REPORT OF THE TRAINING

Making Investments Work for people!

ENHANCING STAKEHOLDERS' ENGAGEMENT IN INVESTMENT POLICY PROCESSES

SEATINI
Strengthening Africa in World Trade

diakonia
PEOPLE CHANGING THE WORLD

29TH TO 30TH JUNE 2017, VICTORIA HOTEL, LAICO

Introduction

SEATINI Uganda with support from Diakonia Africa Regional Office organized a regional training for civil society from the five partner states of the East African Community region under the theme “Enhancing stakeholders’ engagement in investment policy processes at national, regional and global levels”. The training, which brought together 28 participants, 15 of whom were women specifically aimed at enhancing stakeholders’ understanding of the linkages between investment policies, laws and agreements on the one hand and sustainable development including human rights, gender and environment sustainability on the other.

The link between investment and sustainable development for communities, countries, regions and the world at large cannot be over emphasized. Investment whether domestic or Foreign Direct Investment (FDI) come with a number of development promises i.e. increased production and productivity, increased incomes, generation of domestic revenue, employment creation, skills development, technology transfer and innovation, among others. It can therefore be an important tool for fostering economic growth and development.

An appropriate investment policy framework must be in place to support the realization of these development promises. However, the limited technical capacity of key government officials, policy makers’ private sector, civil society and the rights holders to effectively defend their development interests and promote the realization of these development promises has remained a major challenge.

Consequently, investment regimes in the EAC region have remained blind to critical aspects such as gender, human rights and environment sustainability. This has further translated into the absence of specific legal frameworks for key investment related issues like land Human Rights gender and environment. In order to address this lacuna, there is need for more stakeholders’ involvement in the investment policy making process. Such stakeholders must be equipped with the necessary information and skills for them to be able to defend their interests.

Specific Objectives

1) To enable key stakeholders understand the link between investment, investment policy and sustainable development.
2) To equip stakeholders with knowledge to mainstream human rights, gender, environment sustainability and land rights in investment policy frameworks.
3) To equip key stakeholders with skills to advocate for pro development investment policy frameworks

Opening remarks

On behalf of SEATINI Uganda, Ms. Jane Nalunga the Country Director welcomed all the participants to the training. She noted that as a region, we need to realize that investors are here to make profits and that the objective of promoting our economic, social and cultural welfare needs is not at the top of their agenda. She observed that all the EAC partner states' investments policies do not provide for the protection of people's rights but that they serve the interests of the investors, especially foreign investors. She further observed that in addition to the national investment policy frameworks, these partner states have also negotiated and signed investment agreements which also undermine the protection human and environment rights. She noted that this was the result of limited capacity among civil society to play a more effective role in objectively analyzing these investment policy frameworks. This is given the limited capacity and expertise in areas of human rights, environment and gender, necessitating the need for civil society technical support of the key government institutions working on issues of trade and investment.

She pointed out that the purpose of the training was to enable key stakeholders understand the link between investment, investment policy and sustainable development; to equip stakeholders with knowledge to mainstream human rights, gender, environment sustainability and land rights in investment policy frameworks; and to equip key stakeholders with skills to advocate for pro development investment policy frameworks in the EAC region.

Highlights from trainees' expectations

- To get informed on how civil society can influence the orientation of investments towards sustainable development in the EAC.
- Knowing much about investment and how it relates with natural resources like water, land and governance.
- Learn how investments in the EAC can be people centered and inclusive
- To understand how to integrate issues affecting workers in investment policies within the region.
- To see a holistic approach on investment, land and gender.
- How to promote intra-regional investments and trade in the EAC region.

Pre-training assignment

The training was preceded with a pre-training assignment which sought to provide a greater understanding of the participants' knowledge and views on private investments in their countries. The questionnaire which also consisted of questions on "Principles of Good investments" as developed and proposed by Christian Aid also sought to obtain their views about what would constitute principles of good investments.

The following were the outcomes:

- Of those that responded, 100% of them observed an increase in investment, especially foreign direct investment in the extractive sector, agriculture and agroindustry sector, infrastructure development i.e. transport and real state
- The sectors that were identified to be urgently in need for investment included the health sector, education and energy sector
- In terms of the positive impacts, they highlighted creation of employment opportunities, development of the telecommunication sector, and other services sectors, increased export of manufactured products
- Negatively, the most of the respondents noted that investments, especially FDI evade taxes and have therefore not fully contributed to revenue growth, repatriation of profits, pollution and environment degradation and in some cases poor working conditions
- They also noted that generally in their countries, most of the investments are private investments because of the private sector led economic development strategy
- They noted that investment incentives exist in their countries and this has resulted into the race to the bottom for the EAC partner states as they compete for FDIs. They stated that such incentives include tax holidays/ exemptions, land concessions
- Regarding the principles of good investment, they participants supported the idea of principles of good investment noting some principles that should be included such as "Good investment should be sustainable", "It should support the development interests of the country", "It should have the social license", "It should provide gainful employment", and "It should facilitate forward and backward linkages and procure extensively from the host market".

1. Understanding the concept of investment

Participants were constituted into 5 "investment clubs". Each investment club was asked to discuss their understanding of the concept of investment and investor; and to generate an acceptable definition by the group. They were also asked to identify a potential sector and area in which they would wish to invest, including indicating if their investment was a short term or long term investment. They were asked to provide justification for selecting that specific sector and area of investment. They were further asked to point out their source of financing.

This exercise enabled the participants to understand the concept of investment including what it is, its determinants, the types, sources of investments and the challenges that face investments.

