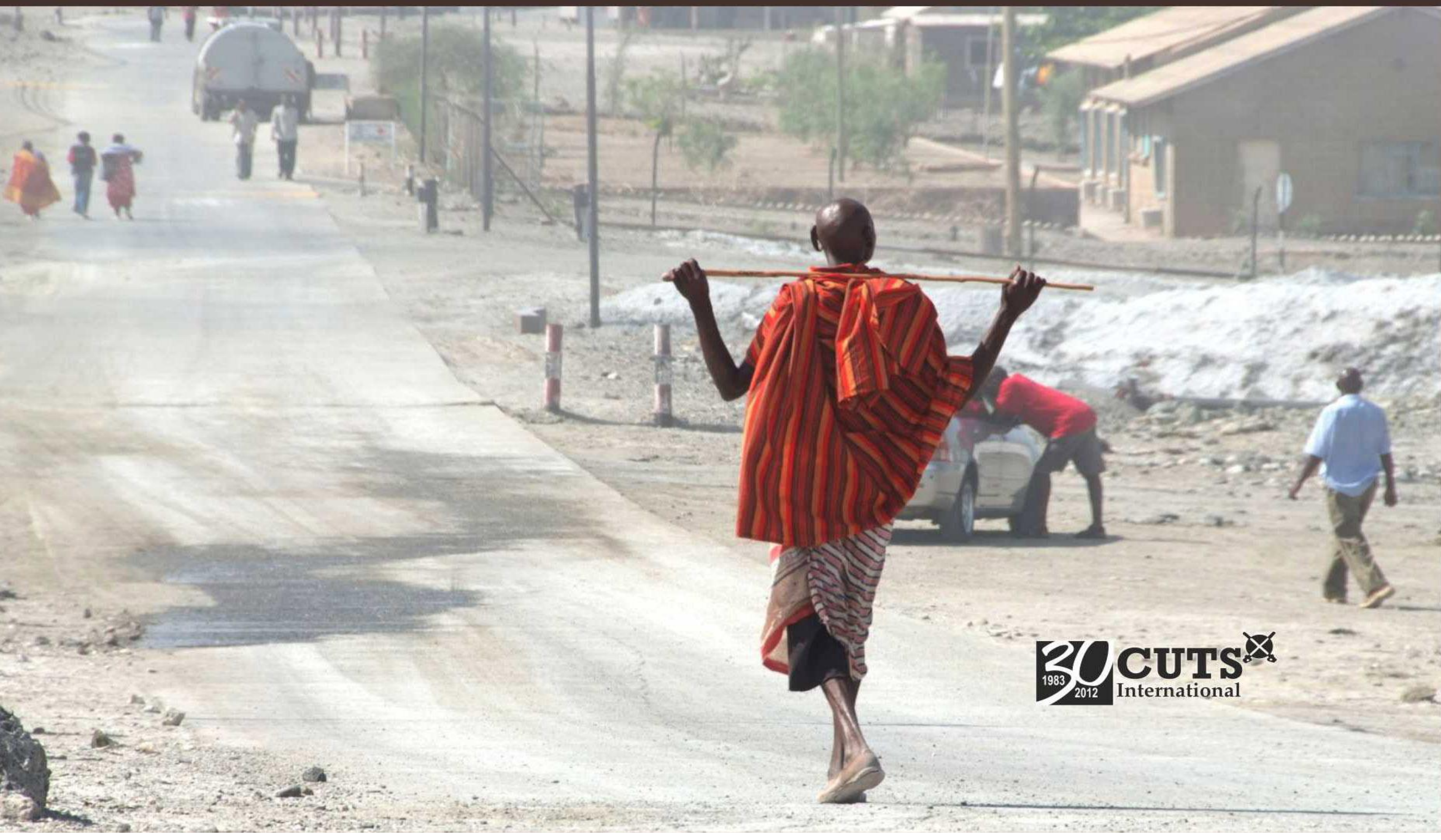
Indian Investments in Mining and Agriculture in Africa:

Impact on Local Communities



1983 30 2012 CUTS International

Indian Investments in Mining and Agriculture in Africa

Impact on Local Communities

Published by

Consumer Unity & Trust Society
D-217, Bhaskar Marg, Bani Park
Jaipur 302016, India
Ph: 91.141.228 2821
Fx: 91.141.228 2485
Email: cuts@cuts.org
Web: www.cuts-international.org

Supported by

HEINRICH BÖLL STIFTUNG
INDIA

First published: December 2014

CONTENTS

Abbreviations *5*

Acknowledgement *7*

Preface *8*

Executive Summary *10*

1. Introduction 15
- Background 15
- Foreign Investment in Developing Regions with Focus on Africa 16
- BRICS Investments 17
- BRICS: Country Specific Investments in Africa 19
- BRICS-Africa Trade 20
- Critical Dimensions of Indian Investment in Africa 21

2. Indo-African Investment 24
- Historical Context 24
- Sectorial and Regional Investment 24
- Greenfield Investments by India in Africa 26
- Reception of Indian Investment in Africa 26
- Regulations Important for Indian MNCs Abroad 27
- Impediments Faced while Investing in Africa 28

3. Case Stories 29
- Ethiopian Case Story 29
- Ugandan Case Story 37
- Zambian Case Story 44
- The Kenyan Case Story 53

4. Key Findings and Recommendations 62
- Summary of Key Findings as per the NVGs 62

References 72

List of Figures and Tables

Figure 1: Indian Investment, by Sub-sectors 26
Figure 2: Foreign Direct Investment, Net Inflows in US$..38
Figure 3: Foreign Direct Investment, Net Inflows (US$) 45

Table.1: Outward FDI stock from BRICS, by destination region, 2011.....................................15
Table 2: FDI Flows by Regions, 2011-2013...16
Table 3: The BRICS Development Bank, initial contributions, US$bn 18
Table 4: Chinese FDI flows and FDI stocks in Africa...19
Table 5: Africa Credit Lines Granted by Brazil's Development Bank..20
Table 6: BRICS-Africa Trade..21
Table 7: NVG Principles...22
Table 8: Legislations Pertaining to Agriculture in Ethiopia 30
Table 9: Indian Investors in Ethiopian Agriculture Sector 32
Table 10: Indo-Ugandan Trade, in US$mn...37
Table 11: Laws Pertaining to Agriculture Investment in Uganda...38
Table 12: Respondents Characteristics 40
Table 13: Legislations Pertaining to Mining in Zambia 46
Table 14: Respondents Characteristics 48
Table 15: Legislations Pertaining to Mining in Kenya 54
Table 16: Bilateral Investment Agreements (Kenya-India)...55
Table 17: Respondent Characteristics...58
Table 18: Responses that Matched up against relevant NVGs 62

Abbreviations

AD:	Authorised Dealers
AfDB:	African Development Bank
AU:	African Union
BIPA:	Bilateral Investment Promotion and Protection Agreement
BIT:	Bilateral Investment Treaty
BNDES:	Brazilian Development Bank
BRICS:	Brazil, Russia, India, China and South Africa
CII:	Confederation of Indian Industry
CRGE:	Climate-Resilient Green Economy
CSOs:	Civil Society Organisations
CUTS:	Consumer Unity & Trust Society
CSR:	Corporate Social Responsibility
DC:	District Council
DSPL:	Dharni Sampda Pvt Ltd
DTAA:	Double Taxation Avoidance Agreement
DTTs:	Double Taxation Treaties
ECZ:	Environmental Council of Zambia
EIAs:	Environmental Impact Assessments
EIA:	Ethiopian Investment Authority
EXIM:	Export-Import
FAO:	Food and Agriculture Organisation
FDI:	Foreign Direct Investment
FEMA:	Foreign Exchange Management Act
FIPA:	Foreign Investment Protection Act
GDP:	Gross Domestic Product
GRI:	Global Reporting Initiative
HBF:	Heinrich Boll Foundation
HDFC:	Housing Development Finance Corporation
IBID:	Project Implementation
ICA:	Indian Council of Arbitration
ICMM:	International Council on Mining and Metals
IPA:	Investment Promotion Act
ITC:	International Trade Centre

JTC:	Joint Trade Committee
KNCCI:	Kenya National Chamber of Commerce & Industry
LDC:	Least Developing Country
LICs:	Low Income Countries
MCA:	Millennium Challenge Account
MDT:	Maamba Development Trust
MFN:	Most Favoured Nation
MNCs:	Multinational Corporations
MoA:	Ministry of Agriculture
MoFA:	Ministry of Foreign Affairs
MoU:	Memorandum of Understanding
NBE:	National Bank of Ethiopia
NEMA:	National Environment Management Authority
NVGs:	National Voluntary Guidelines
ODA:	Official Direct Assistance
ONGC:	Oil and National Gas Corporation
PDC:	Project Development Company
PSDRP:	Private Sector Development Reform Programme
RBI:	Reserve Bank of India
RECs:	Regional Economic Communities
SEBI:	Securities Exchange Board of India
SMEs:	Small and Medium Enterprises
SNNP:	Southern Nations, Nationalities and Peoples Programme
SNNPR:	Southern Nations, Nationalities and Peoples Regions
TCIL:	Telecommunications Consultants India Ltd
UNCTAD:	United Nations Conference on Trade and Development
VSAT:	Very-Small-Aperture Terminal
WTO:	World Trade Organisation
ZCCM:	Zambia Consolidated Copper Mines
ZDA:	Zambia Development Agency
ZEMA:	Zambia Environmental Management Agency

Acknowledgement

CUTS is implementing a project entitled, ‘Critical Dimensions of Indian Investments in Africa’ with the support of the Heinrich Böll Foundation. The project will attempt to analyse the impact of Indian investors in selected African countries making use of the nine principles of the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVGs) as well as other applicable rules and regulations.

Efforts of several people have gone into making this report a reality. Involvement in various forms, such as direct inputs, thought provoking discussions, timely reviews, incessant encouragement and guidance have been crucial, in development of the report.

First of all, we express our deep gratitude and appreciation to Heinrich Boll Foundation for its extensive support and involvement in this project. Special thanks are due to Axel Harneit-Sievers and Shalini Yog of Heinrich Boll Foundation.

We acknowledge the hard work and efforts of Udai S Mehta, Vikash Batham, Chenai Mukumba and Neha Tomar in leading extensive research and preparation of the report. The study also benefited from the assistance extended by country partners and researchers – Clement On’yango and Daniel Okendo Asher of CUTS Nairobi; Simon Ngona and Annie Mwambazi Siame of CUTS Lusaka; Woinshet Fekade of Lelena Global; and Tesfaye Getachew, Researcher, University of Natural Resources and Life Science Vienna, Division of Livestock Sciences, Ethiopia – in conducting the country-level research/survey and writing individual chapters.

Project Advisory Committee Members made valuable suggestions and provided guidance to improve the content of this study. We also appreciate the efforts of Madhuri Vasnani for editing, and Mukesh Tyagi for preparing layout of the report.

Last but not the least, this report would not have seen the light of the day without the skillful direction and guidance of Pradeep S Mehta, Secretary General; Rajeev D Mathur, Executive Director; and Bipul Chatterjee, Deputy Executive Director of CUTS International.

Preface

In recent years, the BRICS countries have emerged not only as major recipients of Foreign Direct Investment but also as important outward investors. At the 2013 BRICS Summit too, leaders expressed their commitment to "stimulate infrastructure investment on the basis of mutual benefit to support industrial development, job-creation, skills development, food and nutrition security and poverty eradication and sustainable development in Africa."

BRICS countries are increasingly becoming significant investors in Africa and although Africa receives only four percent of BRICS FDI outflows, BRICS countries have joined the ranks of top investing economic bloc in Africa.

As part of the BRICS group, India has emerged as an economic power in the past two decades and this growth has been accompanied by an increasing demand and subsequent investment in primary resources such as minerals, agricultural and fuel in Africa. Indian investment in Africa has a long history dating back to pre-colonial era and has since increased significantly, notably in agriculture, infrastructure, telecoms and mining.

One of the key roles of any foreign investment apart from economy wide efficiency gains through the transfer of technology and funds is to contribute to social, economic and environmental benefits for the local communities and improving their living standards. Foreign companies/investments have to demonstrate that communities in the host countries will derive developments benefits from their existence. There is a growing recognition that businesses need to be not just profitable, but more importantly sustainable in broader context pertaining to the stakeholders and the community

Given this background, a project entitled, 'Critical Dimension of India's Investment in Africa' was conceptualised by Consumer Unity Trust Society (CUTS) with support from Heinrich Böll Foundation (HBF) to critically review the impact of Indian investments in Africa, through a research-led discourse on improving the social, economic and environmental impacts of investments in the mining and agricultural sector.

The bulk of research that has been undertaken on Indo- African engagement so far has focused on the bilateral engagement from a business perspective however there was a need felt to better understand the different ways in which the investment is impacting/benefitting the local communities in Africa.

The research used the framework of National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Businesses (NVGs) and applied its nine principles and core elements in both the sectors to identify the critical areas of responsible business and community development. The NVGs were released by Government of India in mid-2011 which look at business responsibility as a holistic concept integrated with core business and Corporate Social Responsibility (CSR). It is applicable to both indigenous businesses as well as Indian MNCs planning to invest or already operating in other parts of the world.

On mapping the principles with the critical socio economic impacts of companies on the local community and environment in both the sectors, common issues such as migration, displacement, gender impacts, land rights and environmental emerged as key indicators for assessing the performance of companies

The study looked at four countries, namely Kenya, Uganda, Zambia and Ethiopia, where one company from each country was identified. Significant amount of FDI flows into these countries particularly in mining and agriculture. Further, the local presence of CUTS and our existing network also played a key role in the selection of the mentioned countries.

The outcome of the research highlights that while FDI is important for social and economic development of Africa, such investments whether in mining, agriculture or any other sectors need to earn a social licence to operate freely with trust. Unless a company earns that licence, and maintains it on the basis of good performance on the ground, and community trust, there will undoubtedly be negative implications. Having a social licence to operate means that a project is accepted by a majority of its hosts, including both local communities and other relevant stakeholders in the host nation.

In our view, open dialogue between companies and communities is the first and very important step towards working out solutions to a number of problems. Our analysis suggests that the companies will have a lot to gain from a transparent and inclusive policy regarding communities' engagement, and in understanding their values and conceptions of right and wrong, as well as their needs and development priorities. A balance will also need to be struck by the companies between working with the communities on one hand and the local development authorities on the other. Participatory mechanisms such as inclusion of local communities in development project, decision-making bodies and community dialogue between company officials, government representatives, and traditional leaders should be commended.

Executive Summary

In recent years, the BRICS countries have emerged not only as major recipients of Foreign Direct Investment (FDI) but also as important outward investors. According to UNCTAD's 2013 World Investment Report, in 2000 BRICS' outward FDI was US$7bn; however, in just over one decade this figure has grown to US$145bn. The rise in FDI outflows started slightly later than that of inflows, jumping from US$31bn in 2005 to US$93bn in 2006. BRICS investors also remained resilient to the crisis, with outflows dropping by only 26 in 2009, compared to 41 percent for the world as a whole. As a result, the role of BRICS as investors has increased significantly, now accounting for 9 percent of world outflows in 2012 - ten years before that share was only one percent.

Further, BRICS countries are increasingly becoming significant investors in Africa and although Africa receives only four percent of BRICS FDI outflows, BRICS countries have joined the ranks of top investing countries in Africa. In 2010, the share of BRICS in FDI inward stock in Africa reached 14 percent and their share in inflows reached 25 percent. Their share in the total value of Greenfield projects in Africa rose from one fifth in 2003 to almost one quarter in 2012. While Greenfield investments from developed countries have shrunk by almost by half in recent years, in 2012 nearly 60 percent of Greenfield investment in least developing countries was from developing economies, led by India.

At the 2013 BRICS Summit in Durban, South Africa, leaders expressed their commitment to 'stimulate infrastructure investment on the basis of mutual benefit to support industrial development, job-creation, skills development, food and nutrition security and poverty eradication and sustainable development in Africa.' In view of the increasing multilateral exchanges between BRICS and Africa, and the further injection expected to flow into the continent in coming years as a result of this BRICS mandate, this project sought to analyse the impact that these investments may have on local communities.

Given that the most direct impacts of such investments are experienced by the local communities in and around these areas of investment, this project sought to capture their experiences. The importance of civil society engagement in addressing the impacts of Foreign Direct Investment (FDI) cannot be understated given that the most direct social, economic and environmental impacts of these investments are experienced by the local communities in and around these areas of investment.

Responsible Business Behaviour

The role of private sector has changed over recent years. On one hand, businesses are being increasingly recognised as an agent of positive development. While, on the other hand, a logical understanding of this enhanced role is that, as members of a community or society at large, more is now expected out of the businesses. Large numbers of businesses no longer see themselves as stand-alone operations with the intent of just making profits without further societal and environmental commitments.

It is important to understand that in developing and least developing countries governments cannot afford to bear all responsibilities alone. Thus, other stakeholders, including businesses, are called upon to do their part as well. It will be clear that the corporate social responsibility performance of investors becomes even more important when the international cooperation agenda seeks to combine business objectives with the promotion of equitable and sustainable development in poorer countries. While there is no universally accepted definition of responsible business or CSR, one that is frequently used is by Holme & Watts (2000), ‘Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large’.

Critical Dimensions of Indian Investments in Africa

As a BRICS country, India has emerged as an economic power in the past two decades and this growth has been accompanied by an increasing demand and subsequent investment in primary resources such as minerals, agricultural products and most importantly fuels. Indian investment in African countries has a long history dating back to early years of independence and has since increased significantly, notably in agriculture, infrastructure, telecoms and mining. According to the latest joint report by the Confederation of Indian Industry (CII) and the World Trade Organisation (WTO), India's current investments in Africa amount to more than US$50bn.

The bulk of research that has been undertaken on the Indo-African engagement has focused on the business perspective of the relation; however, there is a need to better understand the different ways in which investments are affecting local communities in Africa. Against this background, with support from Heinrich Boll Foundation (HBF), Consumer Unity & Trust Society (CUTS) International implemented a project, Critical Dimensions of Indian Investments in Africa covering two sectors i.e. mining and agriculture. We wanted to conduct the research in primary sectors such as mining and agriculture as given the extractive nature of both the sectors there are significant impacts that they have been known to have on local communities who are directly affected by operations in these two sectors. The study analysed one company each in the select countries, namely, Kenya, Uganda, Zambia and Ethiopia. While mining was looked at in Kenya and Zambia, agriculture was looked at in Ethiopia and Uganda. These countries were selected based on the significant amount of FDI flows into these countries particularly in mining and agriculture. India is the largest investor in Ethiopia, and one of the top five foreign investors in Ghana, Kenya. Zambia was selected as an example of a Least Developing Country (LDC) with which India has a burgeoning investment relationship that is likely to lead to further bilateral engagements. In Kenya and Zambia we selected two Indian companies whereas in Uganda and Ethiopia, our focus was on the impact of two agricultural-based companies.

This research aimed to provide insight into the contribution of specific Indian companies vis-a-vis positive impact on the communities in the relevant project countries. In assessing the characteristics of the companies and their contributions to local sustainable development, we have looked into a number of aspects:

- Characteristics of the enterprises: activities, history,
- Direct and indirect contributions to local development
- Employment creation
- Environmental consequences, use of natural resources
- Local laws and regulations
- Applications of the National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business

Key Findings

Social Impacts

Under the social factors, the issues that this project focused on were - migration, displacement, infrastructure investment and gender issues.

In Kenya (mining) and Zambia (mining), and Uganda (agriculture) it was found that there was a significant influx of members from the same country as well as foreigners due to the wide range of economic activities that the select companies offered. As a result of the influx, there has been high pressure on the natural resources as well as increased tensions among community members. It was mentioned by some of the community members in these countries that the companies were engaging with the local governments to supress the tension. In Ethiopia, on the other hand, the nearest village from the company site is 19 kilometers and the company recently started operation, hence there has been no influx of people.

