AFRICAN STRUCTURES FOR GOVERNING FOREIGN DIRECT INVESTMENT: A CRITIQUE

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Abstract

African countries have warmed up to foreign direct investment (FDI) in the past two decades. In an attempt to attract more FDI, most countries have reformed their FDI policies and institutions. However, the national structures governing FDI have not been studied in-depth. This policy-science research uses a unique conceptual framework and an institutionalist approach to expose and critique national policies and institutions for FDI in Africa. The current African structures governing FDI reflect a messy web, difficult to decipher and inadequate to form a foundation for a continental regime. Policy learning and structural convergence may be essential for better FDI governance.

1. Introduction

African countries have warmed up to FDI in the past two decades or so. This is a change from the late 1960s to the early 1980s when some African countries displayed antagonistic postures, made anti-transnational corporation (TNCs) rhetoric and implemented practices that were in some instances informed by socialist and communist ideologies (Wold Bank 1991; Schroeder 2008). The current positive perceptions of FDI by African countries are consistent with what is happening worldwide (Zeng 2010). Whereas much of the FDI in the period of the 1960s to 1980s was mainly from the developed countries, nowadays FDI is flowing from both developed and developing countries (UNCTAD 2005). And, there is hunger for FDI in many parts of the world leading to cutthroat competition among countries to attract it (Zarsky 2005).

Although most African countries want FDI, they inadvertently reduce it to capital or financial flows that affect the national statements of accounts. Such a parochial view of FDI is regrettable and unfortunate because FDI should be viewed as a multidimensional bundle of resources that includes capital, technology, organisational, marketing and managerial skills affecting economies in a multidimensional way (Manyuchi 2016).

In an attempt to attract more FDI, most countries in Africa have reformed their structures, that is, the policies and institutions for governing FDI (Mugabe 2005). Such policy and institutional reforms have overtly been encouraged and facilitated by agencies such as the United Nations Conference on Trade and Development (UNCTAD), TNCs and civil society groups (UNCTAD 2012a; 2016a). For a number of countries on the continent, the policy and institutional changes have been far-reaching. Despite these reforms, FDI has seemingly continued to evade African countries (Mijiyawa 2012). Even though the continent has overall received increased flows of FDI (Ajayi 2006), it has remained the least recipient of FDI when compared to other continents (UNCTAD 2014a).

The national structures for governing FDI in Africa have gone largely unnoticed in academia. There are two possible reasons for this. In part, because the reforms in the last decade or so have been too quick. But many academics engaged in examining FDI have also been, far too exclusively, in my opinion, preoccupied with the volumes, trends and destinations of FDI, and the role FDI plays in developing and emerging countries in a globalised economy, to the neglect of all else.

The existing related literature that explains FDI policies explores the content and effects of FDI policies worldwide (UNCTAD 2009; 2010a,b; 2011a,b;c; 2012b,c; 2013a,b;c 2014b; 2015a,b,c; 2016b). However, this literature does not examine the other non-content or reveal institutional issues pertaining to FDI. Furthermore, the literature explains FDI policies from an investor and home country point of view, ignoring the explanations of host countries. Therefore, most of the related literature has an effect of obfuscating and concealing rather than clarifying and illuminating the key points pertaining to the structures for FDI, especially as they relate to African countries.

The questions to be answered through this research are: What are the generic structures created by African countries to govern FDI?

What are the merits and demerits of these structures?, and can the structures provide a foundation to build a continent-wide FDI regime? Before proceeding to the argument, three caveats are in order. First, the focus of this article is principally on the national 'structures', that is, national 'policies and institutions', for FDI among African countries, rather than the 'content' and 'effects' of FDI policies. Through a clear and robust conceptual framework and an institutionalist approach, I hope to contribute to exposing the generic structures of FDI on the continent, providing a critique of the structures and querying whether or not the changes to the structures for FDI are creating some form of convergence that can form the foundation for a continental FDI regime.

