CONFERENCE REPORT

Making Agricultural Investment Work for Africa: A Parliamentarian’s Response to the Land Rush

Malabo, Equatorial Guinea

8-9 November 2013
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1. FOREWORD

“Making Agricultural Investment Work for Africa: A Parliamentarian’s Response to the Land Rush” is a campaign launched by the Pan African Parliament in collaboration with regional parliaments with the objective of raising awareness among parliamentarians of the current scale and impact of foreign direct investment in land and water, and strengthening land policy and governance.

The model of large scale land-based investment has long been presented as an opportunity, but major projects show little benefit for local community and negative social impacts, especially for marginalized family farmers, indigenous people and women. This alarming situation regarding the management of the most valuable natural resource creates an important role for policy makers and parliamentarians in particular.

Regional parliaments and the Pan African Parliament were created to facilitate integration through a democratic process. Although they are intended to assume legislative powers in the long run, they so far
remain at an infant stage of development but have increased in significance over recent years. They have proven their commitment to complement the process of economic integration with broader political dimension. Both the Pan African Parliament and the CEMAC Parliament recognize their specific and targeted roles in addressing critical challenges for Africa and are joining forces to address this issue.

This regional seminar, the third of its kind, called on members of parliament to debate on the trends of large scale land-based investment within the CEMAC area and define a plan of action for how to ensure that investment benefits the populations of the region.

Indeed, the Central African region is characterized by family farming with a low level of mechanization that explains both low productivity and poor yields, which is the reason why investment in the sector is important in order to alleviate poverty and achieve sustainable development. Agriculture remains the main sector of the CEMAC economy, employing approximately 64 percent of the population and contributing 25 percent of the gross domestic product in the region. Africa’s strategy for agricultural development has been developed at the continental level through the Comprehensive Africa Agriculture Development Programme for Africa (CAADP) and by a common agricultural policy for the CEMAC zone. These mechanisms should support in achieving concrete responses to the current land rush.

The meeting emphasized that equitable and sustainable solutions that respond to local and national aspirations should be prioritized. Therefore compliance with African initiatives such as CAADP, the AU Declaration on Land Issues and Challenges in Africa and the Framework and Guidelines on Land Policy should be the top priority.

Furthermore, as we target investment to benefit our respective countries and seek sustainable models of investment, the ongoing process on the Principles for Responsible Agricultural Investments (rai) led by the Committee on World Food Security (CFS) embodies an important step towards achieving these objectives.
2. INTRODUCTION

Over sixty parliamentarians from central Africa met in Malabo, the capital of Equatorial Guinea, to discuss how to promote sustainable agricultural investment. The meeting was organised by the Pan African Parliament (PAP) and the Parliament of the Economic and Monetary Community of Central Africa (CEMAC). The initiative is supported by an advisory group, including the International Institute for Sustainable Development (IISD), European Parliamentarians with Africa (AWEPA), the African Union, Land Policy Initiative, Oxfam, NEPAD, International Land Coalition (ILC), University of Pretoria, CIRAD, Africa Forum and the Institute of Poverty, Land and Agrarian Studies (PLAAS). Ten experts on investment, land, agriculture and water presented findings and perspectives from current research.

Hon. Gaudencio Muaba Mesu, Speaker of the parliament of Equatorial Guinea, opened the event. Hon. Vincent Mavoungou Bouyou, president of the CEMAC parliament, chaired the two-day meeting with Hon. Roger Nkodo Dang, first Vice President of the PAP and Henk Ormel, former Mp and Vice-President of AWEPA.

This is the third seminar of its kind, aimed at reinforcing inter-parliamentary cooperation on investment in agriculture, land and water resources. There was a specific focus on promoting investment in the Lake Chad basin.

The parliamentarians adopted an ambitious declaration and plan of action (see below), whereby they commit to:

1. Develop legal frameworks that, while attracting investment, ensure the preservation of ecosystems and sustainable development;
2. Work towards transparency of all investment contracts and treaties, whether by local or foreign investors, by making them available to the public in a timely manner;
3. Strengthen existing laws at the national and regional levels and harmonise them with the Framework and Guidelines on Land Policy in Africa and other international good practices;
4. Adopt new laws that are appropriate and adapted to all aspects of investment in agricultural land, water and related natural resources;
5. Prioritize the implementation of the Maputo Declaration of 2003 during the study and voting of budgets in national parliaments; and
6. Create a network of parliamentarians on responsible governance of investment and land, under the auspices of the regional parliamentary fora.