Land is an issue in Africa, where debates on 'land grabs' are on the agenda. In Zambia, Kenya and Uganda, the select companies merely acquired land from the previous companies. As a result, there were no displacement or land rights issues. However, in the case of Ethiopia, the company has acquired massive tracts of land by way of signing a contract with the Ethiopian government. As there was no community living on the land leased, hence no conflict of land rights. Although, the community members (19 kilometers away) surveyed did express concern that the government should have taken their opinion into consideration as the forests acquired were used by them for generating livelihood and food. One common recommendation that emerged from the stakeholder surveys was the need to provide a platform for the local communities to voice their interests/concerns, etc at the time of acquisition of the land. It is important for all the governments to make note of the same and ensure that in future, local communities must be heard during the process of land acquisition either by the Government and/or the businesses.

In the case of infrastructural investments, in Kenya (mining), the relevant company has made investments to provide facilities such as roads, railway, electricity, education and training facilities to the local communities. Similarly, in case of Zambia (mining) and Uganda (agriculture), the presence of the relevant companies has resulted in the improvement in infrastructure development in and around the project site. On the other hand, in case of Ethiopia (agriculture), it was found that no infrastructural investment had taken place. Thus, there is scope for the company in Ethiopia to learn from its counterparts in Zambia, Kenya and Uganda to invest in creating infrastructure for the communities.

In terms of Gender, Zambia (mining) and Uganda (agriculture) were found to have created job opportunities for women. The social- economic conditions of women (surveyed) in both these countries are said to have improved since the Indian company took over. Both the companies run special skill development programmes and other similar programmes for women. Respondents in Ethiopia (agriculture), reported that there was no job creation specific to only women and there were no such programmes were run especially for them. In Kenya (mining), no information could be gathered on gender issues.

Economic Impacts

Majority of the respondents in Zambia (mining), Kenya (mining) and Uganda (agriculture) were of the opinion that there was an increase in the overall income of the local community and that the local economy was impacted positively since the company arrived. Further, the respondents also indicated that the company has had a significant impact on employment generation and increased level of disposable income. Further, a large number of respondents were of the opinion that the relevant companies had also significantly created an environment for other business opportunities in the area. In Ethiopia (agriculture), however, such impacts on the livelihood of the respondents were not eminent. The company could absorb more of the community members and run development programmes for the same.

Environmental Impacts

The respondents in Zambia (mining) and Uganda (agriculture) indicated that they found the select companies environmentally responsible. The Ugandan company followed measures to ensure afforestation and provided training to the community on land and environment conservation measures. Similarly, the Zambian company was found to take measure to reduce emissions. In Kenya (mining), however, majority of the respondents felt that that the company had done little to protect the environment and land pollution was a crucial concern. They felt land pollution caused by the company was exposing them to diseases and had degenerated vegetation. In Ethiopia (agriculture), the main concern of the respondents was forestry and vegetation. With the company having started operation, they were afraid that they may deplete forestry and vegetation. However, they did mention that in the last two years there had been no air, water or land pollution caused by the company.

Key Recommendations

On the basis of the review and fieldwork undertaken in the four countries, certain conclusions have been derived and recommendations made to ensure that more community-friendly investments evolve in future in the developing and least developed countries of Africa.

- **Strengthening corporate social responsibility -** Companies' CSR policy should to be designed and periodically evaluated according to the needs of the community affected by the project
- **Recognition of communities rights before land acquisition –** Process of land acquisition should not take place without sufficient recognition and acknowledgement of rights of the local communities present in the area. The most prevalent kind of rights consideration is through relocation and resettlement.
- **Engage in effective community consultation** – Culturally appropriate and effective community consultation is the key to community development. Consultation through all phases of a company's operations forms a basis of trust and helps companies identify community needs, define the community development responsibilities of stakeholders and manage expectations among community members.
- **Well defined roles and responsibilities** – Foreign investments tends to raise stakeholder expectations for community development. Unless companies clearly define their commitments to community development they run the risk of failing to meet such expectations. The companies should also try to involve local government and the community to play key role in local developments. Once roles and responsibilities are defined, companies should communicate these clearly and consistently. Unmanaged expectations lead to mistrust between the company and community.
- **Building capacities and forging partnerships** – In addition to developing internal capacity, companies might also work with other stakeholders such as national or local governments,

community groups, or NGOs with local presence to develop their capacity as partner organisations in the community development process.

- **FastTrack adoption of National Voluntary Guidelines (NVGs)** – Indian MNCs should follow NVG's to further enhance their responsible business scorecard. The NVGs also provide parameters to evaluate performance of companies.

1. Introduction

Background

In recent years, the BRICS countries, Brazil, Russian Federation, India, China and South Africa, have emerged not only as major recipients of Foreign Direct Investment (FDI) but also as significant outward investors. According to UNCTAD 2013 World Investment Report, BRICS' outward FDI has grown manifold from approximately US$7bn in 2000 to approximately US$145bn in 2010.[1]

In Africa, particularly, the BRICS countries have emerged as eminent investors. While the US, Japan and Western Europe have been the traditional investors in Africa, the BRICS countries have gradually surfaced as prominent investors within the region.[2] As indicated in Table 1, although the BRICS FDI flows to Africa amounts to only 4 percent, the economic bloc has cemented its position as the highest investing bloc in Africa. The gradual expansion of BRICS FDI has not only transformed the traditional trade and investment landscape of Africa, but has also created various economic opportunities and challenges for African countries.

Table 1: Outward FDI stock from BRICS, by destination region, 2011

Partner	Value (USmn)	Share
World	1,130,238	100.0
Developed countries	470,625	41.6
European Union	385,746	34.1
US	31,729	2.8
Japan	1,769	0.2
Developing economies	557,055	49.3
Africa	49,165	4.3
Latin America and Caribbean	175,410	15.5
Asia	331,677	29.3
Transition economies	31,891	2.8

Source: UNCTAD, FDI database and data from the IMF, CDIS (Coordinated Direct Investment Survey)

With the upward swing in investment in Africa, it is pertinent that African economies ensure that its investors abide by domestic as well as international standards of responsible business. It is necessary to take stock of the nature of the investments and analyse its subsequent implications on social, environmental and economic factors. Moreover, it is important to understand the said implications under the realm of foreign and local policies pertaining to investment.

[1] Available at: http://unctad.org/en/publicationslibrary/wir2013_en.pdf
[2] Available at: http://www.brookings.edu/~/media/research/files/reports/2011/1/africa%20economy%20agi/01_africa_economy_agi_kimenyi_lewis.pdf

Foreign Investment in Developing Regions with Focus on Africa

Over the last quarter century, foreign investment has accelerated at a spectacular pace. There are more than 80,000 multinational corporations (MNCs) operating worldwide today with more than 800,000 foreign affiliates – compared to 37,000 MNCs and 170,000 foreign affiliates active in 1993.[3]

According to the UNCTAD World Investment Report 2014,[4] FDI inflows to developed countries increased by 9 percent to US$566bn, making them accountable for 39 percent of global flows, whereas, the FDI inflows to developing countries recorded an all-time high of US$778bn, making them accountable for 54 percent of the total. Similarly, the FDI outflows from developing countries also recorded a high level. Developing and transition economies jointly were accountable for 39 percent of global FDI outflows, compared to 12 percent share at the beginning of 2000s. The global trade flows have been enlisted below in Table 2.

Table 2: FDI Flows by Regions, 2011-2013

Region	FDI Inflows			FDI Outflows		
	2011	2012	2013	2011	2012	2013
World	1700	1330	1452	1712	1347	1411
Developed economies	880	517	566	1216	853	857
European Union	490	216	256	585	238	250
North America	263	204	250	439	422	381
Developing economies	725	729	778	423	440	454
Africa	48	55	57	7	12	12
Asia	431	415	426	304	302	326
Latin America and the Caribbean	244	256	292	111	124	115
Transition economies	95	84	108	73	54	99

Source: UNCTAD World Investment Report, 2014

Foreign investment is essential for any growing economy as it attracts development and economic growth. It not only brings capital, technology as well as competitive spirit, but also brings new markets and a range of employment opportunities. In Africa, FDI inflows have gained much global attention. In 2014, the same are said to have recorded at four percent to US$57bn, propelled by market seeking and infrastructure investments. Much of the investment seems to be targeted towards the mature economic baskets such as that of Southern Africa and Eastern Africa.

In Southern Africa, the major destinations are South Africa and Mozambique. The trade flows towards this region is said to have almost doubled to US$13bn. Majority of the investment has been in the infrastructure sector and gas sector, particularly in Mozambique. For the year 2013, the Southern Africa region is said to have registered the highest FDI inflow in Africa.[5]

[3] Importance of Investment in the Global Economy; Available at: http://www.state.gov/e/rls/rmk/2010/146894.htm
[4] UNCTAD: World Investment Report 2014; Available at: http://unctad.org/en/PublicationsLibrary/wir2014_en.pdf
[5] *Ibid*

In East Africa, on the other hand, FDI increased by 15 percent to US$6.2bn, where Kenya and Ethiopia have been the biggest recipients.[6] The investment in this region panned out in various sectors like oil and gas exploration, manufacturing and transport.

In North Africa, investment has been relatively low due to its truncated performance in global ranking and geopolitical crisis.[7] In 2013, FDI in North Africa dropped by seven percent to US$15bn.[8] Similarly, Central and West Africa also witnessed drop in FDI, US$8bn and US$14bn, respectively, due to political and security reasons.[9]

It is clear that in Africa, investments have focused in such countries where markets are favourable and the investment climate is backed by strong pro-investment policies.

BRICS Investments

FDI is the biggest source of external private capital flows, know-how, employment generation and trade opportunities for all least-developed countries as well as developing countries. FDI flows to Africa from India, China and Brazil have risen from 18 percent of the total in 1995–1999 to 21 percent in 2000-2008. The BRICS have becoming significant investors in Africa, especially in the manufacturing and service sectors.

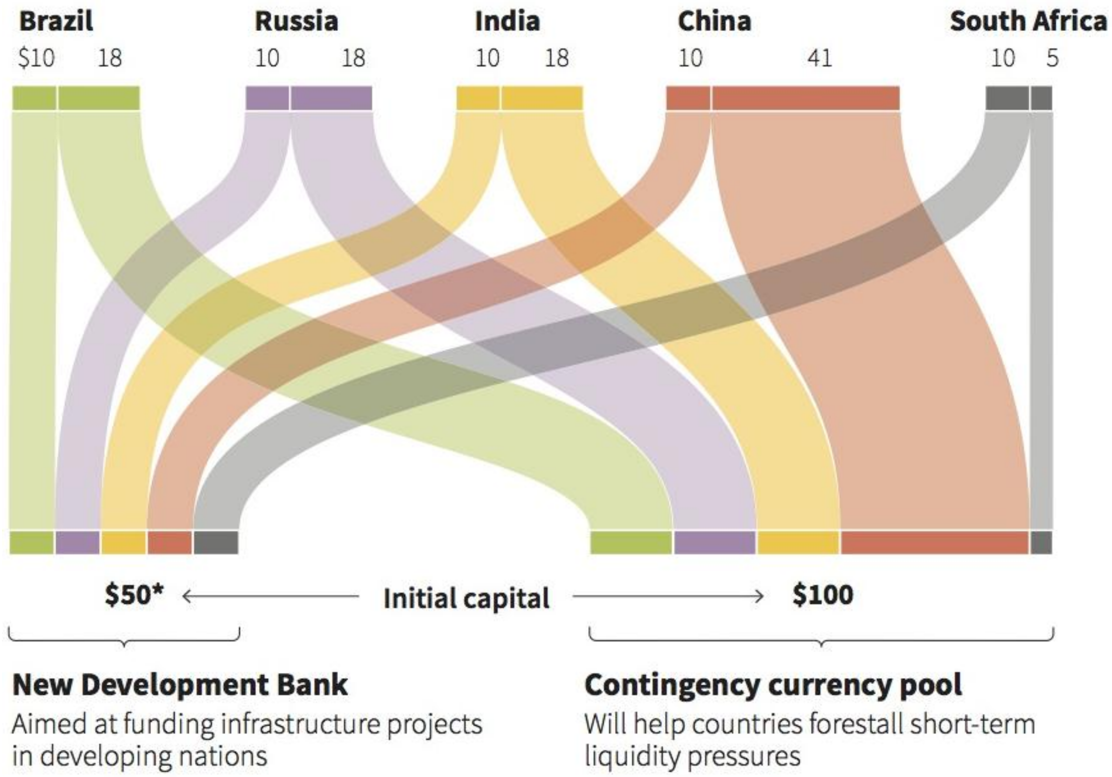
The BRICS countries make up more than 40 percent of the world's population and are accountable for a collective gross domestic product (GDP) of over US$16tn, which is about 12 percent of the world GDP.[10] In 2013, BRICS FDI inflow was about US$304bn, accounting for nearly 21 percent of global FDI flows.[11] Over the years, BRICS has been able to maintain a commendable momentum of economic growth. Along with economic cooperation, tight political support and strong global impact are the key features of the BRICS agenda.

One of the recent milestones for the BRICS countries was establishment of the BRICS Development Bank. In a meeting in Fortaleza, Brazil, in July 2014, BRICS declared the establishment of the BRICS Bank with its headquarter in Shanghai, China. The bank seeks to foster greater financial and development cooperation amongst the member states. Further, the bank will also provide a channel for investment in low income countries.

---

[6] *Ibid*
[7] Foreign investment growth in Africa patchy; available at http://www.dw.de/foreign-investment-growth-in-africa-patchy/a-17736425
[8] *Ibid*
[9] *Ibid*
[10] Africa-BRICS Cooperation: Implications for growth, employment and structural transformation in Africa; Available at: http://www.uneca.org/sites/default/files/publications/africa-brics_cooperation_eng.pdf
[11] Supra Note 4

Table 3: The BRICS Development Bank, initial contributions, US$bn



Source: Reuters

In Africa, the presence of the BRICS countries has not only flourished in the paradigms of trade, investment and finance, but there has also been an escalation in diplomatic and political relations. The size of the BRICS economies, their economic potential and their demand for stronger political voice on the international platform make them particularly relevant to Africa's development.

Further, BRICS has played a crucial role in not only boosting trade and FDI but also in development aid. BRICS has provided continued support to Africa by ways of development projects with the objective of improved infrastructure, concessionary, soft loans, credits and grants. The aid has also resulted in improved power generation, pharmaceuticals and transport network in Africa.

Africa's natural resources and its young population put it in a strategic position of interest for the BRICS. The impact of this engagement, however, is highly dependent on how the African countries capitalise on opportunities and mitigate various challenges.

With the increasing FDI, it is crucial for the African countries to ensure foreign investors meet certain conditions, including local labour and content requirements. Similarly, recipient countries need to have economic stability and liberalised markets to supplement the same. Some of the African countries still face high poverty rates, paucity of jobs, poor infrastructure systems and low human development. Hence, ensuring sustainable growth and enhanced employment opportunities is preoccupation of African policymakers. With the influx of foreign investment, the African countries need to deliberate the impacts and ensure high positive benefits of investments on their economies. In the case of BRICS investment, the influence has been dominant in three key channels; trade, investment and aid.

BRICS: Country Specific Investments in Africa

Amongst the BRICS countries, China ranks the highest in terms of FDIs in Africa. In 2011, the Chinese FDI stock in Africa stood at US$16bn, where South Africa is the lead recipient of Chinese investment, followed by Sudan, Nigeria, Zambia and Algeria.[12]

China has joined the ranks of top investing countries in some Least Developing Countries (LDCs) in Africa such as Sudan and Zambia. The Chinese have managed to invest in areas where the western countries have not, such as, agriculture, industry and infrastructure.[13] In 2012, the overall Chinese FDI, including state-owned and private investment, exceeded US$40bn.[14]

Table 4: Chinese FDI flows and FDI stocks in Africa

Year	FDI Flows (US$mn)	FDI Stocks (US$bn)
2008	5491	7.70
2009	1439	9.33
2010	2112	13.04
2011	3173	16.24
2012	2520	21.23

Source: MOFCOM

Indian FDI in Africa has traditionally been concentrated in Kenya and Mauritius, due to its offshore financial facilities and favourable tax conditions.[15] Some of the other recipients of Indian investment are Côte d'Ivoire, Senegal, Sudan, Ethiopia, Kenya, Zambia, South Africa and Uganda. In 2010, India's Bharti Airtel acquired the African mobile phone networks of Kuwait's Zain for US$10.7bn (the value of which is recorded outside Africa).[16] In 2012, India's total FDI stock in Africa stood at about US$14bn, making the country the seventh largest investor in the continent.[17] The Indian investment in Africa has been explained in detail in the next chapter.

Brazilian FDI in Africa, on the other hand, is relatively recent. However, the same has been on the rise since past few years, especially in the finance sector. The Brazilian Development Bank (BNDES) has played a significant role in Sub-Saharan Africa, where its incentives and disbursements have fairly increased.[18]

[12] Supra Note 1
[13] http://www.ippanigeria.org/china_africa_working.pdf
[14] Ambassador David Shinn, China's Investments in Africa, ChinaUSFocus, November 1, 2012: http://www.chinausfocus.com/finance-ecnomy/chinas-investments-in-africa/
[15] Africa's tax haven; available at: http://ideas.foreignpolicy.com/posts/2013/03/26/how_much_of_africas_foreign_investment_is_malaysian_money_in_mauritius
[16] Supra Note 1
[17] *Ibid*
[18] The rise of BIRCS in global investment; Available at: http://www.twnside.org.sg/title2/twe/2013/542/4.htm

Table 5: Africa Credit Lines Granted by Brazil's Development Bank

Country	Credit Volume (US$)	Sector
South Africa	35mn	Transport
Mozambique	80mn	Construction
Angola	3.2bn	Construction, Industry and Agriculture

Source: BNDES 2012

There has also been an expansion of Brazilian investment in ethanol industry in countries like Angola, Ghana and Mozambique.[19] Furthermore, Banco do Brasil and Bradesco in partnership with the Portuguese Banco Espírito Santo have been supporting Brazilian companies in Africa, while the Brazilian Caixa Econômica Federal has been supporting the development of housing projects in Angola and Mozambique.[20]

Similarly, Russian FDI is also recent, yet robust in Africa reaching a total of US$1bn in 2011.[21] Russian FDI has been driven by the objective to enhance raw-material supplies and to expand to new segments of strategic commodities and improved access local markets. To illustrate, Rusal, the world's largest aluminium producer, has operations in Angola, Guinea, Nigeria and South Africa. Furthermore, with Vneshtorg Bank, Russia opened the first foreign majority-owned bank in Angola. The Bank was then moved into Namibia and Côted'Ivoire.

With US$18bn worth of FDI, South Africa was the fifth largest holder of FDI stocks in Africa in 2011, where Mauritius, Nigeria, Mozambique and Zimbabwe are its largest recipients.[22] The presence of South African FDI is eminent in banking and mining sector.

BRICS-Africa Trade

The successful experience of emerging economies such as Chile, Hong Kong, Malaysia, Singapore, Thailand and India; over the past half century has amply reflected that trade can be an important impetus for growth. Africa's trade response has been strong and the trade with the BRICS has grown faster than with any other region in the world, doubling since 2007 to US$340bn in 2013, and projected to reach US$500bn by 2015.[23] The BRICS are now Africa's largest trading partners.[24]

The trade impact of the BRICS countries on Africa's development has led to a fall in prices of many consumer goods, such as clothing and footwear. Moreover, the skills set brought by of some of the BRICS countries in manufacturing have led to the growth of price competition and (possible) deflation in industrial goods.[25] The impact of trading with the BRICS in Africa has resulted in increased demand for commodities, better terms of trade with Africa and infrastructure development. The trade ties also served to insulate, although to varying degrees, African countries during global financial crisis.

