

(Conference Draft)

The Quest for Sustainable Development Provisions in African Bilateral Investment Treaties:
Lessons from China- Tanzania BIT

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2017 Law and Development Conference

Cape Town, South Africa
September 2017

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Summary: Tanzania’s inward Foreign Direct Investment (FDI) has increased drastically after the discovery of oil and gas. Tanzania is rich in natural resources however it has remained one of the least developed country. The approach toward Bilateral Investment Treaty (BIT) practice has remained unchanged and incoherent because there is no model BIT. Tanzania has signed 22 BITs as of January 2016. European countries have signed 11 BITs, which are in force. Tanzania is now one of the fastest growing economies in the world and the government is implementing the five year development plan 2016/17- 2020/21 to achieve 2025 Millennium Development Goals(MDG) to make Tanzania a middle-income country. In addition China has been the leading investor in Tanzania in particular and Africa at large. In order to achieve that, Tanzania and other African countries need to adopt a sustainable model BIT that incorporates corruption, human rights, labour and environment. Tanzania and other African countries can meet their target only when serious measures are in place to fight corruption and provide transparency legal framework in its international contract practice, which has been much of criticism Africa. This article critically analyzes the Tanzania and some of African Bilateral Investment treaty practice in relation to provisions on corruption, labour, human rights and environment. In doing, it assess whether or not African countries needs to amend, and/or re-negotiate the existing BITs. It also puts forward some legal and policy suggestions, which may help the policy makers and legislators to adopt a new model BIT that is geared toward sustainable development. Tanzania experience is a replica to what is happening in most African country hence can be taken as a pilot study.

Key Words

Tanzania; Inward Foreign Investment; BIT; International Investment Law; corruption; labour, human rights, sustainable development, China

1. Introduction

The Tanzania- China relationship can be traced back to 1960 when the founding father of Tanzania nation late Mwalimu Julius Nyerere and late chairman Mao Zedong established a long lasting relationship.¹ However, formal diplomatic relationship was established with Tanganyika and Zanzibar on 1961 and 1963 respectively.² Thereafter several economic, social, trade and political cooperation agreement has been signed.³ The cooperation has continued with the frequent visit of diplomatic dignitaries and government officials from both countries, for instance on 16 February 2009, Chinese President Hu Jintao in his keynote speech entitled ‘work together to write a new chapter of China-Africa relationship’ he reiterated that China-Tanzania relationship has become ‘a model for both china-Africa and south- south cooperation’.⁴ In addition, immediately after sworn in as President of China on 14 March 2013, the Chinese President Xi Jinping made a historic visit Tanzania on 24 March 2013.⁵ During his visit more agreements were signed that promotes commerce, energy, trade, and investment.⁶

On 24 March 2013, Tanzania and China signed a new BIT which was entered into force on 17 April 2014.⁷ The said BIT is geared toward promotion and protection of investment and contains

¹ East China Normal University, ‘Chinese Version of Selected Works of Nyerere Published’, 27 November 2015, available at <http://english.ecnu.edu.cn/00/0c/c1703a65548/page.htm>, retrieved 10 November 2016.

² Economic and Commercial Representation of the People’s Republic of China in the United Republic of Tanzania, available at <http://tz2.mofcom.gov.cn/article/bilateralcooperation/inbrief/200411/20041100004088.shtml> , retrieved 26 May 2017.

³ Ibid.

⁴ Window of China, ‘Chinese President Speaks Highly of China- Tanzania Ties’ *Xinhua*, 16 February 2009, available at http://news.xinhuanet.com/english/2009-02/16/content_10828650.htm, retrieved 1 March 2017.

⁵ Michelle Florcuz, ‘Xi Jinping Visits Tanzania: What’s In It For Africa?’ *International Business Times* , 25 March 2013, available at <http://www.ibtimes.com/xi-jinping-visits-tanzania-whats-it-africa-1149133>, retrieved 10 November 2016; Tania Branigan, ‘Xi Jinping Becomes China’s President’ *The Guardian*, 14 March 2013, available at <https://www.theguardian.com/world/2013/mar/14/xi-jinping-installed-china-president>, retrieved 10 November 2016.

⁶ Agence France-Presse, Agence, ‘France- Presse, China’s Xi Jets into Tanzania on Start of Africa Tour’ *The Telegraph* , 25 March 2013 available at <http://www.telegraph.co.uk/news/worldnews/asia/china/9951605/Chinas-Xi-jets-into-Tanzania-on-start-of-Africa-tour.html>, retrieved on 10 November 2016; Huo Qiang, China- Tanzania Issue a Joint Communiqué on Boosting Friendly Relationship, *Xinhua*, 25 March 2013.

