

LES OPPORTUNITÉS DE L'INVESTISSEMENT ÉTRANGER DANS LE SECTEUR AGRICOLE:
UN ATELIER SUR COMMENT ATTIRER L'INVESTISSEMENT DURABLE
ET DE HAUTE QUALITÉ ET LE RÔLE DES CADRES LÉGAUX

FOREIGN INVESTMENT OPPORTUNITIES FOR AGRICULTURE:
A WORKSHOP ON HOW TO ATTRACT HIGH QUALITY AND SUSTAINABLE
INVESTMENT AND THE ROLE OF LEGAL FRAMEWORKS



Nairobi » Kenya » 11 - 13 février 2018 | 11 - 13 February 2018

REPORT



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Background

From 11 to 13 February 2018, the East African Community (EAC), Common Market for Eastern & Southern Africa (COMESA) and the International Institute for Sustainable Development (IISD) ran a three-day training workshop in Nairobi, Kenya for government officials involved in negotiating and drafting agricultural investment contracts. 16 countries were represented at the workshop, which focused on using and implementing legal and policy tools to promote sustainable and responsible investment in agriculture, including investment contracts and laws, agricultural growth poles, screening processes, contract farming and incentives.

Key discussion points – policy and legal tools for sustainable investment in agriculture

The emphasis of the workshop was the sharing of experiences and innovative legal and policy tools and practices from across the participant countries and regions. After being introduced generally to a range of different innovations in contracts and laws relating to agriculture and investment from across the world, the workshop drilled down to examine some examples from the COMESA and EAC regions. The participants were introduced to the EAC Model Contract for Farmland Investments, a tool developed by the EAC and IISD to help EAC member states to better manage the risks and capture the benefits from foreign investments in agricultural land.

Participants also heard about the agro-industry investment promotion tools that are emerging in Africa. After a presentation on the agricultural growth zones, participants heard the Tanzania's experience establishing the Southern Agricultural Growth Corridor, Malawi's efforts to set up a Green Belt Initiative to catalyse agricultural investment in key areas, and Madagascar's work creating a legal framework for Investment agricultural zones. The level of interest in sharing between countries at different levels of progress in their work on agricultural growth zones led to an extra evening session dedicated to the topic, requested by participants.

Participants also heard about reforms in Ethiopia, where the process of identifying policy constraints and prioritising and sequencing interventions with a broad range of stakeholders led to the development of a comprehensive contract farming law, amongst other legal and policy tools. Contract farming was the topic of another session, discussing its importance as an inclusive business model that can broaden the benefits of foreign investment in agriculture. During the discussion, participants emphasised the importance of the general legal framework for contract enforcement in supporting contract farming schemes and deterring side-selling. Participants were alerted to the forthcoming Model Agreement for Contract Farming being developed by IISD and the FAO, which will be a useful tool for countries interested in promoting a more fair and balanced approach to contract farming for smallholders.

In a session on screening, participants were given an overview of best practices for ensuring investment projects align with national development goals, and investors are capable and credible of delivering those projects, including through feasibility studies and business plans. During the round-table following the presentation, discussants underscored the difficulty of performing adequate screening in the face of political and investor pressure.



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Following a session presenting the findings of a recent study by the OECD, IMF, UN and World Bank casting doubt on the effectiveness of tax incentives for investment, the participants engaged in a rich discussion, some noting that the study did not seem to accord with their country experience. Discussants remarked that investors request tax incentives during negotiations, making it hard to accept the OECD findings, but agreeing that a regional study on this topic would be very useful.

A simulated negotiation between groups of participants representing the investor, government, local community and smallholder farmers, drew together the key themes of the workshop, and illustrated the challenges of negotiating an outcome that reflects the breadth of interests involved. Before the conclusion of the workshop, participants identified their key national challenges in investment in agriculture, and developed work plans setting priority actions to address these challenges, and identified some concrete activities and steps for implementation.

