

THE FACILITATION OF FOREIGN DIRECT INVESTMENT BY LOCAL AUTHORITIES IN NAMIBIA: AN ANALYSIS OF THE POLICY AND LEGISLATIVE FRAMEWORK

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ABSTRACT

The legislation and policy framework on decentralised foreign direct investment (FDI) facilitation shapes the scope and developmental experiences of host local authorities (LAs) with foreign investors in Namibia. Owing to the FDI facilitative roles of LAs, it is vexing how the Windhoek and Walvis Bay LAs have developmentally experienced FDI. These LAs have developmentally experienced FDI (Ramatex Textiles Namibia and Namibia Press & Tools) in a negative and neutral way respectively. In addition, no known empirical research has focused on analysing legislation and policies that accord FDI facilitation functions in Namibia and its impact on the scope and developmental experiences of LAs with facilitating FDI. The present study fills this empirical gap by using a qualitative research paradigm. Through purposive sampling, 13 key respondents were interviewed. Data were interpreted and presented through thematic analysis. The principal findings of this research are that the legal and policy framework on the facilitation of FDI by LAs is insufficient and regressive for achieving bottom-up development, hence the negative and neutral developmental experiences of the Windhoek and Walvis Bay LAs with FDI respectively. This study recommends legal and policy reforms aimed at ascending the developmental role of LAs and ensuring that LAs are adequately empowered to facilitate FDI for development and those measures are put in place to protect LAs and their communities against the negative effects of FDI.

Keywords: Foreign Direct Investment, Policy, Legal, Local Authority, Namibia.

INTRODUCTION

Understanding the complexities of the policy and legislative framework for the facilitation of foreign direct investment (FDI) in any country is important for fathoming the dynamics investment facilitating agencies (IFAs) are confronted with. For more than a century, scholars of public administration (Gerton & Mitchell, 2019) have shown renewed interest in the normative improvement and use of public policies to address various developmental challenges. Kline (2012) and Marenga (2017) identify one such area as the use of FDIs for sustainable development. The drive towards attracting ‘development-friendly’ FDI emerges at a time when

developing countries are consistently confronted with pressing socio-economic and environmental challenges in a multi-level governance (MLG) system (United Nations Conference on Trade and Development, 2015). In the history of development economics, FDIs have been thought of as an enabler for economic growth which resolves broader development challenges. To date, the importance of FDIs in propelling the development of any country remains prominent in literature (Jauch, 2002; Li, 2013; Karlsson, 2014; Kolk et al., 2017; Zampetti & Lazo, 2018; Brandt, 2020). As a result, developing countries have incrementally prioritised the attraction of development-friendly sustainable FDI (Jauch, 2002; Jenkins & Thomas, 2002; Farole & Winkler, 2014). To benefit from the development prospects of FDI, several developing countries have passed investment legislation that offers incentives, concessions and facilitative support to attract FDI. These incentives, concessions and facilitative support have often been implemented by IFAs at various levels of government as permitted in an MLG system. One such country that has followed this approach is Namibia, where local authorities (LAs) are empowered to facilitate FDI by providing incentives, concessions and services as per the joint provisions of the Export Processing Zones (EPZ) Act (Act No. 9 of 1995) and the LAs Act (Act No. 23 of 1992) as amended. The EPZ regime is currently phasing out and being replaced by the Sustainable Special Economic Zones (SSEZ's) regime.

The phasing out EPZ Act (Act No. 9 of 1995) mandates that the provision of FDI incentives (e.g. reduced rates on land use, supply of water and electricity, construction of factory buildings, and provision of waste management services) is done by LAs as per their core mandates provided by the LAs Act (Act No. 23 of 1992) as amended. More specifically, the EPZ Act (Act No. 9 of 1995) allows for an EPZ management company or the Offshore Development Company (ODC) to approach LAs with a request to provide facilitative services, incentives and concessions to EPZ FDI (Republic of Namibia, 1995). Drawing from the divergent experiences of two Namibian LAs, Windhoek and Walvis Bay, this study makes use of the ancillary inferences made by Jauch (2006 & 2008), Flatters & Elago (2008) and Enders (2013) on the legislative inefficiencies that provided these two LAs with limited scope of facilitating EPZ FDI and the resultant lacklustre developmental experiences. For instance, the Windhoek LA unsuccessfully facilitated the investment of Ramatex Textiles Namibia (RTN), which rendered the FDI unsustainable for local development. RTN was an exporting Malaysian subsidiary garment manufacturing company that invested in Namibia in 2001 and relocated in 2008 under controversial circumstances.

The relocation of RTN occurred after it was reported to have polluted the underground water reservoir, illegally used land that was not allocated to it, and was generally not cooperative with the Windhoek LA (Jauch, 2006 & 2008; Flatters & Elago, 2008), and did not engage in any corporate social responsibilities (CSRs). The case of the Walvis Bay LA paints a more neutral case with the facilitation of Namibia Press and Tools (NPT), a car parts manufacturer for the German market that invested in Namibia since 1996 to date. The case of NPT suggests a neutral sustainability index where it has been reported to have created sustainable jobs in the local economy and made consistent employee income tax contributions and 10% withholding tax (non-resident shareholders) on declared dividends (Enders, 2013). Although the Walvis Bay LA enjoys a cooperative relationship with NPT, this FDI has not engaged in any CSRs for local development. Both the RTN and NPT firms were accorded EPZ status and received numerous

neo-liberal incentives and concessions under the EPZ regime. Some of these incentives, that is, reduced rates on land use, water, electricity, waste management, construction of factory buildings, amongst others, were provided by the hosting LAs as per the EPZ Act (Act No. 9 of 1995) and the LAs Act (Act No. 23 of 1992) as amended (Republic of Namibia, 1992 & 1995).

As illustrated elsewhere, the absence of an IFA within the Windhoek and Walvis Bay LAs provided limited scope (e.g. supply of water, electricity, land and waste management) in facilitating FDIs. However, although the Walvis Bay Export Processing Zone Management Company (WBEPZMC) was established with the opening of Walvis Bay as an economic zone in 1995/6 (Larri, 2000), it lacked the necessary functions to synchronise FDI sustainability with local development priorities. Resultantly, the legislation that accords LAs FDI facilitative functions is instrumental in shaping their scope and developmental experience with facilitating FDI. However, notwithstanding what has been described as a generally adequate policy and legislative framework for attracting FDI in Namibia (Marenga, 2017 & 2019), LAs have faced numerous challenges in facilitating FDI for development. This is in light of the bottom-up approach to development using FDI as embraced in Namibia's MLG system and encapsulated in legislation (that is, Vision 2030, the National Development Plans (NDPs) and the Growth at Home Strategy). Despite this broader legislative and policy position and backing, it remains empirically unclear why the Windhoek and Walvis Bay LAs have developmentally experienced FDI in a negative and neutral way. These experiences suggest a normative gap within the amended LAs Act (Act No. 23 of 1992) and the EPZ Act (Act No. 9 of 1995) for attracting and retaining sustainable FDI for development. LAs lack the development ascent when it comes to facilitating FDI.

