



Women, Compensation and Benefit Sharing from Land Intensive Business Sectors

Progressio and ZELA Submission to UN Working Group on Business and Human Rights

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Progressio works for a just world where everyone has choices and opportunities to live a fulfilled life. A world where people's human rights, and particularly women's rights, are respected and they can exert control over their lives.

The Zimbabwe Environmental Law Association (ZELA) is a public interest law organisation that works to promote democracy, good governance, sustainable development, transparency and accountability using natural resources as a lens.

Introduction

This submission has been prepared with a specific focus on Sub-Saharan Africa and the impact of land intensive investment sectors on women's economic rights.

The recommendations outlined here are by no means exhaustive in relation to the broader business and human rights agenda. They specifically focus on how states can ensure that companies requiring large areas of land for their operations respect human rights, and specifically the right to food and a livelihood. The main outcome is to ensure that communities, and women in particular, **benefit from large-scale investments in the land they occupy or farm, with a view to reducing potential social conflict with affected communities.**

This is critical in the African context as more and more African governments are aiming to attract investors into the extractive and large-scale agribusiness sectors. This has profound implications for local communities farming this land.

Most African economies are agriculture-based and the majority of smallholder farmers are women; they produce about 70% of food consumed within rural households. Land and the crops grown on this land are critical to their survival.

As a result of mining or large-scale agribusiness, communities lose access to land previously used for agriculture and harvesting of natural resources. This impacts negatively on their food security and income.

National Action Plans on Business and Human Rights must ensure that poor communities, and especially women who lose their land as a result of land intensive industries, are not worse off than before.

This should be a basic precondition for companies' 'social licence' to operate.

While women have access to land, they rarely control it. Existing gender inequalities mean that men, as heads of households, are in charge of the land, so compensation tends to be paid to them. This means women are disproportionately affected when it comes to compensation payments as a result of land loss, and they are rarely consulted on how the funds should be spent. In addition, compensation levels are grossly inadequate and rarely based on realistic estimates of the real value of crops on the land.

Evidence from Sierra Leone¹, for example, shows that, in the absence of official national compensation laws and policies, **compensation agreements tend to depend on the goodwill of companies or negotiating power of communities**. Communities are frequently represented by traditional leaders who may have personal interests at heart, rather than the common good. Even though women suffer the greatest negative impact once the land is gone, they are usually absent from negotiations.

If any compensation is paid, it is typically a one-off payment which does not take into account the actual productive value of crops or trees over their lifespan. Research shows, for example, that one company paid a total of \$13.21 for one improved oil palm, while the estimated productive value of the oil produced from the same tree actually amounts to \$1,663 over its expected lifespan of 30 years - 123 times as much. This means compensation payments are hugely inadequate to meet the rising cost of subsistence for farmers once the farm is gone, and they by no means cover their loss.

States play a key role

According to UN Guiding Principle 1 on Business and Human Rights, states have a duty to protect the human rights of those adversely affected by business enterprises in their territory. This requires taking appropriate measures to prevent [...] such abuse through effective policies, legislation, regulation and adjudication.

If states had compensation frameworks in the form of laws and policies that provided adequate compensation based on the real value of crops, companies leasing land might have fewer disputes with affected communities.

In addition, the United Nations Basic Principles and Guidelines on Development Based Evictions and Displacement clearly express that **states must provide or ensure fair and just compensation for any losses and economically assessable damage**. This includes accounting for the value of land, trees, crops and other income from the land. All those evicted, irrespective of whether they hold titles to their property, are entitled to compensation (Section VI, para 60-63 'Compensation').

Accordingly, states should ensure that compensation agreements are not left for 'communities' to negotiate with companies as this is a highly unequal relationship of power and knowledge. Instead they should **develop national binding compensation frameworks for all crops, trees and important resources based on the real value of each over its productive lifespan, which companies are then required to comply with**.

Unequal gender relations further complicate the issue: many studies have shown that if compensation is paid to men, they will not necessarily spend this in a way that benefits their families², whereas women are more likely to invest in the education of their children and food³. It is therefore in the interest of the sustainable development of each country that women benefit from compensation as much as men do. This is, however, very difficult to achieve as local gender dynamics take a long time to change.

The UN should support governments to promote women's rights through National Action Plans

In order to ensure that compensation is justly distributed, National Action Plans could stipulate that companies in these sectors provide a percentage of compensation in kind to affected families in ways that specifically benefit women. For example, vouchers could be provided to households for food, school uniforms, and other areas specified by women during consultations on a monthly basis (rather than one-off payments), instead of cash⁴.

In order to stimulate the local economy, linkages could be established between these initiatives benefitting individuals and the community as a whole. Again, these should specifically aim to improve the livelihoods of women as they are the least likely to benefit from mining or agribusiness operations. In this context, in addition to merely avoiding discrimination, positive opportunities should be provided to address existing gender inequalities in communities.

Benefit-sharing and ensuring improved outcomes for women as economic actors

In reality, when communities lose land, this is rarely replaced by 'land commensurate in quality, size and value, or better' (as stipulated in the Guidelines, Section VI, para 60). States should therefore specify in NAPs and national legislation that companies pay a share of revenues to communities to ensure they, and particularly women, are not worse off than before. This is more sustainable than the current common practice in Corporate Social Responsibility (CSR) to build schools and hospitals which should be the responsibility of the state and not the companies⁵.