Main observations

- Majority of the investment clubs referred to investment as a venture that involves the conceiving of an idea combined with the facilitation of huge sums of capital with the end goal of harvesting profits while providing a service or product.
- Investment was regarded to as very important in a sense that it creates jobs, enhances Social service delivery Technology, facilitates skills and knowledge, generates government revenue, facilitates Structural transformation and promotes industrial development.
- The major challenges most of the investment clubs identified was poor infrastructural development, limited access to finance such as credit, land tenure issues within the host countries and corruption, foreign investors who tend to dominate the market and practice unfair competition
- Some of the anticipated negative impacts of investment were; human rights violations and environment degradation; loss of government revenue due to tax incentives, investment practices like creative accounting;
- Key determinants of investment was the enabling policy framework, natural resources, labour, wide EAC market, and infrastructure

In order to support the participants to better understand the concept, the facilitator elaborated by defining an investor as that natural person or enterprise who should be conducting "real and substantial business operations". She further observed that while the definitions provided by the participants were limited to the investment capital, the definition that is largely used defines the term "investment" to broadly include all kinds of assets owned and controlled by an investor in the territory of the host country. It is defined to include rights to shares, interest, money, intellectual property and granted rights to prospects, explore, extract and win natural resources.

The facilitator further pointed out that there are different types of investments i.e. resource seeking, market seeking and efficiency seeking investment, which are defined based on what they seek. She noted that an investment can also be categorized by its source of financing i.e. foreign investment[1], domestic investment[2] or a joint venture[3]. She recalled the presentations that were made by the investment clubs and noted that the investment club which was interested in investing in the oil and gas sector is a resource seeking investment while the investment club which was interested in investing in Tanzania because of its high population and therefore provides a viable market is a market seeking investment. She also noted that the investment club which proposed to invest in the agriculture sector because of the comparative advantage argument and the existence of cheap labour force is an efficiency seeking investment.

The facilitator further elaborated on the determinants of investment noting that while the investment clubs had each identified pull factors such as the availability of natural resources like oil and gas, availability of raw materials like sugar cane for the establishment of sugar processing industry, availability of low-cost labour and the large market size, other factors that could determine the location of an investment are:

[1] A foreign investment is an investment whose financing solely comes from foreign investment capital
[2] A domestic investment is an investment whose financing solely comes from a national of the country where the investment is being established
[3] A joint venture is an investment whose financing is provided by both foreign and domestic investment capital

quality and efficiency of infrastructure, market growth, access to regional and global markets, availability of low-cost labour.

Finally, participants discussed the challenges that arise from investment noting that today a lot of focus has been put on conducting environment impact assessments rather than social impact assessments.

2. Understanding the global dynamics of investment policy frameworks from a historical perspective

The facilitator introduced the session recalling an earlier discussion where she was asked what entails global dynamics of investment policy frameworks from a historical perspective. She noted that it encompasses how the investment rule making evolved. She pointed out that the session was going to answer the questions of Why?, What?, How?, Where ?, When? and Who?

She asked participants to provide their responses to any of the above questions. They noted that the need for consistence, certainty was one of the main reasons why rules and regulations are made. In response to the "how", participants indicated that rules are negotiated. She asked participants if any of them had participated in any negotiation. Out of the 28 participants, none of them indicated to have participated in the negotiations. The facilitators noted with concern this fact noting that there is need to address this asymmetry given that rules are made through negotiations. Participants were concerned about the fact that their voices are not heard in these processes, not forgetting the limited capacity of our governments and civil society to be able to effectively influence these processes, especially

While discussing "where" the investment rules are made, participants noted that rules are made in specialized departments in various countries and then they are discussed at parliament level to become laws. While they are being made, they may be designed to be in line with global or regional frameworks like the WTO and EAC respectively. The facilitator stressed the point noting that investment rules can be made at the national level but they must comply with rules made at regional and global levels.

The facilitator pointed out that historically there have been efforts to put in place principles and agreement on how investments are to be treated. This came into play when cross border investment grew and the need for laws and regulations to oversee foreign direct investments became important. She recalled that after the Second World War, economies came together to put in place global economic structures such as the IMF and World Bank. She further recalled that the Havana Charter, which provided for the establishment of the International Trade Organization (ITO) and set out the basic rules for international trade and other international economic matters, then came into place. It was signed by 56 countries on March 24, 1948. Since 1948, efforts have been undertaken to put in place laws and agreements to regulate investments.

The facilitator further informed participants that in 2003, a conference was held in Cancun, and a proposal was made for an investment agreement in the WTO by developed countries like the European Union (EU) to replace the failed Multilateral Agreement on Investment (MAI) of the OECD, which was abandoned in 1998. She further noted that the civil society arguments against the agreement were based on the fact that experiences from the NAFTA Chapter on Investment and other investment treaties demonstrated the threat that this kind of agreement would pose to the public interest.

She informed participants that UNCTAD has also been very instrumental in the investment policy development process at national, regional and global level. The organization has provided a structure for how investments should be regulated. She informed them that the debate for an agreement on investment at the multilateral level has continued till today and that currently within the WTO, there is a proposal to reintroduce investment as a new issue for negotiation for a binding agreement. This urge for a binding agreement on investment has seen countries world over including the EAC partner states signing Bilateral Investment Treaties with third parties.

3. Bilateral Investment Treaties (BIT): Key provisions and implications for sustainable development

The facilitator began by enlightening participants on the fact that every citizen in their different capacities is a negotiator. He asserted that it is for this reason that governments make an effort to undertake thorough consultations to take citizens' positions into account. He however pointed out that there is an urgent need to strengthen stakeholders' capacity to effectively engage in these negotiations.

