IMPACTS OF LAND-BASED INVESTMENTS IN THE EAST AFRICAN COMMUNITY

The Case for Gender Responsible Investment Policies for the East Africa Community

Written By

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Introduction

Women, despite constituting over 60 percent of the East African Community (EAC) population are still marginalised especially in the sectors of investment[1]. Generally, the current attitudes and approaches in the economic development process and specifically, the existing investment related policies, laws and agreements have served to marginalize women and undermine the agenda of gender equity within the EAC region. While measures have been taken by Partner States to address the imbalances meted out on the female gender throughout human history, more work still needs to be done on enhancing more gender responsive investment policies and laws in order to fundamentally contribute towards the socio-economic transformation of the region.

Foreign Direct Investment (FDI) inflows into the East African region have been increasing cumulatively over the past years, majorly from the land-based investments as a result of the existing fertile soils, the discovery of viable reserves of mineral resources.

Land-based Investment in the EAC and the "scramble for land"

After the food crisis and increased energy price in 2007–2008, large-scale investments in land dramatically increased to establish commercial crop production in order to meet global food and biofuel demands and produce industrial commodities[2]

Most notably is that these land-investments have resulted into a massive takeover of vast tracts of land that are either bought or given away as concession to private investors, including local elites and foreign investors at the expense of local communities.

This "new scramble for land" has further been reinforced by the neoliberal policy ideology which is anchored within free market fundamentalism. Consequently, land has been commoditized and its allocation and economic viability is now influenced by the market forces of demand and supply. The associated social benefits, such as land being a source of food, shelter, cultural interests such as burial sites and other practices, have been ignored, with specific focus drawn to profit.

Land that only a short time ago seemed marginal to the global economy is now being sought by international and national investors and speculators to an unprecedented

[1] https://www.eac.int/gender
[2] https://www.mdpi.com/2073-445X/10/3/324/pdf

degree, placing them in direct competition with local communities (majority of which comprise of women).

In the recent past, land-based investments have generally grown in four main sectors, Agriculture, Natural Resources, Infrastructure, Mining and Energy:

Agriculture. The EAC has borne the brunt of a global spike in large-scale land deals for production of commodities such as palm oil and sugarcane. According to the Land Matrix compiled by UNECA revealed that in the agriculture sector alone, there are 685 cases of Largescale Land-based Investments that have been initiated since 2000, covering an area of nearly 40 million hectares of land across Africa. Most of these deals are in East Africa (242 cases totaling over 15 million ha). In Southern Africa a substantial number of 216 cases have been registered covering about 8.7 million ha, whereas in West Africa a surface area of 9.7 million ha has been registered covering 178 cases. North Africa is not a destination of note for large scale land investors, which might be explained by the small area of fertile arable land available in this region[3]. The EAC partner states governments have welcomed increased investment in agriculture as a strategy for improving food security, enhancing industrial development and creating employment opportunities.

Natural Resources. The discovery of viable reserves of minerals, oil and gas in the region has fueled an increased inflow of foreign capital over the recent years. However, this in most cases the poor have been left behind as inequality has widened. Without strong governance to manage natural resource development, extractive industries have stripped Africa not just of natural capital, but public wealth – making up a significant portion of the more than USD 50 Billion lost every year in illicit outflows. Natural resource extraction has also often been accompanied by evictions, violent conflict, and environmental devastation.

Infrastructure. Investment in infrastructure accounts for over half of the recent improvement in economic growth in Africa and has the potential to achieve even more. The wave of infrastructure development in Africa is mapped out in the Programme for Infrastructure Development in Africa (PIDA). PIDA was adopted by the African Union in 2012 as a continent-wide program for regional integration and infrastructure transformation. Within the EAC region, in 2017, US $55bn was approved towards infrastructure development in the region. The main aim of the infrastructure projects is to connect member states and ultimately boost intra-EAC trade. The region is also undertaking projects such as the East Africa 1,443km-crude

[3] Large-scale land-based investments in Africa: Synthesis report

oil pipeline project plus the Hoima Oil Refinery in Uganda and the Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET) Corridor project which comprises ports, railways, pipelines and roads. The first Standard Gauge Railway (SGR) in the region was completed and runs between Mombasa and Nairobi and is now being extended to Malaba on the border with Uganda with a spur to South Sudan and Rwanda. Other projects include road projects such as the construction of Mombasa – Nairobi – Malaba – Jinja Expressway (Kenya and Uganda); the development of EAC-based Airports and EAC Unified Upper Flight Information Region, the second Nile Bridge which spans 525 metres is under construction in Uganda, among others.