Second, no claim is made here that the conceptual framework and the institutionalist approach is the only valid way to understand African structures for governing FDI, or that these are preferable to others. On the contrary, I view the conceptual framework and the institutionalist approach as one way to generate an insightful interpretation of the structures of governance of FDI on the continent that complements interpretations derived from analysis of policy content and effects employed in other researches.

Third, my critique of the African structures for governing FDI is designed to be neither comprehensive nor exclusive but rather exploratory and therefore a foundation for discussions and further research. Hence, this article rather attempts to make what we know more intelligible and does not try to put forward a definitive theory of the linkages of policies and institutions to an international regime.

2. Conceptual framework

Since this is policy-science research aimed at dealing with practical problems grounded in a given contextual reality, I use a conceptual framework instead of hypotheses to guide the analysis of issues. The study of African structures for governing FDI is essentially an examination of policies and institutions that African countries have adopted and built to direct and manage FDI. Therefore, it is essential to conceptualise policies and institutions for FDI.

Policies for FDI encompass laws, rules, regulations, White Papers, Green Papers and other public statutes adopted by African states and governments for managing direct investments. The policies for FDI can be regional, sub-regional, national, sector- and firm-specific. These can be differentiated into explicit and implicit policies. Whereas the former includes those unequivocally crafted to govern FDI, the latter consist of those purposely created to govern other issue-areas but through their implementation tacitly affect FDI. Examples of explicit FDI policies include national investment laws, while examples of implicit FDI policies include sector specific policies such as mining sector laws and policies that are enacted and adopted to deal with mining but whose implementation affect FDI.

The national policies that countries adopt can perform five interrelated functions. First, they define the mandate of some FDI institutions. Second, they guide institutions in the implementation of activities and programmes for FDI. Third, they facilitate coordination of institutions involved in FDI. Fourth, they control actors by providing incentives for desired performance and sanctions for undesirable behaviour. And finally, they are an information and knowledge resource to actors interested in FDI.

There is no commonly agreed definition of what an institution is. Alford and Friedland (1985: 16) aver that the "concept of institution refers to a pattern of supra-organisational relations stable enough to be described — polity, family, economy, religion, culture". Following this broad definition, the operational definition for institutions in this study is analogous to formal organisations, be they public or private and bureaucratic or not, found at international, regional, sub-regional, national and sector levels.

Institutions can either be formal or informal (North 1990). This study focuses on formal institutions that have a direct or indirect effect on FDI. Institutions with a direct effect on FDI are created either through an Act of parliament or enshrined in legislation, statute or policy whose specific and explicit objective is to govern FDI. These include Investment Promotion Agencies (IPAs). Institutions whose effect is indirect to FDI are those whose mandate is not FDI *per se*, but through the execution of their mandates affect FDI. These include ministries or departments and boards constituted by law to regulate specific economic sectors and economic activities such as the mining sector and mining activities.

Domestic institutions for FDI generally serve different purposes, classified into four major categories — to implement, coordinate, control and represent actors. Whilst the implementation, coordination and control functions are clear and consequently not worth further explanation, the representation function may need further clarity. The representation function pertains to political and diplomatic duties that organisations perform in pursuit of the interest of their domestic constituencies including *inter alia* defending, collaborating, advocating, informing, marketing and disseminating information and transferring knowledge.

International institutions for FDI "provide information, reduce transaction costs, make commitments more credible, establish focal points for coordination, and in general facilitate the operation of reciprocity" (Keohane and Martin 1995: 42). International institutions can generally facilitate cooperation by helping to settle distributional conflicts and by assuring states that gains are evenly divided over time.

When countries primarily use explicit FDI policies and direct institutions with few to no implicit policies and indirect institutions to regulate FDI, they are considered as actively regulating FDI. Inversely, countries can be considered passively regulating FDI when they largely employ implicit policies and indirect institutions. African countries have developed some structures for governing inward FDI (IFDI), meaning there is no *laissez-faire* approach to the governance of IFDI on the continent.

Ideally, there seem to be two main levels of analysis for FDI structures, namely international (including regional, sub-regional and bilateral), and domestic (including firm, sector and national).