---

[19] Supra Note 1
[20] *Ibid*
[21] *Ibid*
[22] *Ibid*
[23] *Ibid*
[24] Africa and the BRICS: A win – win partnership; Available at: http://www.afdb.org/en/blogs/afdb-championing-inclusive-growth-across-africa/post/africa-and-the-brics-a-win-win-partnership-12098/
[25] Kaplinsky, Raphael, and Masuma Farooki. (2010) Africa's Cooperation with New and Emerging Development

Table 6: BRICS-Africa Trade

Year	Value in US$bn
2010	235
2011	290
2012	320
2013	340

Source: UNCTAD

Critical Dimensions of Indian Investment in Africa

Against this background, CUTS International, with support from Heinrich Boll Foundation launched a project entitled Critical Dimensions of Indian Investment in Africa.[26] The objective of this project was to analyse the social, economic and environmental impacts of Indian investment in Africa on various local African communities in and around their areas of operation. Due to the negative implications normally associated with extractive sectors, the project focused on mining and agriculture sectors. The four countries that were selected for the project were Uganda and Kenya, where the project looked at two mining companies; and Ethiopia and Zambia where we focused on two agricultural-based companies.

The findings of the project are envisaged to serve as a lesson for future policymaking and implementation at the national levels in the selected host African countries. The idea of the project was to capture the perception of local community members and other relevant stakeholders, such as, civil society organisations (CSOs), business chambers of Indian investment and provide recommendations.

While the body of literature on the nature and scope of Indian investments in Africa is growing, an area that still lacks attention is the impact of these investments on local communities. This project therefore seeks to contribute to this area of research. This study benefit from the inputs derived from interviews that were conducted with the local communities in an around selected Indian investments. These interviews sought to identify the implications that the presence of these firms had on these communities.

The project main objective was to analyse the impact that current Indian investments have had on the sustainability of local communities, as a lesson for future policymaking and implementation at the national levels in select 'host' African countries.

The expected outcomes of the project were:
1. Identify the good practices as followed by Indian companies operating in Ethiopia, Uganda, Kenya and Zambia;
2. Understand the perception of these investments by local communities;
3. Identification various policies that the BRICS countries can adopt to ensure that investment is conducive to both inclusive and sustainable development;
4. Understand the role of the legal frameworks of both 'host' and 'investor' countries in fostering positive social, economic and environment impacts of FDI; and
5. Understand how Indian investment is different from investments of other BRICS countries.

[26] http://www.cuts-ccier.org/iia/index.html

Research Methodology

The first stage of the project entailed a review of the regulations in India mandating responsible business behaviour. The National Voluntary Guidelines (NVGs) on Social, Environmental and Economic Responsibilities of Business were selected as the framework to evaluate responsible business by the select companies. The NVGs consist of nine basic principles and forty eight core elements which provide the benchmark for responsible business by Indian companies and Indian multinational companies, in India and abroad.

While all the NVG principles are important for the study, the key and most relevant NVGs were pulled out. These are mentioned in Table 7:

Table 7: NVG Principles

Principle	Context
Principle 3	Businesses should promote the wellbeing of all employees
Principle 4	Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalised
Principle 6	Businesses should respect, promote, and make efforts to restore the environment
Principle 8	Businesses should support inclusive growth and equitable development

Source: http://www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.pdf

An all-inclusive list of issues pertaining to agriculture and mining sector *vis-a-vis* select NVG principles was prepared. Several meetings were conducted in order to finalise the most critical social, environmental and economic impacts of activities related to agriculture and mining sector.

Subsequently, a review of existing evidences generated out of various documents and reports, certain critical socio, economic and environmental indicators were selected to reflect the impacts of specific to mining and agriculture sector. Thereafter, the said indicators were juxtaposed against the corresponding NVG principles and their core elements. The idea behind linking each impact with corresponding NVG principle was to enable researchers to quantify the social, economic and environmental impact that each project company was having on its local community members.

Lastly, the said linkage was extended to connect with the findings of the scoping mission undertaken by researchers. Hence, a research framework was finalised to make a clear linkage between the three factors – indicators (critical social/environmental/ economic impacts of mining and agriculture sector), corresponding NVG principles.

Based on the said indicators and variables, questionnaires were drafted to gather primary information from local community members and relevant stakeholders. Further, the core team prepared a draft list of relevant stakeholders and sample size and provided the same to the country partners for finalisation.

The questionnaires, list of stakeholders and the sample size, were finalised by the researchers in consultation with the core team after which the surveys and in depth interview were conducted. The data collected was entered into excel sheets and analysed on the basis of a data analysis guidance note prepared by the core team. The underlying motive behind drafting the data analysis guidance note was to ensure a uniform, yet flexible tool to interpret the data collected across the four project countries. The said framework provided a question by question guidance for the analysis of information collected.

2. Indo-African Investment

Historical Context

"Of all the classes connected with the trade of East Africa,
there is none more influential than the natives of India' "[27]

Sir Bartle Frere, 1873

Trade and investment relations between India and Africa can be traced back thousands of years. It is said that with the help of Monsoon winds, merchants from Ancient India would sail to the East Coast of Africa to trade cotton, glass beads and other goods in exchange for gold and soft carved ivory.[28] With the gradual increase in trade, Indian merchants began investing and setting their base in Eastern Africa.

In the 17th century, under the Omani establishment, the trade and investment ties escalated, where spices such as black pepper, cinnamon, cloves, became the prime source of business for Indian merchants. Many Indians migrated to East Africa in the given period. Thereafter, in the colonial period, many Indians were brought in by the British as labours.

As a result, the Indian and African relationship is backed not only by strong business ties but also by robust historical, cultural and political ties. Furthermore, the relationship is buoyed by the geographical factor, where countries bordering the Indian Ocean, such as, South Africa, Mozambique and Tanzania, have attracted a high amount of Indian investment over the years. The given features of the Indian - African relation highlight strong long standing relation, setting it apart from Africa's relations with the other BRICS countries.

As of today, Indian investment in Africa has grown exponentially. Having its oldest base in East Africa, the investment has now panned out to cover a wide area of the Sub Saharan Africa, where the investment is complemented with economic, political and strategic interest in the resource rich continent.

Sectorial and Regional Investment

The first outward FDI by an India firm in Africa is said to have been in Ethiopia, where the Birla Group established a textile mill.[29] Subsequently, in 1960s, many Indian investments were made in Kenya, Uganda and Nigeria. The investments have been driven by strong initiatives taken by the government as well as the private sector. Some of the sectors which have received high Indian investments are steel, telecommunications, IT, mining, energy and automobiles.[30]

Significant Indian investments have also been made in the natural resources of Africa. In the oil sector, India's Oil and National Gas Corporation (ONGC) has acquired shares in oil exploration

[27] Memorandum by Sir Bartle Frere regarding Banians or Natives of India in East Africa Sir Bartle Frere to Earl Granville, Enclosure # 51, 7th May 1873, Poona, MSA , PD Vol. V # 114, 1873, p.198
[28] Stearns, Peter N.; William Leonard Langer (2001). The Encyclopedia of world history. Houghton Mifflin Harcourt. p. 16. ISBN 0-395-65237-5
[29] http://www.wto.org/english/tratop_e/devel_e/a4t_e/global_review13prog_e/india_africa_report.pdf
[30] CII WTO report

ventures in Nigeria and Libya which account for 15 percent India's oil imports.[31] The Corporation has further invested about US$690mn in the hydrocarbon sector of Sudan and about US$12.5mn in offshore drilling in Cote d'Ivoire.[32] Private Indian companies, on the other hand, have been seeking investment in oil rich countries like Angola, Burkina Faso, Equatorial Guinea, Senegal and Ghana.

In terms of other natural resources, there have been significant investments in iron, copper and steel. Vedanta Resources is said to have invested around US$750mn in a copper mine project in Zambia.[33] Similarly, Arcelor Mittal, the leading steel company in the world, has recently launched a US$1bn project in mining in Liberia. The said project is expected to substantially increase employment as it is sought to introduce 15,000 direct jobs and 20,000 indirect jobs.[34]

To name some of the Indian companies which have made deep rooted investments in Africa, the Tata group is prevalent in the sectors of hotel, mining, technology, transport, information and telecom. The group has been present in Africa since 1976, where its investment has only increased. Similarly, immense investments have been made by the Bharti Airtel group in the telecommunication sector. Indian banks have also played a distinct role in providing credit to African countries, where some of the banks are State Bank of India, Bank of Baroda and so on.

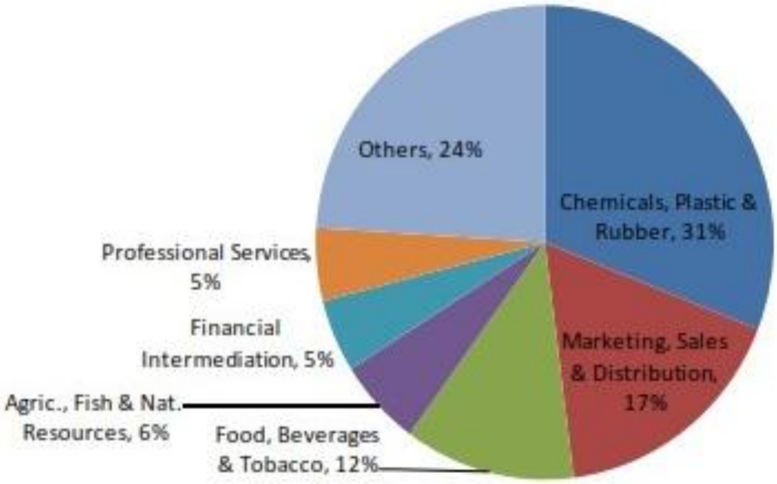
The Export-Import Bank of India (EXIM Bank), which was established to facilitate exports from India, has consistently sought Africa as one the favourable trade investment partner. As per the 2014 Annual Report of the EXIM Bank, the bank plans to set up a Project Development Company (PDC) in Africa which will essentially bring infrastructure projects in Africa to a bankable stage and facilitate exports from India to Africa.

Furthermore, in March 2014, EXIM signed a Memorandum of Contract with the International Trade Centre (ITC) to promote trade and investment between India and East Africa by supporting Small and Medium Enterprises (SMEs) in their access to finance.

The African Development Bank (AfDB) group has also recently signed a Memorandum of Understanding (MoU) with the EXIM Bank where the focal objective is to co – finance projects in Africa. The said MoU was signed and operationalised in 2009, where credit worth US$3.4bn was provided by the EXIM bank to various African countries. Under the MoU, EXIM Bank is also to provide advisory services on business and investment opportunities to the member countries. Figure 1 below illustrates the line of credit provided to the subsectors in Africa under the said Memorandum.

[31] www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/India's%20Economic%20Engagement%20with%20Africa.pdf
[32] *Ibid*
[33] *Ibid*
[34] *Ibid*

Figure 1: Indian Investment, by Sub-sectors



Source: AFDB Exim Bank (2012)

Greenfield Investments by India in Africa

Although the level of Greenfield investments in Africa has lowered in the past few years, the same is relatively robust in the global context. India plays a substantial role in Greenfield investments in Africa. The country has even surpassed China in terms of the given investments. In the period 2003-2012, Greenfield investments in Africa by China were worth US$45bn, whereas the investment by India stood at US$52bn.[35] Some of the sectors that have witnessed such investments are pharmaceuticals, chemicals, metals, agriculture and automobiles.

Reception of Indian Investment in Africa

Indian officials as well as private investors have periodically reminded Africans of their interest in expanding investments in Africa, keeping in mind the need to develop inclusively in Africa. In a recent conference, Sharma Jain, Joint Secretary of the Indian Council on World Affairs stated, “India has demonstrated its commitment to playing a substantive role in the development of Africa through its trade and investment, cooperation in the area of oil and gas, education, healthcare, pharmaceuticals, mining, textiles as well as infrastructure.”[36]

Private Indian companies have also taken various steps to strengthen trade and investment ties with the African countries. Such steps are sought to build a relationship of trust along with economic growth. For instance, Cipla, created goodwill in 2001, when it announced that it would supply AIDS drugs to Africa at a considerable discount, slashing the per-patient price from more than US$10,000 a year to less than US$400.[37] Due to cheap Indian drugs, the proportion of AIDS patients being treated is said to have risen from 2 percent in 2003 to 37 percent in 2009.[38]

35 http://m.oecdobserver.org/news/fullstory.php/aid/4171/New_challengers_for_China:_Africa_92s_emerging_partnerships_2.0_.html
36 http://globalriskinsights.com/2013/10/indian-investment-in-africa-challenges-china/
37 Supra Note 4
38 *Ibid*

The African countries have appreciated the intention of Indian investors. The annual India – Africa Conclave meetings are a strong example reflecting the inclination of the two partners in paving way for long standing sustainable investment and trade. The meetings are facilitated by Confederation of Indian Industry (CII) and Exim Bank where the objective is to provide a platform for 'systematic approach to work on projects in Africa'.[39] The Conclave provides a platform for Indian as well as African government officials to take stock of the Indian projects in Africa and discuss a sustainable way forward.

Similarly, the India-Africa Forum Summit has also provided a strong platform for the Indian and African governments to discuss the economic ties and pave way for sustainable and inclusive trade and investment. In the Second India Africa Summit[40], India promised to provide momentous investment in infrastructure, human capacity-building, agriculture and rural development. In the said Forum, the Indian Prime Minister then agreed that India will provide US$300mn to help assimilate the Djibouti-Ethiopia railroad. Furthermore, US$500mn was promised to some of the African countries to accelerate human resource development and capacity building, where India will seek to strengthen local capabilities by creating a regional plan.[41]

Another dynamic project launched as a cooperative venture between the Indian government and the African Union is the Pan-African e-Network Project.[42] The project was launched in 2009 and with the objective of linking major universities and centres of excellence in Africa and thereby extending higher education to around 10,000 students in Africa over a period of five years. Furthermore, the project aims to link major hospitals to twelve – super specialty hospitals in India to improve medical training, online consultations and other facilities. The project also supports resource mapping, e-governance and meteorological services.

The Indian government has invested about US$1bn in the project. The project is the biggest project in distance learning and tele-medicine that Africa has ever undertaken and is a clear example of South – South partnership.[43]Currently, the project is in its second phase, where it intends to extend the number of countries under it from 47 to 53.

Regulations Important for Indian MNCs Abroad

Indian companies wanting to acquire companies abroad have to comply with various aspects of The Companies Act of 1956, the Foreign Exchange Management Act of 1999, The Securities Exchange Board of India Act of 1992, and the various regulations imposed by the Reserve Bank of India. Also, the Take Over regulations applicable to the target company would need to be adhered to.

The Indian companies may invest overseas either through the automatic route or with the approval of the Reserve Bank of India (RBI). The present legal framework provides for investment overseas by Indian companies up to 200 percent of their net worth as per the last audited balance sheet, in any bonafide business activity are permitted by Authorised Dealers (AD). Also no prior approval of RBI is required for opening offices abroad. For initial expenses, AD banks have been permitted to allow remittance up to 15 percent of the average annual sales/income or turnover during last two financial years or up to 25 percent of the net worth, whichever is higher.

[39] http://www.ciiafricaconclave.com/conclave-synopsis.aspx
[40] http://www.indiaafricaconnect.in/index.php?param=news/2688
[41] *Ibid*
[42] http://www.panafricanenetwork.com/
[43] *Ibid*

For recurring expenses, remittance up to 10 percent of the average annual sales/income or turnover during last two financial years is allowed. Within these limits, ADs can allow remittance by a company even to acquire immovable property outside India for its business and for residential purpose of its staff. The Indian investors would also have to file forms ODG/ODI depending on their method of investment in an overseas firm. The detailed guidelines have been provided under Notification FEMA 120/RB-2004 dated July 07, 2004, which is amended time to time.

An entrepreneur can successfully expand and grow his/her business abroad by taking into account the basic legal framework of the home country as well as of that of the foreign country. It is necessary for him/her to abide by such laws and regulations in order to ensure efficient and healthy functioning of the organisation and face the various challenges that he/she may encounter abroad. In India, the most important law which regulates all foreign exchange transactions including investments abroad is the Foreign Exchange Management Act (FEMA), 1999. It is an investor friendly legislation which aims to facilitate external trade and payments as well as promote an orderly development and maintenance of foreign exchange market. Under the Act, the RBI has been authorised to frame various rules, regulations and norms pertaining to overseas investments in consultation with the Central Government.

In order to encourage capital inflows and provide safe business environment for all investments abroad, many countries have entered into bilateral investment treaties or agreements. Bilateral Investment Promotion and Protection Agreement (BIPA) is one such bilateral treaty which is defined as an agreement between two countries (or States) for the reciprocal encouragement, promotion and protection of investments in each other's territories by the companies based in either country (or State). These bilateral agreements have, by and large, standard elements and provide a legal basis for enforcing the rights of the investors in the countries involved. The Government of India has, so far, signed BIPAs with 58 countries out of which 49 BIPAs have already come into force and the remaining agreements are in the process of being enforced. Among the project countries, India has signed a Bilateral Investment Treaty (BIT) with Ghana, which is yet to come in force.

Arbitration and Conciliation Act, 1996 is another law which provides solution to business disputes for an entrepreneur. It consolidates and amends the laws relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards and also defines the law relating to conciliation. Arbitration is an alternative dispute resolution mechanism in which the parties get their disputes settled through the intervention of a third person and without having recourse to the court of law, whereas conciliation is the process of amicable settlement of disputes by the parties with the assistance of a conciliator. In India, the Indian Council of Arbitration (ICA) established in 1965 is the apex arbitral organisation at the national level which provides facilities for arbitration of commercial disputes.

Impediments Faced while Investing in Africa

In spite of providing a favourable climate for FDI, there are certain challenges that the Indian companies (and other foreign investors) face while investing in Africa. Firstly, it is difficult to obtain work visas. Secondly, there is a lack of infrastructural connectivity, in terms of regional network. Thirdly, there are not many BITs offered which could incentivise foreign investors to invest in Africa. In the year 2013, there were only as much as 5 BITs. Lastly, the business environment suffers from regulatory in efficiency.

3. Case Stories

This chapter focuses on the case stories that were selected for this project. The project conducted surveys and focus group discussions in four countries. The project identified two agriculture-based Indian companies: one in Ethiopia and one in Uganda and two mining companies, one in Zambia and one in Kenya.

A total of 164 community members were interviewed in this project; 35, 50, 50 and 29 in Ethiopia, Uganda, Zambia and Kenya respectively. The community members were asked a number of questions pertaining to their perceptions of the effect that the Indian companies had on their overall welfare. These case stories are not a reflection of all community members directly impacted by the companies but instead serve to highlight various critical dimensions of the impact of Indian investments on the well-being of their surrounding communities.

Ethiopian Case Story

Introduction

With an estimated population of 82.7 million, Ethiopia is one of the fastest growing non-oil dependent countries in Africa[44]. In the year 2011-12, Ethiopia marked the annual growth rate of 8.8 percent, which is significantly higher than the 5.5 percent estimate for Sub-Saharan Africa in the same period.[45] The real Gross Domestic Product (GDP) of the country is 507.4 billion Birr and according to NBE report, the GDP per capita in 2011-12 was US$510.

In 2011-12 5,649 investment projects with a combined capital of Birr 146.2 billion were approved of which domestic private projects made up Birr 59.3 billion (41 percent) while foreign investment projects accounted for Birr 84 billion (57.5 percent) of the total approved investment capital and the remaining were made by the government.[46]

The agriculture sector makes up 41 percent of GDP and accounts for 85 percent of employment. It is set to steer the transformation sought under the national growth and transformation plan. As most of the population is dependent on subsistence farming, agriculture is a key sector to drive any economic transformation in the Ethiopian context through changes in farm types, farm inputs, and farm products.[47] Increasingly farm types are gradually evolving to large-scale and commercial farms; and farm inputs uses are being enhanced and farm products are expanding increasingly to include high-value, export-oriented produces.

