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## Safeguarding Human and Environmental Rights Amidst Land-based Corporate Investments in Emerging Markets and How These Investments are Impacting Vulnerable Populations in Africa, Particularly Women

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**SAFEGUARDING HUMAN AND ENVIRONMENTAL  
RIGHTS AMIDST LAND-BASED CORPORATE  
INVESTMENTS IN EMERGING MARKETS AND HOW  
THESE INVESTMENTS ARE IMPACTING  
VULNERABLE POPULATIONS IN AFRICA,  
PARTICULARLY WOMEN**

Prof. Hajer Gueldich\*

Being the text of a keynote lecture delivered on June 05, 2024 at the Commemoration of the World Environment Day Event themed “Human and Environmental Rights at risk under Land-Based Investments in Emerging Markets”, organized by the Business and Human Rights Committee of the International Law Association (Nigerian Branch)

I want to start by thanking the International Law Association (Nigerian Branch) for inviting me to be a part of today’s discourse on a critical issue: the impact of Land-Based Corporate Investment in Africa’s emerging economies.

Between 2007 and 2008 when food and energy prices rose sharply, we also saw a dramatic surge in large-scale investments in agricultural land in economically challenged countries. Investments are supposed to be good for development and we generally welcome them. Still, we must also acknowledge the complexities and challenges of land-based corporate investments in Africa, which can impact the human and environmental rights of affected communities including through the displacement of communities from their ancestral lands, often with inadequate compensation for the loss of their homes and livelihoods. Additionally, affected populations frequently report a lack of communication and consultation with investors and governments throughout the land acquisition process.

As I said, investments indeed offer great potential for economic growth and development, however, we need to emphasize the importance of achieving

progress that upholds human and environmental rights because sustainable development cannot be achieved at the expense of our people or environment.<sup>1</sup>

As one of our founding fathers, Kwame Nkrumah, once proclaimed, “Seek ye first the political kingdom, and all these things shall be added unto you”. True prosperity cannot be built on the backs of vulnerable populations, so in upholding the African Union Declaration on Land, we must be committed to ensuring that land-based investments on our developing Continent take cognizance of responsible land governance and upholding the rights of local communities.

Land-based investments significantly disrupt the delicate balance of our communities and ecosystems. The burden of the impact falls disproportionately on women and children. Women face numerous challenges due to land-based corporate investments such as loss of access to fertile land and vital resources they depend on for food production and income generation. This disruption of traditional agricultural practices, often more sustainable than industrial methods, further jeopardises food security for their families. Environmental degradation caused by these investments also significantly increases their workload, as they are forced to travel farther for cleaner water and firewood.

Children are even more so vulnerable. Forced displacement from their land can sever their connection to cultural practices and traditional knowledge systems often passed down through generations. This loss of heritage can be deeply disorienting and contribute to this ever-growing sense of rootlessness as we strive to develop. Furthermore, the environmental degradation caused by these investments creates a harsh reality for children. Water scarcity, for example can lead to waterborne illnesses, while pollution from industrial agriculture can cause respiratory problems.

Many children are also forced to drop out of school to help their families with the lost income or take on additional responsibilities due to increased workloads at home. This not only jeopardizes their education and prospects but also robs them of a crucial period of development and socialization.

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Allow me to provide the areas of discussion I believe to be pivotal as we move forward through our discussions. Firstly, need to consider the issue of free, prior and informed consent (FPIC). FPIC is a principle that centres on obtaining consent from Indigenous Peoples for activities to be undertaken on their land. This can be utilised as a strategy to confront the issues that come with land-based corporate investments. This strategy seeks to balance the power dynamic between the corporations and the communities by ensuring their participation in matters concerning their land.

Information should include potential social, environmental, and economic impacts of the projects in a way that all parties understand. Communities must have the opportunity to ask questions, raise concerns, and negotiate the terms of the project.

A prime example of when FPIC could have been used is the in the case of the Sengwer people in Kenya, who in 2012, were forcibly evicted from their ancestral lands in Embobut Forest to make way for a government-backed hydroelectric dam project. The Sengwer people were not adequately consulted or compensated for the loss of their land. It is these situations in which we find that FPIC could have been a strategy used to support the Sengwer people and ensure that they were protected while their government sought to push development on their land.

Following this principle, corporations can ensure that their investments are truly sustainable and contribute to the well-being of the communities they operate. This principle also empowers women by ensuring their voices are heard in decision-making processes. When women have a say in how land is used, they are more likely to advocate for sustainable practices that protect the environment and ensure the well-being of their families.