3. Theoretical and methodological aspects

This study is grounded in an institutionalist theoretical framework, especially historical institutionalism. Within this institutionalist approach, 'institutions' are defined as "the formal or informal procedures, routines, norms and conventions embedded in the organisation structure of the polity or political economy" (Hall and Taylor 1996: 938). Following this definition, 'institutions' can range from constitutional order or standard operating procedures to conventions. This perspective associates institutions with organisations and the rules or conventions promulgated by formal organisations.

The three key characteristics of the institutionalist perspective are as follows. First, it conceptualises the relationship between institutions and individual behaviour in relatively broad terms. Second, it emphasises the asymmetries of power associated with the evolution and operation of institutions. And finally, it posits that institutional development is path-dependent. These characteristics of institutions are quite useful in the analysis of structures governing FDI in Africa.

The methodology for this study encompasses use of illustrative case studies that demonstrate the generic national policies and national institutions for FDI in Africa. It facilitates a focus on the structures that are commonly present across African countries at national and at inter-state levels. This methodology is relevant for examining African countries because, in some instances, it is not the contents of given FDI policies that is problematic, but rather the inexistence of, or existence of weak, structures to implement and enforce the policies.

Data for this study were gathered through a review of secondary literature and interviews carried out between 2013 and 2015 as part of a doctoral research. The secondary literature reviewed included national policies, laws, statutes of African countries, published peer-reviewed articles on FDI and FDI reports from government, regional and international agencies. Secondary data were gathered through contacting (calling and emailing) government officials, representatives of TNCs and civil society organisations and browsing the websites of IPAs. In addition, a total of 107 interviews were carried out involving representatives of government, civil society groups, international and regional organisations and TNCs using a snowball technique. Selected interviewees were supposed to be knowledgeable about FDI in Africa. Data from these various sources were triangulated and analysed electronically.

4. The African structures for governing FDI

Across a number of African countries, explicit policies for FDI at national, sector and firm level are primarily crafted by state institutions and enshrined in laws, policy documents, guidelines, and White and Green Papers that directly address the processes and procedures for investing in a given country, define the rights of and guarantees for investors, and establish mechanisms for dispute resolution and settlement. However, direct FDI institutions, such as line ministries and governing boards, can be either government institutions, or semi-government, statutory bodies. However, some IPAs are oftentimes constituted by government and other stakeholders from the private sector, as well as from civil society.

4.1 Explicit and direct national structures to govern IFDI

National explicit policies for FDI are generally enacted by an Act of Parliament and are, therefore, evident in the form of broad and all-encompassing laws, rules and regulations. An example is Mozambique's investment legislation, which includes the Law on Investment (Law No 3/93 of 24 June 1993), which explicitly defines the parameters for direct investment, including the creation and entry of IFDI, the sectors where IFDI would be welcome, incentives, and conflict-resolution procedures, amongst other issues. This law is complemented by the Regulations on Investment Laws, promulgated in terms of Decree No 43/2009 of 21 August 2009, operationalising and providing guidance on the practical implementation of the national investment law by outlining all the necessary forms, time frames, and other operational areas not covered at any length in the Act.

The national investment laws and policies establish direct national investment institutions for FDI, mainly in the form of IPAs, whose mandate is to provide information to prospective investors, promote a country's image to investors, assist in creating conducive policies for investments, and facilitate the review of policies so that they are and remain in line with international, regional, and national 'best practices'. In the case of Mozambique, the law establishing the Investment Promotion Centre (CPI), which performs both a regulatory and investment promotion/support function as explicated under Resolution 26/2009, stipulates that the main role of the CPI is the "development and execution of measures of promotion and co-ordination of foreign and national investments, including the evaluation, support and monitoring of projects undertaken under the *Law on Investment*".