The country has about 74 million hectares of arable land of which only 18 million hectares is under cultivation and three million hectares is set aside for commercial farming. To-date only about one million hectares is leased out to companies, including foreign and local. The Ethiopian government has broadened its agricultural policy focus from increasing smallholder productivity to encouragement of private investment (both domestic and foreign) in larger-scale commercial farms. To that effect the Ministry of Agriculture (MoA) has created a new Agricultural Investment Support Agency that is

[44] FAO (2011). FAO Investment Policy Support Foreign Agricultural Investment Profile- Ethiopia
[45] National Bank of Ethiopia (NBE) (2012). Annual Report 2011-12
[46] *Ibid*
[47] Access Capital (2011). Investing in Ethiopia. Ethiopia: Macroeconomic Handbook 2011-12

tasked with negotiating long-term leases for commercial farms. Currently, large scale commercial agriculture is focussing on five major regions - Gambella, Oromia, Amhara, Afar and SNNP.

Gambella, the focus region of this study, is found in the south-west of Ethiopia. The region is one of the most scarcely populated regions with a total population of 396,000 people and is home to five indigenous ethnic groups (Anuwak, Nuer, Mejenger, Opuo and Komo) which constitute 72 percent of the total regional population. The region has a total land mass of 4,220,882 ha of which 30 percent is cultivable land. Currently only 32,172 ha is under cultivation. In addition to the vast arable land, the region is endowed with water and other natural resources which can attract private investors and the region has potential to produce coffee, tea, tobacco, cotton, sesame, rice, vegetables and fruits.[48]

National Laws, Rules and Regulations Governing Foreign Investment

In the last two decades, Ethiopia has taken measures to ensure that regulations, legislation and policies for agricultural development are transparent, accessible and clear for both foreign and domestic investors. Some of the most important laws, rules and regulations are listed in the table below.

Table 8: Legislations Pertaining to Agriculture in Ethiopia

Investment Proclamation (2012)	Provides details on: the objectives and areas of investment; forms of investment; capital requirements for foreign investors; investment permits; registration of technology transfer and collaboration agreements with domestic investors; investment incentives; guarantees and protection; investment administration; the industrial development zones, etc.
Agriculture Sector Policy and Investment Framework (PIF) 2010	Provides a strategic framework (2010-2020) for the prioritisation, and planning of investments that drive Ethiopia's agricultural growth and development. It is anchored to, and aligned with, the national vision of becoming a middle income country by 2025 and the Five-Year Growth and Transformation Plan.
Commercial Code (1960) revised in 2009	Governs various types of contracts. In the revision of the law it included the statement "a contract of mortgage concluded to provide security to a loan extended by a bank or a micro-financing institution may not require to be registered by a court or a notary".
Commercial Registration and Business Licensing revised in (2010)	Provides the registration and licensing procedures of commercial activities.
Trade Practice and Consumers' Protection Proclamation (2010)	Sets out the necessity to prevent the proliferation of goods and services that endanger the health and well-being of consumers following the expansion of commercial activities, and it ensures their safeness and suitableness to human health in a sustainable manner, and to create the possibility that consumers get goods and services equivalent to the price they pay.
National Social Protection Policy of Ethiopia (2012)	The law guarantees a minimum level of employment for the long term unemployed and under-employed. It enhances the social status and progressively realises the social and economic rights of the excluded and marginalised. It also ensures the different levels of society are taking appropriate responsibility for the implementation of social protection policy.

[48] Ministry of Federal Affairs (MFA) (2010). Gambella Regional State Development Gap Assessment and recommendation for Equitable and Accelerated Development

Environmental Impact Assessment (2002)	The law prescribes that no person shall commence any new development activity under any category listed in any directive issued pursuant to this Proclamation ("project") which requires an environmental impact assessment without authorisation of the Environmental Protection Authority or the relevant regional environmental agency.
Climate-Resilient Green Economy (CRGE) Strategy (2010)	Ethiopia has initiated the Climate-Resilient Green Economy (CRGE) initiative to protect the country from the adverse effects of climate change and to build a green economy. This clearly indicates that investment projects need to proactively watch their activities against climate change and need to plan to minimise contributions towards climate change.
Rural Land Administration and Use (2005)	States the right to ownership of land is exclusively vested in the state and in the people. Provides rules relative to acquisition and use of rural land by peasant farmers or pastoralists, transfer of rural land use rights, distribution of rural land, disputes resolution, restrictions on the use of rural land and defines responsibilities of the Federal Ministry of Agriculture and the Regions. It sets out mechanism to encourage individual farmers, pastoralists and agricultural investors and establishes a conducive system of rural land administration.

National Investment Climate

Ethiopia is becoming an investment destination in the sub-region due to the fast paced economic progress it has been experiencing, the lucrative business opportunities it provides, and its attractive investment incentives. The government considers foreign investments as potentially providing developmental benefits through technology transfer, employment creation and infrastructural developments.

Centrally located within non-stop transport distance to all major markets: Ethiopia is roughly equidistant between the United States and Japan, China and Brazil, Europe's largest economy and India, and Russia and South Africa. Addis Ababa is already the main air hub for Africa and the home of Ethiopian Airlines, which carries two thirds of Africa's air freight and has just significantly extended its cargo capacity and range.

Ethiopia's economic policy is framed in terms of the developmental state model of industrial policy and applies all the tools of traditional industrial policy, namely: targeted financial support, such as subsidies, loans from domestic policy, banks, and equity participation, setting up public corporations or nationalisation of industries to address market failures, trade policies that favour export-oriented and import-substituting industries, tax incentives, including import duty exemptions, tax holidays, etc. These tools promote priority sectors, particularly those facing handicaps such as inadequate trade logistics or infrastructure, strategic government procurement, investment in specific supporting economic infrastructure, and/or regulatory exemptions to attract, preserve, or foster the growth of particular industries, including by attracting foreign direct investment.[49]

[49] Henok A. Derk B. and Dan C. (2013). Ethiopia's Investment Prospects: A Sectoral Overview. African Review of Economics and Finance, Vol. 4, No.2, June 2013. African Centre for Economics and Finance. Rhodes University, Grahamstown, South Africa

Foreign Direct Investment (FDI)

The flow of foreign direct investment (FDI) to the country has increased at an accelerated rate since the last two decades. China, India, Germany, Italy, Saudi Arabia, Yemen, United Kingdom, Israel, Canada, and the United Arab Emirates are Ethiopia's major sources of FDI.[50]

FDI flow to Ethiopia which was only 54.4 billion birr in 2005 jumped to 169.6 billion birr in 2007 and showed a more than 300 percent growth rate in 2012. Foreign investment has accounted for nearly 85.5 percent of the total private investment projects in Ethiopia licensed over the last two decades and out of the 11.6 billion Birr total investment flow in 2010-2011 foreign investment constituted 93.9 percent. The number of foreign investors interested in engaging in the agricultural sector has also increased significantly.

The larger share of investments is taking place in five administrative regions – Afar and Amhara in the North, Oromia in Central Ethiopia, and Gambella and the Southern Nations, Nationalities and Peoples Regions (SNNPR) in the South. The areas, with most promising potential for investment in the country are agriculture, agro-processing, textile and garment, leather and leather products, sugar, cement, chemical and pharmaceutical industry, tourism, mining and hydropower.[51]

Ethiopia and India's Bilateral Relations

It was in July 1948 that Ethiopia and India first established diplomatic relations at the level of legations. The relationship was raised to ambassadorial level four years later in 1952. Equally, there had been contacts between the people of both countries for many centuries, and this long legacy had been nourished through trade and commerce.

More recently, since the establishment of full diplomatic relations, the two countries have consistently made efforts to strengthen their relations. There have been a number of visits by the leaders of each country and a number of agreements signed which have steadily contributed to the deepening of relations. Economic relations have steadily increased in the last two decades. Indeed, the volume of bilateral trade in 2013 crossed US$1.22bn and Indian exports to Ethiopia actually grew over 37 percent last year.[52]

Indian companies identify Ethiopia as a stable country to invest in with sound macroeconomic policies and good governance. In addition, the Indian government has certainly encouraged Indian investment in Ethiopia, as well as in Africa more widely, by providing finance through its Export-Import Bank (EXIM Bank). The bank opened an East African regional office in Addis Ababa on September 21, 2010.

Indian firms expressed interests in cotton, palm oil, rubber, oilseeds and horticulture[53] and in 2011, Ethiopia offered 1.8 million hectares of its farmland to Indian investors. The companies have so far committed US$4.7bn in foreign direct investments in Ethiopia, with most of it related to the agriculture sector. Some of the investors in this sector have been mentioned in Table 8.

[50] Supra Note 51

[51] Ethiopian Investment Authority (EIA) (2013). Invest in Ethiopia: An investment guide to Ethiopia, Opportunities and Conditions 2013

[52] Amb. Sanjay Verma, interview with Addis Standard, 2013

[53] Rowden, Rick (2011). An Examination of the Role of the Indian Government and Indian Companies Engaged in Overseas Agricultural Land Acquisitions in Developing Countries. Produced in collaboration with GRAIN and the Economic Research Foundation.

Table 9: Indian Investors in Ethiopian Agriculture Sector

There are a number of Indian investors in the Ethiopian Agriculture Sector, these include:

1. **Karuturi Ago Products Plc.:** Acquired 100,000 ha in the Jikao and Itang Districts of the Gambela Region for growing palm, cereal and pulses, with conditional option to acquire another 200,000 ha. Karuturi Ago Products is a subsidiary of Karuturi Global Ltd.
2. **Ruchi Soya Industries:** Acquired 25-years lease of 25,000 ha land for soya bean production and processing in Gambela region.
3. **Sannati Agro Farm Enterprise Pvt. Ltd.:** Ethiopia Acquired a 25-years lease on 10,000 ha in Dima District, Gambela Region,
4. **Chadha Agro Plc.:** Acquired up to 100,000 ha in Guji Zone in Oromia Regional State for a sugar development project.
5. **Uttam Sucrotech :** Won a $100-million contract to expand the Wonji-Shoa sugar factory for the cultivation of rice, pulses, and cereals.
6. **BHO Bio Products Plc.**: Acquired 27,000 ha to grow cereal, pulses and edible oil crops

Corporate Social Responsibility

Socially responsible behaviour of investment companies is critical to ensure healthy ecosystems, social equity and good organisational governance. In Ethiopia, there is no national framework to guide socially responsible business behaviour as yet. However, some companies have started to exercise their corporate responsibilities. For instance, Total S.A, a French oil company, has been actively working with a local NGO to fund the rehabilitation of the Churchill Road area (Addis Ababa) with the aim of developing an environmentally sound and sustainable program to address the problem of litter.[54]

Case Study

The Indian company identified in Ethiopia is one of the largest exporters of soy meal and lecithin in India. A total of 35 respondents who are residents of the nearest village to the farm which is 19 km away from the farm were interviewed. Out of the total 35 respondents, 20 (57 percent) were women. Most of the respondents fell under the age ranges of 30-39 (49 percent) and 20-29 (31 percent). The most common household size was four people per household and the second common household size is five. This is not far from the regional average family size which is 4.7 persons per household.[55]

The majority of the respondents (94 percent) reported that they had been born in the same village which was primarily because the area has been inhabited by the same local people for a long time and migration to the area has not been a common phenomenon.

Social Impacts

29 (83 percent) of respondent households felt that the presence of the company is not benefiting the community, while 2 (6 percent) of the survey households responded that they are benefiting as causal daily labourers. The general perception was that the company is not meeting the expectations of the community members. They were expecting the company to involve them beyond engaging them as daily labourers, teach them methods to practice improved crop and livestock production and enable them access schooling and health services and help them in creating access roads.

The company however only started work on the land in 2012 and the village within which the respondents reside is 19 kilometres away from the company. Further, the skill set required for the

[54] Tewelde Mezgobo (2012). The Nature of Corporate Social Responsibility (CSR) in Ethiopian Business Context, International School of Management – Paris March 2012 (PhD candidate)
[55] Tsegahun T. and Mulugeta T. (2008). Socioeconomic Survey Report : Gambela Peoples' Regional State Bureau of Finance and Economic Development,.Gambella

company activities does not match the skill set that the respondents have. For the respondents (and other members of the community) that indicated that they were employed in the company, they noted that the company provided pick and drop facilities from the village to the company site.

Migration

As the company is situated in a forest in a rural area, there has not been any influx of community members to the farm site. In fact, all of the respondents confirmed that there has been no migration of people to the farm area and as a result there has been no instance of ethnic tension created with this regard. No respondent reported to be a personal victim of such a tension.

According to informants, employees like farm guards or those working farm machinery stay only for few nights and then leave as their residences are far away. Further, there is no chance of establishing new villages around the farm as land belongs to the government and they are not allowed to settle on government-owned land. While they spend the day working on the land, they return to their villages at the end of the day. Some respondents said the local people would like to be closer to the farm as they think this creates opportunities to engage into small businesses around the farm to diversify livelihoods.

Displacement

Despite the fact that the company acquired massive tracts of land (25,000 ha), no respondent reported that land rights had been affected due to the land acquisition. This is because the villages are outside of the farm territory. However, community members stressed that although they do not necessarily inhabit the land that has been leased to the company, they use the land for collecting firewood, grazing herds, and periodic crops when they undertake land rotation. They further stated that the forest was vital for villagers particularly as a source for medicinal plants, roots and wild fruits in times of food scarcity. They also use the forest as a source of construction materials as well as hunting grounds. All the respondents felt that they could have been compensated in some way as they are restricted from such uses of the communal land.

Of all the respondents, 32 (91 percent) confirmed they are not aware of how the company acquired the land while the rest said the company acquired the land from the government. 23 (66 percent) of the households said they do not know whether the land acquisition process was a fair and just process. Another 12 (34 percent) however said the process was not fair and just because they were neither consulted nor did they participate in the land acquisition process. They feel it could have been fair had they been provided the opportunity to voice their interests as well as their reservations concerning the implications that the farm would have on the forest as a result of deforestation. However, the need for involvement of the community members may be questioned as the land acquired was not the respondents land and lies 19 kilometres away from the village.

Infrastructure Investment

The respondents said that there has been no any infrastructural development that has taken place since the company started its operations in Gog woreda. Interviewees said that instead, a school building had been given to the company by government to set the farm's office.

Gender

Fifteen (43 percent) of the interviewed households said the company created job opportunities for women in the farm and other related fields. However, the respondents reported that the company did not attempt to run any skill development program and they felt the company did not play any role to improve the socio economic positions of women in the project area other than job creation.

Economic Impacts

Gog woreda is one of the lowest population densities (1.44 people per sq.km) in the Gambella region, as compared to the regional average which stands at 12 people per square km. The livelihoods of the small households are dependent on crop farming and animal husbandry as well as fishing and beekeeping but to a lesser degree. On average, households live on a 0.42 ha of land each. The average annual household income of the interviewed households ranges between 1800 and 2,400 Birr (calculated based on the annual crop production and income from livestock of a households). The average annual income of the Gambella region ranges between 2000-3000 Birr. Given the isolated nature of the community, it has very limited access to other key socio-economic services.

In spite of this, 16 (46 percent) interviewed households said that there has been an overall increase in the income of the local community as some of the community members are working with the company as daily labourers. Due to this the respondents felt that the company is beginning to have a positive impact on the local economy. The community members hope that as time progress, there will be more employment opportunities and subsequently, increased economic gains by the community members. All of the interviewed households noted that their businesses had not yet started to benefit from the increasing number of people working at the farm but they hoped that this would change with time.

20 (57 percent) of the interviewed households said the company had not yet created job opportunities for women. Given that the company has recently started operations, the respondents reported that it had not yet started any skill development programmes for women.

Environmental Impacts

According to the respondents, their concerns regarding the environment included the loss of biodiversity (wildlife, agro-diversity), deforestation and loss of vegetation cover due to their dependency on the forrest for their livelihood. The community felt that the company had had no negative impact on water quality, air quality and land pollution, their main concern was on forestry and vegetation. According to the respondents, they had not yet seen efforts at replacing the trees that had been chopped down. The community members noted that they would like the company to leave at least patches of trees within the farm land as shelters of wildlife and as sources of medicinal plants, sources of fruits and roots for community harvest.

Overall

When the respondents were asked in what areas they would like to increased community involvement by the company, the three areas that were highlighted by the respondents were education, health and employment. Regarding employment, the respondents noted that engaging in skills development and training the local people on how to operate the machinery would be crucial component of employing local people. Until then, the members reiterated that minimising the cutting of trees was necessary as this had direct repercussions on their livelihood.

Key Findings and Recommendations

Foreign investments in agricultural land may have both positive and negative impacts on communities where they are operating. Such investments should recognise the rights of local stakeholders, more specifically, their domestic food security and rural development concerns, and agreements between governments and foreign investors should be based on balanced contracts and partnerships safeguarding the interests of all stakeholders.[56] Unless they are designed to ensure equity of benefits with stakeholders, they may be sources of conflicts and would be unlikely to be sustainable.

The company has established its company in rural yet fertile area in Ethiopia. Having its closest village 19 kilometress away and leasing the land from the government, there has been no issue of displacement and migration. Yet, at the same time, there are some recommendations that the company could keep in mind for the future. Some of the recommendations are:

- Design/adopt/adapt and present a CSR strategy and present to the stakeholders to show its acts are sustainable as well as responsible.
- As the assessment indicates the farm is poorly connected to any partners in its operation area, it is imperative if it identifies partners around the farm operation area with the view of working together in areas of common interest particularly related with CSR attributes.
- Design a strategy to make the farm to minimise and prevent the investment-related adverse effects of deforestation.
- The farm needs to manage and protect the environment/natural resources through initiating plantation schemes to replace the trees cut and maintaining the biodiversity of plants, reduce use of artificial chemicals and introduce environmentally friendly crop protection methods like biological control.
- The community indicated that key social infrastructure such as schools, health and sanitation facilities, roads, grain mills are lacking. The farm can work with the local government structure to identify and confirm the priority CSR activities and contribute to the provision such facilities and services.
- The different government agencies at federal, regional, zonal and woereda levels and the community needs to involve collaboratively and share information and responsibilities in land allocations, transfer and provision of support and regulatory services so that investors are adequately facilitated in their business while at the same time be encouraged to discharge their responsibilities particularly CSR.
- The company needs to get the buy-in of its project by the community by interacting and communicating more with them on the current and future benefits of the investment to the day to day life of the community by way of expanded employment opportunities, technology and skill transfers, and triggering key services relevant to the community.
- It is advisable for the company to take steps to be more transparent about their policies, commitments, product & services and associated operations, spending plan and annually report these both in the country and in India.
- It is also important to consider membership with the appropriate business association such as Addis Ababa chamber of commerce and sectoral association to be networked with companies working in the country and to be more familiar with the business law of the country.

[56] Supra Note 51

Ugandan Case Study

Introduction

India is the second largest FDI investor in Uganda. The two countries have had strong diplomatic ties since 1965, where India's engagement with Uganda is at three levels viz. at the African Union (AU) level, at level of the Regional Economic Communities (RECs) and at the bilateral level. India's commitment with Uganda has been consultative, response-based and focused on developing Ugandan capacities and human capital. Indian assistance to Uganda has been guided mainly by the announcements made by India at the India-Africa Forum Summits in 2008 and 2011.