The facilitator noted that Bilateral Investment Treaties (BIT) have been defined in different ways world over. However, BITs are international investment agreements that are signed between two countries or entities with the intention of protecting international investments by ensuring that predictable and fair treatment of investors is guaranteed in the host country. A BIT is an agreement establishing the terms and conditions for private investment by nationals and companies of one state in another state or an agreement between two countries that sets up "rules of the road" for foreign investment in each other's countries. BITs seek to integrate national economies through the removal of barriers to investment flows and Uganda has about 15 BITs. He noted that the definition is very critical because it elaborates what a country is willing to give away or to secure.

He recalled that the history of BITs goes as far back as the 18th Century and the first semblance came from the United States to conclude bilateral treaties of "Friendship, Commerce and Navigation" (FCN). This post World War 11 FCN was characterized by the provisions of Investment Property Protection; guaranteed "equitable treatment"; MFN Treatment; and Investment protection features. He stressed that these treaties included provisions on: a) Guaranteeing "special protection" or b) Full perfect protection" to the property of nationals of one party in the territory of another party. He further recalled that the focus of this treaty was on protecting property, as opposed to investment; and that the principal source of norms for the protection of international investment stocks was customary international law.

He highlighted the key provisions of BITs including inter alia: the Definition of Investment; Definition of an Investor; Definition of Government; Most Favoured Nation (MFN); National Treatment (NT); Fair and Equitable Treatment (FET); Expropriation and Nationalization; Protection Against Loss eg. losses arising out of war, civil disturbance, insurrections, riots or similar events *(Thus call for restitution, indemnification, compensation or other settlement on the bases of MFN and national treatment)*; Repatriation of Assets and Transfers; Compliance With Host Country Laws; Duration, Review and Termination; Performance

Requirements (PRs) e.g. goals to be met by the FDI – location, employment etc.; Standards Setting *e.g. "allow persons of the other Party to participate in the development of standards and technical regulations by its central government bodies and encourage non-governmental standards bodies to allow such participation"*. (U.S BIT Provision); Dispute Settlement/ Access to Courts for Redress/ Judicial Review; Taxation *(a few BITs include tax issues)*.

In conclusions, he asserted that BITs can be very important in the promotion and protection of Investment and they can also facilitate attraction of FDIs. However, they must be carefully negotiated to ensure that both parties benefit. He argued that most BITs in the recent past have been lopsided in favor of developed countries.

4. Understanding national and regional investment policies: key provisions and implications

Participants were constituted into five groups of the EAC partner states i.e. Burundi, Kenya, Rwanda, Tanzania and Uganda. Each of the country groups was asked to discuss and answer the following questions:

- What do you understand by an investment policy framework?
- What are the investment policy frameworks in your country?
- Who influences the investment policy making process in your country?

Most of the groups defined an investment policy as guidelines, regimes, rules, regulations and governing principles of investment in any country or jurisdiction. They noted that investment policy spells out the government's policy intentions and directions in as far as investments are concerned.

They further highlighted their various national level policies and laws i.e.

Burundi	**Kenya**	**Rwanda**	**Tanzania**	**Uganda**	**EAC**
Investment Code Act Private sector development strategy 2014-2020 Burundi Visions 2025 Burundi Competition policy	Kenya Investment Policy framework Vision 2030(blue print) EPZ(export processing zone)	Rwanda Investment policy framework Rwanda private Sector Development Strategy Investment promotion strategy	The Investment policy of Tanzania 1996 The Miming Act 2010 Vision 2025 in Tanzania mainland and 2020 Zanzibar Land Act 1996 Petroleum Act 1980	Uganda Investment Code Act, Cap 92 Income Tax Act VAT Double Taxation Treaties Petroleum Act	EAC Treaty EAC Common Market Protocol EAC Investment Model Code, 2006 EAC Model Investment Treaty, 2015

	Special economic zones Mining vision fir Kenya National plans on business and human rights	Rwanda Export Development strategy		Mining Policy Mining Act	

Participants generally agreed that the following constitute key stakeholders imperative for engaging in the development of investment policy frameworks:

- Government: specifically, the ministries, departments and agencies in charge of trade and investment promotion, environment, human rights, labour and judiciary
- Private sector: the private sector associations, large enterprises and Multinational Corporations
- Civil Society Organization: those working on investment, mining, environment, human rights, governance, trade, labour rights, women rights
- Media practitioners/ journalists
- Multi-lateral/development institutions (IMF, World Bank)
- Development partners (China, Japan, USA)
- Academia and researchers

Subsequent to this interactive process, the facilitator enlightened the participants on the underlying elements of investment policy and the various provisions that make up various investment policy regimes including the laws, policies and agreements.

Specifically, the facilitator noted that any country's investment policy environment may be influenced by a number of frameworks at the global and regional levels. For example, the WTO Trade Related Investment Measures (TRIMS) Agreement; Bilateral and Regional Free Trade Agreements with Investment provisions and Bilateral Investment Treaties (BITs). She further elaborated that in some cases, certain frameworks may not directly apply to a given country given its level of development. For example, the TRIMS does not apply to countries that are considered Least Developed Countries, of which the EAC region is home to four of these. She also added that related policies, laws and agreements on taxation, environment, labour, competition, financial and trade may all constitute a country's investment policy regime.