Further information is available at:
3. EMERGING THEMES FROM THE PLENARY DISCUSSIONS

3.1 Agricultural investment in central Africa: forestry and biofuels

Central Africa is less affected by large-scale land investment compared to East and West Africa: around 8 million hectares of land has been reportedly leased to investors since the mid-2000s, 4 million hectares in the Democratic Republic of Congo (DRC) alone.

Investors come from different continents and sectors. Asian investors from China, India, Malaysia and Singapore, are the largest source of investment in the region. The next biggest group is the traditional industrialised countries, including France, U.S.A, Canada and Belgium. The size of investments by these countries is smaller than those coming from Asian investors. In addition, a growing number of domestic investors, sometimes in partnership with international capital, are active.

Investments to date are mainly for forestry (particularly the harvesting of hardwood trees from tropical rainforests) and cash crops, for export purposes. The main agricultural investments are palm oil plantations. Biofuel investments are by far the most dominant, accounting for 82.63 per cent of the agricultural area compared with 13.6 per cent for food.

3.2 Water and the shrinking Lake Chad

There are considerable impacts from large-scale agricultural investments on the environment, water resources and ecosystems. Land deals involve ceding water rights over long periods of time. Participants recognised that agricultural investments and land deals do not appropriately value ecosystem services, which need to be protected.

In this regard, they considered the case of the Lake Chad basin where as many as 30 million people are affected by the lake drying up. In this region, investment is needed to sustain populations, support their livelihoods and stimulate development for one of the poorest regions in the world.

3.3 Limited returns for African people from current investments

Investment in food production is minimal despite the high poverty levels and severe food insecurity in the region. In fact, all countries in the region are net food importers. Some are heavily dependent on imports, with over 90 per cent of national food supply coming from
abroad. Furthermore, production by foreign investors is often for export, not for domestic markets. Participants were concerned that local populations may not benefit from increased production in their countries. Worse, some investments are transforming farmers into seasonal workers as the jobs created from agricultural investments are temporary. Furthermore, workers endure miserable working conditions and are poorly paid.

All participants agreed there is a need for increased agricultural investment and commercialisation in the region. However, if the benefits do not go to the populations, and if there is too much focus on serving the needs of the foreign investors and the export markets, then this can result in lower levels of production for local farmers, declining incomes, increased food and nutrition insecurity, fewer employment opportunities and an increase in social conflicts in rural areas.

Investments in forestry are particularly problematic because they can intensify environmental and climate-related problems. For instance, in the Congo basin, projects have been designed to benefit from the Reducing Emissions from Deforestation and Forest Degradation (REDD), but none has materialized. As one participant pointed out, “None of the countries of the Congo Basin has received the carbon money.” So while large areas of forest are being leased out to investors, the incentives scheme to preserve the forest and its ecosystems services under REDD are ineffective.

3.4 Farmers have a limited role in decision-making and land reform

The legal and policy frameworks for agricultural investments are particularly weak in the region. Clear rules on land tenure are needed, but decisions must be participatory so that the voice of farmers is heard. In many cases, farmers do not have a voice in land management. Without land reforms and participatory governance, farmers risk being locked out of key decisions that affect them. Farmers can be displaced and land seized for foreign investors, with no resettlement process in place.

There are serious deficits in the negotiating processes over land deals. The representative of PROPAC (Regional Platform of Farmers’ Organisations of Central Africa) has said that an “advanced form of slavery” is being introduced to the region as farmers are denied land rights, which are given to foreign investors.

The worst situations arise when local farmers are displaced, but the promised investments do not materialize. The parliamentarians agreed that there is an urgent need to review existing land
deals, as many of them have not been implemented. They also stressed the need to reconsider some of the preferential treatment for foreign investors, such as tax breaks, which can disadvantage local farmers.

3.5 The voice of women and indigenous people is not heard

Women play a primary role in agriculture in central Africa, not only in agricultural production but also in the commercialisation of agricultural products. It is women who represent the majority of the workforce. But their voice is not heard and, as in many other sectors, they are subject to discrimination.