Many countries in Africa have one-stop facilities for processing investments. In 2009, for example, Rwanda established the Rwanda Development Board with the express intention of integrating all government agencies responsible for investor matters under one roof. The board brought under its ambit all key agencies responsible for business registration, investment promotion, environmental clearances, privatisation, and specialist agencies supporting the priority sectors of information communications technology, tourism, small and medium enterprises, and human-capacity development in the private sector. In the same way, the Investment Promotion Centre in Côte d'Ivoire (CEPICI) is a one-stop facility for FDI, established in terms of Article 4 of Decree No 2012-867 of 6 September 2012, with a mandate to "gather, co-ordinate and streamline all government initiatives and actions on investment promotion and private-sector development" (CEPICI 2016).

Other explicit national legislations and direct institutions for FDI are also found in countries such as Chad, where Law No 006/PR/2008 of the Investment Charter of the Republic of Chad (2008) defined the functions of the National Agency for Investment and Exports. Even in the politically fragile Central African Republic, Law No 01/10 of 16 July 2001 of the Investment Charter of the Central African Republic created a National Commission for Investments. Across these African countries, explicit national legislations have provisions for the entry/creation of investment, the operational treatment of investment, the promotion or facilitation of investment, investment retention and repatriation, and establishing a conducive business climate.

In some African countries, national laws and policies for FDI are supported by explicit sector-specific policies with legal provisions for those economic sectors that states consider a priority for investment. A general analysis of these laws and policies indicate that they are mainly focused on the extractive and service sectors. For example, the Ghana Investment Promotion Centre Act, 1994 (Act 478) regulates investment in all sectors of the economy, except minerals and mining, oil and gas, economic free zones, banking, non-banking financial institutions, insurance, fishing, securities, telecommunications, energy, and real estate. Similarly, in Botswana, some specialised enterprises such as banking and insurance, as well as business arising from diamond mining, are licensed by the regulators of those specific industries. In Tanzania, the Natural Gas Policy of 2013 controls many parts of the natural gas value chain and the promulgation of the Petroleum Exploration Policy, the Natural Gas Act, the Gas Utilisation Master Plan, and the Natural Gas Revenue Management Act will further provide for greater regulation of the sector. Since, in many African countries, sector-specific laws and regulations co-exist with national FDI policies, these cause investment processes to be rather cumbersome as foreign investors are required to satisfy the provisions of national investment acts, as well as the requirements of sector-specific laws.

Sector-specific institutions, in the form of line ministries and government departments, implement the policy requirements enshrined in sector-specific policies. For example, in Zimbabwe, the Ministry of Mines is supported by the Mining Affairs Board and the Zimbabwe Mining Development Corporation, which constitute the direct institutions that deal with FDI in the mining sector as prescribed by the Mines and Minerals Act (Chapter 21: 05) and the Zimbabwe Mining Development Act (Chapter 21: 08).

Some African countries have introduced explicit policies that assist in attracting FDI to specific projects of national importance, outside the ambit of Companies Acts. Firm-specific policies and laws are enacted to clearly demonstrate ownership arrangements and provide clear guarantees of investor protection, especially with regard to huge investments or investments in strategic sectors. For example, in Chad and Cameroon, Law No 20/PR/96 of 23 August 1996 and Law No 96/13 of 5 August 1996, respectively, were promulgated to support the opening of the Chad Transportation Oil Company and the Cameroon Oil Transportation Company. Likewise, Angola has firm-specific laws for the Angola Liquefied Natural Gas Project. Nevertheless, there are only a few such firm-specific laws on the continent.

African countries have introduced mechanisms for the coordination of FDI that are at times explicitly stated in national policies. These mechanisms ensure that state institutions interact positively with non-state stakeholders. In Côte d'Ivoire, the Prime Minister (as head of government) is in charge of the coordination of all entities dealing with investment, including line ministries and the CEPICI. In Rwanda and Angola, the coordination of all investment institutions, including the Rwanda Development Board and the National Investment Agency for Angola (ANIP) respectively, government ministries and departments, rests with the President. These examples show that African states have placed the coordination of investment activities in the offices wielding the greatest power in government. This promotes FDI, as it becomes a matter that is on the government's public policy agenda at all times.

