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Making Investment Work for Africa: A parliamentary response to “land grabs”

July 21-22, 2011

Pan African Parliament, Midrand, South Africa

Report from the seminar on foreign investment in agricultural land and water, organized by the Pan African Parliament in collaboration with the International Institute for Sustainable Development (IISD) and the Institute for Poverty, Land and Agrarian Studies (PLAAS).

The seminar was made possible through the generous support of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).



*Foreward by Joaquim Alberto Chissano,
Former President of Mozambique and Chairman of the Africa Forum*

“I pressed my father’s hand and told him I would protect his grave with my life. My father smiled and passed away to the spirit land.”

*Chief Joseph of the wal-lam-wat-kain (Wallowa) Indian Humanitarian and Peacemaker
March 3, 1840–September 21, 1904*

The report from the seminar Making Investment Work for Africa, organized by the Pan African Parliament in Midrand, South Africa from July 21-22, 2011, contains important recommendations on how best to implement the overall objectives of the Maputo Declaration commitments on the Comprehensive Africa Agriculture Development Programme (CAADP), adopted in Maputo, the Republic of Mozambique, in 2003. The seminar, the first of its kind, organized in collaboration with the International Institute for Sustainable Development (IISD) and the Institute for Poverty, Land and Agrarian Studies (PLAAS), brought together 40 parliamentarians, representatives from intergovernmental agencies including the African Union (AU) and the NEPAD Planning and Coordinating Agency, the United Nations Economic Commission for Africa (UNECA), the African Development Bank, donor community, academics and a vibrant civil society. Substantive contributions were also made by the AU-ECA-AfDB Land Policy Initiative (LPI) Secretariat.

The Forum for Former African Heads of State and Government, Africa Forum, is happy to have been invited to the seminar. The Africa Forum would like to reaffirm the commitment of its members to use their experience, knowledge, expertise, good offices and moral authority to promote and defend democratic governance, principles and values, as well as to contribute towards building sustainable African states. Thus, Africa Forum salutes the opportunity to participate. Indeed, the seminar was very informative and enriching, particularly for the role that the Pan African Parliament plays in providing a platform for serious reflection on Africa’s agenda for sustainable development and growth.

This report provides an excellent overview of foreign investment in farmland and water. The notion of awakening Africa’s sleeping giant, as suggested by the World Bank, is increasingly becoming a reality. Indeed, available statistics clearly show that international actors from the public and private sector are looking to Africa to solve their food and energy needs. In fact, with the land and agriculture question, Africa is gradually becoming “the Continent of the future.” The International Land Coalition estimates that 80 million hectares of land have been allocated to investors in the past few years, 50 million hectares in Africa alone. The phenomenon of land grabs in Africa is not a myth. It is a reality. It is time for Africa to begin a comprehensive dialogue and consultation on appropriate land policies and legal frameworks, in which parliaments play a key role in both the design and implementation.

Consequently, it is important to take seriously the recommendations of the seminar, particularly in the context of the overall implementation of the CAADP. It is our hope and expectation that the seminar was not a one-off exercise, but rather the beginning of a series of policy workshops to raise public awareness about the centrality of agricultural land and water in Africa’s development efforts. The Africa Forum wishes to encourage the Pan African Parliament to continue to engage its collaborators, particularly the AU, UNECA and AfDB through the Land Policy Initiative Secretariat, as well as the technical support from the IISD and PLAAS to African countries, with a view to making investment work for Africa.

Joaquim Alberto Chissano
Former President of the Republic of Mozambique
Chairman of the Africa Forum



AFRICA FORUM

FORUM FOR FORMER AFRICAN HEADS OF STATE AND GOVERNMENT

Table of Contents

Introduction from the President of the Pan African Parliament.....	1
Overview of Foreign Investment in Land and Water.....	2
Who are the investors?	3
Examining the Impacts on Africa	4
Legal Implications of Foreign Investment.....	7
African Union and Other Global Initiatives on Agriculture, Rural Development, Land and Water ...	9
Public and Private Investment in Agriculture: Implementing the Maputo Declaration	10
Role for Parliamentarians	11
Recommendations and Next Steps	13
Draft Parliamentary Resolution	14
Annexes	16
Programme	16
List of participants	18
Reading Materials.....	20

Introduction from the President of the Pan African Parliament

A new wave of foreign investment in Africa's farmland and water was triggered in 2008 by the growing demand in Europe and North America for biofuels, spikes in oil prices, the global food crisis and the world financial crisis. Widespread media coverage and a series of studies by the UN, World Bank, universities and non-governmental organizations (NGOs), confirmed the scale and consequences. In its report *Rising Global Interest in Farmland*, the World Bank reported that land deals in Africa amounted to 32 million hectares in 2009 alone, larger than the total land area of Ghana or the United Kingdom. The countries that leased the most land to investors were Sudan (4 million hectares), Mozambique (2.7 million hectares), Liberia (1.6 million hectares) and Ethiopia (between 1.3 and 3.6 million hectares).

Africa's 832 million inhabitants represent 13 per cent of the world's population but account for only 1 per cent of global gross domestic product and 2 per cent of world trade. The prevalence of people living on less than one dollar a day still remains a serious obstacle to development. More than 70 per cent of poor people live in rural areas and depend on agriculture for their livelihoods.

Investment in agriculture is crucial to improve rural livelihoods. New sources of investment could support the statement made in 2003 by African Heads of State in the African Union's Maputo Declaration which committed "to the allocation of at least 10 per cent of national budgetary resources to agriculture and rural development policy implementation within five years."

