Tenure and Investment in East Africa

Power and Bioenergy

Tenure disputes in East Africa have created financial and reputational problems for the companies and investors involved. These issues are becoming significant at a macro-level as well as a project level. Energy projects have experienced contagious disputes that have undermined the attractiveness of the sector for international investors in key countries.

This paper examines recent case studies of tenure-related dispute in East Africa to help companies, investors, governments, and CSOs avoid and resolve them more effectively. It compares these recent cases to historical and global trends to provide a current and representative picture of the way that tenure risk is impacting investment in the sub-region.

Our investigation suggests that if these stakeholders cannot find better ways to engage and make agreements with local people, tenure risk will continue to affect key projects and sectors. This could have a knock-on effect for foreign direct investment and national economic growth in some countries.

1. Tenure Dispute in East Africa

This paper provides insights into the causes and impacts of tenure dispute at the project and macro-level for companies, investors, governments, and civil society organizations (CSOs). Tenure disputes can result in work stoppages, legal interventions, and even project cancellation. In addition to operational and legal risks, companies and investors involved in these disputes expose themselves to considerable reputational damage.

A pattern of contagious dispute in a country or area unsurprisingly acts as a strong deterrent for international investors. This pattern may suggest that the problem is with the operating environment in addition to the way many companies manage their operations. Governments competing for investment and striving to roll out public infrastructure are therefore highly incentivized to avoid macro-level tenure issues.

In this paper, we focus on two key industries for governments and investors in East Africa: energy and agribusiness.[1] Specifically, we examine project-level difficulties for a bioenergy project in Tanzania and sector-level projects for the wind power sector in Kenya. These examples demonstrate that successful land-based investment in East Africa relies on significant engagement between companies, government, local peoples, and CSOs. According to Dave Bledsoe (Landesa), if these relationships are not managed carefully, any of these groups may obstruct project success.

In our bioenergy example, a company has been exposed to considerable financial risk because of weak diligence on tenure issues and a failure to learn the lessons of previous investors in the area. At the same time, the local and national Tanzanian government could have done more to provide the company with accurate information and to facilitate constructive engagement with local communities. This case is therefore representative of the typical causes of project-level disputes in East Africa. The operational and financial consequences in this case, which include successive disruptions and project cancellations, are relatively severe but hardly unusual (see trend analysis below).

In the Kenyan wind sector, the delays and cancellations caused by tenure issues add to the already significant challenges faced by national energy plans. Our examination of the affected projects suggests that local politicians felt cut out of the deals and that project developers felt that the government was responsible for the difficulties the sector has faced. But had developers had

[1] All but one of our cases from East Africa were from the energy and agriculture sectors. The remaining case is of a gold mine in Tanzania.

a more direct, counterparty-like relationship with local communities, they might have been able to address opposition to the project decisively and at an early stage.

These problems in the Kenyan wind sector are a risk to energy security and perhaps even national economic growth. According to Mark Eckstein (CDC), they are certainly likely to give investors reason to reconsider their engagement, particularly in energy and public infrastructure projects. These disputes reinforce the image of a country struggling with tenure risks. It appears that key pieces of regional infrastructure, like a railway and an oil pipeline, have been routed away from Kenya in part because of concerns about the threat tenure issues pose to project development and completion.

Our examination of the wind sector in Kenya provides a good example of the linkages between project-level, sector-level, and national-level tenure risks. It also highlights an increasingly common trend: tenure issues are becoming more important in macro-level risk assessments, and investors are becoming more aware of the importance of understanding and addressing these issues.

Key Recommendations

East Africa is home to attractive investment opportunities, but the energy sector and others can be impaired if key stakeholders fail to reach informed agreements. Making these agreements is difficult and requires both inclination and expertise. Thankfully, effective guidance is now available to help companies, investors, and governments avoid and resolve tenure disputes.

The following recommendations are designed to raise awareness of the key issues while pointing interested parties towards more comprehensive materials like the Interlaken Group Guidance Tool (IGGT), the Ian Toolkit, and the New Alliance Due Diligence Framework. Some of these suggestions may seem basic, but our research suggests that they are fundamental.

1) **Work with current, independent information.** Data provided by an external party, especially the government, can be unreliable. Making effective investment decisions requires access to reliable and recent information about key factors like claims to land and resources, legacy land issues, and likely project impacts. Countries that can provide this information readily are at a considerable competitive advantage for attracting investment.

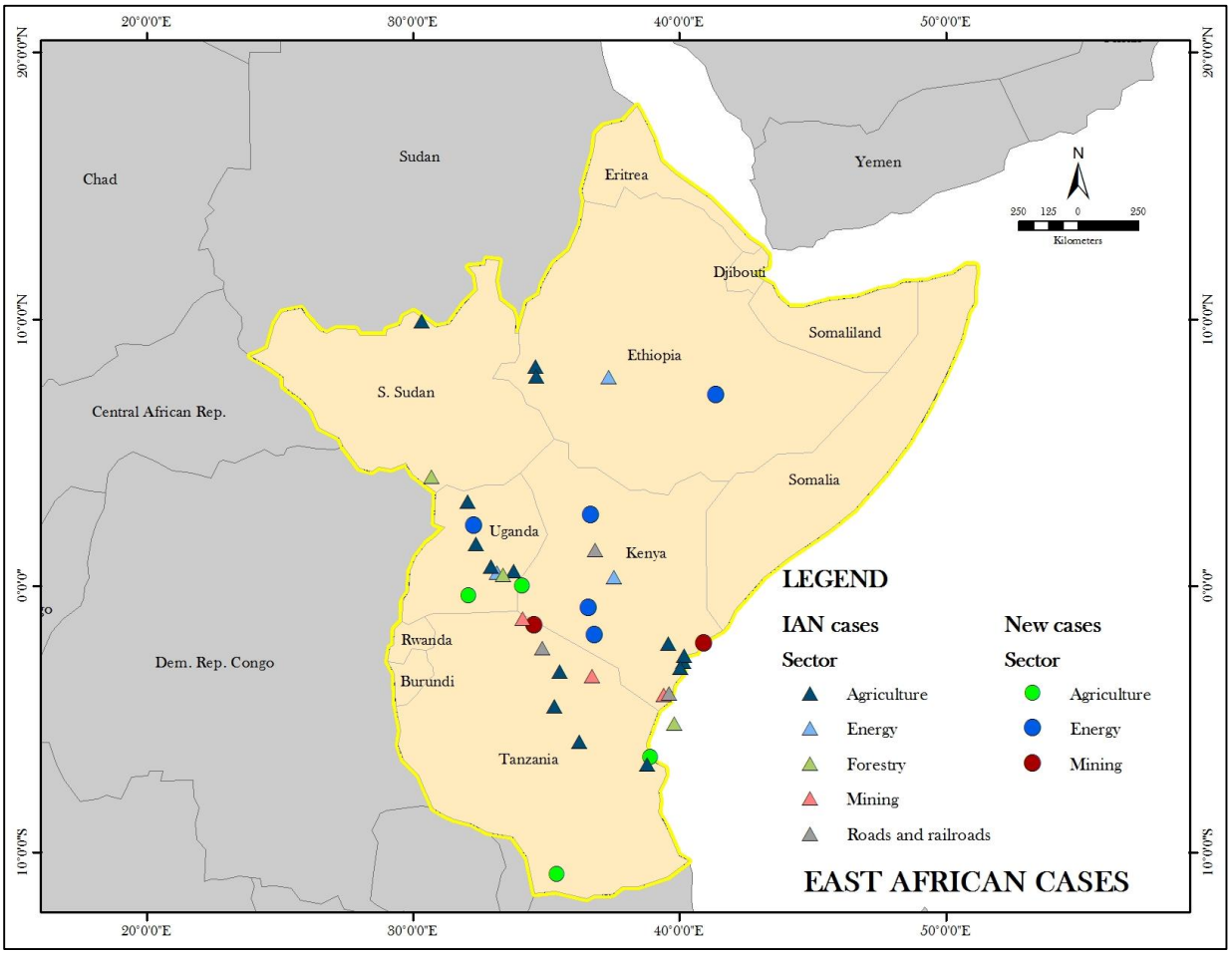
2) **Make agreements and consult with local peoples directly.** Local representatives, both political and customary, are important, but it is crucial to establish their capacity to legitimately speak on behalf of others. The only way to get genuine local consent is to engage local people as well as local representatives directly and early in project development. This prevents misunderstanding and helps ensure opinion is not subverted by vested interests.

3) **Following the highest available standard on tenure reduces exposure to risk.** Local, national, and international law and guidance on tenure issues can be contradictory. The best

way to reduce the risk of a dispute is to adhere to the standard demanded by local peoples as well as international standards.