As the participants agreed, land reforms are needed to provide women with independent land rights, as a basis for development. As of today, even though women contribute most of the labour for cultivation, few own their land. As one parliamentarian observed: “Women don’t have land; if a woman asks for land, her husband says, well, she should go to her parents. She gets to her parents, [but] they say no, you are married; you must go to your husband! So we need a legal framework where women will be owners of land.”

Secondary users of land, including for collection of water and firewood (which is mostly done by women), pastoralism, and the making of traditional medicines, are often ignored when land deals are struck. Sometimes national or local authorities have declare land as idle or under-utilized, and give it to investors, ignoring the secondary users of that land.

With the commercialization of agriculture, people are being asked to renounce such secondary rights and are at risk of displacement. Furthermore, the commercialization and monetization of land can undermine customary land rights and lead to eviction of indigenous people and hunter-gatherers. It is in these circumstances that one of the experts recalled the importance of the principle of “free, prior and informed consent” contained in the Voluntary Guidelines on Responsible Governance of Tenure. Participants said that stronger legislation is required to regulate these processes and ensure the protection of traditional and customary rights.

4. WHAT SHOULD BE DONE?

Investment in agriculture is desperately needed on the continent, but the type of investment is crucial. Central Africa needs to promote agricultural investment that creates jobs and wealth, preserves the environment, and is economically viable in a globalized world.
4.1 Inclusive business models for investment

There are alternative business models to large-scale land investments that can create more benefits for the African population. Research conducted by PLAAS, for example, compared investment models in Africa and found that commercialization of agriculture “from above,” by importing capital in return for land and labour, tends to produce fewer benefits than promoting reinvestment of capital by those who already hold the land and labour. Drawing on case studies from Nigeria, Zambia and Ghana, PLAAS argues that more attention should be given to investments that enable accumulation from below, among small farmers themselves, rather than replacing them with large-scale corporate farming. If large-scale investments are to be promoted alongside smallholder farming, this must be done in a way that includes smallholders and invests in them.

4.2 Increased transparency of land deals

Similar to other regions, land deals are not made public, and the process is not transparent. An ongoing study on land deals led by the Paul Anlgo Ela Foundation (FPAE) and the Catholic University of Central Africa, highlights the lack of transparency between investors and country officials and stresses the strong need for open deals to stifle corruption and promote development.

Participants recognized that transparency is a precondition for inclusive investment. It is also key, not only to make contracts publicly available, but also to have open and transparent negotiating processes.

The quest for transparency is particularly relevant for parliamentarians, who are responsible for overseeing government activities and monitoring how revenues from investments are spent. Most parliamentarians from the region are not informed about land deals. There is a need for parliamentarians to use the African Union protocols and charters and implement them in national land laws and policies, to ensure that transparent monitoring and evaluation systems are put in place.

As one parliamentarian frankly stated, “MPs are elected to represent the voice of the people and promote their interest and must stay focused on this, rather than pursue majority or party interests and think of the next election.” The representative from AWEPA’s Austrian section
said that, unfortunately, reality shows that the legislature is often locked out of key decision-making processes and lacks the information required to promote transparency.

4.3 Towards a model contract
Participants agreed that even if there may be no ideal contracts that have been signed, there are certainly “good contracts” that respect certain principles and ensure that certain outcomes are achieved. These should be promoted.

However, there are some elements in contracts, particularly “stabilization clauses,” which are clauses that freeze the domestic laws at the time the contract is signed. These are considered especially damaging as they can prevent future changes to legislation and regulations. If these clauses are for a narrow set of fiscal issues, they can be tolerated, but if they are broad and include all areas of public policy, they are unacceptable.

IISD is working on a model contract and presented the 10 key steps towards good contracts. They include:

1. Prepare the negotiating environment based on country needs, objectives and local realities;
2. Conduct feasibility studies and develop business plans;
3. Conduct impact assessments (environmental, social, etc.);
4. Determine rights of access to land and water resources;
5. Determine financial incentives schemes;
6. Avoid stabilization clauses;
7. Specify the development responsibilities of the investor;
8. Set environmental standards;
9. Establish a conflict arbitration/resolution mechanism;
10. Ensure systems for adequate reporting, monitoring and evaluation;

4.4 Land reform
Many countries have land reforms underway. The parliamentarians recognized that land reform processes are sometimes undermined or contradicted by investment codes and other frameworks, which focus on attracting investments. However, they do agree that land reform should:

- Secure and protect informal and customary land rights, to enable land rights holders to invest in their land;
- Clarify the powers of the state versus the landholders themselves;
- Improve local institutions for the decentralized governance and democratic management of land;
• Support landholders to play a leading role in the land reform process;
• Address inequalities through redistribution of land, where needed, and post-conflict restitution of land rights;
• Allow local landholders and farmers to have free, prior and informed consent and clarify entitlement to compensation where needed;
• Ensure transparency and attract investments that lead to development and growth through production, technology transfer, job creation and the improvement of people’s livelihoods; and
• Promote the protection of the environment and biodiversity conservation.