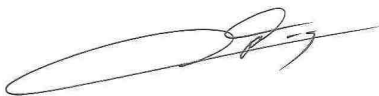
In response to the growth in foreign direct investment in agriculture and the consequences on vulnerable people, during its Third Ordinary Session of the Second Parliament, October 2010, the Pan African Parliament approved the recommendations of the Permanent Committee on Agriculture, Rural Economy, Natural Resources and the Environment (CARENRE), to prioritize issues around investment in agricultural land and the implication for food security and peace, including:

- That sensitization on land grabbing be carried out through workshops and regional and continental fora to inform parliamentarians and citizens about this issue;
- That the equivalent of the African Ministerial Conference on the Environment (AMCE) and the African Ministerial Council on Water (AMCOW) be set up by African Ministers in charge of land;
- That directives on good land governance be developed [to support the operationalization of the African Union's Framework and Guidelines on Land Policy, adopted by Heads of State in Tripoli in June 2009;]
- That rules on these special investments be developed so as to secure the benefits of these investments for the African countries and citizens.

I am pleased to announce that this endeavour is now underway. The first seminar was held at the Pan African Parliament, July 21-22, 2011. Forty parliamentarians, representatives from intergovernmental agencies including the African Union and NEPAD, UNECA, the donor community, academics and a vibrant civil society, attended the event. This first step highlighted the role of the Pan African Parliament in providing a common platform for African peoples and their grassroots organizations, to be more involved in discussions and decision-making on the problems and challenges facing the continent. I am thrilled that the Pan African Parliament initiated this vital debate. The results discussed below will create a road map for further action across the continent.

We look forward to expanding this initiative with you and welcome your contribution. I wish the organizers a fruitful continuation.

One Africa, One voice



Honourable Dr. Moussa Idriss Ndélé
President of the Pan African Parliament

Overview of Foreign Investment in Land and Water

In 2009, the World Bank published a report, *Awakening Africa's Sleeping Giant*, which argued that global food production will have to double by 2050 to satisfy demand, and that international actors from the public and private sector, should look to Africa to solve their food and energy needs. Indeed, a new wave of investment in agriculture has emerged. The main goal is to acquire the title to land, water and other natural resources needed to grow crops for food, fuel and animal feed. It is dramatically transforming rural societies and is often referred to as a "land grab."

In 2010, the World Bank published another report, *Rising Global Interest in Farmland*, which provided a quantitative and qualitative assessment of global land acquisitions. They found reported deals in 2009 amounted to 45 million hectares of land, 32 million in Africa alone. The International Land Coalition estimates that 80 million hectares of land have been allocated to investors in the past few years, 50 million hectares in Africa alone. The recent acquisitions of farmlands across the continent by both foreign and local investors are not occurring within an environmentally and socially responsible context that benefits African people. Land leases are typically for 50 to 99 years and in general, the projects are not bringing benefits to the community or the country, in terms of tax revenues, economic growth, increased job opportunities, technology transfer, improved skills or capacity building.

Africa is at the centre of this new wave of investment, because of the perceived abundance of available land and water, favorable tax and fiscal incentives, a weak or non-existent land tenure systems and the failure of governments to adequately protect land users. It is estimated that 80 per cent of land in Africa is state land. This means that national governments in many countries in Africa "own" the land and natural resources, or are the custodians on behalf of the people. The government therefore has the right to allocate land to investors, even if it is to the detriment of the local land users, or leads to the expulsion of communities from their ancestral lands. Land can also be privately owned or held under communal title in Africa. In these cases, it can also be difficult for the local population to negotiate with incredibly well resourced and powerful investors.

Furthermore, this new investor rush is taking place in the context of rapid population growth in Africa, coupled with increasing resource scarcity, making it even harder for Africa to provide its own needs. Indeed, the motivation for this new wave of investment is strongly driven by water needs. Investments are clustered around the major river basins, including Senegal River Basin, Niger River Basin and the Congo Basin. States with scarce or depleted water resources are looking to outsource their water use by growing crops abroad. At an investor conference in Geneva in 2010, Judson Hill from NGP Global Adaptation Co, a private equity fund said, "when a country imports one ton of wheat it is saving about 1300 cubic meters of domestic water." As a result, Africa is subsidizing, often free of charge, the water needs of other countries.

Undoubtedly, increased investment is an opportunity for agricultural development and poverty reduction. But it is equally important to reflect on what type of investment is needed, who should invest and where will the money come from? According to the Comprehensive Africa Agriculture Development Programme (CAADP), Africa needs US\$250 billion investment to develop infrastructure in rural areas between 2002 and 2015. And yet, only few countries have responded to the Maputo Declaration, and overseas development assistance (ODA) and philanthropy remain limited and promote dependence. The main investors in agriculture are still small-scale farmers. The question is how to strengthen them and how to invest in them to improve productivity and livelihoods? Is the current trend of foreign investment the answer?



From left to right, Gaynor Paradza from the Institute for Poverty, Land and Agrarian Studies (PLAAS), Hon. Sisa James Njikelana from South Africa, Hon. Dr. Augustin Iyamuremye from Rwanda and Isilda Nhantumbo from the International Institute for Environment and Development. *Photo courtesy of Ruth Hall, PLAAS.*

Who are the investors?

There are three types of investors interested in Africa's farmland and water. First, cash-rich but food-insecure states, particularly the Gulf states but also from Asia, who are mostly operating through sovereign wealth funds and state-trading enterprises. Second, traditional western agribusinesses in the food production, processing and export industries that are looking to expand market opportunities. And third, a new group of actors from the financial sector, including banks, private equity and hedge funds and pension funds. They can be either private or public funds. The African Agriculture Fund, for example, belongs to the French Development Agency. Emergent Asset Management is a private fund that is operating in over 18 African countries. This group of actors is mainly driven by the increased opportunities, including speculative, of this new and seemingly lucrative market. Asset management companies take care of the funds, buying up land with the expectation of increased fluctuation in land and food prices.