⁷ Agreement between the Government of the People’s Republic of China and the Government of the United Republic of Tanzania Concerning the Promotion and Reciprocal Protection of Investment, signed on 24 March 2013 and entered into force on 17 April 2014 (Hereinafter Tanzania- China BIT (2013), available at, <http://tfs.mofcom.gov.cn/article/Nocategory/201111/20111107819474.shtml> , retrieved on 10 November 2016

some paragraphs in the preamble that stipulate the objective of the BIT to include respect for corporate social responsibility (CSR), promote healthy, stable and sustainable development and to improve the standard of living of citizen of both countries.⁸ The spirit of the relationship is in line with the One Belt One Road (OBOR) initiative geared towards win-win relationship and sustainable development.⁹

Data from Ministry of Commerce of the People’s Republic of China indicates that the Chinese OFDI flows to Ghana, Kenya, Tanzania, South Africa, Democratic Republic of Congo and Algeria reached 2.98 billion with a year decrease of 7 per cent and accounted for 2 percent of the total OFDI.¹⁰ In addition, in 2015, china became the second largest OFDI country in the world and the OFDI reached \$ 1.147 trillion and this was facilitated by going out global policy and OBOR.¹¹

Moreover, during Forum on China- Africa Cooperation (FOCAC) held in 2015, Tanzania is among three countries in Africa that have been selected by China to participate in OBOR initiative.¹² The OBOR initiative among other things is geared to help African countries to achieve industrialization goals through cooperation with China in order to achieve sustainable development.¹³

The current Tanzania fifth phase government under President Joseph Pombe Magufuli has stated that the National Second Five Year Development Plan (NFYDP II), 2016/17- 2020/21 is geared

⁸ Ibid, Preamble and Art. 10.

⁹ The Full text: Action Plan on the Belt and Road initiative, available at

http://english.gov.cn/archive/publications/2015/03/30/content_281475080249035.htm , retrieved 1 December 2016.

¹⁰ Ministry of Commerce, *2015 Statistical Bulletin of China’s Outward Foreign Direct Investment* (MOFCOM, 2015) 85-98, available at <http://img.project.fdi.gov.cn//21/1800000121/File/201703/201703030924502483589.pdf>, retrieved 11 April 2017.

¹¹ Ibid, p.85

¹² Forum on China- Africa Cooperation, ‘China ready, willing to finance Tanzania Industrialization Drive’ *FOCAC*, 23 June 2016, available at <http://www.fmprc.gov.cn/zflt/eng/zfgx/jmhzt/1374635.htm>, retrieved 1 December 2016.

¹³ Speech by H.E Amb. Dr. Lu Youging in the International Seminar on China- Africa Industrial Capacity 7 July 2016, available at <http://tz.china-embassy.org/eng/sgbx/zz/t1378170.htm>, retrieved 1 December 2016.

towards industrialization and shows that key investment projects are implemented or under negotiation by China state-owned Companies, for instance, Bagamoyo Special Economic Zones (BSEZ), development of Bagamoyo Port, construction of Kurasini Trade and Logistic Centre and Mchuchuma and Liganga coal projects just to name a few¹⁴ Given the massive number of FDI from china in various key sectors such as infrastructure, energy, manufacturing and agriculture implemented by Chinese state-owned enterprises and Chinese private investors the quest of incorporating sustainable development in BIT is imperative in order for majority of Tanzanian to benefit from Chinese activities in Tanzania.

In addition Tanzania is among top ten recipient of FDI in Africa.¹⁵ The International Monetary Fund has recommended the government that in order to meet medium term growth objectives, the government need to cooperate with private sector and improve business environment.¹⁶ Tanzania macroeconomic performance remains strong and the economic growth is expected to remain at about 7 percent in 2017/2018 financial year.¹⁷ Moreover, Tanzania ranks 151 out of 188 countries with the Human Development Index (HDI) value of 0.531, as of March 2017.¹⁸ Hence,

¹⁴ United Republic of Tanzania (URT), *National Five Year Development Plan 2016/17 “Nurturing Industrialization for economic Transformation and Human Development* (Ministry of Finance and Planning, 2016) iii, ,11, 19-21; Economic and Commercial Representation in Tanzania ,’Bagamoyo port to heighten Tanzania’s image in world shipping business – CMHI’ available at <http://tz2.mofcom.gov.cn/article/chinanews/201505/20150500971014.shtml>, retrieved 25 May 2017.

