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CAN FOREIGN DIRECT INVESTMENT CONTRIBUTE TO RESTORING SOCIAL ORDER?

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ABSTRACT

This paper explores the concept that Foreign Direct Investment (FDI) and international business law improve social conditions in developing nations. It is widely assumed that spillover effects, such as technology transfer and knowledge diffusion, improve a host country's economic conditions. But do these spillovers also serve to rebuild the host countries' social order and contribute to improved living standards, especially when they occur in developing nations? This paper presents lessons learned and provides several case examples from sub-Saharan Africa, where there has historically been a dramatic need to improve social conditions.

INTRODUCTION

As more and more companies engage in globalization and investment in foreign countries, the question is whether FDI and international business ventures can promote both economic development and social order in developing nations. Although it is generally thought that the concepts of economic development and improving the social order are compatible, achieving these dual goals for investors and host countries can be very challenging, both for smaller investors and Multi-National Enterprises (MNEs). All investors must be aware of their duty of corporate social responsibility (CSR): investor activity should not only promote economic development in the host country but also affect the circumstances surrounding FDI and produce spillover effects on social conditions.

When investors enter new markets, especially those in developing economies, they must understand that they will face varying situations and that ultimately their success will be based on the context of business and the

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industry climate, as well as on the culture of their own enterprise and its stakeholders.[1] In addition, MNEs must also consider the institutional quality in the host country, for which various indicators or indices have been constructed.[2] Finally, investor companies and MNEs investing in developing nations must understand the concept of social order. Social order not only presupposes respect for the fundamental rights of each person for natural freedom, it also calls for access to and opportunity for each person to obtain what is necessary to lead a truly human life (e.g., food, clothing, health, work, education, suitable information, and the right to establish a family). Furthermore, the concept of social order calls for the respective government to promote the security (life and property rights) of its members or its citizens by using morally-acceptable means.[3] Thus, the CSR efforts of MNEs must work within the social framework of the host country and its society. Only then will foreign business activities meet their potential in contributing to human development and poverty alleviation.

This paper looks at the link between economic development and social order and different types of spillovers from FDI on developing nations. This paper also presents specific lessons and select examples from sub-Saharan Africa, and how economic improvement in a developing nation can help to rebuild the country's social order and contribute to elevate living standards. Another aspect that is covered in the paper refers to international regimes for MNEs, with special emphasis on the role of international investment agreements and their contribution to social development in the host country.

I. A Short Note on How Economic Development Connects to Social Order

There is no single key to a reduction of worldwide poverty, but many experts see globalization and development of market economies as an important factor for eradicating absolute poverty worldwide.[4] However, in order to be successful, specific safeguards and institutional policies must be in place. These safeguards and policies include building institutions with appropriate safeguards that limit corruption, the prosecution of fraud, estab-

1. *See* Katherina Glac, The Impact of Foreign Direct Investment on Ethical Standards in Host Countries (2004); *see also* Juliette Bennet, *Multinational Corporations, Social Responsibility and Conflict*, 55 J. of Int'l Aff. 393 (2002) (advocating that multinational corporations contribute to conflict prevention and crisis management in host countries); Shang-Jin Wei, *Local Corruption and Global Capital Flows*, 2000 Brookings Papers on Econ. Activity, 303–54 (examining the effect of corruption in China on the country's FDI appeal).

2. *See* Daniel Kaufmann, Aart Kraay & Massimo Mastruzzi, *Governance Matters III: Governance Indicators for 1996-2002* (World Bank Policy Research, Paper 3106); *see also* Georgio Fazio & G. M. Chiara Talamo, *How "Attractive" is Good Governance for FDI?*, 9 Int'l Fin. R. 33–54 (2008) (concluding corporate governance and institutional quality are important attractors of FDI).

3. *See* Jon Elster, The Cement of Society: A Survey of Social Order (1995).

4. *See* Jeffrey D. Sachs, The End of Poverty: Economic Possibilities for Our Time (2005).

lishing clearly defined property rights, promoting individual prosperity, allowing for expressions of free interaction, providing every member of society a chance to improve their living conditions, and developing functioning capital markets that can potentially be a pathway toward self-sufficiency. In Bangladesh, for example, the micro-financing activities of Grameen Bank not only provided a path for poor women to lift themselves from poverty but also created capital markets that allowed for self-sufficiency. The Grameen Bank model in Bangladesh specifically empowered poor women to participate not only in their markets but also globally with distribution of their products. The Grameen Bank model has served to demonstrate that micro-financing can promote a sense of self-determination and autonomy as well as create new entrepreneurs and a new social order within a local society. On the other hand, MNEs like Unilever and Chevron have built stakeholder partnerships in many developing markets that have provided employment opportunities, education and professionalization, technical assistance, and support for improving healthcare and sanitation.[5]

However, it is important to note that participation in a developing market by hitherto underserved members of the society is only an expression of successful self-determination if the markets are based upon, and supported by, fair institutional frameworks and supportive institutional bodies. This may require the assistance (often prior to the corporate endeavors) of global institutions (e.g., the World Bank) to promote infrastructural changes before a private investor enters the new market. But private business remains the optimal supporter, and we see a movement towards jointly coupling private investment with infrastructure development. Andrew Young has called this "public purpose capitalism."[6]

An illustration is when Chinese investors in Africa improve roads, telecommunications, and educational institutions before they dig for oil or minerals.[7] This concept also has the effect of improving overall social and business standards. Historically, many of the Chinese investors in Africa had a reputation for behaving unethically, as they favored land grabbing, corruption, and sweat-shop conditions in their host countries.[8] In Chinese-led investments in the mining sectors in the Democratic Republic of the Congo, Angola, and Zambia there has been a history of egregious violations

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5. *C.f.* STELLA PFISTERER & NASIM PAYANDEH, THE P'SHPS RES. CTR., UNITY IN DIVERSITY: MECHANISMS AND PRACTICES OF CROSS-SECTOR DEVELOPMENT PARTNERSHIPS TO CREATE MUTUALITY (2014) (discussing diversity in partnerships through coordination, accountability, partnership collective identity, and confidence through transparency).

6. ANDREW J. YOUNG & KABIR SEHGAL, WALK IN MY SHOES: CONVERSATIONS BETWEEN A CIVIL RIGHTS LEGEND AND HIS GODSON ON THE JOURNEY AHEAD 73 (2010).

7. *See, c.f.* ANDREW WILLIAMS, TOM BONNEY & MARTIN XUEREB, ASSESS THE INFLUENCE OF CHINA IN SUB-SAHARAN AFRICA (2009) (assessing the influence of Chinese investment in Africa).