The third group of investors is fundamentally changing the agrarian landscape. We are witnessing the financialisation and corporatization of the agriculture sectors based on largely speculative business models. In fact, Oxfam has undertaken case studies in Ethiopia, Ghana, Mali and Tanzania, and preliminary results show that less than 12 per cent of land acquired by investors has been put under production, suggesting highly speculative ventures.

Examining the Impacts on Africa

A comprehensive body of research has confirmed the scale and consequences of recent agricultural investments.¹ The findings were discussed at length during the seminar and the conclusions drawn by parliamentarians and other participants, include:

1. *Land rights are being undermined.* In Africa, most of the land belongs to the state, a legacy of the colonial era, which means the government decides how it is used. People's rights to land are vague, based on local traditions or non-existent. Yet there is virtually no "empty," "idle" or "unused" farmland in Africa. Investment deals signed between governments and foreign investors are taking place on land that is being used by people, negatively affecting their rights to land, water and other natural resources. Even in countries such as Mozambique, which is seen as having one of the best land reform systems in Africa because they provide legal title to communities, the government allocated land under legal community title, to foreign investors. In Ethiopia, all land allocation to foreign investors, supposedly takes place on "wasteland." However, there is now mounting evidence that farmers have been displaced, particularly shifting cultivators and dry season grazing for pastoralists.
2. *Lack of transparency.* Deals are taking place behind closed doors, and the details of the agreements are not made public. There is an issue of double standards on the part of the West. On the one hand they call for improved governance in Africa through mechanisms of transparency and accountability, but then allow their companies to negotiate contracts in secret that are detrimental to Africa's interests. In some countries parliamentarians have a say because they have to ratify the contracts. But in most other countries this is not the case. Many parliamentarians complained how difficult it was for them to see the contracts. In Tanzania for example, the parliamentarians have asked the government to make the contracts available, but until now the government has been reluctant.
3. *Investors are targeting countries with weak laws.* The World Bank research found that investors were targeting countries with weak land laws. This is coupled with an asymmetry in bargaining power between investors, who have teams of lawyers, high levels of expertise and strong capacity to negotiate deals, against states, which are often in a weaker position due to limited expertise. Worse, when investors negotiate directly with landowners, who are typically farmers with low levels of education, they are even less equipped to defend their interests. This was a serious concern for many parliamentarians.
4. *Access to water is undermined.* Investors are not only looking for arable land but more importantly for the water resources available. This creates competition with local water users, especially for the big water-intensive plantations and leads to reduced water availability for domestic use and agricultural purposes.
5. *No meaningful consultation with communities.* In some cases communities were not consulted at all before their land was given to an investor. In other cases the consultations were purely symbolic or did not involve adequate representation of the community, particularly women. This is partly due to asymmetrical power relations between chiefs, traditional leaders, peasants and communities. Pastoralists, in particular, tend to be invisible, even though they risk losing vital grazing lands, firewood, water and other forest products.

¹ Studies were undertaken by the Food and Agricultural Organisation (FAO), Foodfirst Information and Action Network (FIAN), German Agency for International Cooperation (GIZ), Grain, International Food Policy Research Institute (IFPRI), International Fund for Agricultural Development (IFAD), International Institute for Environment and Development (IIED), International Institute for Sustainable Development (IISD), International Land Coalition, Land Deals Politics Initiative, Oakland Institute, Oxfam International, UN Conference on Trade and Development (UNCTAD) and the World Bank. For a comprehensive list of publications please see Annex on Reading Materials (below).

6. *Particularly negative effect on women.* In sub-Saharan Africa, women generally have weaker tenure rights than men and are marginalized from decision-making forums and community consultations. If the community does receive some financial compensation, women are not usually the beneficiaries. Displacement and resettlement increases pressure on the already weak land rights of women. This can also undermine women's capacity to meet their primary role as subsistence food producers. Research by the International Food Policy Research Institute (IFRPI) shows that women often depend heavily on public resources, such as forests and water sources, and these are often targets for investors. The impact on women is also important in the context of climate change, because the impact of floods and droughts will affect women's ability to produce food for household consumption and domestic purposes.
7. *Investors have not yet lived up to their promises* in terms of providing benefits to the country through job creation, technology transfer and infrastructure development. So far, there is very little employment creation from investment projects. In many instances workers are replaced with machines, farmers are unable to get jobs and investors employ cheaper labour from elsewhere. In Ghana, for example, there was a case where the community was promised jobs during the process of consultations, but the promised employment did not materialize.
8. *Lack of coherence with national strategies for rural development and poverty reduction.* In general, business plans were found to be poorly developed and to bear no relation to national development strategies. In Tanzania, for example, there is an investor rush for biofuels, yet the government does not have a biofuels policy in place. There is an increased awareness of the complexity of such investments and an absence of best practices that can help achieve win-win-win scenarios for investors, governments and communities. The reality is that investment does not make a positive contribution to development by accident, it does so by design: through good policies, good practices and a good legal environment.
9. *States have an obligation to respect, protect and fulfill human rights.* This applies not only to people living in their territory but also outside. Over one quarter of the world's population is estimated to be landless, including over 200 million people who live in rural areas; despite the fact that land is the main asset from which the rural poor derive a livelihood. The human rights impacts of land grabs include impoverishment, insecurity, loss of property, lack of access to the means of livelihood, hunger, disease and even loss of life. This undermines the Covenant on Economic, Social and Cultural Rights, which requires countries and investors to respect, protect and fulfill these rights.



From left to right, Hon. Sisa James Njikelana from South Africa, Mouhamet Lamine Ndiaye from Oxfam Great Britain in West Africa, Angela Mulenga from the Foodfirst Information and Action Network (FIAN) in Zambia, and Hon. Bernadeta Mushashu from Tanzania discussing the impacts of foreign investment on farmland and water. *Photo courtesy of Ruth Hall, PLAAS.*

Legal Implications of Foreign Investment

Three sources of law are relevant to foreign investment in farmland and water. The first is the domestic laws and regulations of the host country. This is the *primary* source of law that should be used to regulate all investments. Yet in many countries, these laws are extremely weak, particularly regarding economic and social rights of local communities.

