



Responsible Land Governance: Towards an Evidence Based Approach

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Advocating for safeguards in governing land for investment: Ethiopia, Mozambique, Uganda, and Malawi

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Abstract

This paper highlights Human Rights Watch research from Ethiopia, Mozambique, Uganda and Malawi based on field research conducted in 2011, 2012, 2013-2014 and 2015-16 respectively. We find that when there are weak government policies, lack of transparency in land transactions and monitoring of negative consequences for communities, vulnerable groups are disproportionately impacted. We argue that governments and donors such as the World Bank need to undertake preventative measures when embarking on policies that encourages large-scale land based investments for extractives, agriculture and infrastructure.

Key Words: Land, Monitoring, Redress, Resettlement, Safeguards



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Overview

With the new wave of land related laws and policies enacted in Africa in the last few years, special focus needs to be on key governance gaps related to how land is allocated for investment purposes vis-à-vis local communities. We argue that governments and donors such as the World Bank need to undertake preventative measures when embarking on policies that encourages large-scale land based investments for extractives, agriculture and infrastructure. These measures should be tailored to address the distinctive impacts on women and men. This will ensure that projects planned and carried out do not violate rights of local communities, and would minimize displacements and disruptions of livelihoods.

Methodology

To highlight governance gaps related to governing land for investment we use data from Ethiopia, Mozambique, Uganda and Malawi based on field research conducted in 2011, 2012, 2013-2014 and 2015-16 respectively. We interviewed approximately 330 respondents for the four case studies, including local community members, government officials, investors and other stakeholders. Empirical qualitative data from interviews was analyzed manually to develop themes that illustrate gaps within the regulatory framework across all four case studies. Secondary data from satellite imagery, government archives, and media sources were used to triangulate and corroborate our results.

- a) In Karonga district, Malawi (where more than 150 respondents were interviewed in 2015-16) we examined the potential harmful impacts of coal and uranium mining on the livelihoods of surrounding communities.
- b) In Tete province, Mozambique (where more than 129 respondents were interviewed in 2012), we examined impacts of coal mining on local communities displaced and resettled from 2009 to 2011 due to coal operations.
- c) In Uganda (where more than 137 respondents were interviewed in 2013-2014) we examined human rights impacts of the mining industry on communities in Karamoja, northeastern Uganda. We especially focused on how Uganda's laws fail to ensure that customary land owners – including many from indigenous communities – are consulted about the development of their own lands.
- d) In Southern Ethiopia (where more than 45 respondents were interviewed in 2011) we examined the government's development plans for sugar plantations and a massive hydroelectric dam, known as Gibe III on the Omo River, and the practical and human rights impact on the Lower Omo's 200,000 indigenous inhabitants.

Findings

Our findings are organized based on the key governance gaps across the four case studies. We find that when there are weak government policies, lack of transparency in land transactions and monitoring of negative consequences for communities, vulnerable groups are disproportionately impacted.

Right to Information

In Malawi we found that families living near sites of coal and uranium mining operations in Karonga district faced serious problems with water, food, and housing and were not informed about health and other risks of mining. Women said they lacked information on issues that affected them disproportionately, such as access to safe water.

In the case of Mozambique, some communities had limited information about when they would be resettled, making it difficult for them to make seasonal farming decisions or investments requiring resources, such as house repairs. Women who had been resettled said they had little information on the timing and duration of food assistance programs implemented by mining investors, enhancing their anxiety and uncertainty about whether they would have adequate food throughout the year.

Uganda's mining law requires a surface rights agreement to be negotiated with landowners prior to active mining and payments of royalties to lawful landowners once revenues flow. The law does not require any communication or consent from the local population during exploration work. No one in the communities interviewed in 2013 in Karamoja indicated that they were outright opposed to exploration or mining activities on their lands, but community members repeatedly stressed that there has been inadequate information and participation in decision making and confusion as to how the communities would benefit, if at all.

In Ethiopia, there was a general information vacuum about the government's development plans for sugarcane plantations and hydroelectric dam in the region, and there was minimal consultation with members of affected communities. These communities lacked experience with industrial-scale development and feared questioning the government.

Need for Greater and More Concrete Recognition of Customary Land Rights

Malawi's land laws establish a variety of forms of land tenure and set out standards for land transfers or compulsory acquisitions, but the land law in effect until 2016 did not provide for compensation for loss of use of customary land, rendering the land rights for individuals and communities near mining sites highly insecure. Women whose land use was contingent on their relationship with men had an additional level of insecurity.