¹⁵ S. Kamndaya, ‘Tanzania leads regional peers in foreign direct investment’ *The Citizen*, 24 May 2017, available at <http://www.thecitizen.co.tz/News/Tanzania--leads-regional-peers-in-foreign-direct-investment/1840340-3939402-apuu0t/index.html>, retrieved 24 May 2017; African Development Bank, United Nations Development Programme, Organization for Economic Co-operation Development, *Africa Economic Outlook 2017: Entrepreneurship and Industrialization* (2017) 48

¹⁶ International Monetary Fund, IMF Staff completes Visits to Tanzania , 14 April 2017 available at <http://www.imf.org/en/News/Articles/2017/04/14/pr17134-tanzania-imf-staff-completes-visit>, retrieved 1 May 2017.

¹⁷ IMF, United Republic of Tanzania, United Republic of Tanzania: Fifth Review Under the Policy Support Instrument-Press Release; Staff Report (IMF, 2017), available at <http://www.imf.org/en/publications/cr/issues/2017/01/12/united-republic-of-tanzania-united-republic-of-tanzania-fifth-review-under-the-policy-44529>, retrieved 15 April 2017.

¹⁸ List of countries by Human Development Index, available at https://en.wikipedia.org/wiki/List_of_countries_by_Human_Development_Index, retrieved 15 April 2017;.

Tanzania is categorized as low human development category.¹⁹ There has been very little academic research in Tanzania related to Chinese Bilateral investment activities in Tanzania.

With this backdrop, this Article examines clauses related to SD.in Tanzania- China BIT because it is the latest public available BIT which has signed by China that contains clauses on SD. Tanzania represents some of the Sub-Saharan African (SSA) countries where China has heavily invested. The paper evaluates the BIT and identifies some lessons learned which might assist future investment and trade negotiations with China. This article is divided into five parts. The first part discusses the general trend of Chinese investment in OFDI in Tanzania. The second part discusses the importance of FOCAC summits, The third part discusses One belt one road in relation to sustainable development the fourth part discusses the importance of international cooperation sustainable development in agriculture, energy, infrastructure and manufacturing and lastly, propose the inclusion of labour, environment, human right and anti-corruption in Tanzania – China BIT and adoption of new BIT model BIT,

2. Chinese investment in Tanzania

Foreign Direct Investment (FDI) can play a significant role in accelerating development by providing employment, technology transfer and access to international market.²⁰ In order to achieve this goal, government needs to reform the investment international law and policy regime.²¹ In order to finance the sustainable development goals (SDGs) many countries including Tanzania are encouraging investors to invest in the county.²² The importance of private sector and the quest for funding has led for both private and state owned Chinese investors to

¹⁹ Tanzania, available at <http://www.africaneconomicoutlook.org/en/country-notes/tanzania> , retrieved 15 April 2017

²⁰ Michael Gestrin, ' Trends in foreign direct investment and their implications for development' in OECD, Development CO-Operation Report 2016: The Sustainable Development Goals as Business Opportunities (OECD, Paris , 2016) pp 49-50

²¹ Ibid , 50

²² 50.

invest in Tanzania at unprecedented scale.²³ Chinese investment in Tanzania has increased significantly from \$700 million in 2011²⁴ and reached \$ 6.62 billion by end of June 2016 with more than 600 companies invested in Tanzania.²⁵ This makes China the fourth largest investor while the top three are the United Kingdom. However, the data from Tanzania investment center shows that the total volume of investment is US\$ 3,669.15 million. The difference may be the result of the presence of private investors that are not registered by the Tanzania investment Centre. (see table 1)

Moreover, China commits to assisting Tanzania’s industrial sector contribution to Gross Domestic Product (GDP) rise to 15 per cent from the current 8 per cent.²⁶ The ongoing projects that are underway are estimated to yield \$9 usd.²⁷ There are different projects that are either being constructed or under negotiations totaling \$ 16 billion.²⁸ The presence of China investment in Africa and Tanzania in particular account for 3. per cent of Chinese (OFDI).. **See table 2**

In January 2017, during the Chinese Foreign Minister official visit to Tanzania said that the Chinese government is ready to assist Tanzania to meet its development goals and improve the wellbeing of its citizen.²⁹ China OFDI to Africa is expected to increase to \$ 100 billion in 2020

²³ Christine Graves and Hildegard Lingnau, 'Overview: Putting sustainable Development at the core of business models' in OECD, Development Co- operation Report 2016: The Sustainable Development Goals as Business Opportunities (OECD, Paris , 2016)pp 23-43

²⁴ Chinese investment overseas, 'Opening the Chinese –built Bridge in Tanzania cements Nations' *Investment Ties China invests Overseas*, 29 April 2016, available at <http://fdi168.cn/20160429/40091.aspx> , retrieved on 1 December 2016.