8. *C.f.* Barry Sautman & Yan Hairong, *Trade, Investment, Power and the China-in-Africa Discourse*, THE ASIA-PACIFIC J. (2009) (discussing the negative impacts of Chinese investment in Africa).

of international labor and environmental standards.[9] However, this type of corporate misconduct appears to be changing, and the Chinese investors' reputation in Africa has dramatically improved as the Chinese are becoming increasingly aware of their corporate responsibility, and thus are being seen as advocates and supporters of local communities.[10] Throughout the African continent, Chinese investors have built roads, railways, ports, and airports. For example, Chinese investors financed the rehabilitated 840-mile Benguela railway line connecting Angola's Atlantic coast with the Democratic Republic of Congo and Zambia.[11] Additionally, Chinese-financed roads have reduced travel time from Ethiopia's hinterland to the strategic port of Djibouti.[12] In 2011, bilateral trade between Africa and China reached $160 billion, up from just $9 billion in 2000.[13]

Although social change and progress has occurred in many nations, strong transnational institutions such as the United Nations Conference on Trade and Development (UNCTAD), United Nations Industrial Development Organization (UNIDO), and International Labor Organization (ILO) are still necessary for helping to establish cross-border political justice, legal, social, and economic order. At the United Nations Millennium Summit in 2000, the world community issued a policy statement in which member nations committed themselves to reduce poverty and hunger by 50 percent between 1990 and 2015. This was part of the Millennium Development Goals (MDGs) that were elaborated for each country and region.[14] FDI (especially in agriculture) is one of several appropriate means of achieving these goals. As we are nearing the year 2015, the world debates the scope and nature of the new sustainable development goals (SDGs) to replace and extend the MDGs.[15]

However, achieving the MDGs and SDGs in developing countries, especially in the poorest ones in Africa, requires the enhancement of their ability to attract FDI, and thus to connect to global markets. In addition, although FDI flows to Africa have increased in recent years, these represent

9. *See* Barbara Kotschwar et al., *Do Chinese Mining Companies Exploit More?*, AMS. Q., Fall 2011, http://www.americasquarterly.org/do-chinese-mining-companies-exploit-more.

10. *See* MEIN P. VAN DIJK, THE NEW PRESENCE OF CHINA IN AFRICA (2009).

11. Collin McClelland, *Angola Restore Copper Rail Line After Four Decade Halt*, BLOOMBERG (Mar. 25, 2013, 12:04 PM), http://www.bloomberg.com/news/2013-03-21/angola-restore-copper-rail-line-after-four-decade-halt.html.

12. *Land Links Between Djibouti and Ethiopia to Strengthen*, THE ECONOMIST INTELLIGENCE UNIT (Sept. 15, 2014), http://country.eiu.com/article.aspx?articleid=1342279918&Country=Ethiopia&topic=Economy&subtopic=Forecast&subsubtopic=Policy+trends&u=1&pid=1532277737&oid=1532277737&uid=1.

13. Peter Eigen, *Is China Good or Bad for Africa*?, CNN WORLD (Oct. 29, 2012, 5:14 PM), http://globalpublicsquare.blogs.cnn.com/2012/10/29/is-china-good-or-bad-for-africa/.

14. UNITED NATIONS, THE MILLENNIUM DEVELOPMENT GOALS REPORT 8 (United Nations Department of Economic and Social Affairs, 2007).

15. Press Release, General Assembly, U.N. General Assembly's Open Working Group Proposes Sustainable Development Goals, U.N. Press Release (July 22, 2014).

only a small portion of the total flows to developing countries. For example, average annual FDI flows to Africa increased from $2.2 billion in 1980, to $15 billion in 2000–2004 and to $53 billion in 2011–2013.[16] However, Africa's share of global FDI flows rose from 2.3 percent in 1980 to about 3.6 percent during 2011–2013. Africa's share of total flows to developing countries fell from 10 percent in 1980 to 7 percent during 2011–2014.[17] Still, the data are promising. A "new geography of FDI"[18] has come up that is marked by an unprecedented opening for developing and transitioning economies: by the middle of 2013 they were absorbing approximately 60 percent of global FDI, and their outward FDI rose to 35 percent of global outflows, up from 10 percent in 2003.[19] In Africa, despite the global economic crisis, GDP has grown rapidly, averaging almost 5 percent a year since 2000, and is expected to rise even faster in the years ahead.[20] Many countries, not just the resource-rich ones, have participated in the boom. The twenty states in sub-Saharan Africa that do not produce oil managed average growth rates of 4 percent or higher between 2008 and 2013, and the inflow of private capital, at $50 billion a year, now exceeds foreign aid.[21] Also, poverty is declining. Since 1996, the average poverty rate in sub-Saharan African countries has fallen by about one percentage point a year and, between 1999 and 2008, the portion of Africans in the region living on less than $1.25 a day fell from 52 percent to 48 percent for the first time.[22] "The region has also made great strides in education and health care. Between 2000 and 2008, secondary school enrollment increased by nearly 50 percent, and over the past decade, life expectancy has increased by about 10 percent."[23]

While these proofs sustain the common belief that increased globalization and economic development in developing nations has a positive effect on developing nations, some theorists and investors question the beneficial effects of FDI in developing markets. For example, some of the literature has argued that FDI effects can be unpredictable, unintended and counterproductive,[24] and that the effects of FDI can be threatening.[25] However, we

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16. Elsabé Loots & Alain Kabundi, *Foreign Direct Investment to Africa: Trends, Dynamics and Challenges*, 15 S. AFR. J. OF ECON. AND MGMT. SCI. 128, 130–31 (2012).

17. *Id.*

18. *See generally* Valentina Pasquali, *A New Geography of Foreign Direct Investment*, GLOBAL FINANCE, 12–15 (2014).

19. *Id.*

20. *C.f.* The World Bank, 8 AFRICA'S PULSE 1, 24 (2013) (stating GDP in sub-Saharan Africa has grown by 4.5 percent per year during 1995–2013).

21. Shantayanan Devarajan & Wolfgang Fengler, *Africa's Economic Boom: Why the Pessimists and the Optimists Are Both Right*, 92 FOREIGN AFF. 68, 68–81 (2013), http://www.foreignaffairs.com/articles/139109/shantayanan-devarajan-and-wolfgang-fengler/africas-economic-boom.

22. AFRICA'S PULSE, *supra* note 20, at 14.

23. *See* Devarajan, *supra* note 21, at 68.

24. *See* Peter Nunnenkamp, *Foreign Direct Investment in Developing Countries: What Policymakers Should Not Do and What Economists Don't Know* (Kieler Diskussionsbeiträge, working paper No. 380, 2001) (stating that "[some] determinants of FDI, which were sufficient in

are finding that the more recent international business (IB) literature has shown a more engaged posture with FDI and development issues.[26] This literature has probed more deeply into the external effects of IB[27] and of its influence on socio-economic development.[28]

II. Legal Frameworks, Rules for Investors, and Their Ethical Foundation

Economic development, return on investment, and, increasingly, ethical and social issues are important determinants for decisions on doing business in developing nations. There have also been issues of growing concern, such as corruption, employment conditions, marketing practices, and effects on the natural environment.[29] One prerequisite to deal with these issues, achieve economic development, and a positive spillover of FDI to social order is to create a "level-playing field" (as per the EU-Africa Business Forum Declaration 2010).[30] This will lay the foundation for a "win-win" situation for both the investor and the host country. One other prerequisite is that markets must be based on, and supported by, fair international frameworks.[31] That applies to the policy issues for all levels of rule-setters, whether they be supranational, national, regional, or local. A recent example is the marked interdependence between the conditions a supranational

the past, may prove to be less relevant in the future."); *see also* Mo Yamin & Rudolf R. Sinkovics, *Infrastructure or Foreign Direct Investment? An Examination of the Implications of MNE Strategy for Economic Development*, 44 J. of World Bus. 144, 144 (2009) (asserting that "positive developmental impacts of FDI flows are conditional on high levels of human capital . . . .").

25. *See* Cornelius B. Pratt, *Multinational Corporate Social Policy Process for Ethical Responsibility in Sub-Saharan Africa*, 10 J. Bus. Ethics 527 (1991) (arguing that foreign direct investors often import highly autonomic ideas that threaten the heteronomous values typical of those receiving aid).