Trends in East African Tenure Risk

To identify the key features of tenure dispute in East Africa, we have compared the case studies identified in this study with cases we have examined in West and Southern Africa, as well as a large sample of global cases.[2] The map below shows the locations of our East African cases. Each of these cases has been quantitatively evaluated using geospatial data from Ian Risk and qualitatively evaluated through desk-based research, fieldwork, and expert consultation.



The most significant result of our analysis was that recent disputes in East Africa are more likely to lead to work stoppages or legal action than in any other part of the world. Three-quarters of the cases we examined had material consequences for the companies and investors involved.

[2] The global sample of 362 cases has been drawn from the Ian Case Study Database

Tenure disputes in East Africa are therefore likely to be financially significant for the companies and investors involved.

Another notable feature of tenure dispute in East Africa is that it is much more likely to be driven by differences over compensation than in other geographic areas. In many instances, local communities stopping work or raising legal challenges believe they are using the negotiating tools available to them. Local populations do not appear to be averse to investment per se, as is relatively common elsewhere. This finding may be connected to the fact that a low number of cases involved Indigenous Peoples and minority groups, who are typically closely tied to their customary land.

This supposition is reinforced by the fact that no disputes started in the exploration phase, meaning projects were not initially rejected. Most unusually, as many as a quarter of the new cases we examined saw disputes start during expansion of an existing operation. This again suggests interest in negotiating a good deal for local communities, particularly given that just 13 percent of cases started during operations.

The final feature of disputes that surprised us was that only three cases in East Africa (27 percent of our sample) involved violent conflict.[3] This compares to 30 percent in West Africa, 64 percent in Southern Africa and 47 percent globally. These figures contradict impressions of the region as restive.

Contextual Factors

Poverty in the areas surrounding our East African case studies is serious, if not as severe as in West or Southern Africa. Population pressure is significantly above the global average but in line with other parts of Africa. Notably, given this population pressure, water risk is especially acute in East African cases, with a WRI Aqueduct risk score of 4.89 out of 5.[4] Investors backing thirsty crops like sugar, as in the bioenergy project profiled on pages 7-11, should include assessment of the impact of their project on local water access and ecosystems services in their due diligence.

Even projects that are not water-intensive must consider local water access. The Lake Turkana wind project, profiled on pages 12-14, provides a good example here. The project does not consume water but it affects a number of semi-nomadic pastoralist communities who rely on natural water sources for their livelihoods. An access road for the project reportedly impacted

[3] This was a case in Ethiopia where a rebel army group attacked natural gas workers. The presence of an armed militia makes this instance atypical of the types of conflict seen in our latest set of African case studies.

[4] The World Resources Institute' Aqueduct database (http://www.wri.org/our-work/project/aqueduct) provides scores for various water risks across the globe. The highest possible risk level is 5, with 0 representing no risk. See page 21 for further details.

one such critical water source, providing a likely source of grievance among dependent communities.[5]

East Africa scores poorly in terms of perceptions of corruption (at 27, with the average for all new cases at 29).[6] However, the sub-region scores comparatively well on a range of governance effectiveness indicators.[7] These scores may point to the differences between the local and national governments in the sub-region.

[5] https://ejatlas.org/conflict/lake-turkana-project-in-indigenous-territories

[6] The Corruption Perceptions Index (http://www.transparency.org/news/feature/corruption_perceptions_index_2016) scores countries on a scale from 0 (highly corrupt) to 100 (very clean). In 2016, the global average score was 43.

[7] The Worldwide Governance Indicators capture six key dimensions of governance (Voice & Accountability, Political Stability and Lack of Violence, Government Effectiveness, Regulatory Quality, Rule of Law, and Control of Corruption).

2. Project-level risk: Bioenergy in Tanzania

This section examines the project-level risks associated with unclear and insecure tenure and examines a specific bioenergy project in Tanzania. While this case is not entirely representative of international investment—the lack of diligence and relevant expertise on the part of the company is unusual—it does provide very clear instances of many typical issues.[8]

The company involved failed to understand how difficult it is to gain access to land in the absence of a high capacity to engage local communities and officials. This experience of underestimating the complexity of the operating environment is mirrored in investments across the region. But this bioenergy project provides a particularly stark example of opportunistic investors facing significant consequences due to their failure to manage tenure issues and effectively cooperate with local and national government.

EcoEnergy in Bagamoyo, Tanzania

The Bagamoyo EcoEnergy project in Tanzania was initiated after SEKAB, a Swedish ethanol producer, was forced to pull out of a proposed investment.[9] SEKAB's Tanzanian interests were transferred to a new company, Agro EcoEnergy Tanzania Ltd (EcoEnergy), which continued to pursue the development of sugarcane on the land SEKAB was being offered by the government. Despite SEKAB's difficulties, the low price and promise of government support encouraged EcoEnergy to proceed with very little diligence.

EcoEnergy cleared the bare minimum of legal hurdles and provided the minimum opportunity for information sharing required by Tanzanian law. But the company found itself facing a lawsuit from inhabitants of a village on the edge of the project area (Gama) in 2011, and in 2014 co-opted villagers in an adjacent area (Biga West) in an attempt to make up for the unsuitable land it had acquired.[10]

In March 2015, ActionAid released a report directing considerable criticism at EcoEnergy, claiming that the company had failed to gain Free, Prior and Informed Consent (FPIC) from the communities affected by the project.[11] This report drew significant attention in the media and

[8] The chairman of the company driving the investment had no prior experience in developing greenfield agricultural projects in emerging markets, having previously only worked on an operating ethanol plant in Sweden.

[9] This case was profiled in a previous TMP report, *The Financial Risks of Insecure Land Tenure*, available here: http://rightsandresources.org/wp-content/uploads/2014/01/doc_5715.pdf

[10] We interviewed a range of groups in Bagamoyo in August and September 2016, including the contractors involved in the consultation process, independent researchers based in the area, and community members. EcoEnergy did not respond to our requests for an interview.

[11] http://www.actionaid.org/sites/files/actionaid/stopecoenergy.pdf

subsequently Sida, the Swedish development agency, refused to provide a commercial bridging loan facility made for the project in 2014.[12]

This case demonstrates the dire potential consequences of failures in engagement with local people and government. The disputes that erupted and mutated over the course of several years are often complex and disparate. A common thread is the attempt to cut corners on the part of the developer, which ultimately led to the erosion of trust and wider support; this lack of trust in the investors on the part of local communities and government partners hampered the ability of the project to make progress, further undermining confidence in the project's developers. Economically significant projects like these rest in large part upon the political will of host governments: EcoEnergy's failures in engagement ultimately caused this will to evaporate.

In May 2016, the Prime Minister of Tanzania signaled that the project's right of occupancy would be cancelled. The decision, however, was not officially based upon concerns about the tenure rights of Bagamoyo residents, but to safeguard drinking water for wildlife in a neighboring National Park. Unofficially, Tanzanian government officials suggested that there was a conflict between ministries over the allocation of land on the border of the park.[13]

Had EcoEnergy been able to resolve or avoid key disputes earlier in the process, it is likely that the National Park issue could have been avoided. But with the company unable or unwilling to address disputes head on, the political risks to the project snowballed. Whether the decision will completely end EcoEnergy's involvement in the area remains to be seen, and people in Bagamoyo are still uncertain as to what the final outcome will be.[14]

Key Disputes

There are two key tenure disputes between Bagamoyo residents and EcoEnergy. The first set of issues relate to the area known as "Biga West," where EcoEnergy attempted to acquire land, having discovered that much of the Razaba Ranch they had been granted by the government was unsuitable for growing sugarcane.[15]

EcoEnergy attempted to push through the reallocation of land from one village to another in order to acquire it (the complexities of Tanzania's land use laws necessitating a transfer in this instance to enable an outside investor to gain rights to the land). In doing so, EcoEnergy put

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[12] Kjellin, 2015, "Impacts on the Local Population due to Delays in Large Scale Agricultural Investments" (http://stud.epsilon.slu.se/8474/1/kjellin_f_150909.pdf).

[13] http://www.reuters.com/article/us-tanzania-investment-wildlife-idUSKCN0YS20T

[14] During field research in September 2016, EcoEnergy staff were still in the area but project development appeared halted.

[15] The soil in much of the ranch was discovered to be unable to support sugar cane cultivation (interview with Ally Bedford, IDC, August 2016). EcoEnergy appear to have known but ignored this information, as SEKAB had previously attempted to acquire the land in 2008 (interview with independent researcher, September 2016).

significant pressure on local authorities and the inhabitants of the villages in question.[16] The legitimacy of this process was hotly disputed by villagers and created significant local resentment.

The second set of issues, which was not well reported in ActionAid's coverage, involves the movement of people to parts of the project area before and after the "cut-off date" established by the government.[17] Much of the controversy centers around a small village called Gama. In early 2010, heavy flooding of the river Wami—which borders the project site—forced villagers to relocate to a nearby area called Makaani.