From the above, there emerges a need to analyse the policy and legislative framework on LA FDI facilitation. The above need is on the parameters that LAs are subject to in advancing the bottom-up development agenda using FDIs in an MLG setting. Furthermore, there is a dearth in the studies by Jauch (2006), Flatters & Elago (2008) and Enders (2013) on the impact of the policy and legislative framework on the scope and developmental experiences of LAs in facilitating FDI, particularly under Namibia's EPZ regime. This is the context that frames the current study. The current study raises important concerns on how the ambiguous nature of Namibia's policy and legislative framework on FDI facilitation has impacted on the scope and developmental experiences of the Windhoek and Walvis Bay LAs with FDIs, particularly in pursuit of the FDI developmental knock-on effects in an MLG system.

The current study attempts to address the above scholarly gaps by answering the following research question: How has the existing policy and legal framework in Namibia impacted on the scope and developmental experiences of the Windhoek and Walvis Bay LAs in facilitating and hosting the RTN and NPT FDIs respectively? At the conceptual level, addressing this research question fills scholarly gaps on the legal and policy requirements for efficient governance at SNG level in an MLG system, particularly on policy implementation and coordination by LAs. This is an element that literature (Davey, 2011; Nganje, 2014; Mahembe, 2014; Kuswanto et al., 2017) and the MLG theory has been inept at explaining in the context of decentralised FDI facilitation. From here onwards, the present study is structured as follows: An overview of the policy and legislative framework for LA FDI facilitation, the policy and legal

framework for LA FDI facilitation in Namibia, the research methodology, results and discussion, as well as a conclusion.

Policy and Legislative Framework for LA FDI Facilitation: An Overview

The facilitation of FDI by LAs is an area of development studies that has long been overlooked. Within this focus area, one sub-area that has been largely neglected is the policy and legal framework for decentralised FDI facilitation. This is particularly in light of the decentralisation of functions to SNG units as propelled by MLG theory and system. The MLG theory advocates for decentralisation and the involvement of SNG units in important issues of development governance (Marks, 1993). This is further supported by Mgoqi (2018) who advocates for a bottom-up development approach that allows SNGs to effectively represent the needs and interests of the local communities. This is reflective of Namibia's policy positions (Vision 2030 and the NDPs) that emphasise bottom-up development using FDI. As highlighted earlier, the experiences of Windhoek and Walvis Bay LAs in facilitating FDIs could largely be attributed to the existing policy and legal frameworks that guide the functions of LAs in this regard. As emphasised elsewhere, the conduct of foreign investor's vis-à-vis LAs could be attributed to the existing neo-liberal policy and legal framework on FDIs in Namibia. This is because the legal framework sets the parameters in which LAs and FDIs engage each other. As illustrated elsewhere, such a framework provides LAs with FDI facilitation functions, which largely shape their relationship with FDI. Sauvart and Hamdani (2015), Dressler (2018), Novik and Crombrugghe (2018) and Savant (2018) advocate for a coherent legislative framework that sufficiently empowers LAs in executing their duties. This would improve the developmental experience of LAs with FDI. The Organisation for Economic Co-operation and Development (OECD) (2015) attributes the resultant ambiguous scope and lacklustre developmental experiences for LAs in facilitating FDIs to an inadequate legal and policy framework. Through its Policy Framework for Investment document, the OECD (2015) argues for the sufficient provision of functions to IFAs such as LAs to create an enabling investment environment and foster the sustainability and development impact of FDIs.

The drive towards development-friendly sustainable FDI has in recent years received increased scholarly attention (Kline, 2012; Marenga et al., 2018; Zampetti & Lazo, 2018). As a result, various countries compete for sustainable FDI through the liberalisation of legislation to attract foreign investors by offering numerous concessions and incentives. This is reflective of Namibia's case where the promulgation of the EPZ Act (Act No. 9 of 1995) grants foreign investors an array of neo-liberal incentives and concessions (Republic of Namibia, 1995). The EPZ Act (Act No. 9 of 1995) is faced with numerous criticisms on the extent to which it is characterised by neo-liberal traits (Larri, 2000). Partly to this, a report by Kahiurika (2017) suggests that the tax haven in Namibia, as created by the EPZ Act (Act No. 9 of 1995), has seen the country being blacklisted by the European Union in 2017. To remedy this, the Namibian parliament is discussing the replacement of this Act with the SSEZs Bill that will likely see the scrapping of tax incentives associated with free repatriation of profits under the current EPZ regime (Brandt, 2020).

The Chinese and Vietnamese experiences with FDIs provide hope for Namibia's LAs in facilitating FDIs. This is in light of the mooted SSEZs Bill that is replacing the EPZ Act (Act No. 9 of 1995). Enright (2017) asserts that China has over the years reaped greater developmental benefits from FDI; FDI that is facilitated by sufficiently empowered SNGs in their MLG setting. As explained elsewhere, developing countries such as Namibia have since the attainment of independence adopted neo-liberal FDI policies to attract and retain foreign investors. As encapsulated in legislation, the competition for foreign investors among developing countries is largely pegged against the developmental benefits of FDIs as explained by Kurtishi-Kastrati (2013), and Nyamache & Nyambura (2013). Kurtishi-Kastrati (2013), and Nyamache and Nyambura (2013) assert that FDIs have various developmental benefits such as higher domestic investment, lower prices (through healthy competition), job opportunities capital, technology and employment for the development and growth of host communities. These development benefits are instrumental at the LA level in an MLG state such as Namibia that embraces bottom-up development.

Standing out in several studies (e.g. Farole & Winkler, 2014; UNCTAD, 2017) on FDI facilitation is the policy and legislative bias towards FDI facilitation by national governments. The current study, therefore, ventures to deviate from this bias by drawing policy and legislative focus from an SNG perspective in a developing country such as Namibia. The bias could be explained by the fact that developing countries, especially those in Africa, tend to centralise power on issues of FDI. A study by Larri (2000) suggests that Namibia is one of the countries in Africa that have directly involved LAs in the facilitation of FDIs owing to the provisions of the LAs Act (Act No. 23 of 1992) as amended and the EPZ Act (Act No. 9 of 1995) (Republic of Namibia, 1992 & 1995). It should be noted that Namibian LAs do not have absolute powers on FDI facilitation, but that such functions are partially decentralised, hence the limited scope that LAs have in engaging FDI and fostering their sustainability for local development. The experiences of the Windhoek and Walvis Bay LAs bear reference in this context.