Indian investments play a key role in the Uganda economy in the manufacturing, communications, construction, trade and service sectors. The bilateral trade stood at US$454.47mn in 2011-12 registering a growth of 48.30 percent over trade volume of US$306.44mn in 2010-11. Bilateral trade figures are as follows:

Table 10: Indo-Ugandan Trade, in US$mn

Year	2006-7	2007-8	2008-9	2009-10	2010-11	2011-12
Export	107.34	153.80	217.78	206.93	292.80	435.08
Import	4.76	15.12	19.32	13.38	13.64	19.30
Total Trade	112.10	168.92	237.11	220.31	306.44	454.47

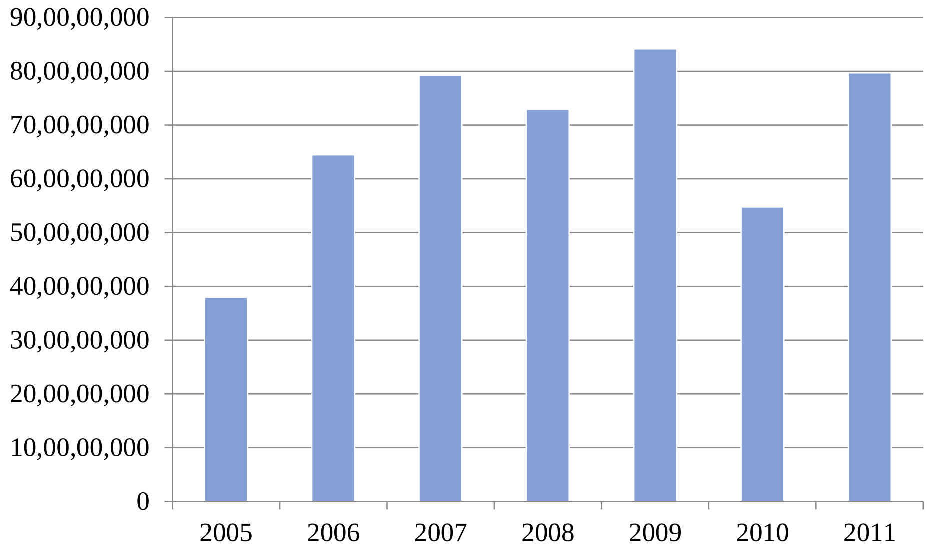
Although the Balance of Trade is heavily in favour of India, India encourages higher Ugandan exports to India. The major items of India's exports to Uganda include, among others, pharmaceuticals, bicycles and bicycle parts, automobile components, small industry & agro-processing machinery, 2-wheelers, textiles, tyres and sports equipment. Uganda imports almost 30 percent of its pharmaceuticals from India. India's imports from Uganda include, among others, iron and steel, tea, wood and wood products. Indian companies such as McLeod Russel Uganda,[57] Tata Coffee, Bank of Baroda and Airtel, have a significant presence in Uganda.[58]

Investment Climate and Promotion in Uganda

Uganda is a fully liberalised economy and has welcomed foreign investment. The country has a predictable economic environment and has a competitive market access.Uganda's investment climate compares favourably with the investment climates of other countries in the region and sometimes even with strong performing economies elsewhere in Africa and in East Asia. As well as having a positive macroeconomic environment with respect to stability and growth, the burden of regulation is relatively low especially in the area of labour regulation, tax rates are comparable with other strong performing countries, and the burden of tax administration is reasonable.[59] The latest value for FDI, net (BoP, current US$) in Uganda was (US$796,935,700.00) as of 2011. Over the past 6 years, the value for this indicator has fluctuated between (US$379,808,400.00) in 2005 and (US$841,570,800.00) in 2009 as illustrated in the graph below.

[57] McLeod Russel. (n.d.). McLeod Russel. Retrieved November 10th, 2014
[58] Indian High Commission-Uganda. (2013). Bilateral Brief. Kampala: Indian High Commission-Uganda
[59] World Bank. (2009). An Assessment of the Investment Climate. Washington, DC: World Bank Group

Figure 2: Foreign Direct Investment, Net Inflows in US$[60]



The leading investors in Uganda are the UK, Kenya, India and Canada, which together account for more than half of the foreign-owned projects there. Foreign investment is concentrated mainly in beverages/soft drinks and breweries for the local market. Other industries, such as sugar, textiles, cement, foot wear, packaging, plastics and food processing, have also attracted some FDI.[61] The top five products exported by Uganda are Coffee (17 percent), Broadcasting Equipment (5.4 percent), Refined Petroleum (5.1 percent), Cement (4.1 percent), and Fish Fillets (3.9 percent).[62] The priority sectors for investment in Uganda are Agriculture and agro-processing, tourism, education, oil, information technology, construction, road and energy.

National and International Legislations pertaining to investments in Uganda

Laws that need to be abided by foreign companies while investing in Uganda have been captured in Table 11.

Table 11: Laws Pertaining to Agriculture Investment in Uganda

Investment Code 1991	The code allows foreign investors to invest in all fields except those involving national security and ownership of land. Foreign investors may, however, lease land for up to 99 years. They can also participate in joint ventures involving the outright purchase of agricultural land.
National Environment Statute 1995	The principal environment protection law. The National Environment Management Authority (NEMA) was established in January 1996 under the statute as the principal regulatory agency for environmental matters. Investors are required to comply with the established environmental standards. Developers of particular projects

60 http://www.indexmundi.com/facts/uganda/foreign-direct-investment

61 United Nations Conference on Trade and Development. (2 0 0 0). Investment Policy Review of Uganda. Geneva: United Nations

62 Simoes, A. (2010). Observatory of Economic Complexity. Retrieved November 7th, 2014, from Observatory of Economic Complexity: http://atlas.media.mit.edu/profile/country/uga/

	are, therefore, required to carry out Environmental Impact Assessments (EIA) prior to project implementation (IBID).
National Agriculture Policy 2011	Aims at providing guidance to all actors in the agricultural sector to make investments that will increase agricultural incomes, reduce poverty, improved household food and nutrition security, create employment and stimulate overall economic.
Land Act 1998	Provides that foreign companies or foreign individuals may not own land. However, with UIA approval they may hold it under 49-year leases. Foreigners must seek Land Ministry approval through the Uganda Investment Act to lease land over 50 acres for agricultural or animal production purposes.
Land Acquisition Act 1965	The Act makes provision for compulsory acquisition of land for public purposes and for matters incidental thereto and connected.

In addition to the legislations mentioned above, Uganda has also signed bilateral investment treaties (BITs) and double taxation treaties (DTTs) with a number of countries. According to literature as of the year 2000, Uganda and India had a bilateral investment treaty as indicted in the UNCTAD report on the guide to Investment in Uganda; Opportunities and Conditions. But as of 2013, there is no indication as to whether India and Uganda have a bilateral treaty.

If the much-captured argument in most contemporary literature that suggests that having a number of BITs is a sign of a predictable and conducive investment climate is something to go by, then Uganda would be such a country. While recognising the argument about BITs as being skewed towards benefiting investment-exporting countries it is also important to acknowledge that the content of BITs matters also in the promotion of investments. For example, most of the BITs reviewed have express provisions which deal with compensation for loses.

There are other principles that have been incorporated in most of the BITs such as protection against worst form of expropriation and disputes settlement mechanism. The main cause of such a predicament is the failure to have a Multilateral Agreement on Investment. Despite this observation, it is clear that Uganda is committed to promoting responsible sustainable investment in the country though great efforts ought to be made in to harmonise the provisions in the BITs not only on dispute settlement but equally other provisions.

Understanding the Agriculture Sector in Uganda

Agriculture is arguably the most important sector of the Ugandan economy. The sector in Uganda is managed through a Multi-sectoral approach where a number of sectors play significant, independent though somehow contradictory roles both at National and Local levels of Governance. Ministry of Agriculture, Animal, Industry and Fisheries; which is responsible for managing and coordinating agricultural policies and interventions and it does so through the Ministry's autonomous and semi-autonomous agencies, local governments, other ministries, departments and agencies, (Private Sector, Civil Society and development partners (Julius, 2013).

The importance of agriculture in Uganda's economy outweighs all other sectors put together. Uganda's key agricultural products can be divided into cash crops, food crops, and horticultural produce. The most important cash crops are coffee, tea, cotton, tobacco, and cocoa. Uganda is second only to Kenya as Africa's largest producer of tea, exporting US$17.06mn of tea in 1996 and US$39mn by 1998.[63] In general, FDI in the agricultural sector has been mainly biased towards the export sector.[64]

Agriculture has been and continues to be the most important sector in Uganda's economy in terms of its contribution to GDP and it employs the largest proportion, 65.6 percent in 2010, of the population aged 10 years and older. In 2010-11, the sector accounted for 22.5 percent of total GDP. Agricultural exports accounted for 46 percent of total exports in 2010 (Plan for Modernization of Agriculture, 2011). Recent literature indicates that the sectors contribution has risen by about three percent from 2010 to 2013. The contribution of the sector to GDP provides for up to 23 percent of the country's GDP and employs over 80 percent of the country's workforce.[65]

Case Study

The company identified in Uganda is one of the largest tea producing companies in the world. The survey was conducted in the western region of Uganda were the company of focus has a presence. The research respondents, communities and areas were diverse, it involved 12 communities in the areas of Kyamazima, Kiko, Kanyabeho in Kabarole and Kyenjojo Districts and Mashonga, Butare, Katima, Omukayenbe, Kibazi and Igara, in Bushenyi District.

Table 12: Respondents Characteristics

	Response Count	Percentage
Total number of respondents	50	100
Male	29	58
Female	21	42

Table 12 shows the composition of the respondents by sex. 58 percent were male and 42 percent were female. Most of the respondents were aged between 30 to 39 years of age. The common size of household was between 1and 5 with 62 percent.

<u>Social Impacts</u>

The overall perception of the company by the respondents was that the presence of the company has benefited the community because the company has created employment for the members of the community. Further, the company has also brought about infrastructure development. 98 percent of the respondents mentioned they had benefitted from the company's presence in some way or the other. Some even mentioned that they are able to sell their agricultural products to the company.

[63] http://www.nationsencyclopedia.com/economies/Africa/Uganda-AGRICULTURE.html#ixzz3IeJwVNUf
[64] Ministry of Agriculture, Animal Industry & Fisheries. (2010). Agriculture Sector Development Strategy and Investment Plan:2010/11- 2014-15. Kampala: Ministry of Agriculture, Animal Industry & Fisheries
[65] Muheebwa, H. (2014, June 12th). Small Farmers' Rights Sidelined In Uganda's Plant Breeding Regulation. Intellectual Property Watch . Uganda: Intellectual Property Watch

Migration

In terms of migration, majority of the respondents (98 percent) felt that there has been an influx of people into the region since the company started its operations, while 68 percent of the respondents felt that the influx of people was moderate. 25 of the respondents responded that the increase of people has not put a lot of pressure on the natural resources in the area. Whereas, 23 of the respondents thought that the increase in people has not put a lot of pressure on the basic infrastructure.

Due to the influx of people in the areas, 22 percent of the respondents have witnessed tensions between the community members who were originally there and those that have moved there. In terms of measures being undertaken, 26 percent of the respondents agreed that measures were being taken to resolve the conflicts, while eight percent said no measures were being taken. For those that agreed that measures were being undertaken mentioned that the interventions were being done by the company, local authorities and the community members.

Displacement

21 of the respondents were aware of how the land was acquired. The company acquired land from the previous company, which the respondents (22 percent) indicated that they were aware of. Currently, there are two primary mechanisms through which investors can acquire land for agricultural investment in Uganda: through direct negotiation with private land owners (possibly with government facilitation) or through the acquisition of government land held by various agencies, including the District Land Boards, the Uganda Land Commission, or the Uganda Investment Authority. In practice, foreign investors most often acquire leasehold land because of the complex tenure systems governing *mailo*[66] and customary land (Stickler, 2012).

The Land Act of 1998 and the Land Acquisition Act of 1965, the Uganda Investment Act 1991 and the constitution of Uganda are the primary laws governing land acquisition in Uganda. According to the Land Act, Foreign companies or foreign individuals may not own land. However, with UIA approval they may hold it under 49-year leases. Foreigners must seek Land Ministry approval through the UIA to lease land over 50 acres for agricultural or animal production purposes. Uganda has not initiated any changes to allow foreign investors to purchase freehold property. However, some foreign investors circumvent land ownership restrictions by establishing locally incorporated companies.[67]

The Constitution (Section 2) states that "Land in Uganda belongs to the citizens of Uganda", this principle significantly diminishes the government's authority to acquire land for agricultural investment. The Land Act of 1998 Cap 227 also confirms that land belongs to the Ugandan people (Section 2). The two laws are the land rights regulations in Uganda. In terms of land acquisition by the company, eight percent of the respondents felt that their land rights were affected and that these rights were affected by less than half. 32 percent of the respondents felt that the process of acquiring land by the company was a fair and just process. 96 percent of the respondents were not involved in the land acquisition process and 68 percent indicated that they would not have preferred to be involved in the acquisition of the land.

The respondents (28 percent) indicated that they are aware of people being displaced during the establishment/expansion of the project. 30 percent responded that the people who were displaced were

[66] Mailoland is land that was granted to individuals and churches mostly in central Uganda during the colonial period. Mailoland cannot be owned by foreigners and the use of such land is subject to the agreement of bonafide or lawful occupants, who may not own the land but have the right to reside there.

[67] Bureau of Economic and Business Affairs. (2012, February). 2013 Investment Climate Statement - Uganda. Retrieved November 14, 2014, from Bureau of Public Affairs

adequately compensated. In terms of compensation, 20 percent indicated that the displaced were compensated by the government, while 50 percent indicated that no one compensated them. 16 (32 percent) of the respondents felt that the whole process was handled well and that the reason why they stayed behind was because they were not affected and were far from the factory, some stayed behind because they had a business there. Others said they were employed by the company.

Infrastructure Investment

92 percent of the respondents agreed that there has been infrastructural development by the company. The respondents felt that most of the infrastructural investments were made on roads followed by educational facilities and then medical facilities. The results also showed that 62 percent of the respondents felt that both educational facilities and medical facilities were easily accessible. 42 percent of the respondents felt that the roads were also easily accessible. With regards to the training facilities, 36 percent of the respondents felt that they were moderately accessible.

Gender

68 percent of the respondents felt that the company has created more job opportunities for women. The results further show that 52 percent of the respondents agree that the company runs skills-development programme or any other schemes specifically for women in the community. While 98 percent felt that the socio-economic position of women in the community has changed since the company's arrival.

Economic Impacts

Almost all the respondents (98 percent) felt that the company had increased the community's employment opportunities. 16 respondents felt that there were job losses as a result of the establishment of the company, while 15 respondents felt that these people were able to find alternative employment.

Majority of the respondents (90 percent) felt that there had been an increase in the overall income of the local community, while 96 percent of the respondents felt that the local economy had been impacted positively since the company arrived.

The respondents 37 (74 percent) indicated that the company has had a significant impact on employment generation and 31 respondents (62 percent) of the respondents felt that the company has also significantly created jobs for the community within the company. 36 respondents (72 percent) of the respondents felt that the company had also significantly created an environment for other business opportunities in the area. There is a clear indication here that the company has brought employment benefits to the community.

Environmental Impact

The results show that 82 percent (41) of the respondents felt that the company was environmentally responsible and 88 percent (44) of the respondents felt that the company was taking steps to restore the environment. The area that the community members felt required attention was land pollution, 30 percent of respondents felt that the company had a negative impact on the land because of the fumes coming from the factory, over cultivating of the land and influx of people into the area. On the other hand the respondents 90 percent felt that on Forestry and vegetation, the company had a positive impact in the area. The respondents were of the opinion that the steps the company was making to restore the environment was through afforestation and training of the community on land and environment conservation measures.

Overall

Overall the survey results indicated that 28 (56 percent) of the respondents felt that the company needed to focus more on improving the educational facilities in the community, health facilities and community consultation and security. The respondents felt that the company needed to engage more with the community members on matters of development, the respondents (58 percent) felt that the company does not consult the community as stakeholders on aspects and /or issues that affect them. They further indicated that the company should work/partner with the relevant regulators and government. CSR should also be increased.

Key Findings and Recommendations

The company of focus has had Estates which have been existent from the 1960s and were run down due to political instability and were later rehabilitated and then changed ownership. Looking at the situation in the 1970s, 1980s, 1990s and 2000 the company was in a poor condition but as a result of the rehabilitation by the Indian company the community and socio-economic development of the community has improved ever since the company became operational.

The company is highly regarded by the communities because it has impacted positively on the local economy since the company arrived. Creation of employment was cited as the prime benefit of the company. However, the community members feel that further efforts need to be made by the company in terms of consultation and community involvement/engagement on matters of development. The company should work/partner with the relevant regulators and government. CSR should also be increased.

Recommendations

- If de facto, India and Uganda do not have a BIT, there is an opportunity for India to sign a BIT with Uganda and further its investments prospects.

- Members from CSOs and Business Chambers mentioned that CSR should not be left only to the investors but government should also take an active role in social responsibilities for the communities, it is advised that the stakeholders should push this agenda to government and spell out the benefits of social responsibility.

Zambian Case Study

Introduction

Since the 1990s, FDI has played an increasing role in Zambia's economy, contributing to increased capital inflows and investment, rehabilitating the copper industry and enhancing the production and exports of non-traditional products and services. In promoting FDI, one of the government's objectives has been diversification to reduce the economy's heavy dependency on copper exports.[68]

India is among the countries with which Zambia is partnering with in the investment sector. India and Zambia have had cordial relations and economic cooperation between the two countries can be traced back to 1970s. It has since continued to grow over the years. India has provided considerable economic assistance to Zambia and has invested in Zambia in different key sectors of the economy including mining, agriculture, the extractive industry, and tourism since 1964. There are a number of Indian companies doing business in Zambia and many more have evinced interest to invest in a country that is abundantly endowed with natural resources. Some of these companies include: Airtel Zambia, Tata Africa, Nava Bharat Ventures Ltd., RJ Corporation, Taurian Manganese and others which have made large investments in various sectors in Zambia. The total investments by the Indian companies in Zambia are in excess of US$3bn, employing over 25 thousand Zambian nationals.[69]

Indeed, since 2007 Indian FDI to Zambia has surpassed US$3bn with the bulk of the investment continuing to grow in view of the country's favourable economic climate.