26. *See* Klaus E. Meyer, *Perspectives on Multinational Enterprises in Emerging Economies*, 35 J. of Int'l. Bus. Stud. 259 (2004) (calling for "more international business scholars to engage in research on positive and negative spillovers from foreign direct investment (FDI) in emerging economy societies"); *see also* Ravi Ramamurti, *Developing Countries and MNEs: Extending and Enriching the Research Agenda*, 35 J. of Int'l. Bus. Stud. 277 (2004) (advocating more research on how multinational enterprises affect developing countries); Nilanjan Ghosh, *The Road from Economic Growth to Sustainable Development: How was it Traversed?* (Jan. 10, 2008) (unpublished manuscript), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1082686 (discussing the shift from aid as a means of economic growth to aid as a means of sustainable development); Manfort Mlachila & Misa Takebe, *FDI from BRICs to LICs: Emerging Growth Driver?* (Int'l. Monetary Fund Working Paper 11/178, 2011) (examining specific FDI flows from Brazil, Russia, India, and China).

27. *See* Pervez N. Ghauri & Mo Yamin, *Revisiting the Impact of Multinational Enterprises on Economic Development*, 44 J. of World Bus. 105, 105 (2009).

28. *See* Does Foreign Direct Investment Promote Development? (Theodore H. Moran, Edward M. Graham & Martin Blomström eds., 2005).

29. Thomas Donaldson, *Moral Minimums for Multinationals*, 3 Ethics and Int'l Aff. J. 163 (1989); *see also* Richard C. Longworth, Global Squeeze: the Coming Crisis for First-World Nations (1998).

30. European Union Commission, *EU-Africa Business Forum Declaration 2010.*

31. Jeswald W. Salacuse, The Three Laws of International Investment 35, *passim* (2013).

funding institution would set for the national government of Ghana when it grants oil extraction rights, the national Ghanaian laws on barter agreements with foreign investors, and the negotiation by the chiefs of the fourteen tribes of the Takoradi region (the coastal province nearest the oil) for development levies.[32] It is evident that all these hold aspects of responsibility toward social as well as business issues. Rule-setting in this manner falls in line with "win-win" solutions and with what has been called incentive-based and advantage-based ethics.[33]

Especially when the efficacy of rules and the validity of rule-setting processes need to be reconsidered,[34] incentive-based and advantage-based ethics, together with Habermas's discourse ethics, provide a robust framework. Both point to effective ways to expand worldwide fair labor practices, diffuse new technologies, develop meaningful local advantages and specializations in backward areas, and channel a socially beneficial re-export of newly manufactured goods and resources. Overall, when we speak of fair norms for markets, we mean fair equality of opportunity. This requires not only that offices and positions in any market be distributed on the basis of merit, but even more importantly that each member of a given market has the reasonable opportunity to acquire the skills on which "merit" is assessed.[35] John Rawls' principle would also apply to the opportunities that must be available for negotiators from developing countries when they discuss investment agreements.

International investment agreements (IIAs) are the core of international investment law. Around these, there is a broad international legal framework, with a wide variety of principles and rules, of diverse origins and forms, differing in their strength and specificity and operating at several levels. This framework includes rules of customary international law, acts of international institutions, and authoritative texts without formal binding force, such as declarations adopted by states or resolutions of international organizations. They all interplay with and against the background of national legal rules and procedures. These rules, in the beginning of FDI, largely regulated foreign investment. A wider range of bilateral investment treaties (BITs) only came up in the 1980s, as both developed and developing countries were eager to negotiate investment rules in order to further

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32. John R. Heilbrunn, Oil, Democracy, and Development in Africa 127–35 (2014); William Wallis, *Let the Good Times Roll*, Financial Times (Feb. 18, 2011, 10:12 PM), http://www.ft.com/intl/cms/s/2/235d95a2-3972-11e0-97ca-00144feabdc0.html.

33. Christoph Luetge, *Economic Ethics, Business Ethics and the Idea of Mutual Advantages*, 14 Bus. Ethics: A Eur. Rev. 108, 113 (2005).

34. *See* Michael L. Michael, *Business Ethics: The Law of Rules*, 2–4 (Harvard University, John F. Kennedy School of Government Working Paper No. 19, Mar. 2006), http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_19_michael.pdf.

35. *See* John Rawls, Justice as Fairness: A Restatement (Erin Kelly ed., Belknap Press, 2001).

cross-border investment (the first BIT was concluded between West Germany and Pakistan in 1959).

This was the time when both investors and recipients of investments in the developing world wanted to overcome the negative consequences of nationalization or expropriation of foreign property which started when colonial territories began to acquire their independence and reached its peak in the early 1970s.[36] Also, the energy crisis of the 1970s made the atmosphere in international forums more favorable to the views of the developing countries, "and they were able to set the agenda—although not to determine the eventual outcome—in international economic organizations."[37] At the same time, negotiations were held for the adoption in legally non-binding forms of "international codes of conduct" for MNE activities. The lead was taken by the Organization for Economic Cooperation and Development (OECD), and in 1976, the Organization's Council released a Declaration on International Investment and Multinational Enterprises that included a set of voluntary guidelines.[38] They consist of recommendations addressed to enterprises, not to governments, which require respect of host country laws and policies and establish international standards of proper conduct. The guidelines cover both general issues and specific topics, such as employment, industrial relations, and the disclosure of information.[39]

Both IIAs and the OECD code of conduct address issues of social order. A number of agreements include general clauses that permit the host country to adopt measures necessary for the protection of public health, public order and morals, and national security.[40] The 2000 review of the OECD guidelines added distinct recommendations relating to the elimination of child and forced labor, and new chapters on combating corruption and on consumer interests.[41] Since then, many foreign investors have abided by the rules and their business has become a potent source for overcoming structural deficiencies in less developed nations, to alleviate poverty, to achieve more equitable growth and a broader distribution of opportunities. It is commonly accepted that for this to become effective,

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36. *See* U.N. Conf. on Trade And Dev., *International Investment Agreements: Key Issues*, at 7, U.N. Doc. UNCTAD/ITE/IIT/2004/10, U.N. Sales No. E.05.II.D.6 (2004).

37. Annie Tortian, International Investment Agreements and Their Impact on Foreign Direct Investment (June 18, 2007) (unpublished Ph.D. dissertation, Université Paris I), https://tel.archives-ouvertes.fr/file/index/docid/165194/filename/Tortian_Annie_these.pdf.

38. The full text of the guidelines as well as annual reports on the compliance can be found at http://www.oecd.org/corporate/mne/.

39. *See OECD Guidelines for Multinational Enterprises*, http://mneguidelines.oecd.org/text/ (last visited Nov. 3, 2014).

40. UN Conf. on Trade and Dev., *Developments in International Investment Agreements in 2005*, International Investment Agreements Monitor No. 2. (2006), U.N. Doc. UNCTAD/WEB/ITE/IIA/2006/7.

41. JORIS OLDENZIEL, THE 2000 REVIEW OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: A NEW CODE OF CONDUCT? 21 (2000), http://oecdwatch.org/publications-en/Publication_1870.

common efforts are needed that use both the tools of capitalism and social technologies. The latter would mainly encompass support of public education, representative democratic politics, and participative governance. This will contribute to reducing arbitrary social and economic structures and inequities.