In order to build policy and institutional synergies for FDI, African states tend to further create a ministerial level mechanism, namely a Council of Ministers or a Cabinet Committee on Investments, drawing members from a number of ministries or departments responsible for implementing national and sector-specific investment policies. The Investment Promotion Act of 2004 in Kenya, for example, provides for the creation of a National Investment Council (NIC), comprised of Ministers responsible for finance, trade and industry, agriculture, local authorities, planning, tourism and information, the environment, natural resources and wildlife; the Governor of the Central Bank; the Chairman of the Kenya Investment Authority (KIA); and 12 members appointed by the President. The NIC is chaired by a Minister directly appointed by the President. Through its activities, it creates synergies between national, sector-specific and firm-specific policies, as well as addressing broader issues of investment and economic change and development, as its mandate include giving advice to the President and the KIA on "how to increase investment, economic growth, and promote public and private sector co-operation" (Kenya 2004: 1, 626). In countries like Ethiopia, a Council of Ministers can approve resolutions and decrees (with legal force) as well as policies, all having a direct impact on FDI. The Council of Ministers, for example, adopted Regulation No 84/2003 on income tax holidays, and is also allowed to award profit-tax holidays to qualifying TNCs for a period in excess of seven years. And in Angola, the Council of Ministers and the *ad hoc* Cabinet Committee on investment help the President in coordinating investment matters.

Another institution for FDI in some democratic African countries is the legislature (Parliament, or National Assembly). Ideally, its role is to enact laws and approve legislation for FDI, as well as holding the executive accountable by probing decisions and actions taken, and asking penetrating questions about the inaction of government or the bureaucracy. To exemplify this, the Zimbabwe Parliament, through its Parliamentary Portfolio Committee, has called several ministers and other members of the executive to answer questions about the implementation of policies that affect direct investments, such as the Indigenisation and Empowerment Act, and also investigated corruption allegations arising from direct investments into diamond mining.

In some African countries, Parliament functions as an arbiter between domestic and international policy-making apparatuses. In such cases, the legislature is the institution that assists African countries in harnessing and domesticating international regimes, and to harmonise them with local laws and policies. Thus, the National Assembly debates and approves international regimes, and also modifies and harmonises national and sector policies. In the Republic of Congo, for example, international regimes have to be approved by the National Assembly in order to take effect at the national level; and once a regime has been approved, the legislature has to ensure that national legislation and policies are aligned to it. This practice is similar in many member states of the Central African Economic and Monetary Community (CEMAC) and Angola. However, sometimes African countries such as Angola lack the capacities and capabilities to harmonise their national policies with international regimes.

4.2 Explicit and direct international structures for IFDI

Inter-state interactions among African countries have created some explicit regional policies and institutions for governing FDI. For example, member states of the Southern African Development Community (SADC) have adopted a Finance and Investment Protocol (FIP) to harmonise investment policies at the regional level. FIP provisions are administered and implemented by the SADC Trade, Industry, Finance and Investment Directorate. Although a regional policy instrument, the FIP guarantees international protection for foreign investors in SADC member states. It aims to facilitate the creation of a favourable investment climate within the SADC region, the "attainment of macroeconomic stability and convergence, co-operation in taxation matters, and co-ordination and co-operation on exchange control policies" (SADC 2016). Thus, the key aim of the FIP is to promote the harmonisation of the investment policies and laws of SADC member states.

In summary, the SADC FIP provides investors with a choice to initiate binding international arbitration proceedings against any SADC signatory state, prohibits the nationalisation of investments, guarantees fair and equitable treatment of investments, allows investors to elevate their disputes with member states to the international arena, initiates arbitration under the International Centre for Settlement of Investment Disputes (ICSID) Convention on the Settlement of Disputes between States and Nationals of other States or UNCITRAL (United Nations Commission on International Trade Law) rules, and does not discriminate between investors, regardless of their nationality. In cases of expropriation, the FIP requires signatory states to pay prompt, adequate, and effective compensation to foreign investors.