Mining. The EAC has experienced a lot of development in the extractive sector in the recent past, specifically the discovery of oil reserves and other impressive mineral resources in Uganda, Kenya, Tanzania, Rwanda and Burundi. Burundi produces cobalt, copper, nickel, niobium (columbium), tin, tantalum, tungsten, gold, and limestone. Kenya on the other hand has a large amount of industrial minerals such as fluorspar, soda ash, kaolin, rare earths and cement. The country also produces metals such as gold, iron ore, niobium (columbium), titanium and zirconium, kyanite, manganese, silica sands, gemstones, gypsum and limestone. In Tanzania, gold is the main mineral. The country also produces cobalt, nickel, copper, iron ore, titanium, vanadium, niobium, silver, uranium, tantalum, diamond, limestone, gypsum, phosphate, gemstones (particularly tanzanite), graphite, and rare earths.

Energy. Energy investment in Africa has traditionally relied on large-scale environmentally taxing fossil fuels and more recently, hydropower. In recent years, some development finance institutions have begun placing more attention on renewable energy, but this investment still pales in comparison to traditional energy sources. New initiatives, such as the U.S. facilitated Power Africa and the African Development Bank's New Deal on Energy for Africa, are bringing together public and private investors to expand energy access. With the electricity demand in East Africa likely to triple by 2030[4], experts have argued that undertaking renewables will be crucial to the diversification of the energy sources needed to meet this expectation. Hence, investors' enthusiasms to finance renewable projects are intensified, as plans are put in place to use renewables to improve energy access in hard-to-reach areas. For example, tied to the SGR project are Kenya's coal fields and the building of a 981.5 Megawatt coal-fired thermal electricity-generating plant worth Kenya Sh206 billion between China Power Global and Kenya's Amu Power. In Uganda, the largest hydroelectricity dam at Karuma is already underway. The USD 1.7 billion project is divided into six major components namely a dam section, power intake unit, powerhouse, transformer cavern, surge chamber, pressure shafts, cable shaft and

[4] http://www.future-energy-eastafrica.com/renewablestrack

two tail-race tunnels for returning water circulating through the turbines back to the river. In 2014, the World Bank approved the Tanzania Renewable Energy Carbon Development Mechanism (CDM) project which aims to increase access to modern energy services, promoting both isolated mini-grids and national grid renewable energy projects in the country using hydro, solar, wind and biomass technologies for electricity generation.

Gender related challenges arising from land-based investments

These investments, if not boldly regulated in view of communities' interests are feared may be "**Trojan horses**". Although the governments forecasts potentially beneficial outcomes, some experts have argued that these projects also risk opening up the EAC countries and their communities to devastating social and environmental impacts, such as air and water pollution, large-scale displacement of communities, and fiscal and macro-economic disruptions. Civil society groups have taken a cautious approach to the increasing number of investments in these sectors. They have raised concerns that the goals of these developments may not be met if undue preference is given to private investors at the expense of the social and environmental sustainability of populations. The absence of strong mechanisms for engaging with civil society and the communities for which the projects are assumed to benefit has remained the order of the day from project to project, sector to sector, and country to country.

The attitudes and approaches that have served to marginalize women and undermine the agenda of gender equity within the EAC region are still entrenched in exiting sectoral legal and institutional frameworks. It should also be noted that despite all the efforts that have been made to put in place gender instruments such as the EAC Gender protocol and law as well as the EAC Gender Barometer, there operation has remained in a vacuum and as a result, gender inequity in investment projects has continued, especially in land-based investment projects. More specifically:

1) Currently, displacement and dispossession of land has characterized the order of the day in majority of the rural communities. The patriarchal nature of land ownership has worsened this situation given that the majority of the land tenures used in these countries are customary which grant men dominance over land ownership and control. Even in areas where the tenure is free hold, cultural influence on property ownership undermines ownership rights at the expense of gender realities. Consequently, consultations during evictions and subsequent compensations have been directed to men without the inclusion of women's voices in this decision making and implementation processes.

2) More often involving the displacement and eviction of local communities from their traditional lands without due regard to their rights, safeguards to their wellbeing and or development interests. These deals are extremely detrimental to the livelihood of the local communities whose main survival is drawn from the land.

Article 5 (3e) the East Africa Community (EAC) Treaty[5] commits to ensuring 'the mainstreaming of gender in all its endeavours and the enhancement of the role of women in cultural, social, political, economic and technological development. The EAC also has in place, the Gender and Community Development Committee which compiled a framework of socio-economic indicators to guide the region's future programmes and activities.
More contentious still, is that the locals displaced in many instances receive inadequate or no compensation for their land.

In addition, land-based investment deals lack transparency in the land acquisition processes despite the existing and internationally recognized principles of Free Prior Informed Consent (FPIC). Instead, operationalization of the FPIC to obtain approval from the community before the allocations are made has been overlooked. Even, existing laws such as the National Investment Code of 2019, The AU guiding principles on large scale land-based investments, the UN Guiding principles on business and human rights are rarely referred to under these circumstances.