²⁵ G. Mbago, 'Chinese firms' investment in Tanzania exceeds USD 6.62bn' *The Guardian*, 24 April 2017, available at <http://www.ippmedia.com/en/news/chinese-firms%E2%80%99-investment-tanzania-exceed-usd662bn>, retrieved 28 April 2017

²⁶ B. Lugongo, 'China assures GOVT of growth' *The Citizen*, 23 May 2016 available at <http://www.thecitizen.co.tz/News/1840340-3214256-krdyoqz/index.html>, retrieved

²⁷ L. Kolumbia, 'TZ-China relations 'not on a free fall' *The Citizen*, 22 February 2017, available at <http://www.thecitizen.co.tz/magazine/politicalreforms/TZ-China-relations--not-on-a-free-fall-/1843776-3823236-iu13mlz/index.html>, retrieved 1 March 2017.

²⁸ R. Athuman, 'China Keen on Dar Progress' *Daily News*, 11 January 2017 available at <http://www.dailynews.co.tz/index.php/home-news/47821-china-keen-on-dar-progress>, retrieved 25 March 2017.

²⁹ Deogratius Kamagi, 'China Pledges to back Tz's Industrialization' *The Citizen*, 10 January 2017 available at <http://www.thecitizen.co.tz/News/China-pledges-to-back-TZ-s-industrialisation/1840340-3511888-4pna06z/index.html> , retrieved 1 March 2017.

from \$ 32.4 billion in 2014.³⁰ In addition, China intends to increase the volume of trade with African countries to reach US\$ 400 billion from \$ in 2014.³¹ Moreover, the Chinese government has agreed to offer US\$ 35 billion concessional loans to African countries to support infrastructure building, development of energy resources, agriculture, and manufacturing sector.³² Chinese investment in Tanzania is centered on infrastructure, tourism, agriculture, industries, energy and information communication and technology (ICT).³³ However, the leading sectors are manufacturing and construction. China ranks second by a number of projects with planned investment worth US\$ 3.669. (see table 3)

Chinese investment in Tanzania started There has been iconic investment project which has been accomplished and some are still on negotiation by Chinese government in recent years, these includes among others the Nyerere Bridge³⁴, proposed cement factory that will cost \$1 billion in Tanga region,³⁵ concession loan for various project such \$7.6 billion for standard gauge railway (SGR) and \$ 2 billion used for construction of natural gas pipeline from Mtwara to Dar es salaam from China state- owned Exim Bank, the construction of the Tanzania Informational and Communication Technology (ICT) Broadband Infrastructure worth US\$ 100 and Upgrading of Zanzibar International Airport worth US\$ 70 million from Exim Bank.³⁶ Moreover, the Chinese

³⁰ The Forum on China-Africa Cooperation Johannesburg Action Plan(2016-2018) para 3.7, available at http://www.focac.org/eng/ltada/dwjbjzjhys_1/hywj/t1327961.htm, retrieved 4 March 2017

³¹ Ibid para 3.8.1

³² Ibid para 3.9.1

³³ R. Athuman, ‘ Master Plan for Bagamoyo Mega Project in offing,’ Daily News, 17 February 2017 available at <http://www.dailynews.co.tz/index.php/home-news/48603-master-plan-for-bagamoyo-mega-project-in-the-offing>, retrieved 1 April 2017

³⁴ Musita John, ‘JPM names new bridge after Nyerere’ *The Citizen*, 20 April 2016 available at <http://www.thecitizen.co.tz/News/JPM-names-new-bridge-after-Nyerere/1840340-3167118-qmf5g0/index.html>, retrieved 1 March 2017.

³⁵ Xinhua, Chinese investor to build giant cement factory in Tanzania *Xinhua*, 1 March 2017 retrieved at http://news.xinhuanet.com/english/2017-03/01/c_136092437.htm, retrieved 2 March 2017.