What often needs to be bridged in the developing world is "what Stuart L. Hart has called the 'collision of the monetary economy, the traditional economy and nature's economy': the monetary economies of the developed countries would just place a burden on the [two other ones]."[42] But, as Hart continues, today's digital revolution is changing the pattern and business opportunities arise from knowledge brought to the world of the poor, which will empower the poor to make use of their natural and human resources.[43] An example of this might be what Hart and Milstein report on Hewlett-Packard's "World e-Inclusion" initiative, which created a research and development laboratory in rural India with the express purpose of understanding the particular needs of the rural poor.[44]

But how do we deal with issues that occur when the "monetary economy" creates an impersonal economic marketplace (in an environment like rural areas of developing countries where personal relations had been the only foundation of business)? Situations like these often unwillingly exploit the poor due to an "imbalance" of resources, of information or financial leverage on the part of the less advantaged member, typically the consumer or the purchase agent of a small business.[45] Neither the pertinent IIAs nor the OECD code provide an apolitical or ethically founded means of settling disputes on those issues, and it has been said that international law is to be perceived as utopian when one thinks that it is based on a moralistic character seeking to gain distance from the realities of power politics.[46] Exploring the role of ethical discourse in international law goes far beyond the scope of this paper. Still, we think that there is a way to engage the ethical dimension in rules and codes that regulate international law.[47] Any party that is seriously engaged in cross-border business with developing countries will have to find a way to solve conflicts without seeking to merely use ethics as raw politics and the will to power.

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42. STRATEGIES FOR SUSTAINABLE TECHNOLOGIES AND INNOVATIONS 142 (John R. McIntyre, Silvester Ivanaj & Vera Ivanaj eds., 2013).

43. *See* STUART L. HART, CAPITALISM AT THE CROSSROADS (2007).

44. Stuart L. Hart, Mark B. Milstein & Joseph Caggiano, *Creating Sustainable Value*, 17 THE ACAD. OF MGMT EXECUTIVE 56, 63 (2003).

45. Kunal Sinha et al., *Marketing Programs to Reach India's Underserved*, *in* BUSINESS SOLUTIONS FOR THE GLOBAL POOR: CREATING SOCIAL AND ECONOMIC VALUE 40–49 (V. Kasturi Rangan et al. eds., 2006).

46. *See* MARTTI KOSKENNIEMI, FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT (2006).

47. *See* ROLE OF ETHICS IN INTERNATIONAL LAW (Donald Earl Childress III ed., Cambridge University Press 2011).

There are many facets of the interface between FDI and the local economy that can be covered by investment treaties or even by the OECD guidelines on proper behavior of MNEs. One such facet is the desire of investors to make sure that the host country does not distort the regulatory stability after an investment has been concluded: once the bulk of a long-term and capital-intensive investment is made, the investor is a hostage of the host state. The investor is vulnerable to host government action that may undermine the investment's financial viability or even expropriate the investor's assets altogether. This issue is dealt with by the regulatory taking doctrine and by stabilization clauses. Under the regulatory taking doctrine, regulation that undermines the investment's commercial viability may be deemed as a taking of property and requires the host state to pay compensation. Under commonly used stabilization clauses, the host government commits to not changing the regulatory framework in a way that affects the economic equilibrium of the project, and to compensating the investor if it does so.[48] But there is a drawback that can affect both the investor and the host country: these legal arrangements may also block the pursuit of sustainable development, which means that economic, environmental, and social considerations will not be balanced in a way that technological or economic progress requires. For instance, the requirement to pay compensation may make it more difficult for host states—particularly poorer ones—to raise social and environmental standards if this affects the economic equilibrium of the investment project or undermines its commercial viability.[49] So options must be sought to mitigate the constraints on the evolution of progressing social and environmental standards.

Options to avoid undue pressure from stabilization clauses causing local governments to withhold social progress must be perceived against the backdrop of the ongoing changes in international social and environmental standards. In light of the growing body of international law on environmental protection and of the many new sets of international social standards,[50] many developing states are becoming new parties to international human rights treaties. From there, they will have to enter an international obligation to bring their domestic legal system in line with these new international standards. As a result, a host state that adopts regulations raising social and environmental standards and seeks to apply such standards to ongoing investment projects would have to restore the economic equilibrium of the contract, or compensate investors for the economic impact of such regula-

48. Lorenzo Cotula, *Regulatory Takings, Stabilisation Clauses and Sustainable Development*, *in* OECD INVESTMENT POLICY PERSPECTIVES 2008 69, 72 (2009).

49. *Id.* at 70.

50. *See, e.g.*, Org. of African Unity [OAU], *African (Banju) Charter on Human and Peoples' Rights*, OAU Doc. CAB/LEG/67/3 (June 27, 1981), http://www.achpr.org/instruments/achpr; *see also* U.N. Global Compact: Corporate Sustainability in the World Economy (2014), http://www.unglobalcompact.org (identifying as a goal the safeguarding of the environment).

tions. Alternatively, host states may exclude ongoing investment projects from the application of the regulatory change. It is hoped, though, that investors will find solutions that do not entail the continued application of social and environmental regulation below international standards. "This is particularly problematic in poorer developing countries where the national legal framework setting social and environmental standards at project inception may be not well developed."[51] One example is the Chad-Cameroon pipeline project, which raised considerable concerns by civil society on the project's social and environmental standards in both Chad and Cameroon.[52] The Chad-Cameroon pipeline project, with its substantial importance for the national economy of Chad, will be presented in the next section of this paper as it appears to prove the existence of a close nexus between FDI and social change.

With regard to environmental standards, host states may see themselves obliged by their investment contracts to pursue sustainable development goals that are less costly for an ongoing investment project. Consequently, the states may favor compensation for environmental damage over injunctions to prevent damage from occurring in the first place.[53] Still, prudent investors and responsible governments will eventually find a solution to dilemmas of this sort, and much depends on the balance of negotiating power between the different stakeholders involved in the project, like foreign investors and host states, but also lenders, Non-Government Organizations (NGOs), and local groups affected by the project.

On the other hand, there is one decisive facet that cannot be extensively regulated by a treaty like IIAs and BITs and/or the remedies to eliminate unfavorable consequences from these treaties, which are the spillover effects of economic activity. Spillover effects go far beyond the immediate stakeholders of a business activity, and they go far beyond the technical sphere.

III. Spillover Effects from FDI

Whenever FDI occurs, there are multiple spillover effects that impact the host country. Potentially, an obvious spillover effect of FDI is an increase in growth by introducing new technologies, such as new production processes and techniques, managerial skills, ideas, and new varieties of capital goods.[54] In order for this to occur, the host country must have certain

51. *See* Cotula, *supra* note 48, at 78.

52. *See* Centre pour l'Environnement et le Développement, *The Chad-Cameroon Oil and Pipeline Project: A Call for Accountability* (2002).

53. *See* Sheldon Leader, *Human Rights, Risks, and New Strategies for Global Investment*, 9 J. Int'l. Econ. L. 657, 692 (2006).