Within the ambit of the FIP, the region has also produced a SADC Model Bilateral Investment Treaty Template (MBITT). The MBITT, though not a legally binding document, provides some guidance to SADC member states on negotiation options that might have an impact on future investment treaties. Hence, states can choose the provisions they regard as important and include these in the treaties they will be negotiating. However, the FIP and the MBITT are instruments aimed at attracting FDI into the SADC region, and less concerned with outward investments (OFDI) from the region.

Similar inter-state interactions piloted FDI policies and institutions in CEMAC, where an Investment Charter (1999) was enacted in accordance with the World Bank's guidelines on the treatment of FDIs. This charter establishes a general framework for the improvement of the institutional, tax and financial environments for companies launching activities in the CEMAC region, as well as principles particularly related to property rights, the repatriation of profits, and investment guarantees.

Inter-state interactions for FDI are also found in explicit bilateral investment treaties (BITs), which are instruments signed by many African states with the specific aim of promoting and facilitating FDI. For example, between September 2011 and January 2012, a single BIT was signed between Kenya and Slovakia (UNCTAD 2012b); but, in the period between June and October 2012, UNCTAD (2012c) reported the signing of three BITs between Morocco and Vietnam, Gabon and Turkey, and the Russian Federation and Zimbabwe, respectively. In the period between November 2012 and February 2013, a BIT known as the Foreign Investment Promotion and Protection Agreement, which includes some typical investment protection provisions, was signed between Benin and Canada (UNCTAD 2013a). In addition, between January and October 2013, three of the four BITs reported by UNCTAD (2013b) involved African countries, namely those between Djibouti and Turkey, Guinea and Turkey, and Japan and Mozambique, respectively.

These examples show that even the least-developed countries in Africa have entered into BITs. Therefore, BITs are not only signed with developed countries, but also with other developing countries and countries in transition. Some of the BITs are quite comprehensive, such as the one signed between Libya and the United States (US) in December 2013. This Trade and Investment Framework Agreement include the establishment of a joint US-Libya Council on Trade and Investment to address market access, intellectual property rights, and labour and environmental issues. In terms of this Agreement, the Council is also mandated to boost commercial and investment opportunities between the two countries by identifying and working towards removing impediments to trade and investment flows.

The BITs are sometimes strengthened and supported by the ratification of Double Taxation Agreements (DTAs). DTAs provide security and stability on issues of taxation, in addition to relief from double taxation by determining that a firm can only be a taxpayer in the country in which its effective management is domiciled. Taxation is an important determinant of FDI, and differentials in taxes can either promote or dissuade investment flows. African countries that have signed DTAs include Swaziland (agreements in force with South Africa, Mauritius, and the United Kingdom [UK]) and Botswana (agreements in place with Barbados, Mozambique, India, Namibia, South Africa, the UK, Sweden, Mauritius, Zimbabwe, France, Lesotho, Swaziland, and the Seychelles).

Besides DTAs, African countries have assented to international legal statutes that relate to FDI. On 19 June 2013, for example, the Convention on the Settlement of Disputes between States and Nationals of other States (ICSID Convention) entered into force for São Tomé and Príncipe (UNCTAD 2013b). São Tomé and Príncipe, a small African island state, subscribed to the Convention as it gives confidence to investors that it will respect their investments by adhering to certain international norms. The Convention essentially establishes procedural rules for the institution and conduct of conciliation and arbitration proceedings under the auspices of ICSID, an international entity founded to improve on the security of investments.

In the international arena, inter-state interactions have resulted in regional policies and institutions that have either been drafted by African countries, or have been accomplished through the active participation of African representatives. Besides BITs, international instruments developed by African countries have been explicitly focused on trade and, therefore, implicitly deal with FDI. Institutions such as the Common Market for Eastern and Southern Africa (COMESA), the SADC, the Economic Community of West African States (ECOWAS) and the trade and investment policies advanced by these institutions should be viewed in this light. Of importance is the recent founding of the Tripartite Free Trade Zone, comprised of 26 African states stretching from Cape Town, South Africa to Cairo, Egypt.