³⁶ Editor, China, ‘Tanzania sign Loan agreements on ICT,air infrastructure’ *Xinhua*, 17 April 2010 http://news.xinhuanet.com/english/2010-04/17/c_13255027.htm, retrieved 1 March 2017.;L. Kasumuni, ‘JK Kicks off sh23tr port construction’ *The Citizen*, 17 October 2015 , available at <http://www.thecitizen.co.tz/News/Business/JK-kicks-off-Sh23tr-port-construction/1840414-2918254-vxjy6x/index.html>, retrieved 2 March 2017; R. Mirondo, ‘Chinese Bank approves

investors are constructing Rusumo Plant that will benefit Tanzania, Burundi, and Rwanda.³⁷ In addition , Chinese investment in Tanzania and Africa in general do not attach any conditions in contrast to western countries.³⁸

According to the United Nations Conference and Trade, Tanzania is expected to become a middle-income country by 2025.³⁹ Moreover, in order to have a good and sound investment climate, Tanzania should consider adopting measures that will make it easier for investors to do business in the country. According to the World Bank’s Doing Business Report 2017, Tanzania ranks 132th out of 189 countries, before that Tanzania ranked 144th in 2016.⁴⁰ conversely, China ranks 78th and in 2016, china ranked 80th out 189 economies.⁴¹ The report shows Tanzania need to improve and create conducive business and investment climate.⁴² The quest for FDI in Tanzania is vital for its sustainable growth because international investment flows contribute to economic growth.

3. China’s new policy towards African continent

China and Africa relationship took a different turn when the first ministerial meeting of the Forum on China-Africa Co-operation (FOCAC) was held in 2000 in Beijing. In his speech, the former President of China Jiang Zemin reiterated that the cooperation between china and Africa

Sh 16 tr for central line’ *The Citizen* ,21 July 2016, available at <http://www.thecitizen.co.tz/News/1840340-3304052-k8wtfcz/index.html>, retrieved 1 March 2017.

M. John, ‘China Bank in new ‘big projects’ pledge’ *The Citizen*, 8 June 2016, available at <http://www.thecitizen.co.tz/News/-China-bank-in-new--big-projects--pledge/1840340-3237454-1668py/index.html> , retrieved 1 April 2017.

³⁷ A. Mwakyusa, ‘80 MW Power Project to benefit three countries’ *Daily News* , 30 March 2017, available at <http://www.dailynews.co.tz/index.php/home-news/49517-80mw-power-project-to-benefit-three-countries>, retrieved 2 April 2017.

³⁸ W. Kidane, ‘Refelections on China- Africa BIT’, *American society of International law Proceedings*, 107 (2013)pp. 225-227.

³⁹ UNACTAD, *The Least Developed countries Report 2016: The Path to graduation and beyond- Making most of the process* (Geneva, UNACTAD, 2016) xii .

⁴⁰ World Bank, *Doing Business: Measuring Business regulation*, available at <http://www.doingbusiness.org/data/exploreeconomies/tanzania/>, retrieved 4 April 2017.

⁴¹ Ibid.

⁴² NFYDP II, at 25.

is based on mutual benefit and aimed at common development.⁴³ The FOCAC adopted a program for cooperation in economic and social development.⁴⁴ In addition, China agreed to continue to assist African countries in terms of aid grants, concession loans, and interest-free loans.⁴⁵ Moreover, It was agreed Chinese enterprises set up a joint equity and Chinese government will help to establish and manage free and special economic zones.⁴⁶

During the sixth in 2015, FOCAC, the President of China, Xi stated that China has become Africa’s principal partner in trade, investment, and economic cooperation.⁴⁷ He further stated that ‘The achievement of inclusive and sustainable development in Africa hinges on industrialization which holds the key to creating jobs, eradicating poverty and improving people's living standards.’⁴⁸ He echoed China’s commitment to providing capital and technology to assist Africa industrialization.⁴⁹ Parties agree to cooperate to implement the 2030 Agenda for sustainable development.⁵⁰ China agreed to implement goal 17 that relate to a partnership among governments, the private sector, and civil societies.⁵¹ Moreover, since most African countries do not have adequate physical and human capacity to tap the resources , Chinese involvement will continue to prevail in Africa.⁵² The relationship is win – win whereby the grant provided in

⁴³ Speech by President Jiang Zemin of the People's Republic of China at the Opening Ceremony of the Forum on China-Africa Cooperation Ministerial Conference Beijing on 25 September 2009 available at <http://www.focac.org/eng/ltada/dyjbzjhy/SP12009/t606804.htm> retrieved 24 March 2017

⁴⁴ Programme for China-Africa Cooperation in Economic and Social Development ,para 1.4 ,available at <http://www.focac.org/eng/ltada/dyjbzjhy/DOC12009/t606797.htm> , retrieved 24 March 2017.

⁴⁵ *ibid*

⁴⁶ *Ibid*, para 5-5.6.

⁴⁷ Speech by H. E Xi Jinping President of the People’s Republic of China at the China- Africa Business Forum, Johannessburg, 4 December 2015 available at http://www.focac.org/eng/ltada/dwjbzjjhys_1/zyjh/ ,retrieved 1 March 2017.