In terms of trade, Zambia's exports to India rose from US$51.4mn in 2009 to US$102.67mn in 2010, while India's exports to Zambia declined from US$131mn in 2009 to US$88.34mn in 2010. India's export items include drug and pharmaceuticals, machinery and instruments, transport equipment, cotton yarn and fabrics, plastic, rubber, chemicals, and electronic goods and its imports from Zambia include non-ferrous metals, ores (copper and cobalt), semi-precious stones and raw cotton. India and Zambia have set up a Joint Permanent Commission at the Ministerial level.[70]

Investment Climate in Zambia

Zambia offers a very liberal investment environment. It is one of the most relatively and highly liberalised economies in the Sub-Saharan Africa. Transparency, good governance and fighting corruption have been one of the government's top priorities. The recent World Bank Doing Business report shows that Zambia maintained its position among the top ten countries within SSA to improve its regulatory reforms.[71] The country has enacted a number of reforms meant to foster economic development and positively impact the investment climate of the country. The economic reforms include the Private Sector Development Reform Programme (PSDRP) which addresses the country's key challenge of reducing the cost of doing business through legislative and institutional reforms, and the Millennium Challenge Account (MCA) which is premised on addressing issues relating to transparency and good governance. Tax incentives and other regulations have also been put in place

[68] Muyoyeta, L. (2010). Foreign direct investment and the fulfillment of key rights. Retrieved May 5th, 2014, from Social Watch

[69] Indian High Commissioner. (2013, June 12th). India-Zambia Bilateral Relations. Retrieved March 25, 2014, from High Commission of India, Lusaka

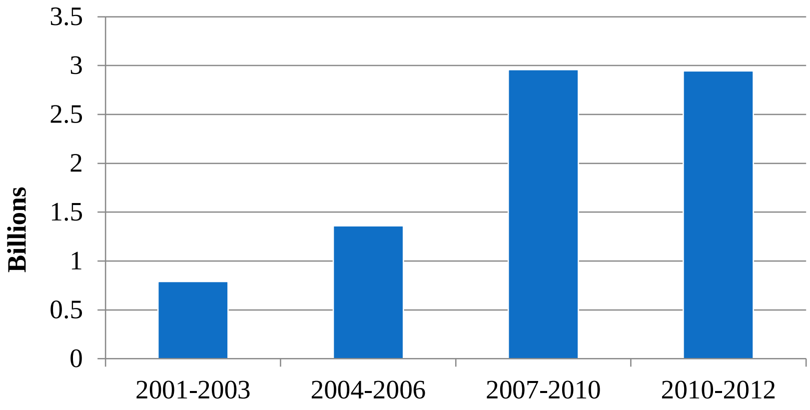
[70] *Ibid*

[71] Bank of Zambia. (2013). Foreign Private Investment Report. Lusaka

to attract FDI and have opened up the Zambian market and made it a more attractive FDI destination.[72]

The effect of these reforms can be seen through the increase of FDI inflows which totalled US$121.7mn in 2000 in terms of new investment into Zambia. As depicted in the graph below, after 2011, Zambia recorded a rise in FDI of 45 percent, recorded an eight-fold increase in FDI reaching US$1.3bn in 2007 and hit a record US$2.4bn in the first half of 2010, with 33, 1401 pledged employment. Most of the investment was coming from the mining and minerals sector while the construction sector, which is currently in a boom, and agriculture sector have driven the rise. The rise in FDI inflows is a clear indication that government policies are on a right path and that investors are showing confidence in the country's economic environment. Most of the investment goes into tourism, manufacturing, construction, telecommunications and mining.[73]

Figure 3: Foreign Direct Investment, Net Inflows (US$) [74]



National Legislation

The Zambia Development Agency (ZDA) act of 2006 is the primary piece of legislature that regulates investment in Zambia and offers a wide range of incentives in the form of allowances, exemptions and concessions to companies. The Zambia Development Act assures investors that property rights shall be respected. No investment of any description can be expropriated unless Parliament has passed an Act relating to the compulsory acquisition of that property. Also, in case of expropriation full compensation shall be made at market value and shall be convertible at the current exchange rate.[75]

The mining industry has been the economic and social backbone in Zambia since the first exploitation of copper deposits on the Copperbelt. For the past 60 years the Zambian economy has been heavily reliant on the mining sector. Zambia's mining sector has experienced significant foreign interest and investment driven mainly by the privatisation of state-owned Zambia Consolidated Copper Mines (ZCCM), a low taxation environment and low political interference. Zambia's mining sector is currently dominated by entities owned by multinationals.[76]

---

[72] Van der Lugt, S., & Hamblin, V. (2011). Assessing China's Role in Foreign. Hong Kong: Centre for Chinese Studies, Stellenbosch University
[73] Supra Note 75
[74] http://www.factfish.com/statistic-country/zambia/foreign+direct+investment,+net+inflows,+bop
[75] Banerjee Shuvojit, C. L. (2006). Investment Policy Review. NEW YORK and GENEVA: United Nations Conference on Trade and Development
[76] Campell, D. (2010). Zambia Environmental Threats and Opportunities Assessment. Washington DC: U.S. Agency for International Development.

The Ministry of Mines and Minerals Development is responsible for enacting legislations for the mining sector in Zambia. The mines and minerals development act 2008 is the prime law that governs the mining sector in Zambia. The Zambian government has adopted a pragmatic mineral policy which is designed to enhance investment in the mining industry and to ensure the development of a self-sustaining minerals-based industry.[77]

Zambia still has an exceptionally high level of macroeconomic dependence on mining. It makes an unusually large contribution to total export earnings, national investment and total foreign direct investment and employment. The sector contributes at least 12 percent of GDP to total export earnings, contributes about 80 percent and accounts for 86 percent of FDI. Mining also plays a vital role in generating employment in and around mining districts. Mining employment levels have risen on the back of the gains in investment and production. Together the four major mining companies employed 56,300 people in 2012, almost all of whom are Zambian (98-99 percent). In relation to government revenue, in 2012, almost one-third (32 percent) of all tax revenue received by the government was from mining sector taxes.[78]

Zambia also recognises numerous international treaties/conventions at the global, regional and sub-regional level. These treaties cover a variety of fields, such as trade and investment, diplomatic relations, climate change and human rights. At the national level, the Zambia Environmental Management Agency (ZEMA) administers the Environmental Management Act and deals with issues pertaining to mining that arise therefrom.[79] ZEMA is an independent environmental regulator charged with ensuring the sustainable use of the country's natural resources. ZEMA's mandate is outlined in the Environmental Management Act of 2011 that covers all matters affecting the environment, from pollution to waste disposal.

Table 13: Legislations Pertaining to Mining in Zambia

Mines and Minerals Development Act of 2008 ("Mines Act")	This is the primary law governing the mining sector in Zambia. The Mines Act provides for mining rights, mining licences, large scale mining in Zambia, Gemstone mining, safety, health and environmental protection, geological services and analysis, royalties and charges as well as administration of the mining sector in Zambia.
The Zambia Environmental Management Agency (ZEMA)	Formerly known as the Environmental Council of Zambia (ECZ), is an independent environmental regulator charged with ensuring the sustainable use of the country's natural resources
Zambia Development Agency (ZDA) Act	It governed the FDI issues in Zambia. All investors, foreign or domestic, are required to apply to the ZDA for approval to invest, for which they must undergo a screening process

[77] Zambiamining.com. (2014). Mining in Zambia. Retrieved April 14th, 2014, from Zambiamining.com
[78] International Council on Mining and Metals (ICMM). (2014). Enhancing mining's contribution to the Zambian economy and society. London, UK. International Council on Mining and Metals (ICMM)
[79] Chilongoshi, M. (2009). An analysis of the regime governing large scale Mining Sector. Lusaka: University of Zambia

Land Act	All titled land is governed by the Land Act of 1995 and is vested in the President. It can be inherited but can only be sold, with presidential consent, through the Commissioner of Lands. Presidential consent is also required to renew or extend the lease.
Other relevant legislations	Other mining relation regulations include: Mineral Royalty Tax (Repeal) Act, Petroleum (Exploration and Production Act), Explosives Act, and Environmental Protection and Pollution Control Act.

Other Indian Investments in Mining sector in Zambia

Dharni Sampda Pvt Ltd (DSPL) is an Indian Mining Company with experience of over 10 years in the mining industry. DSPL operates several mining projects in African Nations through its mining permits at Ivory Coast, Zambia, Niger and Gabon. DSPL has substantial high-grade mineral reserves of Manganese, Uranium, Bauxite, Diamond, Baryte, & Nickel.

Case Study

The company identified in Zambia is involved in the operation of an open cast coal mine with a production history of almost 40 years. The survey consisted of 50 respondents. The aim of the survey was to analyse the impact of Indian investment on the sustainability of a local community in Zambia and to gather its perceptions of the effect that the company had had on its livelihood. This report is based on the analysis of a perception survey that was conducted on local communities in Maamba, a township in Sinazongwe district of Southern Province of Zambia, which is about 350 kilometres from the capital city of Zambia, Lusaka.

The community is characterised by a lot of small scale agriculture activities taking place especially along the flat land found along the streams in the surrounding areas. Maize fields are common in the area and cultivated for up to five years before planting a drought resistant crop such as sorghum, millet etc. Animal husbandry is limited to the keeping of goats, pigs, chickens, ducks and cattle. Mountains dominate the land so much that land for settlement is only found in isolated pockets. However, most of the habitable land is used for agriculture. There is no manufacturing or any other industries within the mining licence area, or within the larger area surrounding the project. Traditionally, men control most of the land. They decide on the use of the land while women have limited say over what to do with the land.

Profile of Survey Respondents

It was important to get the views of the community in this survey in order to get a useful insight into how people perceive the current investment in their community, a description of the community, the people's attitudes and expectations from the company. Also, views help identify the needs of the community in order to provide services appropriate to those needs.

Table 14: Respondents Characteristics

	Response Count	Percentage
Total number of respondents	50	100
Male	26	52
Female	24	48

Table 12 shows the composition of the respondents by sex. 52 percent were male and 48 percent were female. Majority of the respondents were aged between 30 to 39 years of age. 72 percent of the respondents come from the area were the survey was carried out. 36 percent of the respondents lived in the area since birth.

Social Impacts

In order to analyse social impacts, the issues that the survey covered were – migration, displacement, infrastructure investment and gender issues. The overall perception of the presence of the company by the respondents was that 54 percent of the respondents felt that the company has benefited the community because through the investment of the company in the mine and the construction of the power plant jobs have been created and the members of the community have been employed. The company has also helped bring water to the community. 56 percent feel they have benefited from the presence of the company in the community because they have been employed by the company and for some their businesses are doing fine now because the people employed now have disposable income.

Further, the company also follows a well-defined Community Development Programme aimed at addressing the needs of these communities. The Company has established Maamba Development Trust to spearhead social and economic development in Maamba, Sinazongwe district as a whole and in other areas where Maamba Collieries Limited conducts its business, with particular emphasis on health, education and livelihood development activities.

Migration

Most of the respondents (94 percent) felt that there had been an influx of people into the region since the company started its operations. The results indicated that, 66 percent of the respondents rated the influx of people into the area to be high. This influx is mainly attributed to the presence of the company in the area and the spiral effects it has had on the development of the area. As a result of the increase in people, there is a lot of pressure on the natural resources and basic infrastructure. 80 percent of the respondents held that the increase in people has also put a lot of pressure on the basic infrastructure. The respondents said that the infrastructures with the most pressure are the roads and the health facilities.

As a result of the influx of people in the area there have been some conflicts between the locals and the migrants. The results showed that 62 percent of the respondents had witnessed tension between the community members and the migrants. The people experiencing tensions the most are the locals because they say that they are competing for jobs with foreigners and people coming from other parts of the country. They feel they are not given first priority when it comes to job opportunities. In terms of measures being undertaken, 16 percent of the respondents agreed that measures were being taken to resolve the conflicts, while 34 percent said that they were not aware of measures being undertaken by the government and/or the company to resolve such tensions.

Displacement

The purchase of the land was undertaken by the previous company and not the Indian company in question. However, 62 percent of the respondents were aware of how the land was acquired by the earlier owner of the company.

The acquisition of the land by the company was done according to the laws and regulations of the country. By law, all land transactions require the president's consent except for grants of use and occupancy rights based on custom (sec. 8(3), Land Act, 1995. According to the acts, the primary pathways for acquiring customary land are through the consultation of customary land owners and compulsory acquisition by the state (Lands Act 1995, Land Acquisition Act 1996). In the first of these, the investor either seeks consent directly from the chief with consultation of the village headman or a lands working group of the Ministry of Lands and ZDA negotiates land transfers on behalf of investors.

In the former case, the investor may move independently or move together with representatives of government agencies. If the acquisition is approved, the Chief issues an approval letter and the investor carries out a physical demarcation of the area with a sketch map in the presence of village headmen, and both are submitted to the District Council (DC). The DC issues a recommendation to the Commissioner of Lands, who either approves the request or, for requests involving more than 1000 ha, submits a letter to the president for his approval (Ministry of Lands 1996). Compensation is determined and paid to those private persons or bodies whose land is so acquired (Sec. 24 of land acquisition act).

In relation to land rights, they have been issues pertaining to ownership of the houses that were built by the company after some the community members were displaced. The displaced people were not able to secure title deeds for the houses, as because the land was owned by the company. The results showed that 54 percent of the respondents felt that their land rights were affected. However, on the other hand, in terms of the process of acquiring land, 32 percent of the respondents were of the opinion that it was a fair process while 58 percent of respondents were of the opinion that that the process was not fair, given that they were not provided the title deeds. Thus, 64 percent of respondents felt that they would have preferred to be involved in the acquisition of land, rather than being represented by the chief. Thus, this is an opportunity for the present owners of the land, to address issues pertaining to land rights and being able to give back to society and gain their confidence.

Regarding compensation provided to community members that were displaced, 84 percent of the respondents were aware, that the members displaced were duly compensated, as per the laws of the land and to the satisfaction of the respondents.

Infrastructure Investment

The presence of the company has resulted in improvement in infrastructure development in and around the Maamba community. 58 percent of respondents admitted that infrastructure did develop in the area, since the presence of the company and its new owners. The results showed that 74 percent of respondents shared that the company is making investments to the benefit of the community, such as educational facilities (establishing schools from primary to secondary level), modernising the medical facilities and the entire infrastructure being provided the company is accessible by the community members.

Gender

28 percent of the respondents felt that the company had created more job opportunities for women and that the socio-economic position of women in the community has changed since the company's arrival. Integrating women into the labour force in every sector is cardinal. MCL mentioned that they have employed women from the community who are working in operatives, middle management as well senior management. At present, the company does not run any special skill development or similar programme for women (non-employee) but plans are under way to teach unemployed women in income generating skills. However, the company has facilitated establishment of dairy, cattle, goats and poultry units by vulnerable and poor women.

Economic Impacts

Coal mining is the dominant economic activity in the area. Maamba residents are mainly dependent on the coal mine for their survival. They either work for the mine or supply goods and services to the mine or to its employees. Before the transfer of ownership, diminishing activities at the mine caused a lot of suffering for the locals as there were a few alternative opportunities for them. Some ventured into subsistence crop and pastoral farming. Most households in the area surrounding Maamba earn their living by keeping livestock, specifically cattle, goats and fishing.

72 percent of the respondents felt that the company had increased employment opportunities to the community, whereas 92 percent of the respondents were of the opinion that they were certain job losses as a result of the establishment of the company, but those people were able to find alternative employment. As a result of employment opportunities, 52 percent of the respondents felt that there had been an increase in the overall income of the local community and 54 percent of the respondents felt that the local economy had been impacted positively since the establishment of the company.

In assessing the impact of the company on the community, 48 percent of the respondents felt that the company has had a moderate impact on employment generation while 46 percent of the respondents felt that the company had moderately created jobs for the community within the company. 34 percent of the respondents felt that the company had created an environment for other business opportunities in the area. Whereas 54 percent of the respondents felt that the company has in overall impacted the local economy positively. This moderate impact maybe due to the fact that the respondents felt that the jobs available are being taken by the migrants.

Environmental Impact

Before the mine was taken over by the company, the area was characterised by poor environmental conditions. The community surrounding the mine noted bad air quality due to spontaneous fires from the loosely covered coal dust in disused overburden dumps during the dry season. This generated smoke and dust which caused a lot of pollution in the project area. There was also no clean and safe water. This air pollution hangs over the area and forms a distinctive haze especially during cold temperatures. The haze is worst during the coolest months, June and July, when temperature inversions tend to trap the smoke near ground level. The haze lasts until the weather becomes hot in the months of August or September.

The results show that 84 percent of the respondents felt that the company was environmentally responsible because of the action that they are taking to reduce the emissions from the spontaneous. The company has been filling land back into mined out areas. 34 percent of the respondents felt that the company was taking some steps to restore the environment. One of the steps was changing the water pipes.

Additionally, according to the ZEMA, before the company took over the mine there were complaints about the quality of the drinking water due to the waste discharged from the mine but after the company took over they changed the waste discharge point from the mine and improved the water quality.

Key Findings and Recommendations

Mining development in any area is likely to present opportunities for local communities. These include job opportunities, infrastructure improvement and business opportunities.

Due to the construction of the power plant and the revamping of coal mining, employment opportunities have been created for the locals, leading to income generation which has been seen to be a positive impact for the community. Management of the company indicated that they have employed approximately 80 percent of the people from the local community. According to the resettlement action plan about 99 households, representing a total of 693 people were displaced. Those that were displaced were properly compensated by the company. The affected persons were properly resettled – with a compensation package of physical houses, relocation allowance and other related infrastructure (like street lightning, water, recreation hall, roads).

There has also been infrastructure development as a result of the company's presence. Interviews with the company and other stakeholders such as the CSOs and the business chambers noted that there have been developments that are benefitting the community due to mining investments. They indicated that this development has largely been done through corporate social responsibility.

CSR has made a great contribution to the livelihoods of local communities, for instance, investments made in roads and foot bridges, sewage ponds, solid waste dump site, water supply tanks, garbage handling equipment, recreation facilities (stadium, golf club, tennis court, etc.) have improved livelihoods of the community around the mine area. The company takes CSR seriously and by way of showing this is they have assigned a senior person with the responsibility of CSR. The Manager of Maamba Development Trust (MDT) has been appointed to be in charge of CSR activities. The company also has a policy that defines CSR.

Mining and associated infrastructure development requires the use of land that was previously available for agricultural activities. Various CSO's mentioned that there has been a reduction in agriculture and pastoral activities due to mining operations in the local community, by the company. Further, there have been reductions in agricultural activities given that the company had bought land for expansion of the mine which was being used by some of the members of the community for their agricultural activities. However, the people were duly compensated by the company and willingly sold their lands to the company.

Mining by its very nature requires that land, air and water systems be affected. There have been concerns regarding the environmental problems caused due the presence of mining companies. The construction activities were negatively affecting the land, and forestry and vegetation. Issues of emissions due to heavy traffic to and from the construction site, degradation of air, water, soil and even noise due to company operations. But in response to these concerns, as confirmed by community members, the company is taking the necessary steps to protect the environment by undertaking massive landscaping within the mine area where trees and lawns have been planted. Trees have also been planted in the township. The company is also sensitising the community on the dangers of indiscriminate dumping of plastic waste in the environment through the ‘keep Maamba free from plastics’ campaign. Thus, one can draw the conclusion that the company is aware of its social obligations and is taking responsible steps to overcome the negative effects on the community owing to its presence.

In conclusion, there are a couple of measures that could be taken by mining companies in order to ensure positive benefits in terms of social, economic and environmental aspects to spill over into local communities. Dialogue between the mining companies, government and the local authorities should be enhanced, so as to better understand the needs of the communities and the role that the government and mining companies could play.

There is also need for constant third party monitoring and evaluation on the company’s commitment to safeguard the environment. Communities need to be sensitised on the environmental impacts of the mines for them to be proactive and be able to identify and act on any violations from the mining company and not wait on government or the environment agency to act. The company has plans for increasing investments in the future. The company representatives are of the view that relevant steps should be undertaken in order to ensure benefits in terms social, economic and environmental aspects towards the community by expanding and upgrading existing infrastructure, such as schools, hospital, banks, shops, housing and road network to service the ever increasing population. Further, steps would also be taken to ensure that operation within the mine and thermal power plant construction are environmental friendly and sustainable.

Recommendations

- Adopt guidelines for firms on how to implement CSR programmes in the country. It should therefore, be considered that a CSR policy should be adopted by the Zambia Government so as to create and establish benchmarks for various companies including mining in order to ensure that the investments coming into the country is responsible and sensitive to the needs of the local communities.

- Promote knowledge and skills transfer to local workers to increase their participation in the mining workforce. Mining companies should be required to implement training for the local residents in the surrounding communities.

- In order to prevent potential conflict between foreign workers and locals mining companies should start sharing information on the labour market. Dissemination of information on the management of labour by mining companies. This should include details on reasons behind the use of foreign labour, available employment and training opportunities for local residents in the short and medium - term, and immigration policies.

- According to the findings of the research the people that have been displaced cannot get title to the houses that have been built for them. As such, the houses built belong to the company and the members fear that they can be taken away from them at any time. It is, therefore, advised that the displaced persons be given title for the houses they are occupying because these people owned the land that they were displaced from.

