

**PROMOUVOIR DES INVESTISSEMENTS AGRICOLES DURABLES:  
LES OPTIONS JURIDIQUES ET POLITIQUES**

**PROMOTING SUSTAINABLE AGRICULTURAL INVESTMENTS:  
LEGAL AND POLICY OPTIONS**



Abidjan » Côte d'Ivoire » 14 - 16 décembre 2015 | 14 - 16 December 2015



## **“Promoting Sustainable Investments in Agriculture: Legal and policy options”**

**Abidjan, 14–16 December 2015  
Workshop Report**

This conference was generously supported and organised in collaboration with: | Cette conférence a été généreusement financée et organisée en collaboration avec:



African Union



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## *Introduction*

The Pan African Parliament (PAP) together with West African parliaments – the Economic Community of West African States ([ECOWAS Parliament](#)) and [Inter-Parliamentary Committee of the West African Economic and Monetary Union \(WAEMU\)](#) (IPC-WAEMU), in partnership with the International Institute for Sustainable Development (IISD), Land Policy Initiative (LPI), IFAD, Oxfam, UNIDROIT and *Comité technique “Foncier et Développement,”* hosted a training workshop titled *“Promoting Sustainable Investments in Agriculture: legal and Policy options”* in Abidjan, Côte d’Ivoire, from 14 to 16 December 2015. More than 40 participants from the three parliaments and invitees from the [East African Legislative Assembly](#) (EALA) attended the workshop.

With the global rise in interest in farmland, over the last decade West Africa was the target of 128 agricultural projects covering almost 5 million hectares of land. Yet these investment projects do not always lead to expected benefits for the region and its people. As a result, there is interest from parliamentarians and governments in improving legal and policy frameworks to promote sustainable and responsible investment in agriculture.

## *Objectives*

The workshop aimed to improve the understanding of the legal and policy options for foreign direct investment (FDI) in agriculture for parliamentarians and the ECOWAS Commission. Specifically, it sought to train participants to be able to:

- Understand how the Committee on World Food Security (CFS) Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI) and the Land Policy Initiative (LPI) Guiding Principles for Large-Scale Land-Based Investments (LSLBI) can be used as a framework for promoting investment.
- Explore different business models for investing in agriculture, including contract farming, out-grower schemes, joint ventures and long-term land leases.
- Learn how to screen and evaluate investment projects for the agriculture sector.
- Study the design of an investment contract from a sustainable development perspective.
- Understand the ECOWAS agricultural policies (ECOWAP), the Draft Directives on Land Policies in West Africa and the ECOWAS/LPI project on Mainstreaming land in the programs of ECOWAS.

## *Key Outcomes and Content*

The training provided an opportunity for parliamentarians to learn how to use different legal and policy tools to promote sustainable and responsible investment in agriculture, and to share experiences about best practices in the region and beyond. Parliamentarians debated intensively about their role and power to address the many and diverse challenges facing the agriculture sector.

The training started with an overview of land issues in Africa and the African Union's agenda on land. Africa has abundant land and water resources which are an asset for the continent's development. But the governance of these resources, particularly land, faces several challenges, including the diversity of ecological systems, land-management systems and sociocultural contexts, including gender. To face these challenges and issues, the African Union, together with the African Development Bank (AfDB) and the UN Economic Commission for Africa (UNECA), jointly established the Land Policy Initiative (LPI). Parliamentarians acknowledged the LPI's role in implementing the African agenda on land stemming from the Declaration on land issues and challenges in Africa adopted in 2009.

The training also provided an overview of investment in farmland in West Africa. According to existing data, more than 5 million hectares (ha) of land was acquired for investment, with another 5 million hectares planned in a near future. All countries are targeted, with differences in size of land acquired, from more than 2 million ha in Ghana to around 100,000 ha in Mauritania. Investors come from both public and private sectors, and include regional economic organizations like WAEMU, which is preparing land in Mali for citizens of its member states. Participants also had an opportunity to discuss the drivers of this investment and the risks and benefits it entails.

The training allowed parliamentarians to examine in more detail the key international and regional initiatives for responsible investment in agriculture, including ideas for how parliamentarians can help implement these initiatives. Participants noted the importance of integrating these principles into each country's domestic legal framework and ensuring their implementation at the local level.