The parliamentarians also agreed that a pro-poor approach should be considered when envisaging land reform. The best approach is the model whereby parliamentarians, civil society and farmers’ associations are collaborating to bring government to adopt comprehensive land policies.

5. GLOBAL AND REGIONAL RESPONSES TO THE LAND RUSH

At the global level, the Committee on World Food Security (CFS) adopted the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, and is currently developing principles for responsible agricultural investment in the context of food security and nutrition (rai). These are the most globally recognized and accepted rules and standards for promoting more responsible investment and governance of land. In addition, the new G8 Land Transparency Initiative, as well as many others, are paving the way to improve the results from investment. Together, these initiatives appeal to governments, investors and civil society, for better rules and policies around investment (see list of initiatives below).

<table>
<thead>
<tr>
<th>WHO?</th>
<th>INITIATIVE FROM?</th>
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<tbody>
<tr>
<td>Principles for Responsible Agricultural Investments in the Context of Food Security and Nutrition, 2014</td>
<td>Committee on World Food Security</td>
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<tr>
<td>Principles for Responsible Agricultural Investments, 2009 (PRAI)</td>
<td>World Bank, UN Conference on Trade and Development (UNCTAD), FAO, International Fund for Agriculture Development (IFAD)</td>
</tr>
<tr>
<td>Principles for Responsible Contracts, 2010</td>
<td>Professor John Ruggie, UN Special Representative of the Secretary General on Business and Human Rights</td>
</tr>
<tr>
<td>Principles for Responsible Investment in Farmland, 2011, 2011 (Farmland Principles)</td>
<td>Private sector initiative—pension and hedge funds</td>
</tr>
<tr>
<td>Large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge, 2009</td>
<td>Professor Olivier de Schutter, UN Special Rapporteur on the Right to Food</td>
</tr>
</tbody>
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At the continental level, the Head of States of Africa committed to improve land governance within the continent, through the AU Framework & Guidelines on Land Policy in Africa (LPI) and Nairobi Action Plan, the AU Declaration on Land and the Comprehensive African Agricultural Development Programme (CAADP).

6. OUTCOMES OF THE WORKING GROUPS

6.1 Group 1: What are the roles of parliamentarians in supporting land reform, the AU Declaration and the Nairobi Action Plan?

In their capacity as parliamentarians:
- To enact legislation to ensure respect for land rights and transparency in land-based investments, including oversight of traditional chiefs;
- To undertake oversight of the executive and judiciary in order to realise land rights and frameworks for responsible agricultural investment;
- To listen to their constituencies, coordinate with civil society and facilitate access to policy processes (not to compete with them);
- To draw on resources and networks to obtain information, raise awareness, deepen capacity and lobby parties; and
- To hold public debates to share information and debate policy and legislative responses.
In their personal capacity:
- To avoid being an interested party, as a shareholder, in land-based investments, as this would constitute a conflict of interests; and
- To engage with counterparts in other countries to identify best practices.

Capacity building:
- To get themselves well informed about land rights and agricultural investments, and share information with their constituencies.

6.2 Group 2: Laws that improve transparency and investment contracts

The participants recognized that within their countries, laws on transparency already exist. But they recalled that public consultation is key. And they appeal for laws that specifically require the State to make land deals public, especially to the communities that could be affected by such deals. The law should also guarantee a free, prior and informed consent of the communities affected.