The Kenyan Case Study

Introduction

Kenya is a market-based economy with only a few state-owned infrastructure enterprises. Its economic advancement agenda hinges on the need to pursue an open economic policy and the demand for foreign capital and investment flows, *inter-alia* FDI and Overseas Direct Assistance (ODA).[80]

In terms of FDI inflows, Kenya is one of the most favoured destinations in East Africa. Since 2007 the Kenyan government began to actively focus on attracting FDI, by establishing free trade zones and improving infrastructure business incentives[81] and various other reforms, including adoption of relevant legislations, as reflected in Table 1.[82] As a result, Kenya was placed within the top ten reformers in the World Bank's Doing Business 2008 report. This happened after the government took major steps to implement licensing reforms by reviewing the regulatory regimes that resulted in the elimination, simplification, consolidation and harmonisation of business licenses.[83] As a result, the country was ranked among the top destinations for FDI in both the Middle East and Africa, particularly due to the increased investments in infrastructure.[84]

National Legislations

Generally, all investments are anchored under the Kenya Investment Promotion Act (IPA) of 2004 which came into effect on 03rd October 2005 and was later amended in 2009. The objective of the act is to promote and facilitate investment by assisting investors in obtaining the licenses necessary to invest and by providing other assistance and incentives and for related purposes. The IPA established the Kenya Investment Authority (Ken Invest) and provided it with the responsibility of promoting and facilitating investments in Kenya. It provides a one stop window for investors including provision of information on investing in Kenya.

The IPA provides the issuance of Investment Certificates to both local and foreign investors upon application within the prescribed form and satisfaction of the provisions of the Act. The IPA establishes the National Investment Council as an unincorporated body with functions of advising the government and government agencies on ways to increase investment and economic growth in the country and to promote co-operation between the public and private sectors in the formulation and implementation of government policies relating to the economy and investment.

The country's Foreign Investment Protection Act of 1964 amended in 2009 provides special protection to certain approved foreign investments and for matters incidental thereto. Under the Act, any foreign national who proposes to invest foreign assets in Kenya may apply to the Minister for Finance for a certificate that the enterprise in which the assets are proposed to be invested is an approved enterprise for the purposes of the Act. The minister shall consider every application made and if is satisfied that the enterprise would further the economic development of, or would be of benefit to Kenya, he may in his discretion issue a certificate to the applicant.

---

[80] http://www.kenyamission-un.ch/?About_Kenya:Kenya_Foreign_Policy
[81] http://www.iss.nl/fileadmin/ASSETS/iss/Documents/Academic_publications/Cheetah_Challenge_2012_Heemskerk.pdf
[82] http://www.doingbusiness.org/reforms/overview/economy/kenya
[83] http://www.kam.co.ke/index.php/opinion-pieces/148-why-kenyas-competitiveness-is-waning
[84] http://www.theeastafrican.co.ke/business/Kenya-ranked-among-top-FDI-destinations-in-Africa/-/2560/1628028/-/rpvmgrz/-/index.html

The Constitution of Kenya under article 65 grants non-Kenyan citizens the right to hold land on the basis of leasehold tenure for a period of ninety nine years. Under Article 40, the constitution also grants the right to own property of any description and in any part of Kenya either individually or in association with others.[85] Under article 40 (Section 3), the constitution provides for prompt payment in full, and of just compensation to the affected parties.

The Company Act (Cap 486) spells out provisions dealing with the incorporation of companies, share capital provisions, shareholder rights, offers to the public, the management and administration of companies, accounts, directors duties, consequences of winding up and the regulation of foreign companies based in Kenya.[86] The Capital Markets (Foreign Investors) Regulations 2002 requires reservation of at least 25 percent of ordinary shares to local investor by every listed foreign company. It restrains the issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company or co-operative society which for the time being owns agricultural land situated within a land control area.[87]

Legislations specific to investment in the mining sector of Kenya have been captured in Table 15.

Table 15: Legislations Pertaining to Mining in Kenya

Mining Act Cap. 306 of the Laws of Kenya	All mineral exploration, exploitation and trading activities in Kenya are currently regulated under the said Act
National Environmental and Coordination Act	To provide a framework for sound environmental management in Kenya; to provide a framework for improved legal and administrative coordination of the diverse sectoral initiatives for the management of the environment; to be the principal instrument of Government in implementation of all policies relating to the environment.
Foreign Investment Protection Act (FIPA)	Under the Foreign Investment Protection Act (FIPA), foreign investors can repatriate capital and profits. To be eligible for FIPA guarantees, investors are required to obtain a certificate of Approved Enterprises from the Ministry of Finance. The Act also protects foreign investment against expropriation.
Environmental Management and Co-ordination Act No. 8 of 1999	In order to mine, the licensee will be required to acquire a mining lease. The prerequisite for obtaining lease include preparation of a mine feasibility report, undertaking an Environmental Impact Assessment (EIA) Study in accordance with the requirement of the Act
National Mineral Resources and Mining Policy (2007)	The objectives of this policy covers several facets of mining in Kenya such as the regulatory framework, stimulation of

[85] http://www.internationallawoffice.com/newsletters/detail.aspx?g=7bb56275-1bcb-db11-adf6-001143e35d55
[86] http://www.africalegalnetwork.com/wp-content/uploads/2012/10/Investment-Guide-Kenya1.pdf
[87] http://s3.marsgroupkenya.org/media/documents/2010/11/286d25a92d2378a86cfce764312124a0.pdf

	investment in the mining sector in Kenya, ensure harnessing of minerals contributes optimally to vision 2030 and national development. Additionally, the policy also recognises the need to bring into the mainstream the small scale artisanal mining sector
National Land Policy of 2007	This policy will ensure that all land is put into sustainable and productive use.
Resettlement/Land Acquisition of Policy Framework of the Government of Kenya	The objective of the policy is to outline the manner in which the people in areas where minerals have been found to be relocated to other areas.

Kenya-India Bilateral Investment Relations

Kenya has had good economic and trade relations with India for many years. This relationship has seen Indian investments in Kenya increase in the last decade. In the 2012-2013 financial year, Indian investment to Kenya was to the tune of US$1.5bn.[88] Their cordial foreign policies date back to independence. According to Indian High Commissioner to Kenya Sibabrata Tripathi, diplomatic exchanges between the two countries, particularly at cabinet level have played an important role in improving trade relations.[89] Among the bilateral investment that has been agreed in the past are the following:

Table 16: Bilateral Investment Agreements (Kenya-India)[90]

AGREEMENTS	YEAR
The 2nd round of negotiations to review the DTAA was held in Nairobi	2010
An Agreement on extension of a Line of Credit of US$61.6mn by EXIM Bank of India to the Government of Kenya for utilisation in the power transmission sector was signed during the visit of Prime Minister RailaOdinga to India.	2010
An Agreement signed between Telecommunications Consultants India Ltd (TCIL) and the Kenyan Ministry of Information and communication regarding the Very-Small-Aperture Terminal (VSAT) project. Equipment was delivered by TCIL in 2010. Terminals have been installed at Kenyatta National Hospital in Nairobi (August 2011) and at Maseno University Varsity Plaza for Learning Centre in Kisumu (September 2011)	2009
Memorandum of Understanding was signed between India Trade Promotion Organisation and Export Promotion Council of Kenya.	2003
Memorandum of Understanding was signed between the National Small Industries Corporation and Kenya Industrial Estates Ltd.	1998

[88] en.wikipedia.org/wiki/India–Kenya relations
[89] http://www.the-star.co.ke/news/article-106899/india-elbows-way-become-kenyas-top-import-market
[90] http://www.hcinairobi.co.ke/india-kenya-overview

The signing of a Memorandum of Understanding between the Confederation of Indian Industry (CII) and the KNCCI.	1996
Signing of India-Kenya Double Taxation Avoidance Agreement (DTAA).	1989
Setting up of another Joint Business Council by the Federation of Indian Chambers of Commerce & Industry and the Kenya National Chamber of Commerce & Industry (KNCCI).	1985
Establishment of the India-Kenya Joint Trade Committee (JTC) at the Ministerial level. This committee has since held six meeting with the last one being in October 2010 in Nairobi.	1983
Development assistance in form of loans and a line of credit including loan of Rs. 50 million to Government of Kenya and variety of Credit by Export-Import (EXIM) Bank to Industrial Development Bank Capital Ltd.	1982
India-Kenya Trade Agreement was signed according each of them the Most Favoured Nation Status.	1981

There have been significant investments by Indian firms in Kenya with interest in ports and roads, mining, healthcare and energy sectors in the recent years. Among the key ones include Tata Chemicals manufacturing soda ash in Lake Magadi, Essar Energy (petroleum refining) with 50 percent interest in Kenya Petroleum Refineries Ltd, Reliance Industries Ltd (petroleum retail), Delta Corp East Africa Ltd – a subsidiary of India's Reliance Industries owned by billionaire Mukesh Ambani – which has huge investments in Kenya's real estate development, Tata Motors, and Bharti Airtel. Others include Indian public sector insurance company, KenIndia Assurance Co. Ltd.

More recent investments by Indian corporate in businesses in Kenya include Tata (Africa) (automobiles, IT, pharmaceuticals, etc.),several Indian firms including KEC, Karuturi Ltd., Kalpataru Power Transmission Ltd, Power Grid Corporation of India Ltd, Kirloskar Brothers Ltd, Mahindra & Mahindra, Thermax, WIPRO, Jain Irrigation System Ltd, Punj Lloyd, VIL Ltd, Emcure, Dr. Reddy, Cipla, Cadila, TVS and Mahindra Satyams. These companies have a business presence in Kenya as do the Bank of India and the Bank of Baroda, Housing Development Finance Corporation (HDFC) and the Central Bank of India which also have their Representative Offices in Kenya, as well as other Indian multinational corporations.[91]

According to the ODI (2013) there has also been an increased reliance on funding from Indian banks by many Kenyan businesses in the past five years. The report also shows Indian banks increasing their lending to Kenyan businesses six-fold between 2005 and 2012 during which India has been the leading source of Kenyan imports. Additionally, the report also indicates that Kenya attracted a larger share of the Indian cross-border bank lending going to low income African countries. Looking at low income countries (LICs), Indian banks have targeted mainly Kenya which attracted US$100mn (Sh8.5bn) in the first nine months of 2005 and more than US$600mn (Sh50bn) in the same period in 2012.[92]

[91] http://www.businessdailyafrica.com/Indian-bank-loans-to-Kenyan-firms-hit-Sh50bn-mark/-/539552/1757318/-/ia031b/-/index.html
[92] *Ibid*

Case Study

The company identified in Kenya is the world's second largest manufacturer of soda ash. The original soda ash company was acquired in 1924 by Brunner, Mond & Co., founded in 1873 by German chemist Ludwig Mond and British industrialist Sir John Tomlinson Brunner (the Liverpudlian son of a Swiss cleric, who went on to become a Liberal MP and, in 1906, a Privy Counsellor). In 2005, the company was taken over by an Indian Company. [93]

The current company's management mission, vision and values are deeply rooted in the principles of sustainability encompassing stakeholder engagement, environmental stewardship, creating economic value, promoting human rights and building social capital. The company supports the UN Global Compact and is committed to reporting its sustainability performance in accordance with GRI guidelines. Further, the company actively works towards improving its eco-footprint with a policy of 'avoid, reduce and reuse'. Resource optimisation, alternative sources of fuel and raw materials, and maximising reuse and recycling are key drivers in operations.

The fieldwork with the purpose of analysing the impact of the company on the local communities was undertaken in two phases i.e. a scoping visit leading to a full blown field survey. The purpose of the scoping visit to the project site was to collect first-hand information, undertake mapping of the stakeholders, etc from the community living within the premises of the company. It also included interactions with key opinion leaders from the community. The field surveys on the other hand build on the scoping visit and was undertaken to capture the views of the external community and comprised both one to one interviews and focus group discussions with the neighbouring Maasai community.

The views of the surrounding Maasai community predominantly highlighted that when the company underwent restructuring programmes, it had a negative spillover effects on the surrounding communities such as the Maasai.

The community that lived within the compound had very positive views of the company and the projects that it had begun to implement in and around its area of operations. The company serves as their primary means of livelihood as over 90 percent of the neighbourhood is absorbed as either professional or unskilled staffs. Subsequently, they felt that there had also been an increase in job opportunities for the entire community both as professionals as well as manual labourers within the facility. Owing to the presence of the company and investments in infrastructure, the community members were able to get access to both primary schools as well as training facility for new staff members, selected from the community members. As reported by the respondents, the company also provides good housing facilities and the community members also benefit from security as the company has established community police to ensure security of the community members living within the premises of the company.

Members within the community also benefit from available banking services at the facility where they are able to undertake transaction for their socio-economic needs. There is a beehive of economic activities within and outside the company premises, as community members are engaged in various business activities such as hotels, shops, butchery, production of cultural artefacts, etc, run and

[93] Hughes, L (2008), "Mining the Maasai Reserve: The Story of Magadi", Journal of Eastern African Studies, Vol. 2, No. 1, 134164,

managed by themselves. The company has ensured access to quality drinking water to the community drawn all the way from Mau hills and also provides for better road network including tarmac and rail transport to the benefit of the community members.

The survey results below are based on the responses received from the neighbouring Maasai communities. It comprised of both one to one interviews and focus group discussions with relevant stakeholders.

Profile of Survey Respondents

Table 17: Respondent Characteristics

	Response Count	Percentage
Total number of respondents	29	100
Male	19	66
Female	10	34

A total of 29 respondents were interviewed of which 66 percent were male and 34 percent female. Most of the respondents reported having lived in the same area between ten and nineteen years. 31 percent were between the age 50 and 59, 28 percent between 40 and 49 years, and 41 percent between 20 and 39 years.

All the respondents were from the neighbourhood of the company in Kajiado County. The absence of another tribe among the respondents was because the survey was carried out in a rural area that was inhabited only by the local Maasai community.

Social Impacts

According to the responses, during the regime of the previous owners, the Maasai community members had access to wide range of services and facilities. However, almost all of the respondents reflected that due to the scaling down of the operations by the current Indian owner of the soda ash company, the benefits that they used to enjoy had gone down. The company has become the latest Indian firm to implement restructuring programmes that have affected employee contracts in the wake of high energy cost. The other Indian companies with a similar experience include Essar (which jointly owns the Kenya Petroleum Refineries), Karuturi (flower grower and exporter) and Bharti Airtel (yuMobile) whose businesses in Kenya have run into problems, some to the extent of closing down their operations.

Migration

Most respondents felt that since the company had been in operation, and even before the Indian company took over the operations, there had been an influx of people from different parts of the country as well as foreigners. According to respondents, the influx had been so high that competition for limited resources and opportunities had threatened their livelihoods in the area.

While the influx of people to the area has reportedly exerted high pressure on the natural resources of the area, the infrastructure has not been affected as much by the increased number of people in the area. However, one of the key infrastructural facilities that were affected was the water supply as the increase in number of people in the area led to decrease in the quantity and quality of water supplied to the community Maasai community. Water is particularly important resource for the community as they are a pastoralist community and the shortage of water has led to decrease in livestock productivity. This therefore has had negative impacts on their economic activity. The community members also expressed certain concerns regarding the disposal of chemicals from the company into nearby water bodies that are usually used by the massai communities for their own use and also for their animals, which have negatively affected their well-being. The respondents also recorded some tension between the locals and people who moved into the area. These tensions were caused by the increase in number of people migrating to the region which has caused constraints over availability of employment, limited pay with more working hours, shortage of housing, etc due to influx. However, according to the community members the company representatives have been engaging with the members to find solution to the problems and take relevant steps to deal with issues of migration.

Displacement
The results of displacement were difficult to identify as the establishment was built prior to current Indian ownership of the company. None of the respondents were aware of how the land was acquired; but all of them were in agreement that the land belonged to their ancestors. There is a belief in some circles that a clause in the 1911 Maasai Agreement through which the community lost large portions of their land to the British, allowing mining in the Southern Maasai Reserve, was added by Governor Percy Girouard after Maasai signatories had put their thumb-prints to the document.[94]

The Kenyan Constitution indicates that land disputes should be settled by communities through recognised local community initiatives that are in agreement with the law. The Maasai community felt that that their leader was not fully informed of the implications of signing the land agreement and as a result of which a large tract of land was given to the company and the Maasai were left to live in ranches.

Infrastructure Investment
Education and medical facilities, roads, railway transport, training facilities and electricity are the key infrastructure sectors which have attracted substantial investments by the company. However, the community indicated that they have limited access to certain infrastructural facilities such as the education and training facilities. The company provides these services to its employees only. The other infrastructural facilities however, such as medical facilities, roads, electricity, water and railway transport are accessible by the local communities.

Economic Impacts
Some of the respondents were of the opinion that the company's employment policy provides for preference for locals in casual jobs recruitment. By policy, 75 percent of casual workers at the soda ash plant and 100 percent at the salt plant have to be locals. The management of the company has also outsourced cleaning services in the offices and Magadi Township to the local community. However, while implementing the survey, some of the respondents indicated that some people had lost their jobs during the scaling down of operations. During the survey, it was also revealed that men control about 70 percent of the family expenditure with women controlling about a 25 percent and other members of the family, mainly sons, control the rest. Women still control only a limited range of activities and

[94] Supra Note 14

have restricted access to decision-making in the community. They lack decision-making power on land tenure issues and rarely own productive resources such as land or livestock and trees. They have limited sources of income compounded by the inability to access markets. Further, the findings indicated that the job opportunities provided for women are very few, in fact some of the women who had initially been employed were laid off during the scaling down of the operations. However, the company has taken steps to provide support to the women folk by exploring business opportunities in tourism and diversification of livelihoods such as bee-keeping, and posho-mills (flour mills) for women groups.

Environmental Impact

According to the survey findings, the respondents were of the opinion that the Indian company has done little to protect the environment and is also responsible for the destruction of vegetation in the area as a result of the harmful emissions into the atmosphere. The local community also fears that they are being exposed to diseases as a result of harmful emissions from the company's plant in the atmosphere. They noted a general "stuffy" environment around the lake probably due to the processing action by the company and lack of external drainage from the lake.

Overall

The areas where the local community would want the Indian company to invest are mainly in education, health and employment opportunities. The community also noted that the company could also assist the community get water through the use of trains. The community also expressed a want to be involved in the decision-making in certain areas that directly affected their livelihoods.

Key Findings and Recommendations

Apart from community perspectives, there are also varying perceptions of the Indian company by different players such as the Kenya National Chamber of Commerce and Industry (KNCCI), various CSOs as well as the local leadership based in Kajiado. According to some local CSOs, not much has been done by the company to improve the lives of the community members. According to them, there have been little tangible development projects for the community by the company apart from the opportunity for local women to undertake some sale of souvenirs and handcrafts within the company premises.

Contrary to the CSOs however, the Business Chamber paints a different picture of the Indian company as the only mining company in Kenya that has invested in the community. According to KNCCI, the Indian company is one of the companies in Kenya improving the lives of the community around them. For instance, company is associated with the building of schools in Kajiado County. The company also provides employment opportunities to local community members, sponsorship, transport facilities, water through digging of wells and provides health facilities

Based on the research findings, the study makes the following recommendations:

- There is a need to further localise the company's CSR agendas through community dialogue. Indeed this case study indicated that there is a need for dialogue between the community and the company regarding their role in development in order to help build trust and mutual understanding as well as communicate the limits of their contribution to development. It can also help to highlight locally relevant issues and approaches, which might not be prioritised in other contexts.

- There is need for more focused attention on environmental protection to benefit both human and animals in the surrounding area, particularly if the surrounding communities are dependent on the environment for their livelihood.