54. *See* Beata Michorowska, *Transfer and Diffusion of Technology through FDI*, *in* The Role of Foreign Direct Investment in the Economy 192–209 (Oskar Kowalewski & Marzenna A. Weresa eds., 2008).

conditions to maximize the technology spillovers from FDI (i.e., "absorption capacity") where a threshold level of human capital is available in the host country. If a threshold level of education is attained, as is the case in the industrialized regions of China, there may be better outcomes.[55] For example, one interesting study on China shows that FDI has significant effects on the degree of future orientation, performance orientation, and in-group collectivism, which may increase the level of human capital and its capability to achieve higher-paying jobs.[56] There have also been comparable studies on Eastern European countries showing similar types of findings.[57]

Another potential spillover effect is education. It is commonly assumed that education in developing countries largely takes place outside formal institutions and through family influence and peer group pressure within the local community.[58] Buckley states that to benefit from formal education it may be necessary for people to "unlearn" beliefs from their informal education.[59] Thus, unlearning beliefs is one step to changing the order of thought. For example, when we look at the recent economic and institutional progress in some African countries, such as Sierra Leone,[60] we find that this progress could only be achieved because the major ethnic groups developed a positive sentiment towards participation in social and business life after the disastrous consequences of ethnic conflict were gradually overcome. In this situation, important effects were achieved by a multitude of agricultural investment projects in Rwanda and Sierra Leone that went down to the village level.[61] Here, hundreds of rural households were involved in projects on water control, fishery, crops, livestock, and veteri-

55. *See* Kevin H. Zhang, *Does Foreign Direct Investment Promote Economic Growth? Evidence from East Asia and Latin America*, 19 CONTEMP. ECON. POL'Y 175, 175–85 (2001).

56. *See* Lu Jiang, Qiangbing Chen & Yali Liu, *FDI and the Change of the Chinese Culture*, 37 INT'L J. OF SOC. ECON. 101, 101–18 (2010).

57. *See* Demetrios Giannaros, *Twenty Years After the Economic Restructuring of Eastern Europe: An Economic Review*, 7 INT'L BUS. & ECON. RES. J. 35, 35–47 (2008); *see also* Nathalie Fabry & Sylvain Zeghni, *FDI in the New European Neighbours of Southern Europe: A Quest of Institutions-Based Attractiveness* (Munich Pers. Res. Papers Econ. Archive, MPRA Paper No. 1109, 2006), http://mpra.ub.uni-muenchen.de/1109; Molly Lesher & Sébastien Miroudot, *FDI Spillovers and Their Interrelationships with Trade* (Org. for Econ. Co-Operation & Dev., Trade Policy Working Paper No. 80, 2008); Alina Kudina & Malgorzata Jakubiak, *Conditions for Positive Spillovers for FDI: A Case Study of Georgia, Kyrgyzstan, Moldova and Ukraine*, *in* OECD INVESTMENT POLICY PERSPECTIVES 41 (2008).

58. *See* PHILIPP H. COOMBS & AHMED MANZOOR, ATTACKING RURAL POVERTY: HOW NONFORMAL EDUCATION CAN HELP 13–15 (1974).

59. *See* Peter J. Buckley, *The Impact of the Global Factory on Economic Development*, J. OF WORLD BUS. 131, 138 (2009).

60. *See* GOVERNANCE IN AFRICA'S DEVELOPMENT: PROGRESS, PROSPECTS AND CHALLENGES, THE 9TH AFRICA PARTNERSHIP FORUM 12–16 (2007), http://www.sarpn.org/documents/d0002935/APF_Governance_NEPAD_Nov2007.pdf.

61. *See generally* Anita Spring, *Chinese Development Aid and Agribusiness Entrepreneurs in Africa*, *in* REPOSITIONING AFRICAN BUSINESS AND DEVELOPMENT FOR THE 21ST CENTURY 23 (Simon P. Sigué ed., 2009).

nary services and thus started to "unlearn" old habits and acquire new ones. Frequently, with FDI in developing countries, especially in Africa, investors and MNEs might ask: "What do you do when the threshold level of human capital development is far from being reached?" A key response to this question might be acceptance, at least for a while, that there is not enough performance for the "formal sector" of the economy and hard-core business investment to diversify into and intensify informal sector activities. For example, many of these types of activities are based on natural resources and include carpentry and craft production, charcoal manufacturing, collection and trade of non-timber forest products, artisan mining, and metal works. Entry into many such activities is relatively easy for foreign investors and they will, in turn, furnish opportunities for the host country's local businesses. However, critical to the success of these activities is that the profitability and efficiency of those local entrepreneurs is not undercut by bureaucratic controls and inadequate support for market engagement. An example of this is the aforementioned agro-business projects in Rwanda and Sierra Leone, which demonstrate how strengthening the informal market sector contributes to human capital development.

When private capital still does not provide sufficient spillover effects, governments in the host countries will frequently seek support through loans from the World Bank and the International Monetary Fund (IMF) under such programs as the Poverty Reduction and Growth Facility Program (PRGF) and its lending window, the Extended Credit Facility (ECF).[62] The PGRF was expressly directed at pro-poor spending. Thus, loans under the PRGF not only follow the "debt sustainability concept," (i.e. debt is to be repaid only from residual resources after the borrowing government has met its priority spending), but these loans are also framed around comprehensive, country-specific strategies prepared by the borrowing governments with the active participation of civil society and other development partners.[63] In addition, we are also finding that representatives from in-country and transnational NGOs are becoming increasingly involved.[64] Therefore, FDI in countries within sub-Saharan Africa have proven to be helpful if and when business investments can be preceded by, or accompanied by, globally-financed infrastructure support.[65] As shown in Exhibit 1, this type of combined effort can provide a shift of the host coun-

62. *See International Monetary Fund Factsheet: IMF Extended Credit Facility*, INTERNATIONAL MONETARY FUND (2014), https://www.imf.org/external/np/exr/facts/ecf.htm.

63. *See International Monetary Fund Factsheet: The Poverty Reduction and Growth Facility,* INTERNATIONAL MONETARY FUND (2009), http://www.imf.org/external/np/exr/facts/prgf.htm.

64. Christopher Gibbs, Claudia Fumo & Thomas Kuby, *Involving Nongovernmental Organizations in Bank-Supported Activities, in* THE WORLD BANK OPERATIONS EVALUATION DEPARTMENT (1999), http://ieg.worldbank.org/Data/reports/ngo_book.pdf.

65. *See generally* Michael McBride, *Crises, Reforms, and Regime Persistence in Sub-Saharan Africa*, 21 EUR. J. POL. ECON. 688 (2005) (concluding that rent-reducing reforms can lead to an increase overall wealth).

try's status to a new and improved level of societal standards. These moves are primarily induced by how the inflow of financial and technological capital produces effects on human capital and subsequent effects on ethical judgment (e.g., attitudes regarding labor relations, reconsideration of value systems, etc.).