Most of the time was spent exploring three existing legal and policy tools to help governments, investors and communities implement responsible and sustainable investment in agriculture. The first is the [IISD model contract for farmland and water](#), which looks at the legal framework for investment in agriculture, and the interaction between investment contracts, national laws and investments treaties. This tool proposes a range of different provisions to include in investment contracts that are signed between states and investors. The tool emphasizes the importance for countries to have strong domestic laws to govern investments and to use contracts only to temporarily fill the gaps in existing laws.

The second tool is the [Guide to due diligence of agribusiness projects that affect land and property rights](#) of the French development ministry's technical committee on land and development. This guide aims to facilitate the implementation of the panoply of voluntary principles for responsible investment in agriculture.

The third tool is the [UNIDROIT/IFAD/FAO Legal Guide on Contract Farming](#). This guide provides a description of common contract terms, discusses legal issues and problems arising in different situations, and illustrates how these issues can be handled under different legal systems. It aims to promote a better understanding of the legal implications of contract terms and practices.

The training provided a practical insight into what was contained in these three tools and how they could be applied on the ground. Parliamentarians appreciated the hands-on approach to finding solutions to investment in agriculture and the availability of such concrete tools. Discussions and debates during the workshop focused on the following topics:

**1. Roles of parliamentarians in improving agriculture investments.** Many participants called for more commitments from their fellow parliamentarians to hold governments to account during the negotiation and conclusion of agriculture investment contracts. Indeed, parliamentarians are completely absent in the different phases of negotiations, and when they are concluded, they have no say in the implementation phase either. According to many participants, it is the role of parliamentarians to be more proactive and push for more transparency in the process of contract negotiations for investment, and for citizens to be given access to information about the content of investment contracts. Some even called for the inclusion of parliamentarians in negotiating teams, or at the least, a consultative process before contracts are signed and implemented.

**2. Balancing investor rights and obligations, and host governments' negotiating capacity.** Participants were concerned by the imbalance between investor rights and obligations on the one hand, and those of governments and communities. In general, most contracts and investment treaties favour investors by giving them rights without corresponding obligations on the one hand, and by imposing considerable obligations on governments on the other. This imbalance can undermine government efforts to take measures to achieve sustainable development. Here again, the question of transparency during the negotiation process (and that of the capacity of government officials) was raised. For many participants, if the process is transparent, people and parliaments will have an opportunity to alert the government on key provisions that are risky for host countries. At the same time, better-quality negotiators can also help countries secure favourable deals.

**3. Contract farming for small farmers' integration into markets and an alternative to large-scale land investment.** The discussion around contract farming focused on how investment in this mode of agriculture can better integrate small farmers into markets and can offer an alternative to large-scale land investments. Participants were interested in the benefits of contract farming for securing stable markets for smallholders and reducing companies' demands on land. Participants were concerned about some of the complexities of contract farming and the necessity of protecting the rights of farmers against abuses that may occur in the course of contract negotiations and implementation. If these problems are well handled, participants agreed that contract farming could be one of the key tools in helping local farmers benefit from large-scale agricultural investments.

**4. Public investments in agriculture.** Questions were raised about the commitment of West African governments to investing in their countries' agriculture systems. In line with the Maputo declaration in 2003, African governments committed to invest

at least 10% of public funds to the agriculture sector. During the discussions around ECOWAS agricultural policy (ECOWAP), participants discussed which countries fulfilled that commitment, and how the funds were used for agriculture development. For many parliamentarians, it is important that those funds go directly to farming activities instead of equipment for government agriculture services. They also stressed the necessity of monitoring and assessing how funds are allocated to agriculture and how farmers benefit from those funds.