Although Khan et al. (2014) provide an understanding on the proliferation of neo-liberal FDI policy, what remains inadequate in their study is the effects that a neo-liberal policy and legislative framework has on the experiences of LAs as IFA with FDIs. In an effort to mitigate various economic challenges, the liberalisation of investment legislation has been viewed as an effective method that attracts and encourages foreign investment transactions within an economy (United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), 2017). However, this has the risk of attracting low quality FDIs that are often premised on profiteering, hence their fly-by-night nature. Essentially, the process of liberalising investment legislation is aimed at easing the ability of conducting business for foreign investors by removing bottlenecks pertaining to:

“Restrictions on sectors in which FDI can be made; restrictions on the value of FDI; restrictions on the level of foreign ownership; compulsory joint ventures with local firms; controls on repatriation of profits; performance requirements, e.g. export requirements, local content requirements, technology transfer requirements, skills development requirements; trade balancing requirements; and Import restrictions” (UNESCAP, 2017).

From the above, it should be noted that the excessive liberalisation of investment laws has the risk of attracting fly-by-night unsustainable FDIs. Resembling the neo-classical and location theories, the removal of the above-mentioned bottlenecks provides an opportunity for the maximisation of profits, thereby increasing the location attractiveness index for foreign investors. This is true in that the location and neo-classical theories consolidate that high return investment locations are often attractive for FDIs (Krugman, 1992; Weintraub, 1993). In essence, neo-liberal investment laws resemble backward bending, as these laws often prioritise quantity over quality FDI, with no direct linkage to local development priorities. However, creating a conducive investment environment for the facilitation of sustainable FDIs by LAs is largely dependent on the provisions of existing legislation. As highlighted earlier, the phenomenon of developing countries such as Namibia partially decentralising FDI facilitation functions to SNGs has been cautioned against by Brosio (2014). Brosio (2014) explains that this confines the scope of SNGs such as LAs in facilitating FDIs as most important issues and decisions often have to be referred to national governments for intervention. The EPZ Act (Act No. 9 of 1995) and the amended LAs Act (Act No. 23 of 1992) similarly provide a limited scope to LAs in facilitating FDI. The inadequate scope for LAs in FDI facilitation may generally subject foreign investors to frustration and render them non-cooperative with SNGs who may come across as powerless.

For the scope and developmental experiences of LAs in facilitating FDIs to improve, there needs to be reform measures in place to ensure that LAs are fully empowered as IFAs. Such measures should have a bias for synchronising FDI facilitation functions with local socio-economic and environmental development goals and objectives. These reform measures would create the channel through which local communities can benefit through LA facilitated FDI. It should be noted that the developmental benefits of FDI are not guaranteed (Marenga, 2017; 2019), hence the need for an effective policy and legislative framework to foster the development-centric index of FDIs, thereby improving the scope and experiences of LAs in facilitating FDIs. In addition, existing legislation should explicitly identify cushioning mechanisms against the possible negative impacts of FDIs on the local economic, social and environmental interests of the hosting community (Kline, 2012). This is an element that is absent within the Namibian legislative framework.

The need for maximising the developmental prospects of FDIs is founded in the drive towards liberalising FDI legislation in sub-Saharan African countries with a bias for export-oriented manufacturing FDIs (Pant & Srivastava, 2018). However, the mismatch arises in that excessive liberalisation of investment legislation often attracts poor quality and unsustainable FDI. The promulgation of numerous laws and policies such as the EPZ Act (Act No. 9 of 1995) saw the Namibian government similarly according priority to the attraction and facilitation of export-oriented manufacturing FDIs (Republic of Namibia, 1995). This could be attributed to the prospects of manufacturing exporting FDIs in compensating for the depleting natural resources and promoting economic development (Shikongo, 2016). To foster the synchronisation of investment laws and development, a new generation of investment policies emerged. Pant and Srivastava (2018) explain that these are investment policies that aim to create an attractive investment environment, while similarly incorporating and attaching various development aspirations of the host community and country. The new generation of investment policies provides for an elaborate linkage of FDIs and local development, an element that should be

reflected in all investment laws of a country to improve the scope and experience of IFAs with FDIs. The new generation of investment policy framework further accords prominence to the ability of IFAs such as LAs in dealing with FDI facilitative challenges (UNCTAD, 2018).

A policy and legal framework that caters for the neo-liberal profit seeking capitalist agenda of foreign investors through the provision of concessions and incentives has notably been reflected as a cornerstone for the discouraging experiences of LAs in Namibia as IFAs in facilitating FDIs. As established later in the present study, the positive outlook of Namibia's investment as indicated by Bikalemesa (2016), is linked to the holistic multi-stakeholder and MLG approach in facilitating FDIs. The positive outlook is further attributed to the neo-liberal policy and legislation in place that has been criticised for favouring foreign investors' capitalist needs over the development aspirations of Namibians (LaRRI, 2000; Kahiurika, 2017). The scope of functions accorded to LAs as IFAs in facilitating FDIs is set within the parameters of the policy and legislative provisions. The policy and legislative framework shapes the relationship between LAs and foreign investors. It further outlines important elements pertaining to the "what", "who", and "how" of the FDI facilitation process. As a result, this regulatory framework further shapes the experiences of IFAs such as LAs in facilitating FDI. From a Namibian perspective, an overview of this policy and legal framework is provided in the section below. This is done to establish how the policy and legal framework for LA FDI facilitation may have possibly influenced their negative and neutral developmental experiences of LAs with facilitating FDI.

The Policy and Legal Framework for LA FDI Facilitation in Namibia

The Constitution of Namibia (1990)

As the principal piece of legislation in the country, the Constitution of the Republic of Namibia sets the stage in which foreign investments are encouraged. There is explicit and direct reference for the establishment of foreign investors and LAs in the country. Exemplifying this, Article 98 (1) of the Constitution provides for the economic order as premised on the values of a mixed economy (Republic of Namibia, 1990). Although legislatively underpinned by the principles of a mixed economy (market economy with elements of a planned economy), Namibia's economy has been criticised for being more market oriented (Jauch et al., 2011), thus serving private interests through policy instruments, that is, foreign investors. The normative and existential market driven orientation of Namibia's economy could be attributed to the investor attractiveness of Namibia as highlighted by Bikalemesa (2016). Made possible through the constitutional proclamation of Namibia adopting a mixed economy, foreign investors find this attractive to operate in a market driven economy where their interests can be protected through state intervention as provided for in, amongst others, the EPZ Act (Act No. 9 of 1995).

As premised within the location theory (Krugman, 1992), the investor attractiveness of Namibia is linked to its mixed economy. The mixed economic order as proclaimed by Article 98(1) of the Namibian constitutions signifies openness to the private sector, including foreign investors and the capitalist pursuit of profits on the premise of the neo-classical FDI theory. As seen with the case of RTN, this relentless pursuit of profits shapes the context in which LAs

experience FDI as other important considerations such as environmental sustainability, commensurate pay for employees and a safe workplace often get neglected to maximise on profits (Jauch, 2002; Shindondola, 2003). In addition, Chapter 12 of the Namibian Constitution similarly sets the context in which the government is organised (Republic of Namibia, 1990). It is organised in a multi-level hierarchical system that has a national, regional and local government. However, as supported by Stephenson (2013), in the African context, the Namibian government tends to concentrate powers and functions at the national level, as opposed to decentralising to SNGs, for example, FDI facilitation. This is similarly the case of article 96 of the Namibian constitution that centralises international relations and cooperation at the national government level (Republic of Namibia, 1990). This leaves LAs in a futile position when it comes to effectively carrying out para-diplomacy, for example, through twinning agreements with LAs in other countries.

