2019 CONFERENCE THEME: Catalyzing Innovation

SHORT TITLE: *WHEN GOOD INNOVATIONS GO BAD*

LONG TITLE: *A Rights-Based Approach to Land-Reliant Impact Investments*

Summary
In the last decade, impact investing is a concept that has spurred innovative financing mechanisms in emerging economies. Many believe that impact investing is one sure way pool private sector funds to help solve some of the most pressing challenges facing our world today.

In many economies that are land reliant, this is good news and we have seen impressive private sector dollars in sectors like agriculture and renewable energy. But it is not all good news.

This paper discusses potential negative effects that land-reliant impact investments could have on host communities. Regardless of good intentions of innovations, sometimes these investments have the unintended consequence of exacerbating conflict, insecurity and poverty. This paper therefore advocates for a triple-bottom line approach where people, planet and profit are given equal stakes in transactions, so as to produce more responsible land-based investments.

Purpose
This paper specifically aims to discuss safeguards that can be put in place to ensure that community land rights are protected through out the lifecycle of a land-reliant impact investment - from the deal structuring stage through divestment.

Methodology
This paper will be completed using a combination of desktop-based research and case study analyses.

Limitations
As impact investing is a nascent field, a key limitation to the analyses of the subject matter of this paper is the unavailability of a sufficient sample size of relevant case studies. Further research on the subject matter should be an ongoing process as the number of land-reliant impact investments increase.

Practical implications
This paper will influence corporate attitudes when relevant stakeholders are structuring impact investment deals that potentially implicate the land rights of host communities.

Originality, value and significance
Little literature on this subject matter exists, therefore this paper makes a fresh contribution to scholarship on the intersection of rights-based land development and the deployment of private capital.

1.0 BACKGROUND

As the 17 United Nations Sustainable Development Goals started to gain traction, different stakeholders including the private sector began to develop strategies to enable them to leverage communal strengths to contribute to the SDG goals of ending poverty, protecting the planet and bringing prosperity to all by 2030.

According to the Forum for Sustainable and Responsible Investment, from 2014-2016, in the US alone, sustainable and responsible impact investing grew by over 33%[1] and at the 2017 World Economic Forum, UBS AG a Swiss global financial community, pledged to direct $5bn of all its clients' investments over the next five years to sustainable or impact investments.

Although the concept of Sustainable and Responsible Investing (SRI) has been around for decades a while, the specific "Impact Investing" term was coined at The Rockefeller Foundation's Bellagio Center in 2007.

Impact investing is generally defined as "Investments made into companies, organizations, and funds with the intention to generate social and environmental impact alongside a financial return"[2]. The basic idea is to unlock private capital, so these complement government resources and philanthropic donations utilized in addressing global challenges that perpetuate poverty. Consequently, regular key players in the impact investing ecosystem are: institutional investors, retail investors, philanthropic investors, social enterprises and governments.

Impact investments occur across a multiplicity of industries and assets classes, but land-reliant impact investments are mostly seen in Agriculture, Renewable Energy and Conservation sectors, and the number of projects in these industries continue to increase. For example, in 2016, although the financial value of investments in clean energy fell from $348.5bn in 2015 to $287.5bn, the number of new builds of clean energy projects increased.[3]

2.0 PROBLEM STATEMENT

When the innovators, investors and social entrepreneurs of land-reliant impact investment projects do not effectively engage communities that play host to these investments, it often results in situations that negatively impact the land and human rights of these communities.