**5. The ECOWAS Land Directive.** Participants were interested to learn about the ECOWAS draft Directive on Rural Land. This will be a legally binding document to be adapted into the internal legal frameworks of the 15 member states of ECOWAS. Participants were enthusiastic to know that the land directive contains a chapter on land-based investments, which encourages states to manage those investments with appropriate legal instruments, such as long-term leases. Many were of the view that the directive could include a model lease to guide states in drafting similar language at the national level. Moreover, West African parliamentarians welcomed the coherence among key regional institutions, as the land directive takes into account former land initiatives such as the land observatory of L'Union Économique et Monétaire Ouest-Africaine (UEMOA), and a proposed land charter of the Inter-State Committee for Drought Control in the Sahel (CILSS). This provides the land directive with strong background to build upon, and to act as a tool for states to face key land issues and challenges in the region. Another key element highly appreciated by participants is the LPI's involvement in the preparation of the land directive, which is seen as an opportunity to mainstream land issues into development processes in West African countries, as reflected in the African Union declaration on land issues and challenges in Africa. So parliamentarians were eager to be informed of the process before it started being implemented at the national level.

**6. Learning from other regional parliaments.** The workshop was also an opportunity for PAP, ECOWAS Parliament and IPC-WAEMU to learn from the experiences of the East African Legislative Assembly (EALA). A team of parliamentarians, including the Chairperson of the Agriculture, Natural Resources and Tourism Committee, presented the functioning and mandate of EALA, and how they are able to influence lawmaking and norms in the East African region. EALA presented their lawmaking process, focusing on the forest management and protection bill. West African parliamentarians were encouraged to hear that EALA is the legislative arm of the East African Community (EAC) with power to legislate. It is the only parliament in Africa to date that has been awarded such powers. EALA representatives were also curious to know how binding the new land directive of ECOWAS would be on member states if those states retain the power to give it an effect in their national legal frameworks, a process that is similar to that of soft law instruments.

## *Recommendations and Way Forward*

The workshop ended with the adoption of a declaration, including key recommendations from parliamentarians and providing the PAP and its partners with guidance on the way forward (see Annex 1 below).

Parliamentarians firstly recommended that governments build adequate legal and policy frameworks for investment in agriculture and land, drawing as much as possible from the *Principles for Responsible Investment in Agriculture and Food Systems* and the *Guiding Principles on Large-Scale Land-Based Investments in Africa*, through appropriate instruments, information, participation and community consultation. These instruments should include tools aiming at reducing the risks associated with agricultural investment while maximizing the economic and social benefits, taking into account the need for appropriate impact assessments, monitoring and implementation.

Parliamentarians also mentioned the need for policy-makers to promote and support contract farming through proper public policies and strengthen, where appropriate, the legal framework applicable to that farming model.

Another important recommendation from the declaration is the inception of a model contract on agricultural investments at the regional level in order to help countries fill the gaps that may be found in their national legal frameworks applicable to those investments.

In line with the yet-to-be-adopted land directive, parliamentarians called upon governments to ensure equitable and fair access to land, participation in decision making for women in all agricultural investment projects.

As for the way forward, it will focus on the implementation of the declaration adopted by parliamentarians (see Annex 1).

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# ANNEX

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## THE DECLARATION

We parliamentarians from the Pan African Parliament (PAP), the Parliament of the Economic Community of West African States (ECOWAS), the East African Legislative Assembly (EALA), the Inter-parliamentary Committee of the West African Economic and Monetary Union (IPC-WAEMU), the National Assembly of Côte d'Ivoire, having met in Abidjan, Côte d'Ivoire, 14 to 16 December 2015 during the workshop "Promoting Sustainable Agricultural Investments: legal and policy options,"

### **Recognizing:**

- *The African Union Declaration on Land Issues and Challenges in Africa,*
- *The Maputo Declaration on Agriculture and Food Security and,*
- *The Malabo Declaration on accelerated agricultural Growth and transformation for shared prosperity and improved livelihoods,*

**Conscious** of the need to invest in a sustainable manner in agriculture and rural development in Africa to ensure food security and to reduce poverty;

**Concerned** about the negative impacts of large-scale land-based investments on communities rights (land rights, human rights, social rights) and environment;

**Acknowledging** the need to guarantee access to land for all users, and to improve agricultural production and the living conditions for all people;

**Recognising** the importance of promoting sustainable employment for young people and guaranteeing gender equity and women empowerment;

**Acknowledging** the contribution of agricultural enterprises in support of agricultural investment and the need for them to maintain sustainable and mutually beneficial relationships with farmers;

**Recognizing** that the success of agricultural investments is based largely on the implementation of a legal framework that is fair, is well monitored, and with sound evaluation procedures and dispute resolution mechanisms;