EXHIBIT 1: THE IMPACTS OF FDI IN DEVELOPING COUNTRIES

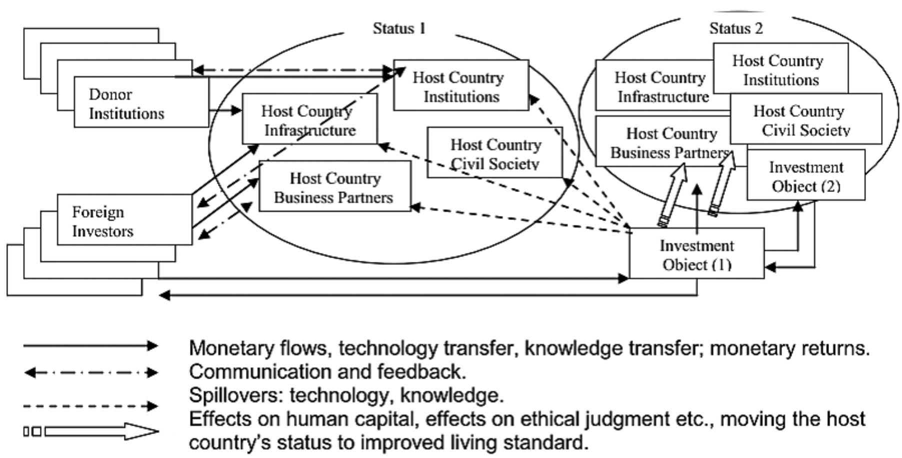

Exhibit 1 also illustrates the main flows of capital, knowledge, and communication between the stakeholders involved in an investment project financed by foreign business in a host country. In Status 1, it shows that, parallel to private investors, donor institutions help with infrastructure from the outset. For example, an initial investment (Object 1) remains "foreign" throughout Status 1 and does not form a part of the host country's society, infrastructure, and institutions or even of the business partner. The object then produces technology transfer and knowledge transfer to the investor's business partners and, by way of spillovers, to civil society as a whole. In this example, education and professionalization will improve and enlarge not only the human capital base in the host country, but also opportunities for a new kind of interaction between the recipient of the investment, the employees, and the community as a whole, with effects on living standards and on ethical judgments, will be forged. Thus, the host country could progress from an initial status where stakeholder involvement is loose (Status 1) to a closer level of cooperation and collaboration (Status 2). Then, subsequent investments (Object 2) will be better accepted and more densely integrated into the infrastructure of the host country. A real life case of this is the "Chad-Cameroon Oil Experiment," which some call a new model for oil-led poverty reduction.[66]

IV. The Chad–Cameroon Example

Chad is landlocked, requiring massive investment to bring the oil to market. In addition, Chad is extremely poor, making the leverage of the World Bank particularly strong prior to the oil boom. Because of the criticism heaped on companies operating in Sudan during its war, foreign oil companies decided that they could not go forward in conflict-ridden Chad without World Bank participation. The project cost was $3.7 billion and it involved ExxonMobil, Chevron, Petronas (the Malaysian state oil company), the World Bank, and the governments of Chad and Cameroon.[67] The Chadians and the Cameroonis would perceive the investor consortium (Object 1 in Exhibit 1) to be located well outside their societal communities, and it would take all efforts to connect local institutions, civil society, and infrastructure to the project (Status 1). Technological know-how and knowledge about professional skills would be purposefully transferred to local business partners or they would "spill over" through local and foreign contractors and sub-contractors. The government issues the pertinent regulations (the "Petroleum Revenue Management Law") and the local communities gradually become stakeholders of the project. Community leaders start to act responsibly with regard to their citizens, on all levels, because they need their cooperation. When this has been successfully accomplished, Status 2 is reached, where all the concerned parties have started to interact in a substantially collaborative manner. Follow-up investors (logistics, maintenance, etc.) can make use of the conditions that prevail in Status 2, as their projects will meet positive response from a newly prepared constituency. Consequently, additional spillover effects will occur on the social order.

Exhibit 2 below provides support for our model by summarizing some of the various arguments on how FDI impacts social changes in developing nations.

66. Ian Gary & Terry L. Karl, Bottom of the Barrel: Africa's Oil Boom and the Poor (2003).

67. *The Chad-Cameroon Petroleum Development and Pipeline Project: Project Overview*, The World Bank (Oct. 8, 2014, 9:29 PM), http://web.worldbank.org/archive/website01210/WEB/0__CONTE.HTM.

EXHIBIT 2: CONTRIBUTING TO CHANGE THROUGH FDI AND CSR – SOME ARGUMENTS[68]

The basic social improvements that can be achieved through foreign direct investment (FDI) in developing nations are closely interrelated to the economic objectives of FDI:

- Contributing to the development of infrastructures.
- Contributing to changing the institutional framework (institution-building) and inducing local governments to upgrade the national legal frameworks to further business operations.
- Developing human capital (training) and providing new knowledge and technological transfer.
- Increasing economic success.

The primary limitation to this interdependence is the magnitude of financial returns on FDI in a developing nation. In the short run, the business results are not deemed to be sufficiently robust for sustaining additional expenses on social improvement. This short-term view obstructs the enlightened self-interest of the investors to include into their decisional processes all the non-tangible consequences which arise from their actions. Hence the following actions should be envisaged:[69]

- FDIs should not try to transfer Western notions of morality (underpinnings) to less-developed countries, but rather deal cautiously with the issue of inter-cultural ethics by harmonizing with local notions and by reciprocally negotiating what is to be understood by cultural norms.
- FDIs could contribute to ethical and socially-responsible norms by insisting on a level playing field (appropriate rules, monitoring, and sanctioning mechanisms in the host countries) for all operating companies, both national and foreign.
- Where FDI experience is inadequate, or the rules of the game are unclear (legal or governing framework), it is in the enlightened self-interest of the FDI (profit motive, ethical and social responsibility) to engage in discourse on the necessity for such rules, as for example in the Global Compact.
- FDIs, in collaboration with supranational bodies, need to set up voluntary rules for engagement in less-developed countries, especially those with inadequate legal frameworks.
- Since the abilities and capacities of many government actors in less-developed countries to develop global competitive frameworks to attract FDIs are very limited, pertinent support should be given on a broader scale (as is done by UNCTAD in selected cases).
- FDIs have the capacity to worsen the existing ethical and social environment (see for example: Siemens Scandals in Nigeria[70]) and therefore better surveillance is required both by local and foreign overseers.

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68. Roland Bardy, Stephen Drew & Tumenta F. Kennedy, *Foreign Direct Investment and Ethics*, 106(3) J. OF BUS. ETHICS 267, 267–82 (2012).

69. *See generally* B. S. Chimni, *Third World Approaches to International Law: A Manifesto*, 8 INT'L COMMUNITY L. REV. 3 (2006) (providing methods of improving the way that investors work with third world countries).

70. *Nigeria probes Siemens bribe case*, BBC (Nov. 21, 2007, 2:35 PM), http://news.bbc.co.uk/2/hi/africa/7105582.stm.

V. Lessons Learned

The late C.K. Prahalad suggested that foreign investors should "stop thinking of the poor as victims or as a burden and start recognizing them as resilient, creative entrepreneurs, and value conscious consumers."[71] There are two to five billion underserved consumers who have enormous collective spending power. Affordable, world-class products and services are needed to include these consumers in the global economy. For example, in the area of business adaptation and innovation, the mobile phone business has had enormous impact. In India alone, ten million new subscribers for mobile phones are added per month.[72] Similar growth is found in China, sub-Saharan Africa, and Latin America.[73] All the major global mobile operators and manufacturers participate in this business.

Innovations are evident in products, services, and business models. Examples of such innovations include unorthodox, low-cost distribution and pricing, new features such as phones with a torch light for rural populations, and SMS-based financial transactions. Not only do these innovations make connection and participation in the community accessible, affordable, and available, they also contribute to social progress. Copeland reports on programs at Stanford University, which teach a new generation of entrepreneurs to use their business and engineering skills for profitability and designing and selling products to the developing world.[74] Prahalad also suggested the concept of "democratizing commerce" where every person will have access to the benefits of the global economy.[75] For example, many efforts are being made to mobilize micro-producers, often with foreign investors playing a prominent role.[76] The original idea comes from rural cooperatives, such as in dairy farming. Amul is a cooperative in Gujarat, India, with a membership of 3.23 million farmers, spread over 17,000 villages and 3,000 collection centers.[77] By effectively organizing subsistence farmers, the output is now about 6.4 million liters of milk per day, up from less than one million liters, and sales of $3 billion.[78] Several others, includ-

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71. Panos Mourdoukoutas, *How Facebook and Alibaba are Turning the World's Poor into Entrepreneurs,* Forbes (Oct. 5, 2014), http://www.forbes.com/sites/panosmourdoukoutas/2014/10/05/how-facebook-and-alibaba-are-turning-the-worlds-poor-into-entrepreneurs/.