The people of Makaani wrote to the District Commissioner to ask for permission to stay, but were told to leave in December 2010. These efforts occurred before the cut-off date in November 2011, but the government viewed even those villagers already living there as squatters. To further complicate matters, a number of villagers sold land around Gama (to which they likely had no rights) to investors from Dar es Salaam and within Tanzania. This resulted in a large influx of people to the project land, both before and after the cut-off date.[18]

EcoEnergy were unable to consult with the village of Gama because it had initiated a legal dispute against the company in February 2011. It is unclear what the initial source of Gama village's grievance was, but EcoEnergy's plans to dam the river Wami in order to use it for sugar irrigation appear to have been central to the problems. Additionally, the actions of security personnel hired by EcoEnergy to protect the site remain a source of discontent for people in the area.[19]

Compounded Delays, Lost trust

Early consultations conducted by IDC, a consultant hired by EcoEnergy, found that local people were broadly supportive of the project. However, as the project attempted to move from consultation to implementation, it quickly became clear that EcoEnergy had not properly budgeted for the Resettlement Action Plan upon which its African Development Bank funding depended. This failure to resettle affected peoples became a source of contention with the host

[16] This included EcoEnergy hiring a specialist to help the village with the rights to the land to develop a Land Use Plan. In doing so, the benefits of being outgrowers for the Bagamoyo project were strongly promoted ("Land use plan for Matipwili village 2013-2023", Matipwili Village Council, 2013; interview with independent researcher, 2016).

[17] At the time of the ActionAid report, the project had been hanging in the balance for three years. People to be affected were understandably irritated by the lack of information, and the insecurity of their livelihoods while waiting for resettlement. This impression of dissatisfaction comes through clearly in the damaging picture described in this report.

[18] Eco Energy response to ActionAid report, 2015 (http://www.ecoenergy.co.tz/fileadmin/user_upload/AA_Report_Response.pdf).

[19] Interviews with villagers in Gama, September 2016.

government when EcoEnergy asked them to cover resettlement costs and the government refused.[20]

Relations between EcoEnergy and the government agencies responsible for the land allocation decisions soured, and progress on the decision all but stopped. Suddenly faced with a government that was holding back on its official decision to sign over the project land, delays mounted, and dissatisfaction with the project's slow progress grew among inhabitants, compounding damage done in Gama and Biga West. But without access to finance the company had no way to break out of the impasse.

The Prime Minister's announcement that the project would be halted apparently took the company by surprise.[21] With hindsight, the issue—which relates to the Saadani National Park's senior claim to the land—was entirely foreseeable. As discussed below, the project has always relied on the goodwill of both local populations and government officials at various levels. When the financial integrity of the project started looking insecure, and apparent local opposition caused significant potential embarrassment for the government in 2015, this goodwill rapidly disappeared.[22]

Proper diligence could have identified potential problems with competing claims on the land from different ministries. But the final decision probably reflects the fact that the government of Tanzania, like the people of Bagamoyo, had lost trust in EcoEnergy to deliver on its promises.

Missed Opportunities to Manage Tenure Risk

There were clear "red flags" relating to this investment that should have been picked up during initial site diligence. The most prominent of these, besides the problems faced by SEKAB, was the unsuitability of much of the land for sugarcane development. Expectations about the amount of sugarcane needed to supply a profitable ethanol plant were based on a certain amount of land, which put the company under extreme pressure to expand to adjacent lands (i.e. Biga West) when the original concession was found inadequate.

These problems were not insurmountable. Tenure issues in Biga West and Gama that delayed project finance and created cascading problems might have been avoided if the company had taken consultation with local peoples more seriously and had provided the consultant it hired with accurate information about the project and its development. Agreements that were

[20] Interview with IDC, August 2016.

[21] Reuters, June 2016 http://www.reuters.com/article/us-tanzania-investment-wildlife-idUSKCN0YS20T

[22] Sida withdrew its support for the project in April 2015 (http://www.thecitizen.co.tz/News/national/Key-financiers-drop-Sh1tr-sugar-project/1840392-2708724-e403if/index.html), and in July of that year Stanbic announced that EcoEnergy was going to default on its loan (interview with independent researcher, September 2016).

negotiated with pastoralists, and the fact that a number of other villages and land users remain positive about the investment, are evidence of this.

Some of that positivity related to local peoples' recent history of displacement due to the annexation of land in the area by the Tanzanian National Parks Authority (TANAPA). In 2003, TANAPA relocated people from Kisauke to Gama in expanding Saadani National Park.[23] Villagers we spoke to are still angry at the way this displacement occurred without any consultation or consent.[24] For many in the North of the project area, on the borders of the National Park, the EcoEnergy project represented a significant opportunity for employment.

EcoEnergy were aware of a dispute between ministries over some of the land in the project area, but relied upon assurances from government partners that it was not a live issue. In November 2013, the Ministry of Lands, Housing and Human Settlements Development wrote to EcoEnergy to state that the dispute with Saadani National Park had been resolved. But in January 2015, a parliamentary committee ordered the Ministry to recover 3,000 hectares from the park.[25] The eventual cancellation of the project must be seen in the light of this conflict between ministries.

EcoEnergy relied heavily from the outset on the word and goodwill of a limited number of contacts in government, and underestimated the risks of their decisions on land allocation. This reliance on local goodwill ultimately undermined the project by forcing the investors to commit to land that was subject to a number of pre-existing problems. Rather than working with local communities and investing in potential resolutions to these tensions, EcoEnergy attempted to cut corners. This approach eroded the public support on which it depended.

[23] Interview with independent researcher, September 2016.

[24] Interview with villagers in Matipwili and Gama, September 2016.

[25] Interview with independent researcher, September 2016.

3. Sector-level Risk: Wind and Energy Security

Economic growth and improving living standards in countries across East Africa create enormous demand for energy. Governments are trying to meet this demand, but they will require private investment to do so. Due to good conditions for energy production and relatively high prices, many private investors are interested in investing in generation and distribution. However, they are increasingly deterred by tenure risk.

In Kenya, in particular, the sector has developed a problematic reputation after a series of investments were delayed or derailed by local opposition. In the case of wind projects, a notable feature of tenure disputes is that they are not primarily driven by negative local impacts. Another is the noticeable contagion effect across wind projects in the country.

If issues become chronic, it will be very difficult for governments to provide energy security, which risks a downward economic cycle. Across East Africa, problems in the energy sector are mirrored in the difficulty governments have in executing infrastructure projects. Often, tenure-related problems threaten both the sub-regional economy and bilateral relationships.

Wind in Kenya

On the surface, Kenya is an attractive country for investment in green energy and investors have responded with particular interest in wind and geothermal. Compared to fossil fuels, these green energy projects have a low environmental impact and do not require much land. They meet the national government's need to increase energy supply, particularly in rural areas, while also aligning with the global climate agenda.

Despite these benefits, a series of wind projects have been delayed or derailed by protests over land and resource rights. A 60.8MW wind farm in Kinangop was cancelled following site invasion and a protracted legal battle; the flagship Lake Turkana project is also subject to a legal challenge that is delaying construction; and the most recent case, Kipeto, will also be delayed by concerted local opposition.

In each of these cases we see a similar pattern in which local communities seemed, initially, to welcome these projects. Local communities seemed to assume that they would deliver jobs and economic benefits without asking for much in return. However, developers made little effort to address the concerns and interests of local politicians, who evidently felt cut out of the deal—whether for legitimate reasons or due to corruption. Since developers also did not forge strong, direct relationships with local communities, they were relatively powerless to stop these politicians fostering local opposition to the project.

According to Suleiman Kiggundu (CDC) this story of problems in the wind sector contrasts to some extent with the experience of geothermal developers in Kenya. Having learnt from initial

difficulty obtaining local consent, companies and investors in geothermal projects have worked to develop effective agreements with local communities. This initial investment in diligence and engagement has resulted in lower-risk projects that can help close Kenya's energy gap.

Legal stoppage

Legal cases filed by landowners absorb precious project time and resources, and can lead to the kinds of delays that mount up over time to ultimately halt projects entirely. According to Rachel Davis (Shift,) if this kind of legal risk becomes a pattern, investors become wary of the affected sector. This is evident in Peruvian mining but also, increasingly, in Kenyan energy.

In the case of the Kinangop project, the local MP was inconsistent in his attitude to the project. He was initially vocal about the inadequacy of the deal being offered, but he gave his support to the project in October 2014, announcing additional compensation for farmers. New agreements were signed with 38 farmers in 2015, securing them access to lands that had previously been earmarked for exclusive use by the wind farm.[26]

But fears about health effects and forced displacement (which the government claimed had been propagated by opposition politicians) had already taken root among the wider population.[27] The project was halted in March 2016, with the company citing the "[unresolved] impact of the initial civil commotion … while further incidents have occurred."[28]

The developers are currently suing the government on the basis that the disputes count as a "political event"— for which the government had provided an indemnity. The developers claim they have incurred a $66 million loss from the delays, in addition to the immediate losses relating to a wind turbine mast that was destroyed in a violent site invasion.[29] This suit gives an indication of the scale of the project-level risks associated with tenure disputes.