The facilitator further highlighted some of the provisions that make up investment laws and agreements i.e. Definition of investment and investors; Right of entry and establishment of investment; provisions on treatment and protection of Investments/ investors such as National Treatment, Most Favored Nation (MFN), Fair and Equitable treatment; Free transfers; Minimum capital requirements; Expropriation and compensation; Dispute settlement which often provides for Investor-State Dispute Settlement mechanisms.

She concluded by noting that the involvement of key stakeholders such as civil society and rights holders in shaping the investment policy agenda and therefore the individual policy frameworks all levels is very critical if we are to *Make investments work for people!*

5. Understanding the linkages between taxation policies and Investment policies and their implication on sustainable development.

The objective of this session was to highlight the linkages of taxation policies and investment regimes with an aim of underlining their implications to sustainable development. The major focus areas were tax incentives/exemptions, double taxation treaties and tax havens.

The session began with a video on titled "The New Tax Havens". The video tells a story of the small town called Zug which has the lowest tax rates, as low as 15-16%, the lowest in Switzerland. The town, which has a population of about 26,000 people has 30,000 companies, and this number keeps growing at an average rate of 800 a year. These companies mainly have mail boxes, even though most of them indicate that this is where their companies' headquarters are located.

The Texas democratic congress man questioned the legitimacy of this moves of these companies giving an example of Transocean, a Texas company which moved to Zug. But Transocean maintained about 1300 employees in Huston area and have only about 12 or 13 in Switzerland, and this company claims that it is a Swiss company. But this is only for tax purposes. According to the congress man, this company, which is an American company has saved about 2 billion USD in taxes by moving to Switzerland, which is a tax haven. Another company, Weatherford, which is a 10 billion USD company and provides oil field services firm, also moved to Switzerland but still has about 2800 workers in Huston. While its headquarters are in Zug, it only rents a boardroom there which according to the Huston office is never used.

According to the video, while this may appear unrealistic, according to the Zug and US tax laws, this is legal to get a low tax rate in Zug, even when the company does not have presence there.

This situation has further worsened the deficit crisis in the U.S but the companies argue that all there are asking for is a plain level field.

The facilitator briefly introduced his session by noting that the video only demonstrates the U.S' experience of companies that are using Switzerland i.e. Zug, which is a tax haven, to evade tax payment in the U.S. He recalled that currently within Africa, there are a number of multinational corporations that are using arrangements such as tax treaties to evade tax payment.

He noted that many African states are signing a number of tax treaties just like they are signing BITs as earlier mentioned, with the aim of attracting and securing greater FDI inflows.

He argued that like earlier discussed that investment is a critical tool for sustainable development, it requires a number of frameworks to be given close consideration if it is to work for the people and for the realization of sustainable development. One of these tools in taxation. He informed the participants that the session would therefore seek to cover how taxation can be used as a tool to facilitate or undermine the realization of the development promises of investment. For example, the role of tax treaties and tax incentives/ holidays, among others.

The facilitator introduced the concept of taxation by highlighting the 4Rs of taxation namely; Revenue, Redistribution, Representation and Repricing. One of the most fundamental needs for investment is the generation of government revenue. However, there is a growing number of investment regimes worldwide that have also penetrating Africa today that shape the extent to which Africa benefits from investment.

While discussing the concept of "Double Taxation treaties", which are agreements between two countries to safeguard against double taxation, participants argued that African states do not need tax treaties but agreed that we would need tax treaties between African countries but not with more countries outside the EAC. Another participants argued that Africa needs tax treaties since it's an incentive for investors to come in and for international trade relations. Another participant argued that every country has its own tax policies, therefore, there is no need for tax treaties and therefore any kind of policies should apply for the country where the investment has been established and therefore different tax regimes are not necessary. One of the participants further added that it's important to note that in economic development, the place of incentives is grounded in empirical studies. He argued that the problem with Africa is that it gives incentives without assessing the impact on the African economies. In terms of tax treaties, they can be adversely influential but can be used as a tool to advance our development but rather to deindustrialize and undermine our development. The most important issue to consider is the motivation for signing any agreement, whether is it inter alia political, economic, international relation.

Key issues

- It further highlighted how Multinational Corporations have used double taxation treaties to set up shell companies in tax haven to try to avoid taxation.
- It's useless to have a tax treaty with a country that we don't have trade relations with.
- It was also stated that tax incentives and exemptions should also be given to the local investors as first preference as a way helping them build their production capacity.
- Participants were also in the view that tax incentives may lead to competition amongst the EAC states as it's the most common tool used for attracting investors resulting into the "race to the bottom". (Kenya is in the process of setting up its self as a tax haven)
- Consultations in policy making process are not inclusive with most CSO not participating.

Major concerns of tax treaties

- Enablers of illicit financial flows
- Avenue of tax avoidance and exemptions
- Contribute to loss of government revenue
- Foster inequality with in countries and among countries (Capital flight)

6. Investment and the Extractives: Implications on human rights, land rights, gender and environment sustainability

The facilitator began by highlighting the African mining sector governance frameworks some of which include: the EITI, Publish What Your Pay, Kimberly Process Certificate, Dodd-Frank Act, EITI+/ Extractive

Industries Value Chain, OECD Due diligence, Equator Principles, Global Reporting Initiative (GRI), ICMM Sustainable Development Framework, Revenue Watch Index and the Africa Peer Review Mechanism.