An example is the national investment code (2019) of Uganda which prioritises protecting the interests of the private investors at the cost of community and environment rights.

Given the intricacies that surround land-based investments coupled with the current "corporate capture", the imperative to regulate Land-based Investments cannot be over emphasized. Now more than ever, the need to promote inclusive approaches in dealing with and regulating private investments is critical.

Implications on sustainable development

Investments can also have adverse and long-term implications on livelihoods, environment and on a country's general economic development. Notably, investments in mineral exploitation and exploration have been reported to have long

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[5] The EAC Treaty; https://www.eala.org/uploads/The_Treaty_for_the_Establishment_of_the_East_Africa_Community_2006_1999.pdf

term impacts on the natural environment, society and cultural heritage, the health and safety of mine workers, and communities based in close proximity to operations. In addition, social and environmental impacts have also been reported to be more prevalent to communities within close proximity to industries/ factories. Continuous disposal of wastes such as mining and industrial wastes has been reported to contribute to air and water contamination, which are detrimental to human health, livestock and wildlife biodiversity, and has also had serious effects on the welfare of the communities, especially groups of women and children. Several authors have also commented on the potential-adverse impacts of such investments, which include displacement of local people from ancestral lands, marginalization, low wages and oppression of people belonging to lower economic classes. In other cases, the impacts have been more indirect. For example, some investments have altered the economies of communities where they are established. A case in point is the Kalangala district in Uganda which has now turned into a food importing district since the establishment of Bidco palm oil industry[6]. Similarly, in the Geita district, a gold mining region in Tanzania, it was observed that the agro-pastoral systems were abandoned due to the increasing number of mine pits.

It is also noteworthy that for any investment to deliver development, there should be a supportive investment regime in place. Such an investment regime must balance between the rights and obligations of states as well as ensure the realization of the country's development aspiration. It is for this reason that countries like Ecuador, South Africa and India have taken to revise their investment policies, laws and agreements to clearly spell out the rights and obligations of states.

Uganda could adopt approaches such the Community Development Agreements[7] that have been explored in other parts of the world to unravel the contentious issues that obliterated people of their inherent right over land[8]. The CDA is a human rights accountability mechanism which can be used by private investors to obtain acceptance or approval from local communities and stakeholders for investments. It's based on the principles of social legitimacy, credibility and trust. The concept is founded on the idea that investment projects do not only need government permission to conduct their business, but also permission from communities. It is

[6] Analysis of oil palm projects in Uganda (2002-2018) – impacts and implications for future development
http://www.ecotrendsalliance.org/assets/files/Article-Musimami-Opige-Ssemmanda.pdf

[7] Community Development Agreements guidance
https://www.ipieca.org/resources/community-development-agreements-guidance

[8] Emerging practices in Community Development Agreements
https://ccsi.columbia.edu/content/emerging-practices-community-development-agreements

granted by all the community members. A community will therefore give their social license to a private investor if the investment and its activities meet their expectations

Policy recommendations.

1. **Review the National investment code of Uganda** should be reviewed to impose a role on the corporations operating on large scale to ensure the respect and adherence to human rights of communities and contribute to the responsible governance of land and land-based resources.

2. **Terminate and renegotiate all International Investment Treaties (IIAs**), Uganda is a signatory to a number of international investment agreements. However, many of these agreements protect the rights of investors rather than being compatible to human and environmental rights obligations. In this context, it is timely for the government to consider terminating and renegotiating all the investment treaties that are incompatible with human and environmental obligations and insert clauses of human rights and environmental protection therein.

3. **Regulate LSLBI to ensure respect for human and property rights.** LSLBI have important human rights implications including **the right to food, the right to development and the right to self-determination.** States must operationalize regulatory frameworks to ensur**e** LSLBI are implemented in a manner which recognizes and respects these human rights.
   The AU framework and guidelines espouses a continental land regime which prioritizes security of tenure for all categories of land rights. A priority action for States is to review their land laws and regulations to ensure that all categories of land rights are protected in light of powerful private interests in land held under customary tenure. On their part, Member States should ensure the protection of land rights of communities in the context of investments. Revisions to legislation may be required in order to make mandatory the prior, informed consent of affected communities with respect to LSLBI agreements as well as establishing the basis for their compensation.

4. The absence of mechanisms to monitor the performance of LSLBI and their impacts. These systems, together with clear accountabilities in the event of

negative impacts should be considered as minimum requirements for the protection of communities. Support is needed to help communities build their capacity in negotiating benefits, compensation and other terms of agreements. In view of the tremendous disparity in the capacities of communities and investors, the playing field should be levelled somewhat through provisions for independent legal counsel for communities.

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