In the case of the Lake Turkana windfarm, a court imposed restrictions on construction due to an ongoing legal case over local consent. The government is heavily financially implicated, as any delays in the construction of the connecting power lines will be borne by Ketraco, the government-owned transmission system operator.

It is still unclear what the financial implications of stoppages will be for the Kipeto wind farm because the case has yet to be heard, but it seems likely that work will be significantly delayed. That these outcomes are becoming typical for wind projects in Kenya is problematic for the sub-

[26] http://www.nation.co.ke/business/Wind-power-farm-now-gets-farmers-backing/-/996/2614372/-/pfgfvo/-/index.html

[27] http://www.dailymail.co.uk/wires/reuters/article-3090818/Gusts-opposition-hit-Kenyan-wind-farm-project.html

[28] http://www.enr.com/articles/39140-kenyan-courts-halts-150-million-wind-farm-project

[29] http://www.businessdailyafrica.com/Wind-power-firm-sues-State-collapse-Sh15bn-project/539546-3293818-item-0-t5f9fsz/index.html

region, deterring likely investors and creating questions over the capacity of the government to provide energy security and economic growth. Finding a solution is in the interests of all parties involved, so long as local people are involved in making the agreement.

Problems in International Infrastructure

In addition to the experiences that investors have had in the Kenyan energy sector, there are signs that transnational infrastructure projects are being routed away from Kenya because of the risk that tenure issues will delay or derail project implementation, indicating that tenure risk has become a significant macro-level issue. These infrastructure projects also create issues in sub-regional relationships, underlining that tenure issues impact international politics.

Two infrastructure projects have been directed away from Kenya. The first is a railway that would link Rwanda to the Indian Ocean via Uganda and Kenya, but which will now go through Burundi and Tanzania.[30] Given the problems that Kenya has been having with its own Standard Gauge Railway—which apparently cost the Kenya Railways Corporation as much as $376,000 a day when construction was suspended in June—this decision is not entirely surprising.

The second major project that will now be routed through Tanzania rather than Kenya is an oil pipeline from Uganda.[31] A key reason given for this decision was the relative ease of land acquisition in Tanzania, as well as the problems Kenya faced developing the Lamu terminal. In both of these instances tenure is not necessarily the decisive factor in the investment decision but it is clear that it was one of the significant factors for decision-makers and investors.

It remains to be seen whether these decisions were based on a nuanced understanding of tenure risk. While land acquisition is often easier in Tanzania, our bioenergy project shows that this top-down approach can create delays and fuel disputes which ultimately derail a project.

Problems around the development of the SAGCOT corridor[32] have not been particularly severe and the Tanzanian government has received international support to improve its performance in tenure governance. But if infrastructure developers plan to ignore the customary rights of local peoples, they may find the reaction of local communities in Tanzania to be similar to those in Kenya.

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[30] http://www.businessdailyafrica.com/Kenya-to-terminate-railway-at-Kisumu-after-Rwanda-exit/1248928-3207470-avv5gdz/index.html

[31] https://www.theguardian.com/global-development/2016/may/12/uganda-chooses-tanzania-over-kenya-for-oil-pipeline-route

[32] The Southern Agricultural Growth Corridor of Tanzania aims to bring together business, government and donor partners to focus agricultural investment across a broad area between the Zambian border and Dar es Salaam.

East Africa: Key Lessons for Companies and Investors

Our assessment of the cases of tenure-related dispute in East Africa leads us to the following recommendations for companies and investors:

1) **Work with current, independent information.**
2) **Make agreements and consult with local communities directly.**
3) **Follow the highest available standard on tenure to reduce exposure to risk.**

Information provided by governments with low capacity may be unreliable. Thankfully, there are a growing number of tools and organizations that can help investors and companies to generate granular, up-to-date information on the kinds of environmental and social factors that can heighten tenure risk. Similarly, this guidance can help private sector actors to engage and develop a healthy relationship with the people affected by new or expanding projects.

The cases we have examined in East Africa highlight the importance of working with all key stakeholders, including diverse local communities, to forge an agreement. Many companies and investors have a natural inclination to try to reduce the number of stakeholders they deal with. This partly explains the preference for dealing with officials rather than local people. But the reality of doing business in East Africa, as in many emerging markets, is that trying to cut down the number of stakeholders often results in resentment as people feel cut out of the deal.

These actors will use the tools at their disposal to oppose the project and, in many cases, try to negotiate a better deal. Failing to engage with local communities can therefore lead to financially significant work stoppages and legal challenges. Indeed, two of the four projects examined here have been cancelled as a consequence of dispute. In the case of EcoEnergy's project, these problems are the result of legacy land issues compounded by a lack of diligence and a failure to budget for the costs of local engagement.

The wind cases demonstrate that forging robust relationships with local communities can be difficult even where companies and investors have access to resources and expertise. But if they are unable to establish these agreements, they are exposed to the risk of other parties including local officials and CSOs creating unnecessary and sometimes intractable problems. These issues can be contagious, impacting entire sectors and ultimately endangering future growth and investment.

East Africa is currently seen as one of the most attractive areas in the region for international investment. However, our research suggests that work stoppages and legal challenges are more likely to result from tenure dispute than in other parts of Africa and the world. In many of these instances, local peoples and their representatives are using available negotiating tactics in an attempt to get a fair deal. This can create intolerable delays for companies and investors that could have been avoided if they had been willing and able to work closely with local people.

Managing tenure risk effectively will depend on up to date information about social and environmental factors. It will also often mean working to a standard higher than legal compliance. Following these principles, as some geothermal developers appear to have done, can make for successful projects. Investors should not ignore the opportunities available in East Africa, but they need to apply appropriate diligence and invest in local engagement if they want to convert these opportunities.

Annex I: Contextual Factors

This annex provides the results of geospatial analysis of the case study sites. Specifically, we have pulled indicator values from the Ian Risk database for a 50km buffer zone around each set of project coordinates. These indicators include a range of leading environmental and social factors, which are typically linked to tenure dispute such as the presence of people, the availability of water, and prevailing land use types.

The results of this analysis of East African cases has been compared with cases from West and Southern Africa, as well as from other regions like Latin America and Asia. Finally we have looked at the results in the context of global averages as a means of picking out trends that are distinctive to the sub-region.

This process helps us to understand whether there are characteristic biophysical or social factors around problematic projects. It also helps us to understand the dynamics of dispute in East Africa. Some of the key trends have been picked out in the main body of the text. This Annex provides more detail on our analysis and on the data we have used.

Social

Population pressures

The average population count for the areas surrounding the new East African cases was 815,187 people (where the area is defined as a circle surrounding the location, with a 50km radius from the central point).[33] This is roughly the same as the average headcount for all the new cases (852,509), significantly above the average for the cases in the original Ian database (319,426). The increased numbers of people in proximity to disputed investments is thus something we are seeing as a general trend in African investments, although it doesn't reveal a great deal in itself about the specific characteristics of the East African disputes.

It is worth noting, however, the importance of factors such as proximity to urban centers. In the Bagamoyo case, a major driver of dispute was domestic investment on the land, and the new local investors were cited as being from Dar es Salaam, Tanzania. Proximity to the capital is clearly a double-edged sword – while providing access to trade hubs and networks, it also increases certain kinds of social risks. 849,950 people live in the 50km around the middle of the project area. But if you take the southernmost point of Razaba ranch, the proximate population is over 2 million, as it brings in the edges of Dar es Salaam.

[33] For population data we used SEDAC's Gridded Population of the World, v4. http://sedac.ciesin.columbia.edu/data/collection/gpw-v4

For the wind power cases, the population count is higher than average at 909,548. Again, this is suggestive of the broader pressures on the land that we see in East Africa. It is difficult to identify a specific effect on the characteristics of these particular disputes, but it emphasizes that investors should be cautious when land is described as 'unused' or 'unencumbered', as in this part of Kenya, as in the rest of the sub-region, this highly unlikely to be the case.

Conflict

At the sub-regional level, the data does not suggest that historical or recent armed or social conflict reveals a specific risk. There are, however, some more localized exceptions which should present a cause for concern for investors.

The Armed Conflict Location & Event Data dataset[34] reveals an average of 59.67 cases of armed conflict within 50km of the wind power cases sites since 1997. This score is largely due to Kinangop, which was in proximity to 149 cases. Kinangop was the only one of the three cases where the tenure dispute turned violent. The significance of the ACLED data is fairly easy to verify and investigate, as it reveals a history of internal displacement in the area following the 2007-2008 crisis in Kenya.