4.3 Implicit and indirect structures for FDI in Africa

Generally, African countries have not developed explicit legal and policy frameworks and direct institutional structures for OFDI, primarily because they do not generate significant volumes of such flows. OFDI laws in many African countries can be found in foreign exchange laws that are enacted for regulating the movement of capital across state borders, in particular among most Anglophone African countries and, generally, across the regional economic communities (RECs) in Francophone African countries. In the latter case, exchange rules and regulations are set at the REC level, while individual (state) adjustments are permissible but largely guided by these regulations. Foreign exchange regulations are harmonised among member states in CEMAC, the Southern African Customs Union (SACU), and the West African Economic and Monetary Union (WAEMU).

Generally, exchange control regulations affect OFDI from African countries through their impact on the volumes/total amount of funds that may be transferred outside of a given state or REC, the time frames for transactions to be approved, the repatriation of profits, exchange rates, and re-investments in host countries. These exchange rules and regulations are usually implemented by national and regional central banks. Thus, national ministries of finance and central banks, through their oversight functions on fiscal and monetary policy, are the key direct institutions that deal with OFDI in Africa.

Therefore, African countries involved in OFDI are either completely silent on the matter, or employ implicit policies and utilise indirect institutions for its regulation. Such policies deal, *inter alia*, with taxes, trade, intellectual property rights, customs duties, the establishment of companies, employment issues, as well as local content laws. The institutions that deal with these matters are indirectly involved in OFDI. Hence, African countries passively regulate OFDI.

5. A critique of the FDI structures

The generic structures for governing FDI in Africa can be critiqued on a number of grounds. First, as stated before, institutions tend to be path-dependent, that is, the current structures of FDI are influenced by those that preceded them, especially in instances where there has not been any radical transformation. Countries such as Tanzania and Zimbabwe that earlier on set up several structures to protect domestic industries have not completely transformed these, in spite of the efforts to liberalise and open these economies. Current structures for governing FDI in these countries oftentimes exist with the remnants of those of earlier periods of protectionism. The governments in these countries at times threaten to use or apply the measures abhorred by investors when they deem necessary, implying the current structures for governing FDI are not durable. Therefore, some African countries took a non-radical and piecemeal approach in reforming their national FDI policies and institutions, in the process creating uncertainty in the governance of FDI. The co-existence of structures of different epochs creates a messy web of FDI governing structures that is not clear for direct investors.

Second, there are many weaknesses relating to coordination of the structures. As explained earlier, in most African countries FDI is also governed by some sector-specific policies, oftentimes different from the explicit FDI structures. For example, in the case of Zimbabwe, the Indigenisation and Empowerment Act demanding direct investors to cede 51 per cent of their equity shares to local Zimbabweans has its own line ministry, but gravely affects FDI. The Minister of Finance and Development, who is in charge of explicit structures for FDI, has interpreted the Act differently from the Minister of Youth, Indigenisation and Empowerment, leading to lack of policy clarity. Since these Ministers wield the same powers in government, no-one can impose his will on the other. The President who is supposed to coordinate the policies and bring clarity in the matter has also provided different interpretations of the law and how it should be implemented, deepening the problem. Coordination challenges of a similar nature are found in Angola, Uganda and across many other African countries.

Third, most of the structures have not helped in stopping corruption. In actuality, the structures have deepened and institutionalised corruption. For instance, whilst most African countries have created one-stop facilities to lessen the duration for registration of business and other processes, corrupt officials still deliberately delay the processing of documents until they have received some payments. In the case of Angola, for example, under the Companies Act, company registration processes normally take between three to six months. In order to reduce this period, the government established the *Guiche Único de Empresa*, one-stop facility, through Decree No 123/03 of 23 December 2003 bringing together representatives of various ministries in a single location under the Ministry of Justice. However, this ministry does not have authority over other government ministries, and processes remain cumbersome, slow and lengthy. Furthermore, firms have to register with the courts and other local municipal offices in the area of their business operations. In all these structures, corrupt officials oftentimes lengthen the process.