He further discussed the Africa Mining Vision further, noting that it aims for transparent, equitable and optimal exploitation of mineral resources to underpin broad based sustainable growth and socio-economic development i.e. Structural Transformation. He informed participants that the Africa Mining Vision aims to facilitate a knowledge driven African mining sector that catalyzes and contributes to the broad based growth and development of the sector; and is fully integrated into a single African market. The Vision promotes downstream linkages towards beneficiation, upstream linkages towards supplying of equipment and chemicals and side stream linkages that include infrastructure like roads, transport and logistics, among others; and mutually beneficial partnerships between the state companies, civil society, private sector, local communities and other stakeholders.

It aims for a diversified, vibrant and globally competitive industrializing African economy. It helped to establish a competitive African infrastructure platform through the maximization of its propulsive local and regional economic linkages. He also noted that the Vision enhances Africa's finite mineral resource endowment. It provides a frameworks which provides a sustainable and well governed mining sector that effectively garners and deploys resource rent. The focus on rent is not only on the rent on the resource but how this can be used to foster structural transformation.

The facilitator further elaborated on the pillars and clusters of the AMV noting: Fiscal regimes and revenue management; geological and mining information systems; building human and institutional capacities; artisanal and small scale mining; mineral sector governance; research and development; environment and social issues; linkages and diversification; and mobilizing mining and infrastructure investment. He stressed, however, that one of the challenges within the sector is the fact that our governments do not pay attention to small scale and artisanal miners despite the skills possessed by the locals which can become conglomerates and invest further. He further argued that in reference to infrastructure, there is need for African countries to give consideration to building infrastructure that provide a linkage between the mining sector and the broader economy. He illustrated this further using the Kenya Standard Gauge Railway as an example, a chunk of the carriage is supposed to be used to carry cargo. This can be used to carry mineral resources thus saving the country's road infrastructure.

He further delved into the history of the Vision recalling the Structural Adjustment Program which failed formed one of the key reasons for the Vision. The 2008 economic crisis resulted into a loss and yet developing partners' support towards African states was also reducing. Some of these and others triggered the development of the Vision. Informed the participants that the focus of the mining sector in Africa is to develop the mineral sector for export with emphasis on creating an enabling environment for FDI and creating institutions and processes for export. He also noted that the recovery of the mining sector is Africa will require a shift in government objectives of maximizing tax revenues from mining over the long term, rather than pursuing other economic or political objectives such as control of resources or enhancement of employment.

The facilitator concluded his session by quoting the World Bank, strategy for African mining of 1992 which stated that "The recovery of the mining sector in Africa will require a shift in government objectives towards a primary objective of maximizing tax revenue from mining over the long term, rather than pursuing other economic or political objectives such as control of resources or enhancement of employment. This objective will be best achieved by a new policy emphasis whereby governments focus on industry regulation and promotion and private companies take the lead in operating, managing and owning mineral enterprises".

Discussions and group report backs.

The participants discussed the implications of extractives on human rights and people's livelihood. For example, in Rwanda, it was noted that women are generally considered weak culturally, especially regarding their reproductive role. As such, they often miss out on opportunities within sectors such as mining and extractives.

In Burundi, it was noted that there are no women involved in the mining sector because they too are regarded as weak. It was further noted that environment degradation has remained a major problem in the country with pollution of water bodies.

For the case of Kenya, participants noted that women who work or live within the salt mining areas often suffer loss of their pregnancies especially due to the salty waters in the mines. The people who work in the mines do not have protective gears for use when collecting the salt and have continued to suffer from severe skin illnesses.

For the case of Tanzania, it was noted that within the acacia mining, women are not allowed to mine but rather they provide different services such as cooking and sex work. It was noted that environment degradation and water pollution has been registered in this area further adversely impacting the livelihood of the people.

7. Mechanisms for Strengthening Human Rights Accountability in Investment Policy Frameworks

The objective of this session was to enlighten participants' understanding of the existing human rights accountability mechanisms at the national, regional and global level that can be used by civil society actors to *Make Investments Work for People*.

During this session, the facilitator informed the participants that there are several human Rights accountability mechanisms at national, regional and international level that can be used to regulate corporations. She noted that in terms of institutional mechanisms, there are; the Judicial, Quasi – judicial, Non Judicial, Regional and International Human rights Mechanisms such as the African Commission on Human and Peoples' Rights, African Court on Human and Peoples Rights, African Committee of Experts on the Rights and Welfare of the Child, the East African Court of Justice, United Nations Committee on Economic, Social and Cultural Rights (UNCESCR), CEDAW and Convention on the Right of Child (CRC) among others. She noted for example, that under the UNCESCR, human rights accountability involves state reporting, fact finding and communications under the Optional Protocol of the International

Covenant on Economic, Social and Cultural Rights (OP-ICESCR) and general comments on Business and Human Rights.

She noted that under the general comments, states are required to ensure that the corporate strategies do not undermine their efforts to fully realize the rights set out in the Covenant; combat abusive tax practices by transnational corporations, States should combat transfer pricing practices and deepen international tax cooperation; lower the rates of corporate taxes with a sole view to attracting investors encourages a race to the bottom that ultimately undermines the ability of all States to mobilize resources domestically to realize Covenant rights; and that the practices of corporates are consistent with the duties of the state's parties to the Covenant.

Regarding the Extra Territorial Obligations of States (ETOs), the facilitator recalled that these obligations require that states regulate corporations/ investments that are domiciled in their territory and/or jurisdiction in their host states. This refers to corporations which have their statutory seat, central administration or principal place of business on their national territory. She argued that the home states of transnational corporations are expected to establish appropriate remedies, guaranteeing effective access to justice for victims of business-related human rights abuses when more than one country is involved.