Poverty

The multidimensional poverty indicators for the populations affected in the East African cases reveal significant deprivations. In general terms there are higher proportions of people in poverty than in our West African cases, but not as many as in the Southern African cases. The multidimensional poverty index, for example, averages 0.31 for all the new cases, and the same for the East African cases. The average for Southern African cases is 0.36, and for West African cases it is 0.20.[35]

This pattern is not uniform across the indicators, however, and there are some areas in which the case studies we highlight in Tanzania and Kenya provide notable outlier values. While the East Africa case populations generally have a higher proportion deprived in terms of key living standards metrics than other cases we have studied (see table below), their access to healthcare and education is generally better than the regional average.

In Bagamoyo, for example, 8.2% of the population has received less than five years of schooling, and the figure is 7.9% in the Kenyan wind power cases; the average for the new cases is 21.2%. This pattern suggests that these are not populations that are extremely remote from or neglected

[34] ACLED records political violence and protest events in African countries from 1997 to the present day. http://www.acleddata.com/about-acled/

[35] The MPI Index combines the proportion of population in multidimensional poverty (East Africa: 58.84, Southern Africa: 68.8, West Africa 39.46) with the intensity of deprivation amongst the poor (East Africa: 49.70, Southern Africa: 50.67, West Africa: 51.68).

by fundamental services provided by central government, though there remains a significant lack of economic integration.

		Original Ian cases	All new cases	East African Cases	Wind	Bagamoyo
Percentage of population deprived in terms of access to:[36]	**Electricity**	26.26	54.30	56.53	37.09	42.2
	Improved Sanitation	30.53	52.61	51.60	35.01	39.8
	Drinking water	19.64	36.60	40.27	26.74	24.225
	Floor	20.84	44.13	50.61	32.57	31.55
	Cooking Fuel	34.66	58.25	58.64	38.09	45.95
	Asset Ownership	19.68	33.42	34.05	23.75	23.325

There is one final metric of note for our highlighted cases: 'Population vulnerable to poverty'. This captures the percentage of the population at risk of suffering multiple deprivations, i.e. with an intensity score between 20 and 32.9 per cent.[37] In our Kenyan wind power cases, an average of 25.8% of people came into this category, and 26.5% of people in Bagamoyo were vulnerable in this way. The average for all the new African cases is 19.8%, and in East Africa the average is 21.7%. This adds to the picture of people who are not completely disconnected from provision of economic and social services or opportunities, but who nevertheless suffer significant deprivations, and are highly sensitive to potential changes in their livelihoods and wellbeing.

Environmental

We focused on two major sources of data for information about the environment of the areas surrounding the new cases: water risks, and land use types.

Water Risks

For water risk analysis, we used the Aqueduct dataset's assessment of water-related risks. A comparison of selected risks is highlighted in the table below.[38] These risks all highlight notable

[36] The MPI living standards indicators are described in full in the methodology document (http://www.ophi.org.uk/wp-content/uploads/OPHIBrief_44_MPI_meth_note_Dec2016-1.pdf)

[37] It can be contrasted with the 'Population in severe poverty', which describes the proportion of people with an intensity score of more than 50%. 'Intensity' denotes the number of types of deprivation that a person is subject to at the same time, so someone with a score of more than 50% is deprived in over half of the ten dimensions of poverty captured by the MPI.

[38] Aqueduct's (https://www.wri.org/sites/default/files/aqueduct_water_risk_framework.pdf) classification of risks is as follows: 0-1: Low; 1-2: Low to medium; 2-3: Medium to high; 3-4: High; 4-5: Extremely high.

trends among the East African case studies, or statistics of particular interest to the Kenyan and Tanzanian cases we discuss in more detail in the report.

Indicator	Original Ian cases	All new cases	New East African cases	Bagamoyo	Kenyan Wind cases
Access to water	3.04	4.55	4.89	5	5
Media coverage	2.55	3.62	3.83	4.20	3.61
Flood occurrence	2.91	2.74	3.16	2.56	3.47
Seasonal variability	2.54	2.90	2.25	3.06	1.95
Drought severity	1.36	1.44	1.52	0.76	1.73

The new East African cases were, in general, at a similar level of risks from water shortage and drought to those in other sub-regions. Water issues featured slightly less prominently in the media than in the West or Southern African cases. It should be emphasized that these risks are, nevertheless, significantly higher than in the globally-representative Ian data set, particularly in terms of access to water.

Interestingly, the Bagamoyo area does not show especially high risks of intense drought or flooding. We know, however, that these issues played a role in the evolution of the conflict. This suggests that either the data is not granular enough to capture newly evolving or highly localized risks, or that the grievances here were incendiary to the dispute, but not a major cause of it. Seasonal variability is, however, relatively high here, which is indicative of a situation where any impact on water resources has a potentially greater significance for those reliant on rainfall and riverine systems.

In the areas surrounding the Kenyan wind investments, access to water is again extremely limited, and drought severity is high compared to other areas. Taken together with a fairly high risk of flood occurrence, these risks indicate the fragility of local water resources, and a potential scarcity that is likely to be a significant source of potential conflict.

Land cover classifications

The second major source of data was on the land type classifications provided by GlobCover's land cover classification maps.[39] The breakdowns of different types of vegetation, and the percentage of the area surrounding the investment that they covered, reveal a significant amount of grasslands and mosaic vegetation. This is suggestive of the kinds of livelihoods that we see in the case studies – notably pastoralism – and is again indicative of likely sensitivities around natural water resources.

[39] http://due.esrin.esa.int/page_globcover.php

Case / Country / Sector (Case No.)	GlobCover V 2.3 Description	Percent Coverage
Kalangala palm oil / Uganda / Agriculture (E001)	Closed (>40%) broadleaved deciduous forest (>5m)	26.61%
	Open (15-40%) broadleaved deciduous forest/woodland (>5m)	22.25%
	Mosaic vegetation (grassland/shrubland/forest) (50-70%) / cropland (20-50%)	18.92%
	Rainfed croplands	10.81%
	Mosaic cropland (50-70%) / vegetation (grassland/shrubland/forest) (20-50%)	7.56%
	Closed to open (>15%) (broadleaved or needleleaved, evergreen or deciduous) shrubland (<5m)	2.88%
	Closed to open (>15%) broadleaved evergreen or semi-deciduous forest (>5m)	2.51%
	Closed to open (>15%) broadleaved forest regularly flooded (semi-permanently or temporarily) - Fresh or brackish water	2.19%
	Closed to open (>15%) herbaceous vegetation (grassland, savannas or lichens/mosses)	1.72%
	Closed (>40%) needleleaved evergreen forest (>5m)	1.66%
	Open (15-40%) needleleaved deciduous or evergreen forest (>5m)	1.40%
	Closed to open (>15%) grassland or woody vegetation on regularly flooded or waterlogged soil - Fresh, brackish or saline water	0.63%
	Water bodies	0.34%
	Artificial surfaces and associated areas (Urban areas >50%)	0.21%
	Mosaic forest or shrubland (50-70%) / grassland (20-50%)	0.18%
	Sparse (<15%) vegetation	0.08%
	Mosaic grassland (50-70%) / forest or shrubland (20-50%)	0.03%
Lake Turkana wind / Kenya / Energy (E002)	Closed to open (>15%) herbaceous vegetation (grassland, savannas or lichens/mosses)	32.58%
	Bare areas	29.59%
	Mosaic forest or shrubland (50-70%) / grassland (20-50%)	17.32%
	Sparse (<15%) vegetation	8.82%
	Mosaic vegetation (grassland/shrubland/forest) (50-70%) / cropland (20-50%)	4.19%
	Closed to open (>15%) (broadleaved or needleleaved, evergreen or deciduous) shrubland (<5m)	2.41%
	Mosaic cropland (50-70%) / vegetation (grassland/shrubland/forest) (20-50%)	1.59%
	Mosaic grassland (50-70%) / forest or shrubland (20-50%)	1.48%
	Open (15-40%) broadleaved deciduous forest/woodland (>5m)	1.40%
	Closed to open (>15%) broadleaved evergreen or semi-deciduous forest (>5m)	0.47%
	Water bodies	0.12%
	Closed to open (>15%) grassland or woody vegetation on regularly flooded or waterlogged soil - Fresh, brackish or saline water	0.04%
Bagamoyo ethanol / Tanzania / Agriculture	Mosaic vegetation (grassland/shrubland/forest) (50-70%) / cropland (20-50%)	20.09%
	Rainfed croplands	17.82%
	Open (15-40%) broadleaved deciduous forest/woodland (>5m)	17.07%
	Closed (>40%) broadleaved deciduous forest (>5m)	13.58%