States should enact laws that ensure a percentage of profits is re-invested into host communities, ensuring that women benefit equally.

This should include livelihoods promotion, business and skills development to ensure backward economic linkages.

It is already common practice that companies pay a share of profits into community development funds/trusts - and this is a welcome step in the right direction. However, gender and other power dynamics in the management of these funds are not always taken into account. It may therefore be advisable for funds to be justly distributed by providing 50 per cent of funds to develop alternative livelihoods for women who have lost access to land. Also women should be equally represented in the management of these funds and in making decisions on expenditure/investments.

Alternatively, companies could invest directly in business and skills development for affected communities, especially women, through training, supporting the development of business proposals, and the provision of loans and seed funds. This may involve collaboration with Non-Governmental Organisations (NGOs) or training providers. They could also integrate women-owned Small and Medium Enterprises (SMEs) into their supply chains, and ensure their procurement policies prioritise local community businesses, especially those run by women.

Developing backwards linkages into local economies is a critical step for local development and this would contribute to sustainable development. Women⁶ could be supported as key economic actors to provide services such as catering, accommodation and the establishment of community shops, or assisted in accessing markets and the production and marketing of local products. This is critical because few women tend to find employment in large-scale extractive or agribusiness sectors, so they lose out twofold. With few livelihoods alternatives left, many become sex workers⁸.

Recommendations

Women have a right to participate at every step of the process

- National Action Plans should be gender-sensitive and ensure companies take into account and address the gendered impact of their operations at all levels. This includes:
 - Women actively participating in environmental and social/human rights impact assessments and monitoring.
 - Women actively participating in the consultation /negotiation process.
 - Women being equally involved in decisions about how benefits should be distributed and how compensation monies should be spent.
- Companies should then outline concrete steps of how they are going to implement these in their plans.

Compensation

- States should ensure fair and adequate compensation. Specifics should be included in NAPs and relevant national legislation. This can be achieved by:
 - Developing national, binding compensation lists for all crops, trees and important resources based on the real value of each over its productive lifespan. These should be included in company compensation frameworks and national policies.
 - Ensuring that companies put mechanisms in place that ensure compensation/royalty payments are equally distributed between men and women in households so that families can benefit at large. Some compensation may have to be provided in kind over a longer period of time.

Benefit-sharing mechanisms

- States should include mandatory provisions for benefit sharing mechanisms in NAPs and national legislation in addition to compensation payments, ensuring companies 'add value' to local communities and to women's economic empowerment, not just by following a narrow definition of CSR, but through compliance with binding corporate accountability requirements which can be legally enforced.
- These should include a share of profits to be paid to mining communities, and especially women, with clear mechanisms to ensure accountability, participation of women, and transparency in the process.
- **Companies** should regularly report against their corporate accountability commitments including gender-disaggregated indicators outlined in plans, not only to governments, but also to affected communities.
- **The UN** should explore the possibility of setting up a global fund to support communities, and especially women, whose livelihoods have been negatively affected by mining and large-scale agribusiness, to develop alternative livelihoods of their choice. NAPs/national legislation and agreements with companies should stipulate a % of profits that companies would be required to

pay into the fund.

➤ **States** should include and acknowledge civil society organisations as critical stakeholders in the NAP development process. The process needs to ensure the active participation of a representative sample of women as part of multi-stakeholder processes.

While these recommendations challenge the status quo, with political will, they could be achieved. In situations where companies are state-owned, these recommendations are equally valuable and should be even simpler to implement – provided there is the political will to do so.

Having some of the suggestions clearly outlined in NAPs would be the first step in the right direction. The next would be for land and resource rich governments to enact laws and regulations that guarantee the above rights. Not only would women and men in affected communities benefit more, but companies would also experience less risk and conflict with local communities due to improved relationships.

The entire process outlined above would be strongly supported by an internationally legally binding instrument on Business and Human Rights. Progressio and ZELA call on all governments to support its realisation.

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A Binding Treaty on Business and Human Rights should include mandatory fair and adequate compensation and benefit-sharing mechanisms as part of human rights due diligence requirements, ensuring that women benefit equally.

Notes

1. 'Who is benefitting?' The social and economic impact of three large-scale land investments in Sierra Leone: a cost-benefit analysis, July 2013 (Christian Aid, Cordaid, ICCO and Bread for All)
2. See Jenkins, K. 'Women, Mining and Development' (2014:8)
3. <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTOGMC/EXTTEXTINDWOM/0,,contentMDK:21242269~menuPK:3157104~pagePK:210058~piPK:210062~theSitePK:3156914,00.html>
4. As specified in IFC Performance Standards on Environmental and Social Sustainability, 2012
5. Also there are frequent examples of CSR where companies provide the infrastructure but not the personnel required to staff the school or health clinic. In cases where communities lose access to water, education and health services as a result of resettlement, these should be replaced by companies.
6. It is important to note that women are not a homogeneous group. It is therefore necessary to ensure that all women are represented and benefit, not just elite women or older women in communities.
7. See Laite, 2009:744