72. *See* Rick Martin, *India Buys 10 Million Phones Per Month*, Tech In Asia (July 5, 2011, 1:00 PM), http://www.techinasia.com/india-mobile-market-growth.

73. Int'l Telecomm. Union, Measuring the Information Society (2010).

74. *See* Michael V. Copeland, *Products for the Other 3 Billion*, Fortune (Apr. 1, 2009, 11:44 AM), http://archive.fortune.com/2009/04/01/technology/copeland_developing.fortune/index.htm.

75. *See* Coimbatore Krishnarao Prahalad, The Fortune at the Bottom of the Pyramid: Eradicating Poverty Through Profits (2004).

76. *See* Patrick M. Kormawa, Karl Wohlmuth & Jean Devlin, *Agribusiness for Africa's Prosperity: Country Case Studies* 315–28 (U.N. Indus. Dev. Org, Working Paper, 2012).

77. Ruth Heredia, The Amul India Story (1999).

78. *See* Amul Organization, http://www.amul.com/m/organisation (last visited Oct. 25, 2014).

ing Malaysia-based Sime-Darby Investment Group[79] and Swiss-based agrochemicals producer Syngenta[80] through the Syngenta Charitable Foundation, have reproduced this model of sustainable economic based integration. Sime-Darby is the world's largest plantations company, with business in Malaysia and abroad. The group's projects, as well as those of Syngenta, reach out to subsistence farmers in remote areas, providing finance, knowledge, training, access to technology, housing, education, and healthcare. This is provided by systematically attaching what might be called "soft investments" to the hard-core FDI in real estate or agrochemicals. These efforts combine social responsibility and sustainable development with a long-term growth perspective, which benefits both farmers and investors.

Often, indigenous knowledge can be used to create and exploit business opportunities. This knowledge may be based on centuries of observation, continually developing in response to changing social and environmental conditions. An example is the increasing market for non-timber forest products, such as *Prunus africana*, *Harpagophytum procumbens* (devil's claw) and *Kigelia africana* (African sausage tree). Trade in devil's claw, a traditional medicinal plant, now supports a $100 million industry.[81] In the beginning, only a fraction of the benefits went to domestic producers, while the bulk went to processors and distributors. However, some prudent low investment in improving community skills and gaining access to relevant information is now slowly changing that pattern of benefits.[82]

Transportation and communications infrastructure is vital for rural development in poor countries in order to access healthcare and bring agricultural products to market. Although public funding may be lacking and private investment inhibited by weak prospects for profitability, some private institutions such as the Development Bank of Southern Africa are now stepping forward to build roads, bridges, and hospitals.[83] For example, the Development Bank of Southern Africa is now fully engaged in infrastructure financing, such as of the Gautrain project and the Maputo corridor project in the Republic of South Africa proper, as well as more distant projects such as the Lesotho hospital project and the North-South-Corridor Road

79. *See* SIME DARBY, DEVELOPING SUSTAINABLE FUTURES, http://www.simedarby.com (last visited Oct. 25, 2014).

80. *See* SYNGENTA GLOBAL WEBSITE, www.syngenta.com (last visited Oct. 25, 2014).

81. UNITED NATIONS ENV'T PROGRAMME, AFRICA ENVIRONMENT OUTLOOK 2: OUR ENVIRONMENT, OUR WEALTH 11 (2006).

82. *See* Yemi Katerere & Jennifer Mohamed-Katerere, *From Poverty to Prosperity: Harnessing the Wealth of Africa's Forests, in* FORESTS IN THE GLOBAL BALANCE – CHANGING PARADIGMS 194 (2005).

83. *See generally* DEVELOPMENT BANK OF SOUTHERN AFRICA, http://www.dbsa.org (last visited Oct. 26, 2014) (listing development projects funded by DBSA including education, energy, infrastructure, and electricity).

project reaching into Zambia and Tanzania.[84] Although the Development Bank's interest is certainly financial, it often acts as the lead investor combining its own money with a consortium of private capital from investors outside the region, and thus a rigorous approach to project appraisal is employed.[85] However, it has been shown that these projects greatly impact the lives in the communities and areas they will serve. One could say that there is neither contradiction nor conflict with their actions, because what is socially responsible and environmentally sustainable has proved to also be financially and economically viable.[86]

VI. Select Examples from sub-Saharan Africa

In the Republic of South Africa, multiple FDI investments were directed at the specifics of this region's consumers and producers. One of the biggest FDI deals of 2011 was Saudi Oger's $180 million investment in Cell C, the new cellular operator.[87] Malaysian Resources Corporation has been active with large property development projects in South Africa for many years.[88] Global Environment Fund acquired forestry assets worth $150 million from Mondi and formed Global Forest Fund, signaling its intention to bid for state-owned forestry assets.[89] These ventures not only contributed to improving the base for follow-up investments that broadened the opportunities for local small businesses, they were also directed toward improving communication throughout rural areas and providing new skills to hitherto unskilled labor.[90]

Other examples of the positive FDI effects are agribusiness investments in various sub-Saharan states. In recent years, agriculture is being perceived as a sector that not only offers investment opportunities for the private sector but also drives local development of agriculture-related in-

84. Graham Smith, Robin Carruthers & Jean-Francois Arvis, Connecting Land-locked Developing Countries to Markets: Trade Corridors in the 21st Century 191, New York (2011).

85. Paul Collier & Colin Mayer, Unlocking Private Finance for African Infrastructure 8, 14 (Feb. 2014) (unpublished manuscript), http://novafrica.org/wp-content/uploads/2015/06/Paul-Collier.pdf.

86. *See* Patrick Karani & Mandla Gantsho, *The Role of Development Finance Institutions (DFIs) in Promoting the Clean Development Mechanism (CDM) in Africa*, 9 Env't, Dev. & Sustainability 203, 225–26 (2007).

87. *See* Matt Smith, *Oger Telecom Gives S. Africa Unit $180 Mln to Boost Network*, Reuters (May 28, 2012, 5:32 AM), http://www.reuters.com/article/2012/05/28/south-africa-telco-idUSL5E8GS2GL20120528.

88. World News Network, *MRCB's First Venture in South Africa to Take Off* (Apr. 5, 2001), http://article.wn.com/view/2001/04/05/MRCBs_first_venture_in_South_Africa_to_take_off.

89. Peter C. Gondo, A Review of Forest Financing in Africa 57 (2012).

90. *See* Oludele Akinboade, Franz Siebrits & Elisabeth Niedermeier Roussot, *Foreign Direct Investment in South Africa, in* Foreign Direct Investment in Sub-Saharan Africa: Origins, Targets, Impact and Potential 22, 58, 126 (S. Ibi Ajayi ed., 2006).

dustries and the rural non-farm economy.[91] In East Africa, for example, fisheries are an expanding sub-sector due to the presence of some of the largest fresh water lakes in the world. Lake Victoria, half of which is in Uganda, is the second largest freshwater lake in the world. Similarly, Ghana, Côte d'Ivoire, and Cameroon have attracted investments in cocoa processing as a result of suitable agroclimatic conditions for cocoa production. Recent land purchases have also been driven by the availability of excess arable land and water.[92] Due to these types of investments, the low-skilled labor force (which is employed in subsistence farming) is being converted into a skilled labor workforce with processed foods gaining prominence in both domestic and global markets.