The participants insisted that transparency means publishing the contract and all related information. This includes publishing the impact assessments, annual reports and importantly, the revenue paid by the investors to the state. Where communities’ land rights are lost or altered as a result of a project, adequate compensation should be given.
ANNEX: CONFERENCE DECLARATION

We, parliamentarians from the Pan-African Parliament and the Parliament of the Economic and Monetary Community of Central Africa (CEMAC), having met in Malabo, Equatorial Guinea, on 8 - 9 November 2013, to attend the Parliamentary Seminar on “Making Agricultural Investment Work for Africa: A Parliamentarian’s Response to the Land Rush”;

Conscious of the need to invest in the development of Africa, in particular in the agricultural sector and the rural areas;

Noting with great concern the recent increase in land acquisitions as well as the impact of direct foreign and local investments in land, water and related natural resources;

Concerned about the negative impact of land acquisitions on human rights, in particular on the vulnerable populations and women;

Preoccupied with the guarantee of access to land for all users in order to improve agricultural production and the living conditions of the populations;

Reaffirming our commitment in favour of sustainable development and determined to uphold human dignity for all;

Cognisant of the importance of attaining the Millennium Development Goals (MDGs) and acknowledging that eradication of poverty, hunger and malnutrition, and protection of natural resources are essential for sustainable development;

Recognising that the environmental, economic and social situation in the Lake Chad basin is a concern for all the countries of Central Africa and the entire African continent;

Recognising the importance of defending and promoting the principles of equality and equity among our peoples;


Acknowledging the importance of the Maputo Declaration of 2003 on Agriculture and Food Security in Africa, in particular the commitment to devote 10% of the national budget to the implementation of agricultural and rural development policies;

We do hereby request that:
1. Member States, signatories of the 2003 Maputo Declaration on Agriculture and food security in Africa, and the AU Declaration on Land Issues and Challenges in Africa, honour their commitments;

2. Member States improve transparency on the process of acquiring and distributing arable land;

3. Member States include farmers, indigenous people and women directly in decision-making related to land transactions;

4. Member States develop and implement land use master plans to guide potential investors and investments;

5. Member States of the Lake Chad basin honour their commitments to safeguard the lake;

6. Member States initiate, review and implement legislation on direct foreign and local investments relating to land, water and other natural resources, which guarantees the benefits of the investment to the African peoples and for sustainable development. This implies inter alia:
   a. The legally binding and enforceable obligation for the investor to contribute to the local economy and the well-being of society;
   b. Poverty reduction, the improvement of food security, protection of the environment;
   c. The increase in employment in both quantitative and qualitative levels;
   d. Capacity-building, improvement of infrastructure and technology transfer;
   e. Prior consultations with local communities and people affected by investment projects and approval of investment deals as a result of free, prior and informed consent from the communities concerned;
   f. The protection of customary rights and user rights for populations;

7. Member States create awareness of existing laws on land and on the value of lands;

8. Member States promote transparent negotiation processes and access to contracts on land investments by publishing them in the official gazette;

We commit to:

1. Work for the development of legal frameworks that, while attracting investment, ensure the preservation of ecosystems and sustainable development, taking into account local conditions and the concerns of small-scale farmers, indigenous people and women;
2. Work towards transparency of all investment contracts and treaties, whether by local or foreign investors, by making them available to the public in a timely manner;

3. Strengthen existing laws at the national and regional level and harmonise them with the Framework and Guidelines on Land Policy in Africa and other international good practices;

4. Adopt new laws that are appropriate and adapted to all aspects of investment in agricultural land, water and related natural resources;

5. Ensure the implementation of national, regional and international commitments made by Member States through parliamentary mechanisms. And prioritize the implementation of the Maputo Declaration of 2003 during the study of and voting on the budget in national parliaments;

6. Mobilise public opinion and governments on the question of land grabs and raise awareness among citizens through public campaigns and special parliamentary debates;

7. Advocate at national and international level, with a view to mobilising resources to promote agriculture in Africa;

8. Create a network of parliamentarians on responsible governance of investment and land, under the auspices of the parliamentary fora (Pan African Parliament, the parliament of the Economic and Monetary Community of Central Africa (CEMAC), the East African Legislative Assembly (EALA), the Parliament of the West African Economic and Monetary Union (UEMOA), the Parliament of the Economic Community of West African States (ECOWAS), the parliamentary forum of the Southern African Development Community (SADC), the Association of European parliamentarians partners with Africa (AWEPA) and others).

9. Table this Declaration in national and regional parliaments for its dissemination and call upon the African Union and all other African regional institutions and organisations to support the implementation of this programme of making investments in agriculture work for Africa.

Malabo, 9 November 2013