Whilst it is commendable that the ultimate structure for governing FDI in most African states is the highest office of government (either President or Prime Minister), this has led to corruption at the highest level in government. Allegations of corruption involving investment ventures concerning the Presidency or Prime Ministers are rampant in countries such as South Africa, Angola, Mozambique, Zimbabwe, Côte d'Ivoire and many others. This has reduced effective enforcement of the investment laws and policies because investors perceive these offices as lacking legitimacy, transparency and accountability.

Fourth, the structures and reforms to the structures have a linkage to the natural resource base of the countries. Countries endowed with natural resources such as oil, gas and diamonds have not had much impetus to change their policies and institutions and have not been rushed to create inter-state instruments for FDI. For example, South Africa is not renewing the BITs it signed with many countries, resorting to a national law on FDI that abolishes international arbitration. Similarly, Angola has not signed any DTAs with any country in the world. However, countries less endowed with natural resources such as Rwanda have been forced by circumstances to reform and be more hospitable to FDI.

Fifth, historical factors associated with colonialism have caused different structures for governing FDI across African countries and the current reforms have failed to remedy this. Whereas the structures in Angola, Mozambique, Equatorial Guinea and Cape Verde have been influenced by Portuguese colonialism, some countries such as Zimbabwe, Zambia, Kenya and Malawi have been influenced by the British. The French have had effect in Francophone African countries and Belgium in the Democratic Republic of Congo. Although China is increasingly getting more influential in Africa, most African countries have maintained strong ties with their colonial masters, which affect their policy making and institutional development processes. The French influence in Francophone African countries profoundly exists because France manages the currency in the different RECs and has pegged the currency exchange rates against the French currency.

Sixth, the variations may be a sign of the existing differences in the national policymaking capabilities and knowledge. Indeed, FDI policies have to be harmonised and aligned to the other broader social and economic policies. Similarly, the institutions for governing FDI have to vertically and horizontally interact with other institutions. In general, African countries have different capabilities in policymaking and institutional development, consequently affecting the structures for governing FDI. Furthermore, many countries are devoid of trained and competent policymakers. The ability of the policymakers to utilise the available knowledge on FDI to make policies that direct FDI towards economic change and sustainable development is questionable. There is generally a lack of domestic institutions that can provide FDI data that is useful for policymaking.

And finally, across a number of African countries, the content of the FDI policies has greatly influenced the structures. Thus, in countries where protectionist policies still exist, structures to enforce the protective measures are prevalent. Similarly, in countries where FDI is considered imperative for job creation such as in Zambia and South Africa, there are some structures to monitor training and other human resources outcomes deriving from the foreign investments. Intrinsically, African countries adhering to international structures for arbitrating disputes with foreign investors lack domestic structures for dispute settlement and resolution and those that have domesticated the dispute settlement mechanisms have structures to ensure arbitration takes place using the domestic structures.

6. Conclusion

This study has examined the generic structures, that is, policies and institutions for governing FDI in Africa at domestic and inter-state level. The structures for FDI across many African countries are aimed at attracting and actively regulating IFDI, and passively regulating OFDI. The generic policies for governing FDI include national, sector-and firm-specific and inter-state agreements and the institutions include those for: enforcement of policies such as the Presidency or the offices of the Prime Ministers; harmonising domestic and international policies and accountability such as the National Assemblies or Parliaments; marketing and advisory services such as IPAs; coordination such as the Ministerial Councils and *Ad hoc* Committees and implementation including the one-stop FDI facilities. Thus, there are a variety of structures for governing FDI across African countries.

The reforms made so far have not brought convergence among these structures. In fact, each country seems to be pursuing its own interest and the inter-state mechanisms such as BITs and DTAs have mainly been geared towards protecting these interests. As such, there is limited to no policy learning about best practices and better structures for governing FDI amongst African countries. Therefore, policy learning that will enable the development of more efficient, effective and accountable structures is essential. Reforms to policies for governing FDI informed through policy learning can result in informed convergence of structures which will form a base for an explicit regional FDI regime. Regional and international support towards policy learning across African countries is encouraged.

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