Uganda's land laws recognize customary land ownership. Despite this provision, the Land Board has only in 2016 granted a limited number of certificates of customary land ownership in the country – and still none in Karamoja. Residents' lack of legal proof of land ownership puts communities in significant jeopardy of rights abuses especially in areas where exploration and mining activities are increasing.

The Ethiopian constitution also provides a solid basis for the recognition of pastoral rights, which apply to the peoples of the Omo valley. Despite this provision government security forces forced pastoralists to move through violence and intimidation, with compensation only when legal title was available – which was rarely the case in pastoral/communal areas. At the time of our research the government was violating the constitutional rights of its pastoralist communities in the Omo valley.

Need for Environmental and Social Impact Assessments (ESIAs) and Ongoing Monitoring of Environmental and Social Impacts



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Malawi's current regulatory framework relevant to mining is outdated. The regulatory framework regarding Environmental Impact Assessments (EIAs) for mining operations remains unclear and incomplete, as it does not require the assessment of social and economic impacts—including distinctive impacts on women. Many of the human rights abuses we documented resulted from the government's failure to effectively monitor, and address the impacts of mining operations.

In Mozambique we also found that the government lacked adequate monitoring mechanisms to ensure that companies comply with the environmental and social commitments they made.

In Uganda, the National Environment Management Authority (NEMA) faces numerous challenges in carrying out a monitoring role. Government officials said there was a chronic lack of resources that made it difficult to undertake thorough reviews of every environmental impact assessment that was submitted, limiting its ability to mitigate harm.

At the time of our research in Ethiopia, we found no evidence that an environmental impact assessment for the sugar plantations had been completed and approved by the Ethiopian Environmental Protection Agency, despite the legal requirement to do so.

Need for National Resettlement policies

Malawi has no national resettlement policy to guide relocations due to development projects and compensation schemes and procedures are unclear. Some households in Karonga district reported that they had been relocated without proper notification and insufficient compensation due to new or expanding mining projects.

In 2012, Mozambique adopted the Regulation for Resettlement Resulting from Economic Activities. In the absence of a coherent government policy, resettlements prior to 2012 proceeded in an ad hoc and to some extent haphazard manner. Local communities that were displaced and resettled from 2009 to 2011 faced significant and sustained disruptions in their ability to access water and to produce or buy food. Many resettled households experienced periods of food insecurity, or when available, dependence on food assistance financed by the companies that displaced and resettled them.

In Ethiopia, we found that the two volume resettlement action plan for the Dam and reservoir did not consider the downstream effects of large-scale commercial irrigation schemes. The cost of the sugar plantation development to indigenous groups is massive: their farms have been cleared, prime-grazing land is lost, and livelihoods are decimated. At the time of our research there was no resettlement action plan that included any of the displaced communities in the areas of the sugar plantation downstream of Gibe III.

Accessible and affordable grievance redress and timely dispute resolution

While Malawi's Constitution sets out various procedural rights that apply to environmental decision-making, such as the right of access to information, the current regulatory regime on mining does not promote access to environmental and health information. Affected communities – especially those vulnerable to mining's potential impacts, are unable to seek redress for harms suffered because relevant information is not available or easily accessible.

In the case of Mozambique we found that there was a lack of accessible and responsive mechanisms for community members' complaints and redress of grievances. At the time of our interviews, none of the resettled individuals that we interviewed were aware of any specific grievance redress mechanism devoted to handling resettlement-specific complaints. More than half said they felt too disempowered to pursue formal complaints.

During our research in Uganda we found that communities in Karamoja that were impacted by mining activities had no clear and/or effective grievance mechanism through which they could complain directly to companies in addition to the government.

In Ethiopia, we found that the lack of independence of the courts, lack of opposition voices in parliament, and government's intolerance for dissent limit possibilities for grievances to be addressed. Where grievance mechanisms do exist they often lack impartiality and are inaccessible to Omo communities because of financial, linguistic, and cultural constraints.

Conclusion

Based on our research findings the key gaps are the (i) need for right to information regimes and meaningful access to such information; (ii) need for recognition of customary land rights in concrete ways such as with resultant legislation to conduct customary land audits, institute community land boards and customary/community title when appropriate; (iii) EIAs and ongoing monitoring should be mandatory, include social and economic impacts as well as environmental impacts, and require consultation with local communities; (iv) need for accessible, affordable and timely grievance redress and dispute resolution; (v) need for national resettlement policies as a basic tool that should be adopted before investment and resettlement begins. Each of these measures should be tailored to recognize the distinctive impacts on men and women from such investments, and ensure women's participation in decision-making.



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