About 2.5 billion people depend on lands and natural resources that are held, used or managed collectively.[4] Africa is a significant target area for land acquisitions for large-scale agricultural projects and the continent accounts for 42% of concluded agricultural deals, closely followed by Eastern Europe.[5] In the renewables sector the Asia-Pacific region has attracted the most investments for five years in a row.[6]

[1] https://content.ubs.com/microsites/together/en/spotlight/sustainable-investing.html?s_kwcid=AL!430!3!221869343675!e!!!!sustainable%20development%20goals&ef_id=WYZVmAAAAHbucGXP:20171012074636:s
[2] https://thegiin.org/impact-investing/need-to-know/#s1
[3] https://www.bnef.com/dataview/clean-energy-investment/index.html
[4] http://www.landrightsnow.org/en/why/
[5] http://landmatrix.org/media/filer_public/ab/c8/abc8b563-9d74-4a47-9548-cb59e4809b4e/land_matrix_2016_analytical_report_draft_ii.pdf
[6] Clean Energy Investment By the Numbers - End of Year 2016; https://www.bnef.com/dataview/clean-energy-investment/index.html

However in reality, when communities are excluded from the investment structuring process, this creates blind spots where investment stakeholders are not attuned to community perspectives. This then leads to a misalignment of community, investor and investee interests.

Rights that are often impacted when an impact investment project is land-reliant are: the right to land and natural resources, cultural rights attached to land, right to Free Prior and Informed Consent, right to public participation, right to food and access to essential resources. Additionally, other issues that might potentially arise include economic and social displacement, particularly where land grabs and forced relocation are present, just and fair compensation, and intra-community conflicts.

In Kenya, for instance, the Lake Turkana Wind Power project has been linked to competition for scarce resources, increased violence and failure to respect the land rights of the host communities.[7] And in Oaxaca Mexico, a community's physical safety, drinking water, culture and livelihood was threatened by a hydroelectric project.[8]

3.0 POTENTIAL SAFEGUARDS

Principle 17 of the UN Guiding Principles on Business and Human Rights states: "In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence".[9]

The Principles also provide that human rights due diligence should be ongoing and cover adverse human rights impacts that the business enterprise directly causes by its own activities or it indirectly causes by the links the adverse human rights implications have to its products, services or business relationships.[10] Enterprises are urged to pay special attention to any potential human rights impacts that its business will have on individuals or groups that may be at heightened risk of vulnerability.[11]

The above principles also apply equally to impact investors and social entrepreneurs.

Some examples of specific safeguards that can be put in place are:

- Investors should conduct proper human rights due diligence and communities should be mobilized from the outset and kept involved in all stages of the transaction.
- The human rights risks identified, including social and environmental harms, should be evaluated and mitigated.

[7] https://business-humanrights.org/sites/default/files/Investor%20briefing%20-%20Renewable%20energy%20-%20Apr%202017.pdf
[8] http://www.accountabilitycounsel.org/news-article/new-video-preventing-environmental-human-rights-abuses-in-oaxaca-mexico/
[9] http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
[10] Principle 18
[11] Ibid commentary

- Host communities should be properly consulted utilizing international human rights standards and following the guidance set by the United Nations Guiding Principle Principles on Business and Human Rights and the IFC performance standards.

- Investors should create a triple bottom line result strategy by aligning community interests with theirs and ensuring that there is no conflict.

- The metrics used to measure successes of a project should also measure against community interests and benefits.

- Prior to deployment of capital, investors should assist in policy advocacy to improve land tenure security.

- Capital could be deployed in stages on the condition that host communities will continue to be actively engaged.

- Project level risk analyses should also consider risks that are exacerbated by community tensions, for instance security risks and reputational risks.

- Global multi-stakeholder initiatives should adopt standards tailored to ensuring that land-reliant impact investments are compliant with international human rights standards.

- The impact investing community should standardize impact investments documentation to ensure that investments take into account risks posed to host communities.

- Deal documentation for impact investments should mitigate potential risks to host communities and embed the outcomes that investors truly care about.

- Land rights scholars and impact investment stakeholders should collaborate and share expertise so skill, experience and good intentions meet at an intersection that is truly beneficial to host communities.

- Use of metrics to evaluate, e.g. GIIRS/IRIS?

- Aspirational: community stake in project?

4.0 CONCLUSION

Impact investing is an innovation that sets to achieve responsible, mission-driven investments that have social, environmental, and financial returns. However, when these investments are land-reliant and fail to engage host communities throughout the lifecycle of a project—from deal structuring to divestment—the good intentions of these impact investments may have inherent blind spots that make them vulnerable to going bad.