The Export Processing Zone Act (Act No. 9 of 1995)

The EPZ Act (Act No. 9 of 1995) was passed into law with the intention of attracting manufacturing export oriented FDIs. The EPZ Act (Act No. 9 of 1995) further provides for the establishment, development and management of EPZs in Namibia, and particularly for foreign investors that are awarded EPZ status. Principally, this Act aims:

“(a) To attract, promote or increase the manufacture of export goods; (b) to create or increase industrial employment; (c) to create or expand export earnings; (d) to create and expand industrial investment, including foreign investment; and (e) to encourage transfer of technology and development of management and skills in labour in Namibia” (Republic of Namibia, 1995).

Foreign investments that were accorded EPZ status operated within EPZs that are established in accordance with Section 2 of the EPZ Act (Act No. 9 of 1995). The Act prescribed that an EPZ may be a designated, developed or underdeveloped piece of land comprising of a single or multiple factories. An EPZ included numerous pieces of land and not necessarily an agglomerate of these (Republic of Namibia, 1995). For instance, RTN, an EPZ status company, was the only one operating in a designated EPZ within the Windhoek LA, while a majority of EPZ FDIs were set up in the Walvis Bay LA. Once granted an EPZ status in Namibia, foreign investors were privileged to a host of incentives such as exemption from paying corporate tax and the payment of import duties on imported inputs (payment of VAT), stamp duties or the transfer of duties or lodging a bond with customs and excise in respect of manufacturing equipment to be used in the EPZ activities (WBEPZMC, 2016). EPZ FDI companies are allowed to repatriate their capital and profits, while enjoying freedom from exchange controls, choosing any investment location within Namibia, and having the right to factory facilities if required, as well as the supply of water, electricity, land and waste management services at subsidised rates (Republic of Namibia, 1995). While the EPZ regime has been known for the incentives it provides to FDI, it has failed to include an element of CSR or FDI sustainability in legislation. Legislation in Namibia that speaks of CSRs is the National Policy on Volunteerism of 2014 which languidly recommends/suggests CSRs (Republic of Namibia, 2014). Even worse, the key legislation under which businesses such as FDI are established in Namibia, the Companies Act

(Act No. 28 of 2004), makes no mention of CSR expectations from companies (Republic of Namibia, 2004) as seen with the case of India which has a mandatory CSR policy.

The provision of the above-mentioned incentives is aimed at increasing the attractiveness of Namibia as an investment location as argued in the location theory (Krugman, 1992), as well as the ease of doing business and making profits as premised in the neo-classical theory (Weintraub, 1993). The intention is to attract FDIs that will contribute to various development goals and objectives of the country. For instance, the goal associated with reducing employment rates as highlighted in Vision 2030 is pegged against the intensive labour requirements that manufacturing firms need. For purposes of smooth FDI facilitation, EPZ Management Companies could be established to manage an EPZ. As a result, the WBEPZMC was the only entity that was established in the country for this purpose. As observed with the investment of NPT, the establishment of the WBEPZMC within the Walvis Bay LA could be attributed to the success of this FDI. The above is juxtaposed with the case of RTN that did not have a dedicated EPZ management company in Windhoek. As a result, RTN relied on the central government through the ODC for that and collaborated with the Windhoek LA in facilitating and supporting this FDI. However, the developmental experience of the Windhoek LA with RTN was not positive as it was accorded limited functions as an IFA. As reported by Shikongo (2016), the ODCs role in facilitating FDIs was similarly ambiguous and could have contributed to the demise of RTN. Upon establishment of the WBEPZMC, the Walvis Bay LA was the majority shareholder among other shareholders, while the Namibian government held nine percent (9%) of the shares (Larri, 2000). The WBEPZMC had powers pertaining to the:

“...Construction, leasing, acquisition of infrastructure and operational expenditure, the EPZ Management Company provides all other services to investors free of charge: handling of investors' applications for EPZ status facilitate in acquiring work permits and visas erecting custom built factories to specific need of EPZ enterprises leasing of serviced land to EPZ enterprises assisting investors in the selection of site/factory facilities serving as link between investors and the nation's power centres facilitate with personal recruitment”.

The establishment of the WBEPZMC as a private entity created boundaries that prevented the Walvis Bay LAs from directly encouraging it to foster FDI sustainability, owing to its limited scope of functions. In terms of its core functions, the WBEPZMC was not linked to the Walvis Bay LA. Additionally, the Windhoek and Walvis Bay LAs' scope in facilitating FDI was limited to the provisions of the LAs Act (Act No. 23 of 1992) as amended. These are: Sections 35, 44 and 94 of the amended LAs Act (Act No. 23 of 1992) associated with water and electricity supply, land and waste management (Republic of Namibia, 1992). The EPZ Act (Act No. 9 of 1995) failed to make provisions for the establishment of an EPZ management company in the Windhoek LA to aid with facilitating one of the biggest EPZ companies in the country, the RTN. This is the context in which LAs and their IFAs become directly exposed to the capitalist vehemence of FDIs as described elsewhere by Faber (2018), whether adequately empowered or not. Section 5(e) of the EPZ Act (Act No. 9 of 1995) makes reference to the elaborate relationship between an LA and an EPZ management company with reference to the administration of LA areas in light of other legislation. For instance, when it comes to the implementation and compliance to various statutes (e.g. Town Planning Ordinance, 1954

(Ordinance 18 of 1954), of the Townships and Division of Land Ordinance, 1963 (Ordinance 11 of 1963) or of the Expropriation Ordinance, 1978 (Ordinance 13 of 1978), an LA may be regarded as an EPZ management company (Republic of Namibia, 1995). This may be linked to the establishment of the WBEPZMC in 1996 under the majority share ownership of the Walvis Bay LA, thus, within the administrative scope of the LA.

Nonetheless, EPZ management companies were not established in all LA areas that hosted EPZ FDI, hence the resultant need for some LAs (e.g. Windhoek) to directly engage foreign investors in the FDI facilitative process of providing incentives through the ODC. Such other laws include the National Environmental Health Policy (2002) and the Public and Environmental Health Act (Act No. 1 of 2015) which mandates LAs with functions on the protection of the public and the environment from potential harm from foreign investors' business operations such as pollution, among others (Republic of Namibia, 2002 & 2015). For the context of this study, the protection of the environment is within the realm of LAs to safeguard against possible unsustainable FDI practices. Overall, the liberal incentives and concessions coupled with poor legislative and institutional support could be attributed to the demise of the RTN and the inability of the Windhoek LA to retain it due to its limited scope in facilitating FDIs. Although the recently promulgated Namibia Industrial Development Agency (NIDA) Act (Act No. 16 of 2016) repeals the existence of the EPZ management companies, it subjects all EPZ FDIs to central government bureaucracy, as all facilitation will now be done by NIDA, formerly ODC. Considering the challenges of the ODC, it begs the question on whether any reforms will be done to improve the organisational efficiency now that the WBEPZMC will no longer exist to maintain the cooperative relationship with the current EPZ FDIs in Walvis Bay. For contextual clarity, it is important to mention that although the promulgation of the NIDA Act (Act No. 16 of 2016) repeals the establishment of the WBEPZMC in the EPZ Act (Act No. 9 of 1995), this study draws inferences on the mandate of the WBEPZMC as relating to the facilitation of NPT since inception, that is, 1996 to 2016.