The second source of law is the investment contract between the foreign investor and host state, also known as a *host government contract*. These set out the price, quantity and duration for the purchase or lease of land, as well as other issues including incentives for the investor, rights to export production, associated infrastructure requirements on the government or investor, environmental requirements, and economic and social development linkages with the local community and economy. Investment contracts often become the legal code for the investment. They can determine which laws apply in the event of a dispute, and even freeze the applicable domestic laws at the time the investment is made, through the inclusion of “stabilization provisions.”

The third source of law is the international investment agreement. These are bilateral treaties between states that provide foreign investors with special protections under international law. They provide a range of rights and remedies for the investor additional to those contained in domestic law or the contract. Most of these treaties have a special dispute resolution process known as investor–state arbitration.

The rights set out in the contracts and treaties are layered over the domestic law, which must comply with the terms. These two sources of law start from the commercial perspective with a view to protecting the investor’s interests. They provide hard contractual rights and arbitration mechanisms for foreign investors against a range of state actions. However, they often fail to expressly address economic and social interests of local users or environmental dimensions related to the investment.

- a. What rights do foreign investors acquire if they do invest?

Investment contracts and treaties can provide investors with additional rights to use water, land tenure and the right to export all products. An investor that includes a stabilization provision in the contract may also be able to avoid complying with domestic laws that come into force after the date the contract was entered into. In addition, by accepting a foreign investment, host governments generally accept that they will provide the means for them to operate, for example to draw water for agricultural purposes. This can provide a secured right, even if it conflicts with existing or future local needs for potable water, small-scale farming, small industries or subsistence uses.

- b. What happens to the rights of previous users?

If the domestic law is clear and developed in relation to rights of local owners or users of land, these people will be entitled to participate in the contracting process. The problem is that in most states where such contracts are being completed, land and water rights are vague, based on local traditions or non-existent. Title is often vested in the government, in local chiefs or other community structures. Actual users may have no clear rights. In such cases, the investor will have its contractual rights to fall back upon as hard, enforceable rights.

- c. What happens when domestic laws change?

What happens if the government introduces new environmental measures to protect against runoff of pesticides and fertilizers, if the government bans certain chemicals, or increases the minimum wage? Changes in the laws can lead to assertions of breaches of the contract or of treaty protections for foreign investors, and

trigger disputes whereby the investor demands compensation. Several of the known investor-state arbitrations have concerned changes in environmental law, zoning laws, royalty levels and other measures that impact the operation of an investment. If a contract includes a stabilization clause that limits the ability of the government to make new laws applicable to the investment, tribunals will take this into account in determining whether there has been a breach of contract. This means that governments may be prohibited from enforcing new domestic laws or being required to compensate investors for any loss in profits linked to the change in law.



From left to right, Dr. Hubert Ouedraogo from the African Union - African Development Bank - UN Economic Commission for Africa partnership, Hon. Yawovi Henri Gbone from Togo and Carin Smaller from the International Institute for Sustainable Development, discussing the legal implications of foreign investment in farmland and water. *Photo courtesy of Ruth Hall, PLAAS.*

African Union and Other Global Initiatives on Agriculture, Rural Development, Land and Water

a. African Union Land Policy Guidelines

Proper land management is a crucial factor for African development. The AU Land Policy Guidelines are a commitment to land policy formulation, implementation and monitoring. They promote consensus and underscore the need for popular participation. They provide examples of best practice and encourage the peaceful and sustainable use of natural resources. Developing land administration systems is key to achieving a proper enabling environment for improved agricultural productivity. Protection and management of natural resources, particularly water, but also grazing areas, is crucial.

b. Principles for Responsible Agricultural Investment, by the World Bank, FAO, IFAD and UNCTAD

These principles include reference to land rights, food security, the need for transparency and good governance, consultation and participation of affected stakeholders, responsible investments, social and environmental sustainability. They compete in some sense with the FAO Voluntary Guidelines (below) but have been criticized for not having any consultation process and no monitoring mechanism to determine whether governments and investors are complying with the principles. Furthermore, this initiative is more strongly targeted to investor action rather than governments.

c. FAO Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests

This is arguably the most comprehensive framework that has been developed. The key feature is its reference to existing human rights law and treaties, reminding states of their existing obligations. The provisions relate to responsible governance of land tenure, including recognition and respect for existing users and the need to comply with international standards. Agreements should be based on free, prior and informed consent. The strength of the guidelines is that they emerge from a broad UN-led multilateral process. Civil society has been part of the discussions, along with governments and the private sector. The document is complementary to the AU Land Policy Guidelines. Their weakness is that they are voluntary, so it is unclear what kind of impact they can have. The document is also weak on women's rights and water issues.

Public and Private Investment in Agriculture: Implementing the Maputo Declaration

a. Achieving the Objectives of the Maputo Declaration

The objective from the Maputo Declaration is a target of 6 per cent agricultural growth and 10 per cent allocation of the public budget to the agriculture sector. Food security is at the heart of the CAADP investment plans, but there is less emphasis on sustainable land and water management, and science and technology, and almost no reference to “land grabs.” There is now an attempt to have 6 per cent of budgets allocated to management of land and water resources. Seven countries have either met or exceeded the targets, including Guinea, Senegal, Burkina Faso, Malawi, Mali, Niger and Ethiopia. On average, African countries allocated 6.5 per cent of national budgets to agriculture, while sub-Saharan Africa’s average was closer to the targeted amount of 9 per cent and the Economic Community Of West African States (ECOWAS) achieved an average higher than the 10 per cent allocation.