**Taking note** of the *Guiding Principles on Large-Scale Land-Based Investment* and the *Principles for Responsible Investment in Agriculture and Food systems*, the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* as well as other initiatives served as a reference framework to national and regional processes for land governance;

**Recognizing** the need for a shared approach to land tenure systems in Africa that aims at improving productivity and the lives of African people in general and in the ECOWAS region in particular and, welcoming the existence of the draft directive on Rural Land Management Principles in ECOWAS region;

**Acknowledging** that “contract farming” based on a mutually beneficial relationship provides an opportunity to increase agricultural productivity provided that such contracts do not include risks arising from the disparity in negotiating power between the parties



**Taking into account** the IISD *Guide to Negotiating Investment Contracts for Farmland and Water*, the Comité Technique Foncier et Développement *Guide to Due Diligence of Agribusiness Projects That Affect Land and Property Rights*, and the UNIDROIT / FAO / IFAD *Legal Guide on Contract Farming*;

**Declare that it is necessary to:**

1. Ensure the adequacy of laws on investment in agriculture and land, drawing as much as possible from the *Principles for Responsible Investment in Agriculture and Food Systems* and the *Guiding Principles on Large-Scale Land-Based Investments in Africa*, through appropriate instruments, information, participation and community consultation.
2. Develop legal and policy tools on agricultural investment and land aiming at reducing the risks associated with agricultural investment while maximizing the economic and social benefits, taking into account the need for appropriate impact assessments, monitoring and implementation.
3. Promote and support contract farming through proper public policies and strengthen, where appropriate, the legal framework applicable to contract farming.
4. Establish and/or strengthen awareness programs and capacity building for parliamentarians to enable a better understanding and dissemination of laws and policies.
5. Initiate a model contract on agricultural investments at regional level.
6. Support measures that strengthen equitable and fair access to land, participation and decision making for women in all agricultural investment projects.
7. Establish a monitoring committee to ensure information flow and experience sharing among parliamentary institutions and the implementation of this declaration.

Abidjan 16<sup>th</sup> December 2015

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**PROGRAMME**

**DAY ONE**

TIME	SESSION
8:30	<b>Registration</b>
9:00	<b>Welcome and introduction</b> Hon. Tavares Gonçalves Alcido, ECOWAS Parliament Hon. Jérémie N'Gouan; CIP-UEMOA Hon. Christophe Bazivamo, East Africa Legislative Assembly (EALA) Hon. Dognon Koné, National Assembly of Côte d'Ivoire
9:45	<b>Session 1: Overview of land issues in Africa</b> Hubert Ouedraogo, Land Policy Initiative (LPI) Mohamed Coulibaly, IISD Questions and experience sharing
<b>10:30 Group photo and Break</b>	
11:15	<b>Session 2: Global and regional initiatives to promote responsible agricultural investment</b> Francine Mukazi Picard, IISD Larbi Odamé, Land Policy Initiative (LPI) Questions and experience sharing
12:15	<b>Lunch</b>
13:45	<b>Session 3: The legal framework for investment in agriculture</b> Mohamed Coulibaly, IISD Questions and experience sharing
14:15	<b>Session 4 (interactive): Dialogue on the role of parliamentarians in improving agricultural investments</b> <i>What more can be done to improve transparency, support communities' participation in decision-making processes, strengthen land rights issues and address grievances?</i>
15:30	<b>Break</b>
15:45	<b>Session 5: Lawmaking in the East African Legislative Assembly – the case of the East African Community Forest Management and Protection Bill</b> Hon. Christophe Bazivamo, East African Legislative Assembly
<b>18:00 End of Day One</b>	
<b>Cocktail reception</b>	