(E003)	Closed to open (>15%) (broadleaved or needleleaved, evergreen or deciduous) shrubland (<5m)	13.49%
	Closed to open (>15%) herbaceous vegetation (grassland, savannas or lichens/mosses)	6.60%
	Mosaic forest or shrubland (50-70%) / grassland (20-50%)	4.10%
	Mosaic cropland (50-70%) / vegetation (grassland/shrubland/forest) (20-50%)	2.39%
	Open (15-40%) needleleaved deciduous or evergreen forest (>5m)	1.23%
	Mosaic grassland (50-70%) / forest or shrubland (20-50%)	1.23%
	Closed to open (>15%) broadleaved evergreen or semi-deciduous forest (>5m)	0.77%
	Closed to open (>15%) broadleaved forest regularly flooded (semi-permanently or temporarily) - Fresh or brackish water	0.50%
	Artificial surfaces and associated areas (Urban areas >50%)	0.41%
	Sparse (<15%) vegetation	0.30%
	Closed (>40%) needleleaved evergreen forest (>5m)	0.12%
	Water bodies	0.12%
	Closed to open (>15%) grassland or woody vegetation on regularly flooded or waterlogged soil - Fresh, brackish or saline water	0.09%
	Bare areas	0.07%
Yala swamp mixed farming / Kenya / Agriculture (E004)	Mosaic vegetation (grassland/shrubland/forest) (50-70%) / cropland (20-50%)	29.84%
	Closed to open (>15%) (broadleaved or needleleaved, evergreen or deciduous) shrubland (<5m)	19.40%
	Mosaic cropland (50-70%) / vegetation (grassland/shrubland/forest) (20-50%)	17.14%
	Open (15-40%) broadleaved deciduous forest/woodland (>5m)	8.79%
	Mosaic forest or shrubland (50-70%) / grassland (20-50%)	8.67%
	Rainfed croplands	4.23%
	Closed to open (>15%) broadleaved evergreen or semi-deciduous forest (>5m)	3.43%
	Bare areas	3.43%
	Closed (>40%) broadleaved deciduous forest (>5m)	1.29%
	Artificial surfaces and associated areas (Urban areas >50%)	0.85%
	Closed (>40%) broadleaved forest or shrubland permanently flooded - Saline or brackish water	0.73%
	Closed to open (>15%) herbaceous vegetation (grassland, savannas or lichens/mosses)	0.65%
	Water bodies	0.56%
	Closed to open (>15%) grassland or woody vegetation on regularly flooded or waterlogged soil - Fresh, brackish or saline water	0.40%
	Mosaic grassland (50-70%) / forest or shrubland (20-50%)	0.36%
	Open (15-40%) needleleaved deciduous or evergreen forest (>5m)	0.12%
	Closed to open (>15%) broadleaved forest regularly flooded (semi-permanently or temporarily) - Fresh or brackish water	0.08%
	Closed (>40%) needleleaved evergreen forest (>5m)	0.04%
Karuma Falls hydropower	Closed to open (>15%) (broadleaved or needleleaved, evergreen or deciduous) shrubland (<5m)	21.63%
	Mosaic vegetation (grassland/shrubland/forest) (50-70%) / cropland (20-50%)	20.75%

/ Uganda / Energy (E005)	Closed to open (>15%) broadleaved evergreen or semi-deciduous forest (>5m)	20.21%
	Mosaic cropland (50-70%) / vegetation (grassland/shrubland/forest) (20-50%)	15.36%
	Open (15-40%) broadleaved deciduous forest/woodland (>5m)	12.93%
	Closed to open (>15%) broadleaved forest regularly flooded (semi-permanently or temporarily) - Fresh or brackish water	4.25%
	Mosaic forest or shrubland (50-70%) / grassland (20-50%)	1.70%
	Water bodies	1.39%
	Mosaic grassland (50-70%) / forest or shrubland (20-50%)	1.25%
	Bare areas	0.27%
	Rainfed croplands	0.17%
	Artificial surfaces and associated areas (Urban areas >50%)	0.10%
Kinangop wind power / Kenya / Energy (E006)	Mosaic vegetation (grassland/shrubland/forest) (50-70%) / cropland (20-50%)	20.03%
	Closed to open (>15%) (broadleaved or needleleaved, evergreen or deciduous) shrubland (<5m)	17.57%
	Open (15-40%) broadleaved deciduous forest/woodland (>5m)	17.06%
	Mosaic forest or shrubland (50-70%) / grassland (20-50%)	9.42%
	Closed (>40%) broadleaved deciduous forest (>5m)	8.75%
	Closed to open (>15%) broadleaved evergreen or semi-deciduous forest (>5m)	7.08%
	Mosaic cropland (50-70%) / vegetation (grassland/shrubland/forest) (20-50%)	4.86%
	Open (15-40%) needleleaved deciduous or evergreen forest (>5m)	3.99%
	Rainfed croplands	3.96%
	Closed to open (>15%) herbaceous vegetation (grassland, savannas or lichens/mosses)	3.35%
	Mosaic grassland (50-70%) / forest or shrubland (20-50%)	2.33%
	Artificial surfaces and associated areas (Urban areas >50%)	0.88%
	Water bodies	0.26%
	Sparse (<15%) vegetation	0.21%
	Closed (>40%) broadleaved forest or shrubland permanently flooded - Saline or brackish water	0.10%
	Bare areas	0.08%
	Post-flooding or irrigated croplands (or aquatic)	0.03%
	Closed (>40%) needleleaved evergreen forest (>5m)	0.02%
	Closed to open (>15%) mixed broadleaved and needleleaved forest (>5m)	0.02%
Lamu County coal / Kenya / Energy (E007)	Open (15-40%) broadleaved deciduous forest/woodland (>5m)	17.58%
	Closed (>40%) broadleaved deciduous forest (>5m)	17.21%
	Mosaic vegetation (grassland/shrubland/forest) (50-70%) / cropland (20-50%)	15.62%
	Rainfed croplands	10.89%
	Closed to open (>15%) broadleaved evergreen or semi-deciduous forest (>5m)	8.73%
	Closed to open (>15%) (broadleaved or needleleaved, evergreen or deciduous) shrubland (<5m)	7.89%
	Open (15-40%) needleleaved deciduous or evergreen forest (>5m)	7.00%
	Closed to open (>15%) herbaceous vegetation (grassland, savannas or lichens/mosses)	5.27%

	Mosaic forest or shrubland (50-70%) / grassland (20-50%)	2.05%
	Closed to open (>15%) broadleaved forest regularly flooded (semi-permanently or temporarily) - Fresh or brackish water	1.89%
	Mosaic cropland (50-70%) / vegetation (grassland/shrubland/forest) (20-50%)	1.78%
	Water bodies	1.55%
	Sparse (<15%) vegetation	0.70%
	Mosaic grassland (50-70%) / forest or shrubland (20-50%)	0.66%
	Bare areas	0.39%
	Closed (>40%) needleleaved evergreen forest (>5m)	0.37%
	Closed to open (>15%) mixed broadleaved and needleleaved forest (>5m)	0.37%
	Closed to open (>15%) grassland or woody vegetation on regularly flooded or waterlogged soil - Fresh, brackish or saline water	0.04%
	Artificial surfaces and associated areas (Urban areas >50%)	0.02%
Hilala and Calub gas fields / Ethiopia / Energy (E008)	Closed to open (>15%) (broadleaved or needleleaved, evergreen or deciduous) shrubland (<5m)	32.90%
	Mosaic cropland (50-70%) / vegetation (grassland/shrubland/forest) (20-50%)	22.85%
	Mosaic forest or shrubland (50-70%) / grassland (20-50%)	16.24%
	Mosaic vegetation (grassland/shrubland/forest) (50-70%) / cropland (20-50%)	12.70%
	Open (15-40%) broadleaved deciduous forest/woodland (>5m)	7.00%
	Sparse (<15%) vegetation	4.14%
	Rainfed croplands	2.14%
	Mosaic grassland (50-70%) / forest or shrubland (20-50%)	1.65%
	Closed to open (>15%) broadleaved evergreen or semi-deciduous forest (>5m)	0.34%
	Closed to open (>15%) herbaceous vegetation (grassland, savannas or lichens/mosses)	0.02%
	Water bodies	0.02%
North Mara gold / Tanzania / Mining (E009)	Closed (>40%) broadleaved deciduous forest (>5m)	28.57%
	Closed to open (>15%) (broadleaved or needleleaved, evergreen or deciduous) shrubland (<5m)	23.44%
	Rainfed croplands	15.81%
	Mosaic vegetation (grassland/shrubland/forest) (50-70%) / cropland (20-50%)	13.92%
	Open (15-40%) broadleaved deciduous forest/woodland (>5m)	12.12%
	Mosaic cropland (50-70%) / vegetation (grassland/shrubland/forest) (20-50%)	2.96%
	Closed to open (>15%) herbaceous vegetation (grassland, savannas or lichens/mosses)	1.32%
	Closed to open (>15%) broadleaved evergreen or semi-deciduous forest (>5m)	0.62%
	Open (15-40%) needleleaved deciduous or evergreen forest (>5m)	0.45%
	Closed to open (>15%) broadleaved forest regularly flooded (semi-permanently or temporarily) - Fresh or brackish water	0.42%
	Sparse (<15%) vegetation	0.14%
	Artificial surfaces and associated areas (Urban areas >50%)	0.14%
	Mosaic forest or shrubland (50-70%) / grassland (20-50%)	0.06%
	Water bodies	0.03%