b. Aid Effectiveness, Gender and Investment in Agriculture

Overseas Development Assistance (ODA) has not achieved its objectives. ODA to African countries reached an all-time high of US\$47.6 billion in 2009 and was estimated to have grown by 4 per cent in 2010, however targets have not been met. Most agricultural aid programmes are failing to incorporate basic gender analysis, and how proposed interventions might affect women and men differently. Addressing the gender gap in agriculture and rural development can have multiplier effects on well-being, human capital formation and economic growth. In the agricultural sector this implies women having the same rights as men to buy, sell, inherit land, to open savings account and borrow money, sign a contract and sell their produce. In general, Africa needs to be less dependent on ODA, especially in view of the financial crisis. We have to move away from aid effectiveness towards development effectiveness.

c. Alternative business models for investment in agriculture

Agriculture needs inclusive business models to deal with intrinsic land productivity challenges. By negotiating investment projects directly with local people, this can strengthen land and water rights, diminish conflicts within local communities, promote win-win solutions, and ensure social and environmental safeguards. There are a number of different business models including joint ventures, contract farming or outgrower schemes, management contracts, upstream and downstream linkages, and farmer-owned businesses.

Joint ventures involve co-ownership, shared risks and benefits, decision-making and dividends in proportion to the equity share, with minority shareholders being represented in decision-making. Communities can contribute with land and water as their assets, but if this is not well valued, then their stake is not equivalent to the value of what they contribute. *Contract farming* involves formal and informal supply agreements between suppliers and buyers, which specify the prices of inputs and outputs, credit, delivery dates, quantities and qualities. Yet buyers usually set the price and this can create unequal power relations.

Inclusive business models are not a blueprint for development. They can be more difficult when you are trying to achieve economies of scale and may increase transaction costs because of the need to work with more partners. But they can deliver benefits through core business activities rather than through philanthropy, thereby ensuring a more equitable distribution of financial, social and natural capital between investors and local people, though the market chain.



From left to right, Ousmane Djibo from the Comprehensive Africa Agriculture Development Programme (CAADP) and Rosalie Lo from the New Economic Partnership for African Development (NEPAD), discussing public and private investment in Africa, aid effectiveness, and the implementation of the Maputo Declaration. *Photo courtesy of Ruth Hall, PLAAS.*

Role for Parliamentarians

Throughout the seminar, participants focused particularly on the role for parliamentarians in responding to rising foreign investment in farmland and water. A number of key roles were identified, but parliamentarians emphasized that they could not do all this work alone, and required partnerships with pan-African agencies such as the Pan African Parliament, AU-ECA-AfDB and NEPAD, as well as African and international civil society organizations, such as the Africa Forum, IISD, Oxfam-West Africa, FIAN-Africa, IDASA, PLAAS, IIED, ILC and others. There was a strong call to launch national, regional and continental campaigns that were not only about legal reform but also political campaigns that are coordinated at a continent-wide level to allow establishment of new norms around investments.

The key roles for parliamentarians include:

- A watchdog role in ensuring social inclusion and transparency of investment projects: pressure the government to provide access to information, respond and suggest alternative language in contracts and insert provisions to protect our constituencies.
- In their role as legislators, monitors of government policy and guardians of the public good: design an appropriate judicial system to protect the interests of local communities; introduce legislation to make it mandatory to

have free, prior and informed consent of communities before investment contracts are signed; establish review committees for business practices and activities; and monitor compliance of business promises and the impact of investment projects.

- Be political decision-makers and transcend party affiliations: prioritize building the capacity of local communities to be aware of what is happening and be able to negotiate with investors; work across party lines on areas of common concern.
- Translate policy into tangible actions at the national and local levels: develop guidelines on good land governance to support the AU Land Policy Guidelines initiative.
- Monitor implementation of the AU Land Policy Guidelines and the Maputo Declaration 10 per cent target; use parliamentarians' control over budget allocations to lobby for larger budgetary provision to the agriculture sector.
- Mitigate, impede and expose corrupt practices.



From left to right, Isilda Nhantumbo from the International Institute for Environment and Development, Hon. Adeo Crenstozao Neto from Angola, and Hon. Dr. Augustin Iyamuremye from Rwanda. *Photo courtesy of Ruth Hall, PLAAS.*

Recommendations and Next Steps

- a. *Improve Transparency.* Parliamentarians have an important role to play in encouraging governments and investors to make contracts public. Contracts should contain provisions that require transparency² and accountability from all parties. There is a growing global consensus in favor of contract transparency. Liberia is leading the way and introduced legislation in 2009 requiring all concessions and contracts in the mining, agriculture, forestry and oil sector to be made public. Other countries should follow their lead.
- b. *Land reform.* The insecure nature of land rights in Africa has allowed this situation to occur. The remedy lies in legal recognition that traditional land rights amount to real property rights. Land legislation must also take into account the possible impact of large-scale farming on climate change. Land tenure reform can be done through empowerment of local land administrations (as is happening in South Africa, Mozambique and Angola). National laws on the rights to land, water and other natural resources must be defined, and clearly state the rights of existing users. Furthermore, governments and parliaments should work together to develop a plan for land use and an inventory of available land.
- c. *Genuine and effective consultations with communities,* including their free, prior and informed consent before investment contracts are signed.
- d. *Build Awareness and Capacity on Foreign Investment.* There is need for a massive sensitization and capacity building campaign, so that people know their rights, have access to the investment deals, and are equipped to negotiate from a position of knowledge and expertise. The Pan African Parliament and its partners should help launch regional workshops for parliamentarians and civil society; empower communities where large investments are taking place; and develop the capacity of government and local landowners to understand the value of their natural resources and to be able to negotiate.
- e. *Establish and Strengthen Centres of Excellence on Land, Agriculture and Natural Resources.* Evidence-based research exist (see Annex Reading Materials). International and regional frameworks that can serve as resources for guidelines on foreign investment (AU Land Policy Guidelines, FAO voluntary guidelines, World Bank principles, etc.). IISD has a model investment treaty that is a useful tool.³ Two international processes have developed principles for responsible investment contracts.⁴ These should help guide the development of centres of excellence across Africa, including the promotion of alternative business models for agriculture with an emphasis on collaboration and the promotion of small-scale farmers.
- f. *A Moratorium on Land Grabs?* Most participants felt that large-scale land deals should be seen as a last resort and priority should be given to small-scale farming and alternative models of community-investor partnerships. A number of participants were in support of an Africa-wide campaign calling for a moratorium on “land grabs” until such time as a proper land and investment framework was put in place that could enable Africa to benefit from this current wave of investment. Others were more cautious, arguing that it was better to find ways to make investments work for Africa, rather than calling for a moratorium.