Local Authorities Act (Act No. 23 of 1992) as Amended

The LAs Act (Act No. 23 of 1992) as amended provides the conditions under which an LA may be established. It similarly accords LAs with numerous powers, duties and functions such as those related to the development of the local economy (Republic of Namibia, 1992). To further create an enabling investor environment, other responsibilities include the provision of infrastructure such as roads, buildings, depots, open markets and public transport services (Republic of Namibia, 1992). As highlighted earlier in the EPZ Act (Act No. 9 of 1995), the provision of FDI incentives such as water and electricity supply, land and waste management require LAs to provide these as per their core functions. This is the context in which LAs are accorded scope and legislative powers in facilitating FDIs. For instance, the LAs Act (Act No. 23 of 1992) as amended prescribes that LAs should be engaged in the supply of water to businesses (Section 35), supply electricity to businesses (Section 53), supply of land for business purposes (Section 94 (1) (aj) (i) and (iv)), and waste management services (Section 44 (1) (e) (vi) (Republic of Namibia, 1992).

The provision of the above services by LAs as incentives to EPZ status companies has been particularly mandated by the EPZ Act (Act No. 9 of 1995) which provides for an IFA, such as the ODC, to make use of an LA to provide these services to foreign investors (Republic of Namibia, 1995). These specific provisions of the LAs Act (Act No. 23 of 1992) as amended apply particularly to LAs that do not have a dedicated IFA, such as the WBEPZMC. LAs without an IFA such as an EPZ management company often rely on the above limited de facto functions provided by the LAs Act (Act No. 23 of 1992) as amended. This was particularly the case for the Windhoek LA with the investment of RTN. However, the challenge with this legislation stems from the fact that it provided LAs limited scope in facilitating FDIs, thus subjecting FDIs such as the RTN to central government bureaucracy for functions outside the scope of those provided to LAs. Furthermore, this limited scope renders LAs helpless in trying to retain and foster FDI sustainability and maximise on the development knock-on effects to meet local needs and aspirations. Despite the provisions that exist, LAs are greatly disempowered when it comes to facilitating FDI for development as such functions are centralised at the national government level. As a result of the above, local Namibians are deprived from benefiting from the prospective positive developmental effects of FDI. This emerges due to the LAs Act (Act No. 23 of 1992) that does not provide LAs with the needed FDI facilitation functions that should foster FDI developmental benefits for local communities.

Decentralisation Policy of 1997 and the Decentralisation Enabling Act (Act No. 33 of 2000)

Namibia is a unitary democratic country that is established on the principles of decentralisation to SNG units in an MLG system. The decentralisation of functions is done through three primary modems such as delegation, deconcentration and devolution. It is against this background that power, functions and duties are decentralised to LAs to drive the development agenda and service provision from a bottom-up perspective. Mgoqi (2018) supports this approach as the most effective way of driving development from a grass-roots perspective. The passing of the Decentralisation Policy (1997) and the Decentralisation Enabling Act (Act No. 33 of 2000) brought sustenance and institutionalised the government's commitment in further empowering LAs to drive the development agenda from a decentralised level of the government (Republic of Namibia, 1997; Republic of Namibia, 2000). This is particularly because the close proximity of LAs allows them in-depth awareness of the needs and challenges of local communities (Mgoqi, 2018), hence their suitability in streamlining such needs and challenges with the opportunities and benefits associated with FDIs.

LAs in Namibia have the mandate to ensure that local communities are protected against the negative social, economic, governance and environmental outputs of FDIs in their jurisdiction. This should be done in light of the incentives they provide as prompted by the EPZ Act (Act No. 9 of 1995) to ensure that they provide support to FDIs that benefit the host communities. For the specific context of this study, the provisions of the Decentralisation Policy (1997) set out the functions that may be decentralised. Furthermore, the Decentralisation Enabling Act (Act No. 33 of 2000) sets the criteria and modems through which functions may be decentralised. The fallacy herein is that despite both legislations being passed a few years after the EPZ Act (Act No. 9 of 1995), have failed to explicitly accord FDI facilitation functions to

LAs in light of those accorded to EPZ management companies as seen with the WBEPZMC. As seen with the developmental experience of the Windhoek and Walvis Bay LAs with FDI, Brosio (2014) cautions against partial decentralisation of FDI facilitation functions as this limits the prospects of LAs in maximising on the development prospects of FDIs by retaining them. While Namibia has a host of legislation on decentralisation (e.g. Decentralisation Policy of 1997 and the Decentralisation Enabling Act (Act No. 33 of 2000)), none of these make provisions for the decentralisation of sufficient FDI facilitation functions to LAs.

While literature (Canfei, 2006; Kuswanto, Hoen & Holzhacker, 2017) has attempted to explain the nature of FDI facilitation by SNG units, there exists a scholarly gap which is attributed to the lack of explanation and understanding on how the policy and legislative framework for facilitating FDI impacts on the scope and experiences of LAs with facilitating FDI. This gap further emerges in light of the MLG theory that has been inept at explaining legal and policy requirements for efficient governance at SNG level in an MLG system, hence the use of the EPZ regime that relies on MLG coordination in Namibia to fill this gap. This is the context in which the current text is framed. It raises important concerns on how the ambiguous nature of Namibia's policy and legislative framework on FDI facilitation has impacted on the scope and developmental experiences of the Windhoek and Walvis Bay LAs with facilitating FDIs, particularly in pursuit of the FDI development knock-on effects. In an effort to address the above issues, the section below details the research methodology that was adopted, as guided by the qualitative nature of the earlier discussed research question and problem.

RESEARCH METHODOLOGY

Informed by the data requirements of the research question of the current study, the qualitative research method was found to be suitable. Primary and secondary qualitative data were relied on to analyse the policy and legal framework on LA FDI facilitation in Namibia. The intention is to analyse how this policy and legal framework has led to the negative and neutral developmental experiences of LAs in facilitating FDI. Using the crux of the current study, there emerged variables of interest. These are the dependent variable: scope and experiences of LAs in facilitating FDIs; independent variables: 1) decentralised functions of FDI facilitation in an MLG system; 2) policy and legislative harmonisation in an MLG system; and 3) broader legal and policy framework for SNGs in an MLG system.