Kipeto wind / Kenya / Energy (E010)	Mosaic forest or shrubland (50-70%) / grassland (20-50%)	29.71%
	Mosaic vegetation (grassland/shrubland/forest) (50-70%) / cropland (20-50%)	20.65%
	Closed to open (>15%) (broadleaved or needleleaved, evergreen or deciduous) shrubland (<5m)	16.29%
	Open (15-40%) broadleaved deciduous forest/woodland (>5m)	11.12%
	Closed to open (>15%) herbaceous vegetation (grassland, savannas or lichens/mosses)	7.93%
	Mosaic grassland (50-70%) / forest or shrubland (20-50%)	6.95%
	Sparse (<15%) vegetation	4.32%
	Closed (>40%) broadleaved deciduous forest (>5m)	1.15%
	Rainfed croplands	1.08%
	Artificial surfaces and associated areas (Urban areas >50%)	0.66%
	Bare areas	0.07%
	Closed to open (>15%) broadleaved evergreen or semi-deciduous forest (>5m)	0.05%
	Open (15-40%) needleleaved deciduous or evergreen forest (>5m)	0.02%
Lipokela coffee / Tanzania / Agriculture (E011)	Open (15-40%) broadleaved deciduous forest/woodland (>5m)	28.51%
	Closed to open (>15%) (broadleaved or needleleaved, evergreen or deciduous) shrubland (<5m)	22.35%
	Mosaic vegetation (grassland/shrubland/forest) (50-70%) / cropland (20-50%)	20.35%
	Closed (>40%) broadleaved deciduous forest (>5m)	14.40%
	Closed to open (>15%) broadleaved evergreen or semi-deciduous forest (>5m)	5.79%
	Open (15-40%) needleleaved deciduous or evergreen forest (>5m)	4.73%
	Closed to open (>15%) herbaceous vegetation (grassland, savannas or lichens/mosses)	2.12%
	Rainfed croplands	0.56%
	Mosaic forest or shrubland (50-70%) / grassland (20-50%)	0.47%
	Mosaic cropland (50-70%) / vegetation (grassland/shrubland/forest) (20-50%)	0.28%
	Closed to open (>15%) broadleaved forest regularly flooded (semi-permanently or temporarily) - Fresh or brackish water	0.27%
	Artificial surfaces and associated areas (Urban areas >50%)	0.16%
	Mosaic grassland (50-70%) / forest or shrubland (20-50%)	0.03%

Governance

Governance indicators are limited to national-level statistics. We have drawn on two sources of data: the Corruptions Perceptions Index produced by Transparency International, and the World Bank's Worldwide Governance Indicators. The regional average of the indicators, and the scores

for Kenya and Tanzania (as shown in the table overleaf), are helpful in shedding light on some of the patterns of dispute that we have seen.[40]

Governance Effectiveness and Regulatory Quality, for example, are generally better than the average for our new African cases, and especially so in Kenya and Tanzania. This may explain in part the recourse to legal intervention; taken with the less extreme poverty we've seen in our East African cases, it may also help explain the relative absence of reported violence. The relatively high scores for Voice and Accountability are also suggestive of an environment where people have faith that they can get a fair hearing for their grievances via legal channels.

The exception here is Tanzania's Governance Effectiveness score, which is relatively low for the region. This makes sense in terms of what we've seen in the Bagamoyo case study, where support for the project from the government was strong in theory, but where capacity to provide services beyond the provision of land was limited. It is also corroborated by the apparent lack of communication or coordination between different departments which led to the overlapping classifications of land and the ultimate rejection of the project by the government.

In terms of perceptions of corruption, however, the region as a whole fares badly. There is, nevertheless, variation within this overall trend as demonstrated by the difference between Kenya and Africa as a whole, both in terms of the CPI and the Control of Corruption scores.

	Ian cases	All new cases	New East African cases	Kenya	Tanzania
CPI score (2014)	36.95	30.28	27.55	25	31
WGI: Voice and accountability	-0.16	-0.45	-0.42	-0.24	-0.23
WGI: Political Stability and absence of violence	-0.54	-0.60	-0.84	-1.15	-0.15
WGI: Governance Effectiveness	-0.23	-0.69	-0.57	-0.49	-0.67
WGI: Regulatory Quality	-0.16	-0.55	-0.40	-0.35	-0.34
WGI: Rule of Law	-0.39	-0.74	-0.62	-0.74	-0.50
WGI: Control of Corruption	-0.42	-0.84	-0.97	-1.06	-0.82

[40] The CPI score (http://www.transparency.org/research/cpi/overview) is graded from 1 as the lowest and 100 as the highest. For the Worldwide Governance Indicators (http://info.worldbank.org/governance/wgi/index.aspx), the worst possible score is -2.5, with 2.5 as the best.

Annex II: Case Study Profiles

Case E001

Location: Kalangala, Bugala Island, Uganda

Sector and commodity: Agriculture, palm oil

Start date: 2011

Total land size involved (hectares): 8,500

Parties involved: Oil Palm Uganda Limited (Opul), International Fund for Agricultural Development (IFAD), Bidco, Wilmar International

Violence: No

Minorities: No

Synopsis:

- Affected locals say that they were surprised that their crops were being bulldozed. Some say no one sought to notify them or gain consent. Others say that some people approached them for compensation but never came back to pay them.
- Those who were given compensation, said it isn't enough. Affected communities responded by filing a lawsuit against the project.
- Oil Palm Uganda (OPUL) leased land from Amos Sempa, a Kampala-based businessman, to expand its production. IFAD, Bidco and Wilmar are investors in the project. In 2004 the World Bank withdrew from the project because it wasn't following World Bank forestry policies.
- The underlying causes of the conflict are unclear, but betray a number of competing interests and perspectives. Companies and government officials claim that affected locals were given just compensation.
- One government official blames the NGOs for "amplifying people to rise up and demand for land even when they were compensated." IFAD claims that it is supporting people who grow their own oil palm on their own land in the area.

Case E002

Location: Lake Turkana, Kenya

Sector and commodity: Energy, wind power

Start date: 2014

Total land size involved (hectares): 16,000

Parties involved: Lake Turkana Wind Power Project (owned by consortium of British, Dutch, Norwegian and Danish (Vestas) companies and investors), Sarima Indigenous Peoples' Land Forum

Violence: No

Minorities: Yes - pastoralists

Synopsis:

- Local nomadic pastoral communities mounted a legal challenge to the Lake Turkana Wind Project in 2014, which was approved by local authorities and the Government of Kenya in 2006.
- The consortium managing the project claim that extensive consultation was carried out with pastoralist communities, and the nomadic communities generally approved of the project in its first stage.
- But four tribes now claim that land was taken without their consent, and that there were no public consultations by the authorities or the wind project consortium. They are also concerned by negative social impacts that have accompanied construction work (notably prostitution, an influx of lots of jobseekers, and alcoholism).
- The legal case may turn on the legal right of these communities to the land and whether or not the tribes are defined as "indigenous" or not.
- A key aspect of this case is to what extent the opposition to the project is driven by the lack of consultation and compensation, as well as negative social impacts.

Case E003

Location: Bagamoyo, Tanzania

Sector and commodity: Agriculture, sugarcane, ethanol

Start date: 2013

Total land size involved (hectares): 24,000

Parties involved: SEKAB (Swedish Ethanol Chemistry AB), African Development Bank Group, Government of Tanzania, Agro EcoEnergy, ActionAid

Violence: Yes – reports of private security attacking 'site invaders'

Minorities: Yes – Barabaig and Maasai pastoralists

Synopsis:

- This case follows on directly from one we profiled in our report on *The Financial Risks of Insecure Land Tenure*. It is a good example of the way that inconsistent land laws

adversely affect investment in spite of significant efforts to address tenure conflicts. It also demonstrates how recent legacy issues can play out for investors in stranded assets.

- Swedish company SEKAB obtained an MOU with Tanzania in 2006 to develop 20,000 hectares for sugarcane and ethanol production. SEKAB was unable to continue with its plan because of the world financial crisis and lack of funds, so it sold the project to Agro EcoEnergy, another Swedish company.
- Agro EcoEnergy identified that it had to relocate 1374 people in the area. The company was able to comply with the African Development Bank and International Financial Corporation's standards of minimizing negative effects of relocation.
- However, the Tanzanian government considered the land uninhabited, and recorded only 815 people in its census, for whom the law requires monetary compensation alone. As a result of the mismatch breaching the funders' standards, Agro EcoEnergy would have to proceed with the relocation on its own resources.
- In 2013 Agro EcoEnergy was able to secure a 99 year right of occupancy, but this was revoked by the Tanzanian Government in 2016, who additionally cited impacts on local wildlife and water sources. Several key funders also withdrew their support in the same year.