Many of our countries are obliged to respect this principle under international law, such as the United Nations Declaration on the Rights of Indigenous Peoples. Some have done so through domestic policy such as the Forest Lands Act of Liberia which stipulates that the FPIC of the local population must be obtained if the status or use of the forest resources is to be changed.

The African Union itself has adopted the Declaration on the Rights of Persons belonging to National Minorities, which affirms the right of minorities to participate in the decision-making process for actions affecting them and to enjoy their own culture and language. Additionally, the AU Model Law on Land also seeks to emphasize the importance of respecting the customary land rights of our communities. This is particularly important for our continent,

where a significant proportion of land is held under customary tenure systems, and formal land titling is often limited.

Secondly, we need to consider a strong environmental impact assessment (EIA). EIAs are crucial tools for ensuring land-based corporate investments are conducted responsibly. But for them to truly be effective, they need to be transparent and inclusive of the community concerns regarding land use. This can be achieved through community participation, independent expertise, considering cumulative impacts, and assessment of long-term social environmental impacts.

As a continent, we have already been working towards ensuring this. Countries such as Ghana ensure the consideration of environmental concerns in investment activities of all types. In Tunisia for example, EIAs are mandatory for projects for the investors to obtain authorization to begin work. The process in Tunisia is guided by several principles, including participation, transparency, accountability, and practicality among others.

The African Union at the continental level provides for the African Monitoring of the Environment for Sustainable Development program, a partnership between the Commission and the United Nations Environment Programme. This program supports Member States in strengthening their environmental information systems and monitoring capabilities by providing technical assistance, training, and access to data and resources. This allows Member States to collect, analyse, and inform EIAs. The program has worked with countries to develop national environmental observing systems, improve data sharing between government agencies, and build the capacity of local experts to conduct environmental monitoring.

Thirdly, we need to find ways to create concrete steps that can be taken to ensure women have land rights, access to training and education, and a strong voice in the decision-making process. The International Fund for Agricultural Development has noted that investing in women's empowerment is a smart investment to generate economic growth, food security, income opportunities and better lives in rural areas where most of the world's poorest live.

Reforming legal frameworks for the establishment and strengthening of women's rights to land and natural resources is one of the most effective ways to empower women.

Supporting women by giving them ownership of land can ensure that they have a strong voice in the decision-making processes of land-based corporate investment.

Lastly, we must find ways to incentivize corporations to adopt environmentally friendly practices throughout their operations. This can be achieved through a combination of government regulations, consumer pressure, and industry best practices. Encouraging renewable energy sources, minimizing environmental impact throughout the supply chain, and employing local labour are all crucial steps.

Several legal frameworks can be used to incentivize environmentally friendly practices in land-based corporate investments. The UN Guiding Principles on Business and Human Rights provide a set of voluntary principles for states and businesses to promote respect for human rights and the environment throughout the corporate supply chain.

The UN Convention on Biological Diversity is an international treaty that requires countries to take action to conserve biological diversity and ensure the sustainable use of its components. The International Labor Organization has adopted several conventions that address labour rights and environmental protection, such as the Indigenous and Tribal Peoples Convention and the Safety and Health in Agriculture Convention.

The African Union itself is taking a leading role in promoting sustainable practices. The AU Agenda 2063 calls for a prosperous and environmentally friendly Africa. In striving to achieve this goal, the AU works with its Member States to develop and implement policies that encourage corporations to adopt environmentally friendly practices but also leverage international agreements.

The African Convention on the Conservation of Nature and Natural Resources for example. This treaty calls for signatory states to take action to conserve natural resources and ensure their sustainable use. This can create incentives for corporations operating in Africa to adopt practices that minimize their environmental impact.

A multi-pronged approach involving governments, regulations, consumer pressure, and industry best practices can incentivise corporations to adopt environmentally friendly practices. International legal frameworks provide a strong foundation for these efforts. By following these guidelines and building upon them, we can ensure that land-based corporate investments contribute to a sustainable future for our continent.

The future of Africa rests on a delicate balance. We need development, but not at the expense of the very people and environment that sustain it. Let us be architects of a future where economic growth goes hand in hand with the well-

being of our communities and the protection of our planet. This requires a collective effort: corporations investing ethically, governments upholding the law, and communities empowered to have a say in their future.

At the African Union, we will continue to support and advocate for development that seeks to prioritize the well-being of our communities and the protection of our environment. This requires corporations to invest ethically, governments to uphold our principles, and empowered communities that have a say in their future. Africa's potential is boundless. Let's unlock it while safeguarding human and environmental rights and ensuring a future where mankind can thrive.