Key issues

- It was observed that all parties involved in investment (investor, government and financers) have the responsibility of accountability.
- Investment is critical to economic growth and if well directed it can lead to further realization of human rights and also promote social economic development.
- There are tensions between balancing human rights and development. Some development policies are silent on the issues of human rights violations for example labour rights. Some countries don't have a minimum wage rate.
- There are gaps in the legal policy framework as well as the states institutional and regulatory capacity to effectively ensure that corporations comply with human rights standard.

8. Way forward – Advocacy actions

In view of the issues discussed, a way forward was agreed upon. Participants discussed advocacy actions that would be undertaken by their institutions at the national, regional and global level.

Burundi
The Burundi team noted that there is need to address some of the issues within the mining sector given the current challenges of public tender processes not always following the official procedures; the sector and the tender awarding processes are marred with lack of transparency and accountability; there is environment degradation and pollution. In order to address this anomaly:

- There is need to conduct studies for facts and figures on the current status of the mining sectors in as far as environment sustainability, human rights and gender issues are concerned.
- There is also need for stakeholder sensitization so that as rights holders they can be able to demand for the protection of their human and environment rights as well as hold the investors accountable for their practices.
- There is also need to create a platform of research institutions/ academia, CSOs, private sector and government to be able to counter these current challenges.

This should be done through engaging policy makers at national level, generation, dissemination and exchange of information, experiences and best practices at the regional level.

Kenya

The team emphasized that there is need for an analysis of the Double Taxation Agreements (DTAs) that have been signed by Kenya and Qatar, United Arab Emirates and South Korea.

Subsequent to which a policy brief highlighting specific policy recommendations can be developed to inform policy advocacy through engagement with the parliamentarians, media, CSOs and government to avert the challenges that come with DTAs.

This research and the policy brief will inform engagements at the national level but will also provide a benchmark for further engagement within other EAC partner states and at the regional and sub regional levels.

Rwanda

There is need to consolidate efforts towards influencing regional, continental and global processes on investment. The highlighted the need to engage in Universal Periodic Review process, the ongoing process to put in place the UN Human Rights Treaty on Transnational Corporations and other businesses as well as ongoing processes at the global level within the WTO. This will require awareness raising, mobilization, information generation and dissemination and capacity building for effective engagement in these ongoing processes to be able to influence these processes.

Tanzania

There is need to address the issue of Human rights violations within the extractive sector of Tanzania. This will require awareness raising for stakeholders to understand and appreciate the imperative of mining and investment regimes that recognize and protect human rights. This will also require a more inclusive approach towards addressing these challenges. Therefore a multi stakeholder approach involving relevant government ministries, CSOs, private sector and parliamentarians is critical in the pursuance of the implementation of the UN guidelines on Business and Human rights within the Tanzania extractive sector.

Uganda

The team identified that there is need for more advocacy efforts around the issue of investments and human rights, especially in the area of land based investments where people's land rights are increasingly being violated.
There is need to identify key partners and players in human rights to co-opt them into the work on investments given its far reaching implications on other rights such as labour rights and environment rights.
This will involve the utilization of existing consortiums on business and human rights at the national level with the aim to influence policy processes such as the amendment of the Investment Code Act as well as the proposed renegotiation of the Uganda – Netherlands BIT. There is also need to utilize other existing consortiums such as the Africa Consortium on Corporate Accountability (ACCA).

Closing remarks

In her closing remarks, Ms. Caroline Wangui thanked SEATINI Uganda for organizing the training which brought together different civil society from across the EAC region. She stressed the need for civil society to strengthen its engagement with government to stop the violation of people's rights especially by foreign investors. She commended the working relations between SEATINI, EASSI and Tax Justice Network Africa which are all Diakonia partner states and pledged that Diakonia would continue to support efforts towards investments which are sustainable in East and Sub Saharan Africa.

ANNEXE 1

Training on Enhancing stakeholder capacity to influence investment policy frameworks

29/06/2017 – 30/06/2017, Entebbe, Uganda

<u>Pre Training Assignment</u>

All parts of the assignment are optional. However, for your effective learning, please take time and answer each of the questions. If you don't have time to respond to everything or if there are questions that aren't relevant to you, you are free to skip them.

Section 1: Trends in private sector investment

1.1. In which country/region are you based?

1.2. In the last five years, have you observed a growth in private sector investment in your country/region?

Yes ☐ No ☐ Don't know ☐

1.3. Which sectors/types of activity do you think attract the most private sector investment in your country/region? Please tick all that apply.

- Financial Services
- Information Technology
- Industrials/ Manufacturing
- Consumer Goods
- Telecommunications Services
- Real Estate
- Transport
- Low carbon energy
- Other energy
- Health Care
- Water and Sanitation
- Agriculture / Food Security
- Education
- Ecosystems / Biodiversity
- Climate Change Adaptation
- Extractive industries (oil, gas, mining)
- Other – please comment

1.4. On a scale of 1-5, how positive do you feel about the extent to which private sector investment is contributing to sustainable economic development in your country/region?

(1 - Extremely negative, 2 – Negative, 3 – Neutral, 4 – Positive, 5 - Extremely positive)

Here ☐

1.5. Please describe any impacts of private sector investment in your country/region which you consider to be particularly POSITIVE. Please be as specific as possible.

1.6. Please describe any impacts of private sector investment in your country/region which you consider to be particularly NEGATIVE? Please be as specific as possible.

1.7. In your opinion, why does your country urgently need private sector investment? Please tick all that apply.

- Jobs
- Technology
- Social services
- Consumer Goods
- Government revenue

- Local private sector development
- Food security
- Efficient resource utilization and exploitation
- Security
- Industrialisation
- Other – please comment

1.8. Do you think the public sector and private investors should have different responsibilities/contributions to the investment needs which you have identified in the question above? Please explain.