Using the above variables as a thematic guideline, interview schedules were developed. Through unstructured interviews, primary data were obtained from key respondents who were selected through the purposive/judgemental sampling technique from key stakeholder organisations. This included one key respondent from each of the following organisations: the Windhoek LA, Walvis Bay LA, WBEPZMC, NPT, Ministry of Urban and Rural Development, Namibia Investment Centre (Renamed to Namibia Investment Promotion Development Board) and the Namibian Association of Local Authority Officials. Other key respondents included an independent researcher, a decentralisation and public policy expert, a local government and sustainable development expert, a social justice activist, a community leader and an economist. This brought the total sample size to 13 respondents.

Secondary data were obtained from books, acts of parliament, policies, research articles and online libraries on the facilitation of FDIs by SNGs such as LAs. Both primary and secondary data were organised using ATLAS.ti, and analysed and presented in themes as guided by the identified variables of interest. The independent variables have been slightly manipulated to have a desirable effect on the scope and experiences of LAs with facilitating FDI as a dependent variable. The analysis was further done against the need to answer the research question that aimed to address; how the existing policy and legal framework in Namibia impacted on the scope and developmental experiences of the Windhoek and Walvis Bay LAs in facilitating and hosting the RTN and NPT FDIs respectively. In terms of the ethical consideration, consent was sought from the respondents wherein they were informed on the scope of their participation in the current study.

RESULTS AND DISCUSSION

The current study sought to analyse how the policy and legislative framework in Namibia has impacted on the scope and developmental experiences of the Windhoek and Walvis Bay LAs in facilitating EPZ FDI. This trajectory of this study emerged owing to the FDI developmental benefits developing countries pursue, and particularly Namibia that embraces the use of FDI for bottom-up development in an MLG system. However, the negative and neutral developmental experiences of the Windhoek and Walvis LAs with facilitating FDI suggest an inefficient guiding legal and policy framework, which required analysis. In analysing primary and secondary data as guided by the identified independent variables of interest, there emerged one (1) primary theme. This is: consequences of insufficient decentralised functions of FDI facilitation in an MLG system. In presenting the results around this primary theme, other key issues around the sub-theme of challenges of policy coordination and implementation in an MLG system have similarly been discussed. These primary and secondary themes are discussed below from a legal and policy perspective in light of their impact on the scope and experiences of the Windhoek and Walvis Bay LAs with the facilitation of the RTN and NPT as FDIs respectively. These themes emerged owing to two factors: 1) the flawed and insufficient functions of LAs in facilitating FDIs for development, and 2) the major policy implementation and coordination challenges around the EPZ regime and the ambiguous broader legal and policy framework for SNGs in Namibia's MLG system. These independent variables influence the scope and experiences of the Windhoek and Walvis Bay LAs with hosting and facilitating of RTN and NPT as EPZ FDIs respectively.

Consequences of Insufficient Decentralised Functions of FDI Facilitation in an MLG System

In terms of the scope of functions, this theme required that respondents provide their views on how the current legal and policy framework in Namibia have impacted on the scope of the Windhoek and Walvis Bay LAs in facilitating FDI under the EPZ regime. Broadly, a majority of the respondents indicated that the tendency of the Namibian government holding on to power by incrementally decentralising functions to SNGs such as LAs is crippling for bottom-

up development and governance in an MLG system. Indeed, this phenomenon finds African governments holding onto power, centralising it by all means possible and only decentralising mediocre functions to SNGs in an MLG system. This is a problem that can further be attributed to the vertical constitutional set up of the government that has a bias for centralised power and functions at the top, that is, the central/national government (Stephenson, 2013). A response that encapsulates that of majority respondents indicated that: “...*key legislation on LAs such as the Namibian Constitution and the LAs Act (Act No. 23 of 1992) as amended does not prescribe sufficient functions for LA FDI facilitation in Namibia* (Personal communication, October 25, 2020).

Additionally, one particular response is telling where a respondent points out that: “...*while dealing with FDI is considered a ‘too important’ and a strategic function, the scope of functions provided to LAs under the EPZ regime are simply disempowering and contradict other laws and policies that advance the notion of using FDI for bottom-up development*” (Personal communication, October 26, 2020). Another respondent agrees by stating: “*The current legislation does not permit LAs to make known their development interests to foreign investors to ensure a mutually beneficial relationship with FDI*” (Personal communication, October 28, 2020). This created a policy coordination challenge in relation to other existing laws as the Windhoek LA could not directly engage with RTN on the suspicion, allegations and evidence of breaking local by-laws, for example, underground water and air pollution at the RTN factory. This study found this to be troubling in that the Windhoek LA could not effectively protect their local communities against pollutants due to legislative power that is centred at national government when it comes to engaging foreign investors. As supported by Shikongo (2016), the EPZ regime simply provided a limited scope and failed to anticipate the attraction of unsustainable FDI and the resultant effects. Similarly, both the Windhoek and Walvis Bay LAs have embraced having an international relations policy. However, these policies are often limited when it comes to directly engaging and facilitating FDI, as such functions are centralised within the Ministry of Industrialisation, Trade and SME Development, as well as the Ministry of International Relations and Cooperation.

This is the context in which the broader legislative accent has consequently resulted in a limited scope of functions for LA FDI facilitation. Indeed, as literature confirms, development policies such as Vision 2030 and the NDPs all make specific reference on the use of FDI for bottom-up development (Republic of Namibia, 2004 & 2017). In light of the current FDI facilitative functions provided to LAs on the supply of water to businesses (Section 35), the supply of electricity to businesses (Section 53), the supply of land for business purposes (Section 94 (1) (aj) and (iv), and waste management services (Section 44 (1) (e) (vi) of the LAs Act (Act No. 23 of 1992) as amended, a respondent lamented that: “...*the little functions LAs rely on in terms of the amended LAs Act (Act No. 23 of 1992) are disempowering and do not allow LAs leeway to advance or protect their local development goals and aspirations*” (Personal communication, October 25, 2020). Another respondent buttressed this as follows: “*Considering the powerful nature of big FDIs, LAs are currently not sufficiently protected against the negative effects of FDIs, particularly considering the enforcement and implementation gaps that were observed with the pollution case of RTN in Windhoek*” (Personal communication, October 28, 2020). This dispensation presents a predicament in which LAs in terms of their local

development functions prescribed in Section 30 of the amended LAs Act (Act No. 23 of 1992) are not able to effectively use FDI to meet and preserve local development goals and objectives. Simply put, the current scope of functions does not allow LAs synchronisation with their own other development plans, indeed, a lost opportunity for local development in an MLG system of Namibia that encourages bottom-up development.

Owing to the legislative provisions in place, the involvement of LAs in facilitating FDIs as per the earlier surveyed legislation has been established. This is expressed against a legislative commitment on the use of FDIs to accelerate bottom-up development in Namibia's MLG system. The study found that the inadequacies of the legislative framework in empowering LAs in facilitating FDIs has been attributed to the negative and neutral developmental experiences of the Windhoek and Walvis Bay LAs with facilitating FDI. The non-uniform implementation on the provisions of the EPZ Act (Act No. 9 of 1995) on the establishment of the EPZ management companies across LAs hosting EPZ FDIs could be further identified as a factor. Furthermore, this institution lacked the needed functions to ensure that EPZ FDIs are sustainable vis-à-vis local development goals or aspirations.