⁴⁸ *ibid*

⁴⁹ *ibid*

⁵⁰ Declaration of the Johannesburg Summit of the Forum on China-Africa Cooperation 25 December 2015, para 14 available at http://www.focac.org/eng/ltada/dwjbzjjhys_1/hywj/t1327960.htm , retrieved 4 March 2017.

⁵¹ Sustainable Development goals, available at <http://www.un.org/sustainabledevelopment/globalpartnerships/>, retrieved 4 March 2017.

⁵² S. Marysse and S. Geenen, ‘Win-win or unequal exchange? The Case of the Sino-Congolese Cooperation agreements’, *Journal of Modern African studies*, 47, 3 (2009), pp. 371,375

Africa are used in infrastructure, energy and manufacturing sector constructed by Chinese companies and African repay the loans with oil or mineral.⁵³

4. The China’s One Belt One Road Initiative (OBOR)

The OBOR initiative was first coined by the Chinese President Xi Jinping in 2013 and it has become the core strategy of Chinese in the world. The policy incorporates the Silk Road Economic Belt and the 21st century Maritime Silk Road initiatives, aims at promoting and encouraging win- win relationship with countries along and beyond the traditional continental and maritime silk Road.⁵⁴ The initiatives offer an important vision of Chinese government in several economic, political, cultural and strategic areas.⁵⁵

Moreover, on 28 March 2015, The National Development and Reform Commission (NDRC) issued an action plan related to OBOR.⁵⁶ The action plan is founded on the five core principle of peaceful coexistence enshrined in the United Nations(UN) Charter namely, mutual respect for each other’s sovereignty and territorial integrity, non aggression, non-interference in each other’s internal affairs, equality and mutual benefit and peaceful coexistence.⁵⁷ The vision is in line with Silk Road spirit that is peace and cooperation, openness and inclusiveness.⁵⁸

On 14-15 May 2017, during the OBOR Forum for International Cooperation the president of china said that OBOR laid out the vision to more than 29 world leaders and stated that the

⁵³ Q. Xie, ‘ The Protection of China’s Investment in Africa Under the International investment law’, *International Trade law Journal* 22 (2013-2014), pp 29.

⁵⁴ The Full text: Action Plan on the Belt and Road initiative available at http://english.gov.cn/archive/publications/2015/03/30/content_281475080249035.htm , retrieved 15 March 2017.

⁵⁵ M. D. Swaine, Chinese Views and Commentary on the “ One Belt, One Road” Initiative (2015) *China leadership Monitor* no 47, at 1

⁵⁶ One Belt on Road Initiative, available at <https://www.csis.org/analysis/building-china%E2%80%99s-%E2%80%9Cone-belt-one-road%E2%80%9D> retrieved 20 March 2017.

⁵⁷ National Development and Reform Commission, Vision and Action on Jointly Building Silk Road Economic Belt and 21st Century Maritime silk Road (28 March 2015), available at http://en.ndrc.gov.cn/newsrelease/201503/t20150330_669367.html, retrieved 20 March 2017.

⁵⁸ Ibid.

initiative is centered on peace, win-win cooperation and friendship and promised to contribute \$14.5 billion to OBOR and Chinese Bank will provide loan up to \$55.1billion.⁵⁹ The China Development Bank and the Export-Import Bank of China will set special lending schemes on infrastructure, industrial capacity and financing.⁶⁰

The initiative is open for cooperation in areas such as infrastructure development, economic development strategies, and policies, investment, and trade, people to people, human development among others.⁶¹ It is argued that the initiative is perceived as Chinese revitalization through domestic and foreign cooperation as new means of cooperation between china and other states around the world.⁶² Moreover, the fact that the Chinese state-owned enterprises are welcomed in Africa is also contributing to the fact that Chinese investment does not go hand and hand with conditions.⁶³

It is interesting to note that OBOR and FOCAC are in line with the FYDPII. For instance, the areas enshrined in the Tanzania five-year development plan which the government has put much emphasis include infrastructure, manufacturing, agriculture modernization, mining and minerals among others.⁶⁴ However, the majority of Chinese financing in Africa are not free grants, but

⁵⁹ Liangyu, ' President Xi says to build Belt and Road into road for peace, prosperity, Xinhua 14 May 2017 available at http://news.xinhuanet.com/english/2017-05/14/c_136281412.htm, retrieved 14 May 2017.,An, 'Chinese banks to lend 380 billion RMB to support Belt and Road cooperation' *Xinhua*, 14 May 2017, available at http://news.xinhuanet.com/english/2017-05/14/c_136281319.htm, retrieved 14 May 2017.