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**DAY TWO**

TIME	SESSION
9:00	<b>Summary from Day One - Moderator</b>
9:10	<b>Session 6: Preparing for negotiations: How to screen investors and evaluate investment projects for the agricultural sector?</b> Amel Benkhala, Gret Questions and experience sharing
10:10	<b>Session 7: Agricultural Investment Contracts: the main elements</b> Mohamed Coulibaly & Carin Smaller, IISD Questions and experience sharing
11:10	<b>Break</b>
11:30	<b>Session 8 (working groups): Towards a model contract for West Africa</b> <i>Participants will discuss the feasibility and desirability of developing a model contract for West Africa.</i>
12:45	<b>Lunch</b>
14:00	<b>Session 9: Contract farming: the legal framework</b> Frederique Mestre, UNIDROIT Questions and experience sharing
15:00	<b>Session 10: Contract farming: an equitable relationship</b> Frederique Mestre, UNIDROIT Questions and experience sharing
16:15	<b>Break</b>
16:45	<b>Session 11 (working groups): Maximising the gains from contract farming</b> <i>How to improve contract farming in West Africa and integrate this model in land investments.</i>
17:45	Reports from working groups
18:15	<b>End of Day Two</b>

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**DAY THREE**

TIME	SESSION
9.00	Summary from Day Two – Moderator
9:10	<b>Session 12: Lessons from country experiences</b> El hadj Issa Azizou, former Ministre of Agriculture, Benin Christophe Bazivamo, former Ministre of Agriculture, Rwanda Questions and experience sharing
9.40	<b>Session 13: Overview of the ECOWAS Agricultural Policies (ECOWAP)</b> Cheick Oumar Ba, IPAR Sénégal Mahamane Dedeou Touré, CEDEAO Questions and experience sharing
10.10	<b>Session 14: The Draft Directive on Land Policies for West Africa</b> Mahamane Dedeou Touré, CEDEAO Questions and experience sharing
10.45	Break
11.00	<b>Session 15 (interactive): Mainstreaming land issues in the programmes of ECOWAS</b> <i>A dialogue on the LPI/ECOWAS Project including a discussion on key activities and plan for implementation.</i>
12:00	<b>Session 16 (interactive): Declaration and decisions on common action</b> <i>Participants will agree on a plan of action based on the outcomes from the working groups and interactive sessions. Participants will finalise the declaration.</i>
13.00	Closing remarks
13.30	<b>Lunch and Departure of participants</b>

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## LIST OF PARTICIPANTS

NAME	SURNAME	COUNTRY	ORGANISATION
Akissi	Roland	Côte d'Ivoire	Parliament of Côte d'Ivoire
Ba	Cheick Oumar	Sénégal	IPAR
Bazivamo	Christophe	Rwanda	EALA
Benkahla	Amel	France	GRET
Coulibaly	Mohamed	Mali	IISD
Diarra	Toumani	Mali	IPC-WAEMU
Diomande	Manga	Côte d'Ivoire	Parliament of Côte d'Ivoire
Dongon	Koné	Côte d'Ivoire	Parliament of Côte d'Ivoire
Dosso	Lancina	Côte d'Ivoire	Parliament of Côte d'Ivoire
El Hadj Issa	Azizou	Benin	Former Minister of Agriculture of Benin
Fongni	Émile Rigobert	Mali	IPC-WAEMU
Kamara ep. Toungara	Aminata	Côte d'Ivoire	Parliament of Côte d'Ivoire
Larbi	Wordsworth Odame	Ghana	LPI
Mestre	Frédérique	Italy	UNIDROIT
Malambe	Goodness Khanyisile	Swaziland	PAP
Monnet	Ernestine M	Sénégal	Moderator
N'Gouan	Jérémie Alfred	Côte d'Ivoire	IPC-WAEMU
Ndayizeye	Béatrice	Tanzania	EALA
Niang	Aminata	Mauritania	PAP
Okumu	Christophe	Uganda	EALA
Ouedraogo	Hubert	Burkina Faso	LPI
Pareno	Judith	Kenya	EALA
Picard	Francine	Rwanda	IISD
Sale	Poli	Côte d'Ivoire	ECOWAS Parliament
Sane	Ibrahima	Sénégal	IPC-WAEMU
Sibide	Mamedi	Mali	PAP
Smaller	Carin	Switzerland	IISD
Sossou	Dakpè	Benin	IPC-WAEMU
Tavares	Gonçalves Alcidio	Cap vert	ECOWAS Parliament
Touré	Mahamane Dedeou	Burkina Faso	ECOWAS Commission
Traore	Alfred	Nigeria	ECOWAS Parliament
Yogo	Geoffroy	Burkina Faso	IPC-WAEMU
Zan-Bi Goï	Ferdinand	Côte d'Ivoire	ECOWAS Parliament