On the establishment of the WBEPZMC and its functions, one respondent explained that: *"...the schism of this IFA from the Walvis Bay LA prevented the LA from incorporating its plans for benefiting from FDI developmental effects"* (Personal communication, November 2, 2020). Similarly, the functions of the WBEPZMC lacked the sustenance required for fostering FDI sustainability for local development. In summary, a majority of the respondents found the legislative framework on FDI facilitation disabling for LAs. It prevents LAs from advancing their development priorities using FDI, and similarly prevents them from protecting their own development needs against negative effects from FDI. This is owing to the limited and insufficient scope of functions to LAs in facilitating FDI that has culminated into the above consequences, which have negatively impacted on the scope and experiences of LAs in facilitating FDI as a dependent variable.

Challenges of Policy Coordination and Implementation in an MLG system

This theme required participants to provide their views on the implementation and coordination dynamics that LAs were subject to under the EPZ regime. The amended LAs Act (Act No. 23 of 1992) and the EPZ Act (Act No. 9 of 1995) were passed in 1992 and 1995 respectively. Subsequent laws and policies on development were similarly passed in the following years. Notably, some of these development policies (such as Vision 2030 and the NDPs) emphasise the use of FDI for bottom-up development. Considering the expected harmonisation of policies and legislation in an MLG system, one respondent fittingly explained that: *"The passing of these development policies did not see the amendment of the EPZ Act (Act No. 9 of 1995) to provide targeted functions to LAs and allow them leeway in advancing the bottom-up development national agenda using FDI"* (Personal communication, November 5, 2020). This created a policy implementation and coordination quagmire for LAs in that while there was an expectation to initiate and propel development from a local community level using FDI as expected by Vision 2030, the NDPs, the amended LAs Act (Act No. 23 of 1992) and EPZ Act (Act No. 9 of 1995) did not accord, particularly the Windhoek and Walvis Bay LAs, with

sufficient scope of functions in facilitating FDI for development. Indeed, this further thwarts the goal of Namibia's Decentralisation Policy that aims to take sustainable development closer to the communities at the periphery (Republic of Namibia, 1997).

Another respondent supported the above by explaining that: *"the EPZ Act (Act No. 9 of 1995) was not amended to ascend the role of LAs in facilitating FDI for development, especially in light of the later adopted policies that emphasised bottom-up development using FDI. It is against the dispensation of these development policies that the EPZ regime remained in an era that did not meet evolving needs of development as rooted in bottom up approaches of governance"* (Personal communication, October 25, 2020). This study found that the EPZ regime created an environment in which EPZ FDIs were not encouraged nor expected to be sustainable vis-à-vis host community development priorities through CSRs. This is a new approach as the UNCTAD (2015) emphasises the creation of sustainable EPZs, which is underpinned by the 'new generation of investment policies' that place socio-economic, environmental and governance development at the core of investment legislation. The aim is to attract sustainable FDI for sustainable development. As it may appear, the formulation of the EPZ regime was flawed from the onset, hence the serious policy coordination challenges experienced and the negative and neutral developmental experiences of host EPZ FDI LAs, such as Windhoek and Walvis Bay. The EPZ regime simply does not reflect on any FDI internal and external sustainability requirements of FDIs.

Similarly, when it came to the coordination of other laws such as the National Environmental Health Policy of 2002, the Windhoek LA was completely disempowered to deal with the pollution that was going on at the RTN factory in Windhoek's Otjomuise location. One of the respondents posited that: *"...the pollution claims at the RTN factory further widened the policy coordination gaps that existed under the EPZ Act (Act No. 9 of 1995). Despite its clear mandate on controlling pollution within the city, the Windhoek LA was not empowered to engage RTN directly and had to wait for central government intervention"* (Personal communication, November 5, 2020). This was amidst serious air pollution reports that significantly reduced the air quality of those working at the RTN and that living around the factory, considering its location was next to residential areas (Shindondola, 2003). Once again, the existing legal framework proved futile for LAs in Namibia's MLG system. Indeed, this presents a policy implementation and coordination challenge from an MLG perspective.

Finally, this study found that the neo-liberal undertone of the legislation among many developing countries such as Namibia may have to a certain extent provided leeway for the ruthless pursuit of profits by FDIs as encapsulated in the neo-classical theory (Weintraub, 1993; Jauch, 2006). One of the respondents asserts that: *"...neo-liberalism often has the risk of attracting exploitative unsustainable FDI that is regressive for a country pursuing development interests"* (Personal communication, October 26, 2020). Despite this neo-liberal orientation in the EPZ regime, there was no clear provision made for the mitigation of the negative and exploitative character and operations of these, often unreliable FDIs those neo-liberal investment policies attract. This was notably observed with the case of RTN which closed shop and relocated abruptly from Namibia after reports of pollution and unsustainable practices surfaced. RTN relocated with no concern for relocation effects for the host country. As earlier stressed, the negative and neutral developmental experiences of the Windhoek and Walvis Bay LAs in

facilitating FDI suggests a normative gap within the LAs Act (Act No. 23 of 1992) as amended, the EPZ Act (Act No. 9 of 1995) and other associated legislation in attracting and retaining sustainable FDI for development. Certainly, the backward bending of the EPZ regime by offering generous neo-liberal concessions and incentives to FDIs with no fostering of development effects to local host communities is regressive. As assumed by the neo-classical theory on FDI, Khan et al., (2014) attribute the vigorous profit-seeking attitudes of FDIs to neo-liberal investment frameworks that developing countries often adopt.

The current study found and supports the idea that the absence of this normative synchronised factor has created a majority of the policy coordination challenges for LAs under the EPZ regime. As mentioned elsewhere, the lack of sustained developmental knock-on effects as particularly observed with RTN suggests an inadequate synchronisation of FDI legislation with broader national and local legislation on development. Sauvart & Hamdani (2015), Dressler (2018), Novik & Crombrughe (2018), and Savant (2018) emphasise the need to harmonise and synchronise all FDI facilitation legislation with development priorities of a country. Indeed, this is supported by a respondent that warned that: *“The lack of harmonisation of FDI policy and legislation with development goals frames the context in which LAs may negatively experience FDIs vis-à-vis local development priorities”* (Personal communication, October 23, 2020). This emerges particularly when FDIs carry out their business activities in ways that do not foster the sustainable development agenda of the host LA. As an independent variable, the above discussed policy implementation and coordination challenges negatively impact on the scope and experiences of LAs in facilitating FDI.

