BIG WIN FOR TANZANIA AS CIVIL SOCIETY COLLECTIVELY INFLUENCE TERMINATION OF THE BIASED TANZANIA-NETHERLANDS BILATERAL INVESTMENT TREATY

Civil society meet with the Attorney General (Center) to present and discuss their proposals to terminate the Tanzania-Netherlands BIT

African states have for a long time signed Bilateral Investment Treaties (BITs) without comprehensive negotiations. BITs have far reaching implications on country's economy as they seek to protect investor rights at the expense of the rights of host communities, state and the environment. Nevertheless, in Africa, BITs have for long been viewed as the magic bullet to increased FDI inflows. As a result, upon signing, many governments have not paid attention to their content , including their expiry with the hope that having these BITs in force guarantees FDI inflows from the countries with which they have signed the treaty. As a result, majority of BITs have been automatically renewed since they contain a clause which stipulates that if notice is not given by either parties to terminate the agreement, it will automatically be renewed. Other reasons why BITs have been quietly rolled over include the limited appreciation by policy makers of the link between the provisions within the BITs and their implications on national laws and policies, and on the human and environmental rights. In other cases, the genuine lack of awareness by officials in charge of the BITs implementation has resulted into countries missing out of the expiry dates.

In July this year, following the realization that the Tanzania-Netherlands Bilateral Investment Treaty (BIT) was about to expire, SEATINI with support from Diakonia, Both ENDS and Rosa Luxemburg Stiftung mobilized members of civil society Organizations[1], human rights lawyers[2] and workers' representatives[3] in Tanzania to appeal to the government to terminate the treaty. The treaty included among other problematic provisions, the prohibition of both direct and indirect expropriation which also prohibit any actions taken by the state to regulate an investor in the public interest; and the provision on Investor State Dispute Settlement (ISDS) which allows a foreign company to subject a country to international arbitration

[1] Haki Madini, East African Civil Society Forum, Envirocare
[2] Tanganyika Law Society, Legal and Human Rights Centre
[3] East African Trade Union Confederation

mechanisms in cases of disputes. The Treaty was supposed to be terminated before 1st October 2018, beyond which it would be automatically rolled over for another 10 years.

The automatic renewal of the treaty would in effect mean that for the next 10 years the Tanzania government would protect the rights of Dutch investors even at the expense of its country and citizens' development interests. In case of a dispute with a Dutch owned/ registered company, Tanzania would be subjected to international arbitration mechanisms, which are very costly. The need to terminate the agreement was also driven by the fact that in 2017, Tanzania undertook a number of reforms in its mining laws. This move sparked suits against the country by foreign companies in international courts of arbitration based on the ISDS provision in Tanzania's investment agreements and contracts with claims that the country was violating, among other provisions, the provisions prohibiting expropriation. Besides this, Tanzania has also been sued by foreign companies that have raised various claims. These include Standard Chartered Bank, Acacia Mining, Symbion Power[4], Bi Water Gauff (Tanzania) Ltd[5] and Agro EcoEnergy project[6].

Against this background campaign was commenced to appeal to the Tanzania government to use the opportunity of the expiry of their BIT with the Netherlands to redefine the kind of BIT they would wish to have in future. The campaign involved a number of key actors who played varying roles. Notably, SEATINI and Both ENDS provided technical support to the Tanzania civil society; which included human rights lawyers and workers' rights activists. Financially, the support from Both ENDS, Rosa Luxemburg Stiftung and Diakonia helped to facilitate consultations, strategic meetings and to generally sustain the campaign both at the regional and national level. The campaign was also supported by a number of online engagements on twitter, WhatsApp and through a Google group which was formed to bring together 30 Tanzania civil society to engage in the process. These online engagements also brought on board NGOs from the North such as Traidcraft, SOMO, and Vrijshcrift.org. The process also involved a number of media[7][8] engagements such as newspaper articles, press conferences and media interviews to enhance awareness of the matter in Tanzania, in the EAC region and beyond. Subsequently, a statement and a letter appealing to the government of Tanzania to terminate the BIT were developed. These documents were both submitted[9] by the Tanzania civil society to the Attorney General on 18th September, 2018 in Dar es Salaam. The Tanzania government eventually wrote to the Netherlands government on 27th September 2018 to terminate the BIT.

This process revealed the power of collective civil society action towards influencing policy reforms; since there was civil Society collaboration at national, regional and global levels. It also revealed the importance of evidence based advocacy and the need for CSO to work closely with government. This campaign also showed the important role of regional policy advocacy especially given that the success of the campaign was also based on the lessons drawn from the experiences from earlier actions by SEATINI and Both ENDS in which the organizations mobilized civil society to influence the termination of the Uganda and Burkina Faso BITs with the Netherlands.

In order to promote investment regimes that are supportive of inclusive and sustainable development, African governments must draw lessons from the experiences from Tanzania, Uganda, Burkina Faso and South Africa. It is imperative that African countries embark on a process of reviewing all their BITs and

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[4] https://af.reuters.com/article/investingNews/idAFKBN16S1P4-OZABS

[5] https://www.mcgill.ca/mjsdl/files/mjsdl/3_2_3_marshall.pdf

[6] https://blogs.ei.columbia.edu/2017/09/21/not-so-sweet-tanzania-confronts-arbitration-over-large-scale-sugarcane-and-ethanol-project/

[7] CSO-strat-group-to-advocate-for-review-of-URT-NET-Investment-Treaty cso-strat-group-for-review-of-urt-net-investment-treaty@googlegroups.com

[8] http://www.theeastafrican.co.ke/business/Tanzania-faces-legal-suit-over-tax-investment-policies/2560-4674336-b3mss5z/index.html

[9] Haki Madini presents CSO proposals to Tz AG.jpg

other investment related policies to ensure that they are t in line with their country's development aspirations. CSOs should also strengthen their capacity and the voices of citizens in influencing pro development investment policies and legal frameworks. CSOs in North and South should strengthened their collaboration in order to effectively challenge the existing unjust investment regime.

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