Case E004

Location: Yala swamp, Kenya

Sector and commodity: Agriculture, rice, cattle, vegetables, banana, fish

Start date: 2004; recurrence in 2013

Total land size involved (hectares): 17,050

Parties involved: Dominion Farms, residents of Siaya County and Bondo District, Friends of Yala Swamp Network

Violence: No

Minorities: No

Synopsis:

- Dominion Farms had a legal claim to land it was allocated, but locals believed the project encroached communal lands. This case shows how ongoing resentment between an external investor and local communities can turn relatively minor or isolated tenure disputes into a significant impediment to investment.
- Local anger has been compounded over the years by pollution of water sources and impacts of irrigation schemes and water diversion on lands used for fishing. The swamp

is in an environmentally sensitive area and provides ecological services to local communities.
- The (US) company has vigorously defended its activities, but its approach in doing so – and in providing community projects – has belittled existing farming methods.
- Although the company has expanded its holdings since 2003, it was recently denied permission to establish a sugar factory, although the council are in favor of building one in the area.

Case E005

Location: Karuma Falls, Uganda

Sector and commodity: Energy, hydropower

Start date: 2013

Total land size involved (hectares): 465

Parties involved: Sinohydro Corp Ltd, Government of Uganda

Violence: No

Minorities: No

Synopsis:

- This hydropower project has struggled to adequately settle compensation claims, which have initiated or exacerbated these difficulties in delaying implementation of the project.
- There were clear warning signs that land tenure would be an issue that required a thorough response. When the government took over the project in 2008, it would have been aware that the previous contractors had been engaged in a court battle over resettlement compensation.
- The main method of informing local people about the project was a public notice, which was evidently inadequate. When pre-feasibility studies and drillings took place in local peoples' plantations in 2010, this came as a surprise to them, and in 2013 residents filed a court case over compensation demanding an injunction.
- The interplay between the project's tenure-related delays, and the other difficulties it faces, presents an interesting case study of how tenure risks can compound other risks, exerting political pressures on a project that can make a host of other risks more difficult and expensive to manage.

Case E006

Location: Kinangop, Nyandarua County, Central Province, Kenya

Sector and commodity: Energy, wind power

Total land size involved (hectares): 1,600

Start date: 2014

Parties involved: African Infrastructure Investment Managers (Macquarie Group and Old Mutual Investment Group joint venture), Africa Infrastructure Investment Fund II, Standard Bank Group, Power Africa, General Electric

Violence: Yes – man shot dead in protest in which residents attempted to storm the police station to free people arrested on charges of incitement.

Minorities: No

Synopsis

- The project in this case – a 60.8 MW wind power project in central Kenya – was completely cancelled, and the developers blamed material delays caused by protest and opposition by local landowners for the cancellation.
- There is an interesting interplay between local politicians, local land users, and the investors. It appears that at first most landowners welcomed the project, but some local politicians spearheaded protests against the development, destroying a wind mast in 2014.
- Since then, the dispute has snowballed, with one local politician declaring at different times that his constituents need either land, or additional compensation. He also claims that the investors gave landowners a "very raw deal" in the first instance.
- The involvement of local politicians as instigators of protest provides a very interesting case study of how different risk factors can impact tenure risk, particularly in light of the fact that the developers are now suing the Kenyan government due to an indemnity covering "political events."

Case E007

Location: Kwasasi, Lamu country, Kenya

Sector and commodity: Mining, coal

Start date: 2014

Total land size involved (hectares): 352

Parties involved: Lamu Coal Project, Amu Power Consortium, National Land Commission

Violence: No

Minorities: Yes – Bajuni, Sanye, Aweer (Boni), and Orma indigenous groups in Lamu.

Synopsis:

- There is a large organized movement of communities who oppose the construction of the power plant. It will be Kenya's first coal-fired power plant and will be constructed near a UNESCO World Heritage site.
- Construction was delayed due to resettlement issues. At the same time, affected locals see the company's CSR efforts as bribes because it is being undertaken with them before the project has started.
- The plant is a Kenyan and Chinese joint venture. This provides another source of conflict, in that 40% of the 3,500 workers who will build the plant are Chinese, causing additional resentment among Kenyan populations over the perceived lack of benefits for the local economy.
- This case demonstrates how tenure-related concerns feed into concerns about environmental and health effects of major projects. That resettlement does not appear currently to be a major source of contention – although it has caused project delays in the past – offers an interesting counterpoint to some of the more hotly disputed projects we have seen.

Case E008

Location: Bugala Island, shores of Lake Victoria, Kenya

Sector and commodity: Agriculture, palm oil

Start date: 2011

Total land size involved (hectares): 12,000,000

Parties involved: Bidco Africa, Kalangala District government, Ogaden National Liberation Front, POLY-GCL Petroleum Group Holdings Limited, Petronas, Petrotrans, Zhongyuan Petroleum Exploration Bureau, Sinopec

Violence: Yes – 74 workers were killed by the Ogaden Liberation Army at Petronas' oilfield in 2007.

Minorities: Yes, the Ogaden region is populated largely by members of the Absame Somali sub-clan.

Synopsis:

- In Uganda, land legislation enacted in 2010 stipulates that a person earns squatter's rights on land if they have occupied it for 10 years or more. If a landlord comes to reclaim the land, the squatter occupants must be compensated at the current value of the land, before eviction can occur.
- More than 100 farmers were left landless in 2011 when Bidco Africa cleared their fields to make way for commercial palm oil agriculture. The deal was made between Bidco and the government without first consulting the land occupants.

- The company attempted to dissociate itself from farmers' complaints and argued that the government is solely responsible for the land acquisition. The government argued that the project has been benefitting a larger part of the community, since only 25 hectares of the 8,500 hectares acquired since 2000 were in dispute. However, this account differs from what the community has claimed.
- With the help of Friends of the Earth Uganda, the company is facing a legal battle with the affected farmers.

Case E009

Location: Tarime, Nyamongo, Mara, Tanzania

Sector and commodity: Mining, gold

Start date: 2016

Total land size involved (hectares): 671

Parties involved: North Mara Mine (Acacia Mining, formerly African Barrick Gold), local government, Ministry of Energy and Minerals

Violence: Yes – a number of killings have occurred around the mine since it began operations

Minorities: No

Synopsis:

- North Mara mine commenced its commercial production in 2002. However, there were still locals residing alongside the mine premises, exposing them to environmental hazards from large explosions, as well as contamination of water affected by chemicals from refining processes.
- Those locals complained of delayed and unfair compensation from the mining company. A probe team was set-up to investigate the complaints. Negotiations were ongoing between the company and residents through the probe team.
- There were allegedly accidental deaths due to illegal and forced entries in mining premises by locals in search of gold sands, as well as allegations of killings by security forces.
- This case offers insight into a different angle upon tenure disputes, with the company claiming that local land users are developing their land in order to extract greater compensation from the company.

Case E010

Location: Kipeto wind project, Esilanke area, Kiserian Division, Kajiado County

Sector and commodity: Energy, wind power

Start date: 2016

Parties involved: Kipeto Energy Limited, GE, China National Machinery Industry Corp (Sinomach), US Overseas Private Investment Corp, Maasai community

Total land size involved (hectares): 7,000

Violence: No

Minorities: Yes – Maasai pastoralists

Synopsis:

- In a September 2014 community meeting, landowners were concerned that the 500-meter buffer zone had taken most of their lands. Among these landowners was Pelo Gusil.
- Some of their neighbors who weren't part of the project were also affected by the buffer zones. The landowners also complained that surveyors came to their lands without any notice.
- Legal cases were then filed by landowners questioning the validity of their lease agreements with Kipeto Energy.
- As of June 2016, the case is still at the Environment and Land Court At Nairobi, Milimani Law Courts

Case E011

Location: Lipokela village, Songea District, Ruvuma Region, Tanzania

Sector and commodity: Agriculture, coffee

Start date: 2016

Total land size involved (hectares): 1,064

Parties involved: Olam, Misereor

Violence: No

Minorities: No

Synopsis:

- This case involves legacy claims of land dispossession, which have resurfaced following the takeover of the project by Olam-Aviv. Olam took over operations at the site, and has since provided testimony in the dispute process.

- Some of the Lipokela villagers in Tanzania were cited as having either sold their land and since regretted doing so, or having been displaced, in a report by German NGO Misereor in July 2015.
- Plantation establishment resulted in a serious lack of land for locals, as no replacement community lands were available. This resulted in land commodification as it changed classifications, and became a source of land conflicts among community members.