Broader Legal and Policy Framework for Efficient Governance at the SNG Level in an MLG System

This theme required respondents to provide their view on Namibia’s broader legal and policy framework’s impact on the scope and experiences of LAs in facilitating FDI for development. The legal and policy framework for SNGs in Namibia’s MLG system is broadly guided by Chapter 12 of the Namibian Constitution (Republic of Namibia, 1990). It organises the government in a hierarchical top-bottom format comprising of national, regional and local government. One view that captures those of the majority respondents is that: *“...local governments, which are intricately aware of local development gaps, are not sufficiently empowered to drive their own developmental trajectory using the FDI currency”* (Personal communication, October 28, 2020). This is an element that is absent in relevant legislation such as the LAs Act (Act No. 23 of 1992) as amended, the EPZ Act (Act No. 9 of 1995) as well as the Namibia Investment Promotion Act (Act No. 9 of 2016). Buttressing this, another respondent motivated that: *“...key legislation should ascend the developmental role of LAs in facilitating FDI for development and capacitate them with the required institutional structures, financial support and human resources”* (Personal communication, November 5, 2020). Indeed, sufficiently empowering LAs with FDI facilitation functions similarly has the prospects of averting the coordination challenges witnessed under Namibia’s EPZ regime. While Vision 2030 and the NDPs advocate for the use of FDI for bottom-up development, the broader legal framework has failed to provide LAs with the necessary functions for this. Similarly, it became

obvious that LAs are not adequately empowered to engage FDIs for development, much less in an effort to protect local communities against the negative effects of FDI as observed with RTN in Windhoek.

As supported by Stephenson (2013), there was consensus from the respondents on the fact that the national government tends to centralise power and functions, and slowly decentralises functions to SNGs. This occurs even when such functions are most needed at the SNG level to foster bottom-up development that contributes to the national agenda. As a result, the continuous subordinate trait that LAs are subject to deprives local communities from development, a role that should be ascended, particularly in facilitating FDI. Furthermore, a majority of the respondents problematized the neo-liberal undertone of investment laws such as the EPZ regime for development. One respondent fittingly stated that: “...the neo-liberal backward bending that came with the EPZ regime proved that providing a host of incentives and concessions to FDI does not automatically guarantee the internal and external sustainability of FDI as seen with both cases of RTN and NPT” (Personal communication, October 25, 2020). As stated elsewhere, while the NPT has been internally sustainable, they have not practiced external sustainability through CSRs. Similarly, the RTN was not internally sustainable for a better part of their investment period in Windhoek, and similarly failed to engage in any CSRs. In light of this, the legislation in Namibia that speaks of CSRs is the National Policy on Volunteerism of 2014, which languidly recommends/suggests CSRs (Republic of Namibia, 2014).

Even worse, the key legislation under which businesses such as FDI are established in Namibia, the Companies Act (Act No. 28 of 2004), makes no mention of CSR expectation from companies (Republic of Namibia, 2004) as seen with the case of India which has a mandatory CSR policy. This is the context in which the UNCTAD (2015) has argued for the reform or introduction of sustainable EPZs that prioritise the attraction of sustainable FDI for a sustainable development impact. Indeed, this is an element the mooted SSEZs should strongly consider so as to avert the developmental failures of the EPZ regime. Considering the broader sectoral coverage of the mooted SSEZs, the developmental prospects from such investments is expected to be higher. This is owing to the multi-sectoral approach it intends to undertake; hence it expects to attract more investment than the EPZ regime was able to. In summary, this sub-section notes that broader national, regional and local policy and legislative framework requires harmonisation and sufficient empowerment and autonomy to LAs in facilitating FDI for development in Namibia. As an independent variable, this positively impacts on the scope and experiences of LAs in facilitating FDI.

CONCLUSION

The aim of the present study was to analyse the legal and policy framework on the facilitation of FDI by LAs in Namibia. More specifically, it aimed to address the research question: how has the existing policy and legal framework in Namibia impacted on the scope and developmental experiences of the Windhoek and Walvis Bay LAs in facilitating and hosting the RTN and NPT FDIs respectively? Returning to this guiding research question and the variables of interest, it is now possible to state that the independent variables (decentralised functions of FDI facilitation in an MLG system, policy and legislative harmonisation in an MLG system, and

the broader legal and policy framework for SNGs in an MLG system) have negatively impacted the scope and experiences of LAs in facilitating FDI. This is in particular reference to the Windhoek and Walvis Bay LAs with facilitating RTN and NPT respectively. While both LAs have had a similar core mandate in facilitating FDI, the Windhoek LAs' developmental experience with RTN was negative (pollution and broke a number of by-laws, provided poor-quality short-term low paying jobs), the Walvis Bay LA languidly benefited from the development effects of NPT (long-term investment of 25 years in the LA area; provided sustainable jobs with sustainable salaries). Both FDIs have not engaged in CSRs that is aimed at filling the development gaps of the community and the LA.

The most obvious finding to emerge from the analysis in this study is that the broader legal and policy framework on decentralisation, MLG and SNG FDI facilitation shapes the specific scope of LAs and their resultant developmental experiences with facilitating FDI. While the legal framework on LA FDI facilitation in Namibia does not encourage the internal and external sustainability of FDI, it simply fails to adequately put measures in place to protect LAs against the negative effects that may arise from FDI as observed with the case of RTN in Windhoek. As a result, this study concludes that there is a need for reform to ensure that LAs maximise from the possible development effects of FDI, particularly in a country such as Namibia that embraces the use of FDI for bottom-up development in an MLG system. Furthermore, there is a need to put effective protection measures in place in case FDI breaks local laws, and for when they abruptly relocate as witnessed with RTN in Windhoek. The absence of a developmental role for Namibian LAs in facilitating FDI for development needs to be emphasised more in legislation.

The findings in this study have significant implications for understanding how policy implementation and coordination dynamics emerge at the SNG level of an MLG system. This is particularly important in light of the theoretical and normative gaps observed in literature (e.g. Davey, 2011; Stephenson, 2013; Chrabąszcz & Zawicki, 2016; Kuswanto et al., 2017) on the same issue. From an MLG perspective, this study has been one of the first attempts to thoroughly analyse the MLG legal and policy dynamics that may occur in implementing legislation (such as the EPZ Act, Act No. 9 of 1995, in Namibia's context) that relies on SNGs for coordination and implementation. The present study has several practical implications. Firstly, it points to the need for legislatively structuring an MLG system in a way that does not disadvantage SNGs by concentrating power at national governments. Secondly, it speaks to the need for ensuring that LAs are sufficiently empowered to drive the bottom-up development agenda as observed in Namibia, and similarly protect LAs and local communities against the negative effects of FDI. Such functions, particularly on FDI facilitation, are important where legislation (Vision 2030 and the NDPs) emphasises the use of FDIs, amongst others, to execute this bottom-up development. Notwithstanding the limited scope of focus on Namibia's EPZ regime, this study offers valuable insights into the dynamics of decentralised policy implementation and coordination in an MLG system. This limitation means that the study findings should be cautiously interpreted and generalised, particularly when relating it to other legislation and country contexts. Considering the limited literature that exists in MLG studies, there is room for further studies that provide empirical anecdotes on legal and policy frameworks in different countries that have adopted an MLG system to increase the explanatory authority of the MLG theory, which is still evolving.

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