⁶⁰ J. Jie, Bianji, ' Xi calls for joint efforts to turn Belt and Road into path for peace, prosperity' *China Daily*, 14 May 2017, available at <http://en.people.cn/n3/2017/0514/c90000-9215323-3.html>, retrieved 14 May 2017.

⁶¹ Ibid, The Forum on China-Africa Cooperation, Johannesburg Action Plan(2016-2018) para 2.4.5, 3.3.4; Declaration of the Johannesburg Summit of the Forum on China-Africa Cooperation 25 December 2015, para 25.2 available at http://www.focac.org/eng/lttda/dwjbzjyhys_1/hywj/t1327960.htm , retrieved 14 March 2017.

⁶² Swaine , p 13.

⁶³ Y. Wang, *Sustainability Impacts of Chinese Outward Direct investment: A review of the literature*(Manitoba, Institute of sustainable development, 2016) vii.

⁶⁴ NFYDP II, at 43 -84 http://www.mipango.go.tz/index.php?option=com_docman&task=cat_view&gid=38&limitstart=5

loans and investment the question remain how will the government repay from this massive assistance.⁶⁵

In order for Tanzania to realize its industrialization dream, the government needs to reconsider its legal framework in relation to Public Private Projects, Special economic zones, Agriculture sector, manufacturing, energy, and infrastructure in order to achieve 2030 sustainable goals.

5. IMPORTANCE OF OBOR IN TANZANIA AND AFRICA IN GENERAL

Firstly, African governments understand the importance of agriculture as a driving force towards reducing poverty and promoting economic growth.⁶⁶ In order to revitalize the agriculture sector African countries need to engage is agribusiness and innovation, climate-smart agriculture and improve roads, energy and water infrastructure.⁶⁷ According to World Bank, agriculture sector employs 60- 70 per cent of Africa labour force and accounts for 30- 40 percent of GDP.⁶⁸ In Tanzania, Agriculture sector is underutilized and account for 66.9 per cent of employment, 23 percent of GDP, 30 per cent of export and 65 per cent of input to the industrialization sector.⁶⁹ The government intends to transform agriculture so as to contribute 7.6 percent of GDP by 2020. In order to achieve that the government intends to use modern agricultural technology, improve infrastructure such as roads, water supply and irrigation and energy among others.⁷⁰ During FOCAC 2015 the Chinese government promised to strengthen China- Africa agricultural

⁶⁵ Y. Sun, ‘Xi and the 6th Forum on China – Africa Cooperation: Major Commitments, but with questions (7 December 2015, Brookings Institute) <https://www.brookings.edu/blog/africa-in-focus/2015/12/07/xi-and-the-6th-forum-on-china-africa-cooperation-major-commitments-but-with-questions/>

⁶⁶African Development Bank, *Development Effectiveness Review 2016 Agriculture- Thematic Review* (Cote’ d’ ivoire, AFD Group, 2016) 12 , available at https://www.afdb.org/fileadmin/uploads/afdb/Documents/Development_Effectiveness_Review_2016/DER_Agriculture_2016_-_En.pdf , retrieved 14 March 2017.

⁶⁷ Ibid at, v

⁶⁸ World Bank, ‘Unlocking Africa’s Agricultural Potential: An Action Agenda for Transformation’ *Working Paper* (Washington DC, World Bank 2013) 13, available at <https://openknowledge.worldbank.org/handle/10986/16624>, retrieved 4 April 2017.

⁶⁹ NPYDP II, at 8.

⁷⁰ NPU DP II, at 54 55.

cooperation so as to realize agriculture modernization,⁷¹ The transformation of the agricultural sector in Africa and Tanzania, in particular, is more about poverty reduction and providing food security.⁷² China’s agriculture modernization has helped to improve farmers lives in Tanzania.⁷³ Moreover, emphasis on development of smallholder agriculture can play a key role in poverty reduction.⁷⁴ In addition, public private partnership(PPP) in agriculture sector is the key to realize the economic growth, job creation among farmers , women in Tanzania and Africa in general.⁷⁵

Secondly, According to 2017 Africa Progress Report, the energy gap between Africa and the rest of the world is widening and Africa poorest people are paying among the world’s highest prices for energy.⁷⁶ Moreover, 80 percent of primary school in 9 African countries do not have electricity and failure to have reliable energy undermines sustainable growth job and investment.⁷⁷ to have reliable, affordable, low carbon energy will enable Africa ‘s socio-economic transformation.⁷⁸ The electricity situation is the worst in the world and that means that 600 million people in SSA lack access to electricity.⁷⁹ The unreliable electricity supply is

⁷¹ The Forum on China- Africa Cooperation (FOCAC),Johannesburg Action Plan 2016-2018, (25 December 2015) available at http://www.focac.org/eng/ltada/dwjbzjhys_1/hywj/t1327961.htm , retrieved 4 April 2017.