Key issues for participants

The highest priorities across the participants were the monitoring of private sector commitments to invest in communities and achieve goals for social and economic inclusion in the growth generated by investments. Chief among these was the inclusion and respect for the role of local smallholder farmers, through contract farming and out-grower agreements. Participants highlighted also the inclusion of local farmer and land-holders at early stages of investment development to guarantee the rights of communities to participate, shape, or decline investments.

Making foreign direct investments beneficial to local communities, the domestic agricultural sector, and national economy are broadly agreed goals. Planning and management of the environmental, social and governance impacts of foreign investment agreements was widely seen as a top challenge by many participants so that governments can ensure planned economic benefits are delivered, consistent with investment agreements. Another common area of difficulty is the numerous overlapping pieces of national legislation and the complications which could result therefrom.

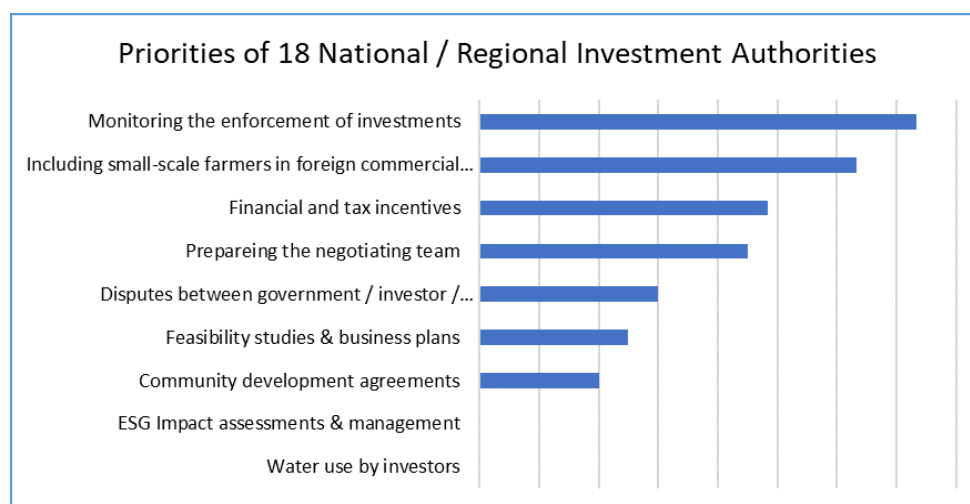


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Steps identified to be taken to improve the situation

Building the capacity of local and national stakeholders was seen as a necessary to address almost every challenge, including the preparation of investment negotiation teams, but also increasing the knowledge, training and awareness of the issues and challenges amongst other stakeholders. This includes training for government ministries and courts, domestic businesses, farmer associations and communities so that they fully participate in creating 'win-win' investment agreements. Participants considered that taking the time during initial planning stages for governments, investors and local communities to develop a shared understanding of responsibilities and commitments can smooth the path for inclusive agricultural growth and avoid disputes (another area of concern).

Participants emphasised the need to harmonise existing legislation, preferably under a consolidated entity that can support all stakeholders in successfully navigating local laws, regulations, and efficiently creating investment opportunities in a participatory manner. Participants noted that in many contexts, there are numerous overlapping tax incentives which are administered through different ministries, making it difficult to evaluate the complete picture. Some considered that the solution may be no more tax incentives, as their effectiveness is in doubt.

Activities proposed for the future

During the course of the 3 days' discussion and exchange, participants made a number of strong proposals for future activities and workstreams (including some which could be undertaken with IISD support) including:

1. Capacity building
 - a. Agricultural investment contract capacity building programme for public and private sector officials
 - b. Governments engagement on investment team formation, training, and negotiation process



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2. Technical expertise
 - a. Investment Policy harmonization guidance to support governments in reform and consolidation of existing laws
 - b. Support for the Agricultural growth poles and SEZ
 - c. Contract farming
3. Tools and best practise exchange
 - a. An online platform to assist governments with screening agricultural investors and sharing experiences with specific investors.
4. Research
 - a. A study into the effectiveness of tax incentives for agricultural investment in COMESA and EAC countries.