²In 2011, both the International Bar Association and the UN Special Representative on Business and Human Rights, explicitly called for transparency in contracts. The World Bank’s Principles for Responsible Agricultural Investment calls for transparency in accessing land and making investments. The UN Special Rapporteur on the right to food, calls for full transparency in land leases and purchases.

³<http://www.iisd.org/investment/capacity/model.aspx>

⁴ See the Model Mining Development Agreement <mmdaproject.org> and Principles for Responsible Contract, UN Special Representative on Business and Human Rights <<http://www.business-humanrights.org/media/documents/ruggie/report-principles-for-responsible-contracts-25-may-2011.pdf>>

Draft Parliamentary Resolution⁵

We, parliamentarians, representatives of intergovernmental organisations, academics and representatives of civil society.

Building on the discussions from the workshop of the Pan African Parliament under the theme *Making investment Work for Africa: a Parliamentarian Response to "Land Grabs"*;

Cognizant of the need of investing in Africa's development in particularly in agriculture and in rural areas where the majority of people live;

Noting with deep concern the recent rise of large-scale land acquisitions also known as "land grabbing" and the impact of domestic and Foreign Direct Investment in land, water and related natural resources;

Fully alarmed by the negative impacts on human rights especially on women, including unequal access to land and disruption of access to water;

Deeply disturbed by the unprecedented drought in the Horn of Africa and its consequences on our people;

Recognizing the importance of defending and promoting equality and fairness among our people;

Acknowledging the African Union Framework and Guidelines on Land Policy in Africa, the Maputo Protocol relating to the ACHPR on the Rights of Women in Africa and the Solemn Declaration on Gender Equality in Africa;

Emphasizing the 2003 "Maputo Declaration on Agriculture and Food Security in Africa", especially the commitment to allocate at least 10 per cent of national budgetary resources to agriculture and rural development policy implementation;

We hereby resolve to:

1. Move a motion for a resolution urging Member States to respond to this phenomenon as a matter of urgency and therefore call on the African Union Commission and the Agency for the Coordination and Planning of NEPAD to spearhead this endeavour.
2. Call for a moratorium on new large-scale land acquisitions pending implementation of land policies and guidelines on good land governance.
3. Call for the establishment of an *African Ministerial Conference on Land-based Investments* equivalent to the African Ministerial Conference on Environment (AMCE) and the African Ministerial Council on Water (AMCOW).
4. Call for comprehensive land and water management policies that recognise and secure the rights of citizens as a precondition for any negotiations on investment.
5. Urge for the development and the implementation of guidelines on good land governance in order to enhance a code of conduct for foreign direct investment (FDI) in Africa.

⁵ This draft resolution is intended to serve as the road map for future campaigns and activities with parliamentarians, intergovernmental organizations, academics and civil society. The draft resolution was discussed at the workshop and supported by representatives from the following parliaments and organizations: Committees on Agriculture, Natural Resources, Rural Economy and Environment of Pan African Parliament, National Assembly of the Republic of Angola, National Assembly of the Republic of Benin, National Assembly of Burkina-Faso, Parliament of the Republic of Ghana, National Assembly of the Republic of Kenya, National Legislature of the Republic of Sudan, representatives of Africa Forum, IDASA, the AUC- ECA- AfDB Land Policy Initiative (LPI), NEPAD Planning and Coordinating Agency, Food First Information and Action Network, Oxfam International and the Institute for Poverty, Land and Agrarian Studies. **The draft resolution will be submitted to the Pan African Parliament for approval at the Fifth Ordinary Session, October 3-14, 2011. It will then become the official position of the Pan African Parliament on the issue.**

6. Urge for rules on FDI in land, water and related natural resources, building on existing initiatives of the AU, FAO and World Bank, so as to secure benefits of investment for African people and to develop sustainable livelihoods. This includes:
 - a. Legally-binding and enforceable obligations on the investor to contribute to the local economy and social well-being;
 - b. Reducing levels of poverty, improving food security, and protecting the environment;
 - c. Increasing employment quantitatively and qualitatively and capacity building and improving infrastructure and technology transfer.
 - d. Ensuring effective consultations with local communities and various people affected by investment projects and ensuring that any investment is approved through free, prior and informed consent of affected communities;
 - e. Enhancing the system of land certification and registration that take into account different agricultural systems that is to say pastoralist rights, women's rights and communal rights, prior to land investment.
7. Ensure that governments are accountable by increasing transparency and making investment contracts and treaties publicly available in a timely fashion.
8. Endorse a process of regional workshops of parliamentarians, politicians, civil society, farmers' organisations and research organisations, in order to raise awareness on large-scale land acquisition.
9. Commit to support African initiatives to raise awareness amongst national parliaments, citizens and affected communities.
10. Ensure stronger mechanisms for monitoring and enforcement of domestic laws, regional agreements and international treaties and conventions.
11. Support for centres of excellence including research institutions to document land-based investments underway and to share information in accessible formats with policy-makers, parliamentarians, civil society and affected communities.