1.9. Are you aware of any specific policies, incentives or other initiatives developed by the government(s) in your country/region with the aim of attracting private investment?

Yes, no,

If yes, please give details.

1.10. In your opinion, what are the key factors that influence private investment inflows into your country or region?

1.11. Is there anything else you think we need to know about private investment in your country or region?

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Section 2: Principles for "Good" investment[4] if investment is to work for people

2.1. On a scale of 1-5 how important/ relevant are the following principles in making investments work for people in your country/region?

(1- very unimportant, 2 – unimportant, 3- neutral, 4important, 5 very important)

- Investment should be transformational
- Investors and the companies they invest in should pay their fair share in taxes
- Investments should create decent and green jobs for all
- Investments should respect community natural resource rights
- Investment should develop inclusive communities and help close the gender gap
- Investment should protect the local environment
- Investment should respect all human rights, including free, prior and informed consent
- Investments should be directed by national climate change commitments
- Investment should consider different sizes and types of enterprise
- Investment should be representative
- Investment should be accountable

2.2. Please insert below any additional comments you have on the proposed principles.

(For example: Would you suggest any amendments to the proposed principles? Do you think that any of our proposed principles are unnecessary or particularly unhelpful? In your opinion are any of the proposed principles incompatible with each other?)

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[4] These principles were developed and have been proposed by Christian Aid

2.3. Please suggest any additional principles that you think should underpin "good" investment. Please explain any suggestions.

2.4. On a scale of 1 to 5 how would you rate the importance of the following factors in encouraging investment that reflects our proposed principles?
(1 - Very low importance, 2 – Low importance, 3 – Important, 4 – High importance, 5 - Very high importance)

- **Government policy**
- **Business facilitation**
- **Economic determinants**
- **Civil Society activities**
- **Human rights and Environmental standards**
- **Industry standards**
- **Media interest**
- **Other** (please specify)

2.5. What factors do you think make it less likely that investment deliver their development promises and protect human and environment rights?

2.6. In your opinion, which actors should have the greatest responsibility for ensuring that private sector investment is supportive of the realization of your country's/ region's development agenda? (please select up to two)

- Your country's Investment agency/ authority
- Private sector investors themselves
- Policy makers/ Members of parliament
- Development agencies
- Regional and multilateral development banks (e.g. Inter-American Development Bank, African Development Bank, World Bank)
- Regional intergovernmental organisations (e.g. EAC secretariat, EALA, African Union, UN Economic Commissions for Africa)
- Other government departments, ministries and agencies
- Civil society
- National Human Rights Commissions
- Other (please specify)
- This isn't necessary

2.7. Are there any other comments you'd like to make?

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Section 3: Advocacy towards making investments work for people

Which actors do you think Civil Society can best influence if we want to make investments work for people in your country or region? (Please select up to 2 answers)

- Private sector investors themselves
- Your country governments
- Policy makers/ Members of Parliament
- Development agencies
- Regional and multi-lateral development banks (e.g. Inter-American Development Bank, African Development Bank, World Bank)
- Regional intergovernmental organisations (e.g. EAC secretariat, EALA, African Union, UN Economic Commissions for Africa, UN Economic Commission for Africa)
- Other Civil Society organisations
- Other (please specify)
- This isn't necessary

3.1. Please explain your answer to the question above

3.2. Is your organisation currently undertaking any policy, advocacy or other work relating to private sector investment? Please specify.

3.3. Do you have any suggestions about how the advocacy work on making investment work for people could complement your current work?

THANK YOU!

ANNEXE 2

EVALUATION RESULTS

DETAILED REPORT OF EVALUATION ABOUT A TRAINING ON ENHANCING STAKEHOLDER CAPACITY TO INFLUENCE INVESTMENT POLICY FRAMEWORKS.

1. **The overall assessment of the training? 1= sufficient - 5= excellent)**
   This section entails at evaluating the overall performance of the training to check if the training was insufficient or excellent to the participants. Basing on the analysis, 12 of the participants considered the training to be very good and 6 participants referred to it as excellent in relation to meeting their expectations.

2. **If there are topics or aspects in the training that were interesting or useful to the participants?**
   Here the evaluation of the training on enhancing stakeholder capacity to influence investment policy held in Entebbe was intended to capture the immediate reaction and knowledge that interested the participants. As a result of the assessment, 90% of the participants indicated that the training was useful basing on the following reactions;

   - ✓ The mechanism of strengthening, mainstreaming human rights accountability in investment policy frameworks and its implications on gender.
   - ✓ Understanding the global dynamics of investment policy frame works from a historical, national and regional perspective.
   - ✓ Understanding the linkages between taxation policies and investment policies
   - ✓ The impact of investment and sustainable development policy frameworks including tax incentives
   - ✓ The importance of HRIAS and the UN treaty on HR in TNCS and other businesses using the ETOs, UN principles on business, human rights and HRIAS.
   - ✓ The Bi lateral and multilateral investment treaties and creative's
   - ✓ The African mining vision
   - ✓ Advocacy for pro development investment policy regimes
   - ✓ Environment sustainability
   - ✓ land rights on investment policy frameworks
   - ✓ The field trip to rose and flower farm which identified the different forms of investment.
   - ✓ The relevance of countries to have tax treaties and how they contribute to illicit financial flows.
   - ✓ The aspect of understanding the global nulls and process on investment policy and tax in regard to accountability.

