investment environment that provides a level playing field for investors. It is apparent that this should take two forms. Firstly the adoption by industry of standards and certification schemes, and secondly, the adoption by host governments of minimum standards of governance of its resources.

Standards and certification are key tools in promoting sustainability. These can be achieved either by individual investors or by industry associations, the main driver often being to minimize reputational risk. Large corporations need to lead the way and others will follow. The experience of Coca-cola, Nike and others, has shown that competitors will soon fall into line if market leaders take successful initiatives. There are also many examples of self-regulating industry standards and lessons can be learned from the biofuels, forestry, fisheries, palm oil and sugar cane sectors. In particular, the certification standard on sustainability and biofuels initiative developed by the Roundtable on Sustainable Biofuels should be studied in order to assess its applicability to other sectors. Independent organizations such as FAO should facilitate the sharing of standards and their implementation through specifically targeted meetings .

With regard to improving governance, the efforts of FAO and others in developing the *Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests* and the *Responsible Agricultural Investment (RAI) Principles* is a good start. Their impact however will only be felt if there is widespread adoption by industry and host governments. The next step must therefore be in the development of implementation guidelines. These must provide practical guidance in the form of tools, models and templates that can be easily adopted by stakeholders. These could be developed and dispersed through regional meetings of participating governments or even made available on the web through 'open access' arrangements. It should also be borne in mind that it is unlikely that 'one size' will fit all, as some countries will be starting from a lower base than others. Implementation standards on governance could therefore be graded at different levels in order to improve the chances for improving governments that are the weakest and most vulnerable.

Yet, even with practical guidelines on the implementation of responsible governance, the impact on investments will not be felt unless government agencies are seen to be transparent, functional and efficient. Experience has shown that host governments are not effective agents for change. Most are struggling to manage the investment process, suffering from lack of policy direction, weak technical capacity, poor finances and institutional inertia.

In order to effect the necessary change, host governments will need the support of the donor community and other agencies. Time is pressing as, although fewer deals are actually being completed than perhaps media reports might suggest, mistakes are being made and natural resources are being tied-up in ownership patterns that will either continue for generations or will in time ignite disputes with local communities. Therefore, priority should be given to build capacity in host governments in order to help them manage the change, in particular, to achieve more efficient and effective resource management. The emphasis should be on developing clear government strategies at the highest level, transparency, technical capacity-building, and the involvement of local communities in order to promote dispute resolution. In addition, host governments need to share their experiences and develop common approaches and problem solving (preferably in keeping with the principles contained in the Voluntary Guidelines and RAI). Meetings of high-level policy makers and also technical-level representatives of host governments should be facilitated by organisations such as FAO and others, in order to bring this discussion to the forefront.

A further key message from investors is the willingness to search for the common ground through multi-stakeholder partnerships in order to achieve win-win business models. Such innovative models need to be promoted and shared with others, in order that they may follow. This might best be achieved by creating a forum for public and private sector dialogue, the dissemination of research and the definition of stakeholder rights and responsibilities.

It is clear from the workshop discussions, and from the previous series of consultations on the Voluntary Guidelines, that there is a groundswell of support from a wide variety of stakeholders spanning multiple thematic sectors and countries, for both responsible investment and responsible governance of tenure. Many suggestions for improvements have been put forward, and indeed the way the multiplicity of issues identified will need a wide variety of solutions. However, the key to change lies in not only developing implementation tools but also in providing practical support. This will include creating a meaningful dialogue between the multiple stakeholders. Many of the suggestions are dependent upon independent facilitators to make this happen and many of the stakeholders are looking to FAO to provide this service.