Midrand July 22, 2011

Annexes

Programme

Day 1: July 21, 2011	09:00-9:30 Plenary	Welcome and introduction: <i>Honourable Dr. Moussa Idriss Ndélé</i> , President of the Pan African Parliament
	9:30-11:00 Plenary	<p>What is happening in Africa? An overview of foreign investment in farmland and water</p> <p>Facilitator: <i>Honourable Iyamuremye (Chairperson, Committee on Agriculture, Rural Economy and Natural Resources (PAP-CARENRE))</i></p> <ul style="list-style-type: none"> » Overview: Trends, drivers, key features of land deals (<i>Madiodio Niasse, International Land Coalition (ILC)</i>) » Main foreign investors, <i>Dr. Ward Anseeuw (University of Pretoria and ILC)</i> » Legal implications of foreign investment in land and water, <i>Carin Smaller (International Institute for Sustainable Development (IISD))</i> <p>Discussion</p>
	11:00-11:20	Break
	11:20-13:00 Plenary	<p>Examining the Impacts</p> <p>Facilitator: <i>Honourable Njikelana (PAP-CARENRE)</i></p> <ul style="list-style-type: none"> » Impact on women. <i>Gaynor Paradza (Institute for Poverty, Land and Agrarian Studies (PLAAS))</i> » Human rights impacts. <i>Angela Mulenga, Foodfirst Information and Action Network (FIAN)</i> » Impact on farmers, land and water. <i>Mohamet Lamine Ndiaye (Oxfam)</i> <p>Discussion</p>
	13:00- 14:30	Lunch
	14:30-17:00 Working groups	<p>Working Groups</p> <ul style="list-style-type: none"> » Land rights, water and other natural resources: The impact of foreign investment on land rights and access to water and other natural resources, with a focus on vulnerable groups. <i>Honourable Sisa Njikelana (South Africa) and Ruth Hall (PLAAS)</i> » What is inside the land deals? Domestic policy frameworks and processes for investment in land, including the role for parliaments. And a closer look at the legal contracts between government and investors and Bilateral Investment Treaties. <i>Honourable Henri Gbone (Togo) and Carin Smaller (IISD)</i>
	19:00	Dinner and distribution of draft declaration

09:00–9:30 Plenary	<p>The way forward: African Union and other global initiatives on agriculture, rural development, land and water</p> <p>Facilitator: <i>Princess Dlamini (PAP-CARENRE)</i></p> <ul style="list-style-type: none"> » African Union land policy guidelines, <i>Hubert Ouedraogo, African Union–United Nations Economic Commission for Africa–African Development Bank (AU-ECA-AfDB)</i> » Aid effectiveness and investment in agriculture, <i>Rosalie Lo, New Partnership for Africa’s Development (NEPAD)</i> » Analysis of the FAO guidelines for land tenure and other natural resources and the World Bank’s Principles of Responsible Agricultural Investment, <i>Ruth Hall (PLAAS)</i> <p>Discussant: <i>Mohamet Lamine Ndiaye (Oxfam)</i></p> <p>Discussion</p>
10:30–10:50	Tea break
10:50–13:00 Plenary	<p>Public and Private Investment in Agriculture: Implementing the Maputo Declaration</p> <p>Facilitator: Member of Pan African Parliament</p> <ul style="list-style-type: none"> » Overview of different business models: Best practices for private investment in agriculture <i>Isilda Nhantumbo (IIED)</i> » Implementing the Maputo Declaration commitments: Best practices for public investment in agriculture. <i>Ousmane Djibo (NEPAD/Comprehensive Africa Agriculture Development Programme (CAADP))</i> » Role of parliamentarians in the oversight of the Maputo Declaration. <i>Estherine Fatabong (NEPAD)</i> <p>Discussion</p>
13:00–14:30	Lunch
14:30–15:45 Plenary	<p>Declaration and next steps (Part I)</p> <p>Facilitator: <i>Honourable Njikelana (PAP-CARENRE)</i></p> <ul style="list-style-type: none"> » Reports from working groups » Presentation of the draft declaration <p>Discussion</p>
15:45–16:00	Tea break
16:00–17:00 Plenary	<p>Declaration and next steps (Part II)</p> <p>Facilitator: <i>Honourable Njikelana (PAP-CARENRE)</i></p> <ul style="list-style-type: none"> » Summary of the discussion (AU/NEPAD/Parliamentarian) » Presentation of the plan of action » Vote of thanks <i>Honourable Iyamuremye</i> <p>Closing remarks: PAP Vice President</p>

List of participants

POSITION	ORGANISATION	NAME
MP	National Parliament-Angola	Hon. Adeo Crenstozao Neto
MP	National Parliament-Angola	Hon. Isabel Mlambo Morena
MP	National Parliament-Angola	Mr. Geraldo Cambiente
MP	National Parliament-Benin	Babatoundé Kakpo Zannou
MP	National Parliament-Burkina-Faso	Norbert M. Tiendrebeogo
MP	National Parliament-Ghana	Hon. Tanko Abdul-Rauf Ibrahim
MP	National Parliament-Kenya	John M. Mututho
MP	National Parliament-Mali	Mohamed Adidey Maiga
MP	National Parliament-Tanzania	Lawrence R. Makigi
Minister	National Parliament-Sudan	Dr. Yonis Alsharif
PAP MP	Parliament-Botswana	Masisi T. Walter
PAP MP	Parliament-Centrafrique	Mokole Jean-Marie
PAP MP	Parliament-Rwanda	Iyamuremye Augustin
PAP MP	Parliament-Sierra Leone	Bundu-Kombe Florence
PAP MP	Parliament-Sierra Leone	Kanagbaro III
PAP MP	Parliament-South Africa	Njikelana Sisa James
PAP MP	Parliament-Swaziland	Princess Dlamini Phumelele
PAP MP	Parliament-Tanzania	Mushashu Bernadeta
PAP MP	Parliament-Togo	Gbone Yawovi Henri
Research	Pan African Parliament	Francine Mukazi Picard
Executive Director	Africa Forum	Dr. John Tesha
Personal Assistant	Africa Forum	Ms. Emilia Haworth
Researcher	African Democracy Institute (IDASA)	Leslie Nyangah
Researcher	South African Institute for International Affairs	Memory Dube
Government Official	Southern Africa International Trade and Economic Department	Calvin Phume
Government Official	Central and East Africa Trade and Economic Department	Thamsanqa Ngwenya
Speaker	African Union-UN Economic Commission for Africa-African Development Bank (AU-UNECA-AfDB)	Dr. Hubert Ouédraogo