3. **If the training met the participants expectations?**
   Under this section, it entails at understanding whether the training that was carried out reached the expectations of the participants. Basing on the assessment, 90% of participants indicated that the training met their expectations accordingly.

4. **If the knowledge and information gained from the training would be useful or applicable in their everyday work?**
   Under this section, it was noted that 11of the participants would **definitely** use the information gained and 8 others opted to **mostly** using it when the need arises. Basing on the assessment, the participates indicated that they are would be able apply the knowledge and information acquired from the training due to the following reasons as stated below;
   - ✓ The information gained would help improve on their policy work in relation to raising public awareness and advocacy, new research topics at large.
   - ✓ As a human rights activist, the information would help broaden the participant's scope on human rights mechanism and framework.
   - ✓ The information gained at the training would enable to merge and understand better the investment policies and to be able link between investment strategies and human rights.
   - ✓ Some of the participants claimed to use the information gained because it will enhance their capacity to do advocacy at all levels.
   - ✓ Also the information gained will be used by the participants because it was a wakeup call for the CSOs and the private sector in various countries to push for implementation and drafting policies which negotiates the investments.
   - ✓ The information gained from the training participated in would be used because it has acted as a flat form to work with communities of which investment and human rights , gender are very crucial.
   - ✓ Some of the participants would opt to use the information gained because their different organizations work around extractives and women rights. These extractives have been identified as part of investments that bring about development yet it has implications on human rights.
   - ✓ The participants would use the information gained from the training because it has enhanced their capacity to create a broadcast related to investment policies and challenges, actors, accountability for sustainable development.
   - ✓ The information gained from the training will be used by some participants to hold their governments accountable on trade investment agreements to widely discuss on media, gatherings and meetings of CBs.
   - ✓ One of the participants who were from Rwanda claimed to use the information gained from the training to be able to report to NRG through ACORD Rwanda to influence Rwanda investment policy frameworks.

- ✓ Lastly but not least, the participants would use the information gained from the training to incorporate more on issues of advocacy programs and its joint efforts with other continents.

5. **If the participants organization future plans for work on policy, advocacy or other work are on promoting investment regimes that support inclusive and sustainable development to make investment work for people?**

This section entails at identifying the different ways in which the participants organizations are going to engage in works on policy, advocacy on promoting investment regimes that support inclusive and sustainable development to work as clearly stated below;

- ✓ Through engagement in lobbing and advocating for gender equality and development bill.

- ✓ Through working in hand with ministry of gender, labor and social development in ensuring that the ministry to come up with regulation so that social impact assessment is done separately from environmental impact assessment.
- ✓ Planning to add in other engagements with the EAC especially the role workers organization is not only development of investment policies and manifests their implementation.
- ✓ Through making alliances with policy makers, government ministries, departments and agencies, parliamentarians as a way of building capacity of stakeholders to enable them participate better in the processes.
- ✓ Through carrying out a sensitization broadcast that will be produced weekly.
- ✓ Through influencing stakeholders, CSOs and the private sector to be more sensitive on issues related to investment and human rights for sustainable development.
- ✓ Continue partnering with SEATINI for a joint policy advocacy and campaign around investment and human rights.
- ✓ Continue working with continental inter government institutions to promote investment regimes that support sustainable development.
- ✓ Through networking with other EAC networks to work and monitor trade, investment negotiations and contracts signing. This will help in identifying and research on investments contracts which are ongoing and explained ones for information to the public.
- ✓ Planning to contribute to national and international policy frameworks and laws to drive forward good investments that work for the people.
- ✓ Planning to continue to work with the ministry to ensure there is an environment impact assessment done routinely.
- ✓ Through investing with RHRC in enhancing accountability at all levels and more in using mechanisms of accountability to canvas investment use.
- ✓ Through conducting a comprehensive study on integration of environment protection in the process of modernization and intensification of agriculture in Rwanda.
- ✓ Engage in more capacity building of communities to understand the concept in investment and what steps to be taken if investment doesn't work for them.

6. **Any suggestions about how the advocacy work on making investments work for people could complement your plans?**

Basing on the assessment, it identified that 90% of the participants agreed upon the ways in which they would work on making investments work for people in the following ways as stated below;

- ✓ Through partnering with the concerned ministry and parliament
- ✓ Developing continuous online engagement
- ✓ Through creating decent jobs which compliment what the organization does.
- ✓ Through capacity building in the region.
- ✓ Involvement of all stakeholders when advocating i.e. providing proposals to policy makers at national and regional levels.
- ✓ Continuation to bring on board diverse voices from trade to finance human rights including youth, women into the national. Regional and global conversations.
- ✓ Through having joint advocacy platforms and strategies especially with SEATINI
- ✓ Forming an EAC network on tracking investments and on social corporate responsibility.
- ✓ Targeting the right policy makers for advocacy.
- ✓ Developing some training tools and instruments for the whole EAC region.
- ✓ Engaging with the national entities to implement some features in regard to investment.

Further Comments/ Suggestions

- ✓ Request to continue with this kind of workshops for strengthening our capacity.
- ✓ Doing social impacts assessments before investment and involving of stakeholders in formulation of policy frameworks, creating accountability.
- ✓ Request for more intensive capacity building to the regional CSOs especially the national level to enable them to influence the making of proper policies. It's noted that the CSOs are not aware of the existing policies and mechanisms that hold investors accountable.
- ✓ Request for more meetings for the team.
- ✓ Request that all the presentations to be forwarded to the participants
- ✓ The issue of time should be addressed.