- The government needs to ensure that they are able to provide basic infrastructure such as, in this case, energy so as to not negatively impact the performance of company and therefore enable them to create more opportunities for the community

4. Key Findings and Recommendations

Summary of Key Findings as per the NVGs

Based on the findings of the case studies, the table below reflects how the responses that were given by the communities matched up against relevant NVGs.[95]

Table 18: Responses that Matched up against relevant NVGs

NVG Principles	Ethiopian Case Study	Kenyan Case Study	Ugandan Case Study	Zambian Case Study
Did the community feel the company promotes the well-being of all its employees? (Principle 3)	The company in Ethiopia has only recently started operation. Some of the community members questioned have been employed by the company as casual labourers. Hence, though some positive socio – economic impacts are visible, the degree of well-being of the employees cannot be gauged at the moment.	The company in Kenya is the community's primary means of livelihood and provides an alternative to tourism as a source of income generation. There have been increased job opportunities for the entire community both as professionals as well as manual labourers within the facility. The company also reportedly provides good housing facilities to the community members who double as workers, housed together with their families at the company' premises. They subsequently also benefit from security as there is established community policing working hand in hand with regular police post at the	The survey results indicated that the Indian company is highly regarded by the community because it has had a positive impact on the economic landscape of the community. The company provides skill development trainings to its employees and has significantly raised the level of disposable income. Further, it has also been engaged in a number of developmental efforts.	Coal mining is the dominant economic activity in the area. The company follows a well-defined Community Development Programme aimed at addressing the needs of the community members. Further, the Company has established Maamba Development Trust to spearhead social and economic development in Maamba, Sinazongwe district as a whole

[95] The NVGS relevant for this study have also been explained under the Methodology section

NVG Principles	Ethiopian Case Study	Kenyan Case Study	Ugandan Case Study	Zambian Case Study
		company to ensure security of the community at the company and the facility environs. Further, members within the community also benefit from available banking services at the facility where they are able to undertake transaction to address their socio-economic needs.		and in other areas where Maamba Collieries Limited conducts its business, with particular emphasis on health, education and livelihood development activities
Did the community feel that the business respects the interests of and is responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalised? (Principle 4)	The community members expressed that company had not created any jobs for women. Some also mentioned that the company could be more considerate of the impact that its operations has had not on the land on which they lived, but on the surrounding forest areas upon they depended for firewood and food.	A number of facilities that the Maasai community once used to avail have been shut down since the Indian company's takeover. The Maasai community members felt that unlike the Indian company's predecessors, the Indian company no longer provided benefits that used to be available to them which included: free medical services; free transport services which used to come five days a week; unconditional employment to community members; and free water delivered through train service.	The company has created job opportunities for women. The survey results indicated that the socio-economic position of women in the community has changed since the company's arrival. It also has a skills-development programme specifically for women in the community. However, the survey respondents also noted that the company needed to engage more with the community members on matters of development. Over half of the respondents felt that the company does not consult the community as stakeholders on	The company has employed women from the community who are working in operatives, middle management and senior management position. At present, the company does not run any special skill development or similar programme for women but plans are under way to teach unemployed women income-generating skills. Respondents felt that the company had created more job opportunities for women and that the socio-economic position of women in the community has changed since the company's arrival.

NVG Principles	Ethiopian Case Study	Kenyan Case Study	Ugandan Case Study	Zambian Case Study
			issues that affect them and indicated that the company should partner with the relevant regulators and government. CSR should also be increased.	
Did the community feel that the business respects, protects, and makes efforts to restore the environment? (Principle 6)	The community felt that the company has had no negative impact on water quality, air quality and land pollution; however their main concern is with regards to forestry and vegetation. The respondents have not yet seen efforts at replacing the trees that had been chopped down. The community members also noted that they would like the company to leave some patches of trees within the farm land as shelters of wildlife and as sources of medicinal plants, sources of fruits and roots for community harvest.	The community felt that the Indian company has done little to protect the environment and is also responsible for the destruction of vegetation in the area as a result of the harmful emissions into the atmosphere. The local community also fears that they are being exposed to diseases as a result of harmful emissions to the atmosphere. They noted a general "stuffy" environment around the lake probably due to the processing action by the company and lack of external drainage from the lake. Further, as there has been an influx of people due to the job opportunities brought by the company, the members feel that it has created pressure on the natural resources.	The survey results have shown that the company is environmentally responsible and that it is taking steps to restore the environment. Steps include afforestation and training of the community on land and environment conservation measures. The majority of respondents noted that on forestry and vegetation, the company had a positive impact in the area. The area that the community members felt were most vulnerable to degradation were was land pollution. Concerns were raised regarding the effects of the fumes, over cultivation of the land and an influx of people into the area.	Before the mine was taken over, the area was characterised by poor environmental conditions. The results show that majority of the respondents felt that the company was environmentally responsible because of the action to reduce the emissions. The company has even helped bring water to the community.

NVG Principles	Ethiopian Case Study	Kenyan Case Study	Ugandan Case Study	Zambian Case Study
Does the community feel that the business supports inclusive growth and equitable development? (Principle 8)	The business has not been in operation for long enough however, because it has begun to employ some of the members of the nearby community as casual labourers, they hope that the business will begin to increase their engagement with the company.	The company has established education facilities within the community; primary schools as well as training facility for new staff members. There has also been increased health service provision to the community members although some of the community members noted that the rates were at times out of their reach. There is a bee hive of economic activities within the company environment as community members outside the plant employments are engaged in various business activities including banking, hotels, shops, butchery, production of cultural artefacts, bars et al for the community. Further, the company has ensured access to quality drinking water to the community members within the company premises and provided better road network including tarmac and rail transport that links the community outside the company premises and the company, hence facilitating movements of persons and goods and promoting business. The members did raise the concern of being more actively involved in decisions regarding development. Community members outside the company premise, however, are yet to be connected to the main grid despite line passing through their	The company has invested in construction of roads, improving the network, educational and medical facilities. Regardless of the positive impacts of the company, the community members feel that more has to be done in terms of consultation and community involvement/engagement on matters of development.	The company has made significant investments to promote business activities and growth. Investments have been made in educational facilities (establishing schools from primary to secondary level) and modernising the medical facilities. Further, for the increase in disposable income, the business of other members has also improved.

NVG Principles	Ethiopian Case Study	Kenyan Case Study	Ugandan Case Study	Zambian Case Study
		ranches. This remains an area of much contention. Additionally, in previous years, the previous owners of the company used to provide a wide range of services to the community. However since the Indian company took over and had to recently scale down its operations, according to the responses obtained from interviews with the Maasai, this has had serious negative implications of their access to previously-available resources. Almost all of the respondents reflected that due to the scaling back of operations they had seen a decline in the benefits they used to enjoy.		

Key Recommendations

Indeed given the increasing FDI that will be flowing into the Africa from the BRICS countries as a group, below are various insights gained from this project and recommendations to ensure that the needs of communities are taken into consideration.

Social Obligation of Foreign Investments

FDI is important for the development of Africa as it is a means of increasing the capital available for investment and the economic growth needed to reduce poverty and raise living standards[96]. In addition, it can contribute to sustainable economic development, as it can result in the transfer of new technologies, skills and production methods, provide access to international markets, enhance efficiency of resource use, reduce waste and pollution, increase product diversity and generate employment

However, such investments whether in mining, agriculture or any other sectors need to earn a social licence to operate freely with trust in a particular location. A social licence is an unwritten social contract between the communities and the company (Minerals Council of Australia, 2005). Unless a company earns that licence, and maintains it on the basis of good performance on the ground, and community trust, there will undoubtedly be negative implications. Having a social licence to operate means that a project is accepted by a majority of its hosts including both local communities and other relevant stakeholders in the host nation.

Key Considerations when Operating in Developing Countries

One of the keys to successful operations of any foreign investment depends on its strategy to engage with local stakeholders and mainly the local community engagement as these are the people affected by a company's activities. The NVGs on Social, Environmental and Economic Responsibilities of Business also emphasise the importance of stakeholder engagements

A good engagement process by an investing company typically involves identifying and prioritising stakeholders, conducting dialogue with them to understand their interest and any concerns they may have and exploring with them ways to address these issues. Successful foreign investments across the globe are as inclusive and creative as possible when reaching out to their local communities, without such engagement, this can result in negative feelings. Therefore, broad-based stakeholder identification and engagement efforts are crucial in winning the trust of communities. There should be an approach by companies on how their activities can be integrated with social and environmental concerns in a way that promotes long-term community development.

In **Kenya**, though the worker or the staff who are part of the community resides within the company premises spoke highly about the company's CSR and facilities/benefits provided to them, some of the respondents of the survey, the Maasai Community who does not reside in the vicinity of the company had differing views. It became apparent that in the past, the Maasai community used to derive certain benefits from the predecessor of present company, which had been ceased since the Indian operations took over. According to the community, there has been little to no interactions with the company about their social need although they constitute a prominent community within the region.

The **Zambian** case study highlighted that dialogue between the company, the government and the local authorities need to be enhanced, so as to better understand the needs of the communities and the role that the government and mining companies could play.

[96] Loots, 1999; Ngowi, 2001; UNCTAD, 1997

In **Uganda**, the project company is highly regarded by the communities because it has impacted positively on the local economy since the company arrived. The most benefit for the communities is the creation of employment for the members of the community. Overall the company has been well received and the community is supportive of the developments the company is bringing in as a result of their investment.

In **Ethiopia**, although the company has only recently started its operations, the community is already experiencing the effects of its operations. The company is going to need to focus on getting the buy-in of the community which can be done by interacting and communicating more often with them on the current and future benefits of the investment to their day to day life by way of expanded employment opportunities, technology and skill transfers, and triggering key local services relevant to the community.

Environmental Concerns

Mining activities involved a high degree of environmental impacts in comparisons to agriculture activities, which can extend well beyond the extent of project areas. The impacts of a mining operation include air and water pollution, loss of forests, groundwater depletion, land degradation and reduced agricultural productivity.

The Maasai community in Magadai, Kenya felt that the company has not done enough to protect and restore the environment and is also responsible for lack of vegetation in the area as a result of the harmful emissions into the atmosphere. They noted a general "stuffy" environment around the lake Magadi probably due to the processing action by the company and lack of external drainage from the lake.

Outcomes of discussions in Kenya and Ethiopia suggest that there is need for more focused attention on environmental protection to benefit both human and animals in the surrounding area, particularly if the surrounding communities are dependent on the environment for their livelihood.

There is also need for constant third party monitoring and evaluation on the company's commitment to safeguard the environment. Communities need to be sensitised on the environmental impacts of the mines for them to be proactive and be able to identify and act on any violations from the mining company and not wait on government or the environment agency to act.

Compensation and Resettlement in Case of Land Conflicts

Foreign acquisition of land has become a contentious political issue in African countries and our project countries are not different where such land acquisition is a core issue. Such acquisitions, also referred to as land grabs by critics (Daniel and Mittal, 2009).

The development of a project unit and its operation requires land for the placement of operational infrastructure, housing, roads, pipelines, storage and a multitude of other project facilities. The land needed for a project is often used by other people, whether they own it, lease it, graze animals or grow food on it or have a traditional attachment to it. In any of these cases, the taking of that land by a project will cause displacement for the original users or owners and resettlement in situations where people need to move their dwelling places because of the project.

The Zambian case study gave an excellent example of a successful resettlement scheme. Management of the company indicated that they have employed approximately 80 percent of the people from the local community. According to the resettlement action plan about 99 households, representing a total of 693 people were displaced. Those that were displaced were properly compensated by the company. The affected persons were properly resettled – with a compensation package of physical houses, relocation allowance and other related infrastructure (like street lightning, water, recreation hall, roads).

Although international good practice demands that resettlement and displacement should be minimised during the project setup, this is not always possible. In such cases, there is a substantial amount of good practice advice as per the local legislations and several sets of international standards available (such as World Bank IFC guidelines and Acquisition and Involuntary Resettlement 2012) to inform companies about socially responsible behaviour. Poorly planned or poorly conducted resettlement can result in poor community relations.

Gender Sensitivity

Communication and transparency are critical issues for harmonious relations between communities and business. Sometime problems arise where certain stakeholder groups that have specific needs and problems are subsumed in larger 'communities' and end up not being heard as we have seen in the case in Kenya. Similarly, women in mining communities often suffer because they are not identified as a stand-alone stakeholder in mining, and hence are generally not consulted or listened to.

It is therefore important for mining companies specifically and the mining sector in general to involve women in coming up with decisions on issues that affect the women directly. It is also important for the sector to take into account the needs, aspirations and concerns of women as they emanate from the community.

The Zambian case study presented a good example of where women have been employed in and are working in operatives, middle management as well senior management. The company is planning to run a programme to teach unemployed women in income generating skills.

The Ugandan case study also gave an example of company that has created job opportunities for women. The survey results indicated that the socio-economic position of women in the community has changed since the company's arrival and it also has a skills-development programme specifically for women in the community

Recommendations Based on Study Findings

- **Strengthen corporate social responsibility according to local need** –CSR policy should be designed and continuously evaluated according to the needs of the community affected by the project

- **Increased recognition of communities' rights before land acquisition** – Process of land acquisition should not take place without sufficient recognition and acknowledgement of rights of the local communities present in the area. The most prevalent kind of rights consideration is through relocation and resettlement.

- **Engage in effective community consultation** – Culturally appropriate and effective community consultation is key to community development. Consultation through all phases of a company's operations form a basis of trust and helps companies identify community needs, define the community development responsibilities of stakeholders and manage expectations among community members.

- **Well define roles and responsibilities** – Foreign investments tends to raise stakeholder expectations for community development. Unless companies clearly define their commitments to community development they run the risk of failing to meet such expectations. The companies should also try to involve local government and the community to play key role in local developments. Once roles and responsibilities are defined, companies should communicate these clearly and consistently. Unmanaged expectations lead to mistrust between the company and community.

- **Building capacities and forming partnership -** In addition to developing internal capacity, companies might also work with other stakeholders such as national or local governments, community groups, or NGOs with local presence to develop their capacity as partner organisations in the community development process.

- Communicate with external stakeholders such as government, regulators, CSOs etc. on commitments, actions towards social development

- Besides promoting and practicing compliance with applicable governmental laws, rules and regulations, companies should engage effectively with voluntary standards such as NVGs to the extent possible

- To address the environmental impacts, the local government should aim to provide technical support to local mines. Mine waste should be regulated and turned into a non-harmful form before it is discharged to waste ponds. Improved regulations and independent monitoring teams should be commissioned to intervene before environmental and social problems spiral out of control

- More effort should be placed on integrating women in company activities

- Indian investments should be linked with NVGs – Indian MNCs should follow NVGs to further enhance their responsible business scorecard. Multinational companies and other leading companies across the globe have adopted similar codes available internationally. NVGs are based on practices and precepts that take into account the realities of business and society as well as global trends and best practices. It provide businesses with a framework to adopt responsible/sustainable business practices which in turn leads to many advantages not only to business in India but to the Indian MNCs as well such as enhancement of brand and reputation, better risk management, innovation across the value chain, better relations with the stakeholders and all of them results into trust building in the host country with customers, government and the community at large.

- **FastTrack adoption of NVG** – Indian MNCs should follow NVGs to further enhance their responsible business scorecard. Multinational companies and other leading companies across the globe have adopted similar codes available internationally. Consequently, in the near future, Indian companies that will adopt NVG will be given priority and included in the global supply chain of those companies. The NVGs also provide parameters to evaluate performance of companies. Therefore, it will protect company from misguided criticisms from shareholders and other stakeholders. Thus, adoption of NVG will provide huge benefits to companies.

While the investments in African countries have been criticised of late for damaging the environment, the adoption and implementation of NVGs also enable businesses to have a positive footprint on environment and society while remaining competitive. Poverty alleviation, job-creation, innovation at grassroots, protection of scarce resources are not only impacts of sustainable businesses but cater to nation building. With globalisation and a varied range of stakeholders demanding answers, responsible business action is gaining traction.

Final Remarks

On critical examination of the select Indian companies in the project countries, namely, Zambia, Kenya, Uganda and Ethiopia, in the mining and agriculture sector, it can be argued that the Indian investors have performed fairly well on the NVGs rector. Each company has its own areas of high and low performance. The companies have managed to generate incomes, improve level of livelihood and connectivity (in some cases). Environment and gender, on the other hand, seem to be the areas in which the companies need to delve further.

Overall, in the mining sector, gender, migration, environment seem to be the major concerns, while in the agriculture sector, capacity building of the farmers seems to be a concern. In order to foster inclusive economic growth and to strike a balance between the interest of investors and the local communities, it is essential for the local government to ensure enabling policies and environment. The governments need to be well versed with the implications of foreign investment and stay abreast with its dynamic nature.

References

Bloomberg Business Week. (2014). Company Overview of Mcleod Russel Uganda Limited. Bloomberg Business Week, 1.

CSA (2012). Household Consumption and Expenditure (HCE) Survey 2010-11. Statistical Bulletin No 563.

CSA (2014). Population projection values of 2014 at zonal, and woreda levels by urban and rural residence and by sex.

Davies, C. (2013, September 9th). An Infusion of Quality, Commitment and Success, McLeod Russel Uganda. Retrieved November 10th, 2014, from Little Gate Publishing: http://www.littlegatepublishing.com/2013/09/an-infusion-of-quality-commitment-and-success-mcleord-russel-uganda/

EFDRE, Ministry of Labour and Social Affairs (2012). National Social Protection Policy of Ethiopia report 2012, Addis Ababa, Ethiopia

Federal Negarit Gazeta of FDRE (2000). Proclamation, No. 197/2000.Ethiopian Water Resources, Management proclamation. Addis Ababa, Ethiopia.

Federal Negarit Gazeta of FDRE (2000). Proclamation, No. 542/2007. A proclamation to provide for development conservation and utilization of forests, Addis Ababa, Ethiopia

Federal Negarit Gazeta of FDRE (2003). Proclamation No. 329/200. Trade Practice Proclamation, Addis Ababa, Ethiopia.

Federal Negarit Gazeta of FDRE (2005). Proclamation No. 456/2005. Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation. Addis Ababa, Ethiopia.

Federal Negarit Gazeta of FDRE (2009). Proclamation No. 639/2009. Civil Code (Amendment) Proclamation. Addis Ababa, Ethiopia.

Federal Negarit Gazeta of FDRE (2010). Proclamation No. 686/2010. Commercial Registration and Business Licensing Proclamation. Addis Ababa, Ethiopia.

Federal Negarit Gazeta of FDRE (2010). Proclamation No. 685/2010. Trade Practice and Consumers' Protection Proclamation. Addis Ababa, Ethiopia.

Harding, T., & Javorcik, B. (2007). Roll out the red carpet and they will come: effect of investment.

ISO 26000 (2010). International Standards. Guidance on Social Responsibility.

Janardhan Lavu, K. S. (2014, April - June). MCL Newsletter. Maamba, Southern Province, Zambia.

Légaré, P. (2013). Zambia - Maamba Collieries Power Generation Project - ESIA Summary. Lusaka: African Development Bank .

Nava Bharat Ventures. (2013). Nava Bharat (Singapore) Pte. Limited (NBS) – the hub of overseas investments. Retrieved 2014, from nbventures.com: http://www.nbventures.com/nava_bharat-singapore.htm

shine.com. (2014). Nava Bharat Ventures Ltd. Retrieved 2014, from shine.com: http://info.shine.com/company/nava-bharat-ventures-ltd/2194.html

The UNCTAD-ICC. (2001). AN INVESTMENT GUIDE TO UGANDA. Geneva: United Nations.

The Zambia Investment Centre. (2005). Zambia Economic Growth Sectors for Investment. Retrieved May 5th, 2014, from Zambian.com: C:\Users\hifi\Downloads\Zambia Economic Growth Sectors for Investment. Zambia business essay papers, management essays and articles, Zambia business books, case studies. Zambia business and economy information. Zambian business sector online.html

30 1983 2012 CUTS International

www.cuts-international.org