A related example is the DrumNet project implemented and launched by Pride Africa that uses a mobile phone interface to link smallholder farmers to banks, farm input suppliers, and agricultural buyers.[93] The project's premise is that lack of information on the market is one of the key elements that keep farmers from getting the full market value for their products.[94] Subsequently, this lack of information keeps the farmers in a disadvantageous financial position, making it difficult for them to obtain the financing and resources they need to grow their business. DrumNet provides marketing, financial, and informational services aimed at stimulating wealth creation and the economic integration of smallholder farmers.[95] After the success of the pilot project in central Kenya, DrumNet is also now moving into a beta phase in other parts of the country.[96]

In Mozambique, where agriculture, fisheries, and industry head the list of economic development priorities in the Government of Mozambique's Action Plan for the Reduction of Absolute Poverty (PARPA), great emphasis is placed on entrepreneurial initiatives to foster social development.[97] Investors and the state cooperate in rural infrastructure development (irrigation, storage, and roads), dissemination of market information, rural financing, and the promotion and capacity building of farmer organizations and value chain development. On the part of the state, these interventions are

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91. *Cf.* Shaohua Chen & Martin Ravallion, *The Developing World is Poorer than We Thought, but No Less Successful in the Fight against Poverty*, 125 THE QUARTERLY J. OF ECON. 1577, 1577 (2010) (estimating the world population living in poverty in 2005 by using new data and studies).

92. *See* Nomathemba Mhlanga, *Private Sector Agribusiness Investment in Sub-Saharan Africa* 24–25 (Agric. Mgmt., Mktg & Fin., Working Paper, 2010).

93. *See* KIWANJA, http://www.kiwanja.net/database/project/project_drumnet.pdf (last visited Oct. 25, 2014).

94. *Id.*

95. BLESSING M. MAUMBE & JULIUS OKELLO, TECHNOLOGY, SUSTAINABILITY, AND RURAL DEVELOPMENT IN AFRICA 46–48 (2013).

96. *See* Tom Rausch, *The DrumNet Project: Lessons Learned from an ICT Initiative in Kenya's Agricultural Sector*, AITEC East Africa ICT Summit (Sept. 2010).

97. INTERNATIONAL MONETARY FUND, REPUBLIC OF MOZAMBIQUE: POVERTY REDUCTION STRATEGY PAPER (2007), http://www.imf.org/external/pubs/ft/scr/2007/cr0737.pdf.

facilitated by the ongoing transfer of competencies and financial resources to provincial and district authorities through decentralization.[98]

Further, we are seeing private sector participation in agricultural water development, which has been developing over the last decade in countries like Kenya, Niger, and Cameroon. Private investment in this very important area uses increased technologies for in-field rainwater management for dry-land crops, the objective of which is to increase the effectiveness of rainfall to stabilize and enhance yields. The most promising of these ventures are the various types of conservation farming, including deep tillage, reduced tillage, zero tillage, and various types of planting basins, all of which have been successfully demonstrated in many parts of the region, in both the semi-arid and dry sub-humid zones of the region. The results have been impressive, particularly when the technology input has been combined with what is called "Farmers' Field Schools." These consist of a community-based, practically-oriented field-study program involving a group of farmers, facilitated by extension staff (public or private) or, increasingly, by other farmers. In this program, farmers learn together and test and adapt practices, using practical hands-on methods of discovery learning that emphasize observation, discussion, and analysis to combine local indigenous knowledge with new concepts.[99]

Finally, considering the overall demographics, these examples bode well for Africa as a market because more than half its population is under the age of 24 and will add more than 900 million people to its population by 2050.[100] This represents future consumers. Even today, African consumers spend more on goods and services than Indians in India.[101] And, paradoxically, Africa's poverty creates opportunities (e.g., education, healthcare, infrastructure, banking, middle class aspirational consumer goods, etc.).[102]

CONCLUSION

Many developing nations have created conditions that have fostered increased FDI and intensified competition among developing nations for these new markets and new opportunities. With this new investment we

98. *See Sector Budget Support in Practice: Agriculture Sector in Mozambique,* FOOD, AGRICULTURE & NATURAL RESOURCES POLICY ANALYSIS NETWORK (2009), http://www.fanrpan.org/documents/d00816.

99. WORLD BANK ET AL., INVESTMENT IN AGRICULTURAL WATER FOR POVERTY REDUCTION AND ECONOMIC GROWTH IN SUB-SAHARAN AFRICA, at vii (2007), http://siteresources.worldbank.org/RPDLPROGRAM/Resources/459596-1170984095733/synthesisreport.pdf.

100. *See* CLINT LAURENT, TOMORROW'S WORLD: A LOOK AT THE DEMOGRAPHIC AND SOCIO-ECONOMIC STRUCTURE OF THE WORLD IN 2032, at 7 (2013).

101. Mutsa Chironga et al., *Cracking the Next Growth Market: Africa*, HARVARD BUS. REV. 117, 118 (2011).

102. John M. Luiz, *Infrastructure Investment and its Performance in Africa over the Course of the Twentieth Century*, 37 INT'L J. OF SOC. ECON. 515 (2010).

have seen changes in attitude, policies, and structures.[103] Opportunistic and short-term ventures driven only by the profit motive are becoming less acceptable, which bring corporations pursuing such strategies into disrepute, making them targets for a technology-enabled global community of activists and NGOs. The old method of corporation profit seeking by selling luxury goods to elite or wealthy customers and using parts of the profit to address social inequality issues will no longer be sufficient. In order for foreign investors and MNEs to stay in these current and future markets, the needs of those at the bottom of the pyramid (as Prahalad referred to them), and the increasing ranks of the middle classes with similar ambitions to their counterparts in developed nations must be addressed.

In a *Wall Street Journal* article from 2011, China's cabinet extolled the mutual benefits of Chinese FDI in Africa, citing the importance of "promoting economic development and social progress."[104] China's strategy of promotion of economic development and social conditions has resulted in it being the leading investor in this continent.[105] The article lamented that the US reduces embassy personnel and creates trade policies that ultimately restrict investment in Africa, while China has opened its doors and policies to the entire African continent. This situation has not changed for the better for the US since 2011.[106]

FDI contributes to improving social conditions and social order in developing nations and investment treaties and codes for proper conduct of business are supportive in this respect. Although a developing nation's poverty and poor social conditions cannot be solely eliminated by FDI, they can be alleviated. FDI will cause select spillover effects on developing nations, both economically and socially, and wisely adapted investment treaties will overcome the tensions between investment protection and sustainable social development goals.

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103. Chantal Dupasquier & Patrick N. Osakwe, *Foreign Direct Investment in Africa: Performance, Challenges and Responsibilities*, 17 J. OF ASIAN ECON. 257 (2006).

104. James R. Haggerty & Will Connors, *U.S. Companies Race to Catch Up in Africa*, WALL ST. J. (June, 6, 2011), http://online.wsj.com/articles/SB10001424052748703841904576257233342891732.

105. *Id.*

106. *Id.*