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Participants List

Country/Institution	Names	Title/Institutions	Emails
Burundi	Léonard Sentore	Director of Investment Promotion Agency	l.sentore@investburundi.bi
COMESA	Thierry Kalonji	Director - Investment Promotion & Private Sector Development	tkalonji@comesa.int
COMESA	Dr. Mbosonge Mwenechanya	CAADP consultant	MMwenechanya@comesa.int
COMESA	Harriet N. Malindi	Secretary	HNambule@comesa.int
Comoros	Mohamed Soilihi	Chef du Bureau Création d'Entreprise à l'Agence National pour la Promotion des Investissements	soilhimadiabdou@gmail.com
Djibouti	M. Ali Houmed Aboubaker	Investment promotion Agency	alihouab@yahoo.fr
DRC	Serge Sabi	Ministry of agriculture	sabiserge@yahoo.fr
EAC	Hon. Bazivamo Christophe	Deputy Secretary General Productive and Social Sectors	cbazivamo@eachq.org
EAC	Havugimana Jean Baptiste	Director - Productive Sectors	jhavugimana@eachq.org
Ethiopia	M.Mengesha Tadesse	Policy Advisor, Ethiopian Agricultural Transformation Agency	Mengesha.Tadesse@ata.gov.et
Ethiopia	M. Woldeamayrat	Ethiopia Investment Commission	mesmother@gmail.com
IISD	Carin Smaller	Advisor on Agriculture and Investment	csmaller@iisd.org
IISD	Francine Picard	Parliamentary Affairs Advisor	francine.picard@iisd.org
IISD	Sarah Brewin	Advisor on Agriculture and Investment	sarahbrewin@gmail.com
IISD	Nalishebo Meebelo	IISD Consultant	meebelo@yahoo.com
Kenya	Laban Mburu	Kenya Investment Authority	labkiiru@gmail.com
Madagascar	Gildas Volaharison	Economic Development Board of Madagascar	gildas.volaharison@edbm.mg
Madagascar	Lié Maminiaina	Ministère en charge de l'Agriculture	expfoncier@casef.mg
Malawi	Henry Njoloma	Green Belt Authority	hnloloma@yahoo.com
Malawi	Chikosa Silungwe	Ministry of lands	Chikosa_Silungwe@dai.com
Namibia	Matti Asino	Government Attorney, Office of the Attorney General	Matti.Asino@ag.gov.na
Nigeria	John K Balami	Presidential Committee on Land Reform	jkbalami@yahoo.com
Rwanda	Karim Tushabe	Coordinator of Doing Business_ Rwanda Development Board	karim.tushabe@rdb.rw
Swaziland	Martin Masilela	Swaziland Investment Promotion Authority	masilelam@sipa.org.sz
Tanzania	Neema Lungangira	Head of policy at SAGCOT	n.lungangira@sagcot.com
Tanzania	Aristides Mbwas	Acting Director of Investment, Ministry of Industry, Trade and Investment	ambwasi@yahoo.com
Uganda	Fred Ahimbisibwe	Principal Commercial Officer from the Ministry of Trade, Industry and Cooperatives	ahimbisibwe.fred@yahoo.com
Uganda	Annet Mbabazi	Ministry of Justice and Constitutional Affairs	b_taga@yahoo.com
Zambia	Mwanchela Kakubo	Ministry of Lands and Natural Resources	mwanchela@yahoo.com
Zambia	Hans Yamba	Principal Economist, Ministry of Commerce, Trade and Industry	hansyamba@yahoo.co.uk
Zimbabwe	Farai Sagonda	Zimbabwe Investment Authority	fsagonda@zia.co.zw ; lenshumba01@gmail.com