Speaker	New Partnership for Africa's Development (NEPAD)/ Comprehensive Africa Agriculture Development Programme (CAADP)	Ousmane Djibo
Speaker	Centre de coopération internationale en recherche agronomique pour le développement (CIRAD) Researcher	Dr. Ward Anseeuw
Speaker	Foodfirst Information and Action Network	Angela Mulenga
Speaker	International Institute for Environment and Development	Isalda Nhantumbo
Speaker	International Institute for Sustainable Development	Carin Smaller
Speaker	NEPAD	Roseline Lo
Speaker	OXFAM	Mouhamet Lamine Ndiaye
Speaker	The Institute for Poverty, Land and Agrarian Studies (PLAAS)	Ruth Hall
Speaker	PLAAS	Gaynor Paradza
Development Partner	Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)/Pan African Parliament (PAP)	Liliane Ntibahezwe
Development Partner	GIZ	Sonja Palm

Reading Materials

General

Case studies and papers by the Futures Agriculture Consortium and Land Deal Politics Initiative (LDPI) (Covers many African countries): http://www.future-agricultures.org/index.php?option=com_docman&Itemid=971

Case studies by the International Land Coalition (ILC) (Covers many African countries): <http://www.commercialpressuresonland.org/> and <http://www.landcoalition.org/publications>

Cotula L., Vermeulen S., Leonard R., and Keeley J. (2009). *Land grab or development opportunity? A quantitative and qualitative analysis of landgrabbing in Africa*, FAO/IFAD/IIED, (Covers Ethiopia, Ghana, Madagascar, Mali, Mozambique, Sudan and Tanzania) <http://www.fao.org/docrep/011/ak241e/ak241e00.htm>

Görge, M., Rudloff, B., Simons, J., Üllenberg, A., Väh, S. & Wimmer, L., (2009) *Foreign direct investment in land in developing countries*. Eschborn, GTZ, (Covers Madagascar and Mali) <http://www2.gtz.de/urbanet/library/detail1.asp?number=7529>

Graham, A., Aubry, S., Kunnemann, R., & Suarez, S.M. (2010). *Land grab study: The impact of Europe's policies and practices on African agriculture and food security*. FIAN. (Covers Burkina Faso, Burundi, Kenya, Mali, Mozambique, Senegal and Uganda) <http://www.fian.org/resources/documents/others/report-on-land-grabbing/pdf>

Hall, R. *Land grabbing in Africa and the new politics of food* (2011, June). Futures Agriculture. (Covers Kenya and Tanzania)

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Smaller, C. (2010, December). *A global thirst: How water is driving the new wave of foreign investment in farmland*. <http://www.iisd.org/itn/2010/12/16/a-global-thirst-how-water-is-driving-the-new-wave-of-foreign-investment-in-farmland/>

To follow the latest news reports on foreign investment in land see Grain's blog: <http://farmlandgrab.org/>

To see a range of investor-state contracts: http://farmlandgrab.org/home/post_special?filter=contracts

To see UNCTAD's database of Bilateral Investment Treaties see: http://www.unctadxi.org/templates/docsearch___779.aspx

World Bank (2010, September) *Rising global interest in farmland: can it yield equitable and sustainable benefits?* (Covers Democratic Republic of Congo, Ethiopia, Kenya, Liberia, Mozambique, Nigeria, Sudan, Tanzania and Zambia) http://siteresources.worldbank.org/INTARD/Resources/ESW_Sept7_final_final.pdf

Democratic Republic of Congo

See *World Bank, ILC and LDPI*

Ethiopia

Fisseha, M. (2011). *A case study of the Bechera Agricultural Development Project, Ethiopia*. EDC & ILC. http://www.landcoalition.org/sites/default/files/publication/1021/EDC_Ethiopia_web_11.03.11.pdf

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Weissleder L. (2009) *Foreign Direct Investment in the Agricultural Sector in Ethiopia*, Heinrich Böll Foundation and MISEREOR. http://www.boell.de/downloads/ecology/FDIs_Ethiopia_15_10_09_c_1.pdf

See also *World Bank, Cotula et al, ILC and LDPI (above)*.

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Schoneveld, G.C., German, L.A., & Nutakor, E., (2010) *Towards sustainable biofuel development: Assessing the local impacts of large-scale foreign land acquisitions in Ghana*. <http://siteresources.worldbank.org/EXTARD/Resources/336681-1236436879081/5893311-1271205116054/schoneveld.pdf>

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Madagascar

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Mozambique

FIAN, (2009). *Land grabbing in Kenya and Mozambique*. <http://www.fian.org/resources/documents/others/land-grabbing-in-kenya-and-mozambique/pdf>

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Nigeria

See *World Bank*.

Sierra Leone

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Sudan and South Sudan

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See also *World Bank, Cotula et al, ILC and LDPI*.

Tanzania

Cotula, L., Dyer, N., & Vermeulen, S. (2008). Fuelling exclusion? The biofuels boom and poor people's access to land. <http://pubs.iied.org/pdfs/12551IIED.pdf>

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See also World Bank, Cotula et al, ILC and LDPI.