⁷² World Bank, Unlocking agricultural potential in Africa, at 21,42-43; F. Mpiji, ‘China to assist Africa Agricultural Industrial Modernization’ *Daily News* , 10 March 2017, available at <http://www.dailynews.co.tz/index.php/business/49060-china-to-assist-africa-agricultural-industrial-modernization> , retrieved 12 March 2017.

⁷³ Economic and Commercial Representation in Tanzania, ‘ Chinese agricultural technology helps improve Tanzanian farmers' lives’ *Xinhua*, 19 January 2016 available at <http://tz2.mofcom.gov.cn/article/chinanews/201601/20160101239191.shtml>, retrieved 26 May 2017.

⁷⁴ X. Li, *What can Africa learn from China’s Agriculture miracle’ in OECD, Development Co- operation Report 2013: Ending Poverty* (Paris, OECD , 2013)pp 87-93.

⁷⁵ A. Catridge, ‘The Grow Africa Partnership’ in Organizational of Economic Cooperation and Development’(OECD), *Development Co- operation Report 2015: Making Partnership Effective Coalitions for Actions* (Paris, OECD Publishing, 2015)pp 143-147.

⁷⁶ Africa Progress Panel, *Lights Power Action: Electrifying Africa- Africa Progress Panel Report 2017* at 12, available at <http://allafrica.com/download/resource/main/main/idatcs/00101753:3383c206b3a80b45f8e62ce8e21e15.pdf>, retrieved 1 May 2017.

⁷⁷ Ibid

⁷⁸ Ibid 14

⁷⁹ A. Castellano and etal, ‘ *Brighter Africa: The Growth of the Sub- saharan electricity sector* (McKinsey and Company, 2015) 6 available at https://www.icafrica.org/fileadmin/documents/Knowledge/Energy/McKensey-Brighter_Africa_The_growth_potential_of_the_sub-Saharan_electricity_sector.pdf , retrieved 1 May 2017.

hindering the African continent transition to higher value-added activities.⁸⁰ That means that 48 countries in Africa with the population of 1.1 billion generate the same power as Spain with just 49 million.⁸¹ Despite Tanzania’s energy potential such as gas, coal, hydropower, geothermal, solar and the wind still, the majority of Tanzania faces regular shortages and blackout.⁸² The energy sector is facing a number of challenges such as lack of private sector investment in large-scale power generation, inadequate resources to develop energy sector, reliance on few sources of energy and low access to modern energy services.⁸³

Most enterprises in Africa agree that access to finance and poor supply of electricity are the biggest obstacles to business growth in Africa.⁸⁴ In order to overcome these challenges, the government has decided to welcome private investors to join hand to develop energy sector so as facilitate the fifth phase motto on industrialization so as to achieve 2025 vision to become a middle-income country.⁸⁵ Only 15.5 per cent of Tanzanian has access to electricity.⁸⁶ A 2017 Africa Progress Panel Report notes that more than half of population in Tanzania do not have access to electricity.⁸⁷ Through OBOR, Tanzania can cooperate with China in order to provide rural electrification to the majority of farmers and could help alleviate poverty.⁸⁸ Moreover, The government welcomes Chinese investors to invest in energy sector.⁸⁹

⁸⁰ African Development Bank, *African Competitive Report 2015* (AFDB, 2015) 12

⁸¹ *ibid*

⁸² United Republic of Tanzania, *Power System Master Plan 2016 update* (Dar es Salaam, Ministry of Energy and Minerals, 2016) 56-57, available at <https://mem.go.tz/>, retrieved 10 April 2017; United Republic of Tanzania, *National Energy Policy 2015* (Dar Es Salaam, Ministry of energy and Minerals, 2015) 3-5,11-13 available at <https://mem.go.tz/acts-policies/> , retrieved 10 April 2017.

⁸³ *Ibid* National Energy Policy 2015 ,2

⁸⁴ African Development Bank and World Bank, *The Africa Competitive Report 2017: Addressing Africa’s Demographic Dividend* (Geneva, World Economic Forum , 2017) 40.

⁸⁵ *Ibid*

⁸⁶ World Bank, Tanzania: Infrastructure indicators< <https://pppknowledgelab.org/countries/tanzania>>

⁸⁷ Africa progress report, p38

⁸⁸ Implementation Plan on Cooperation of "Clean Energy and Rural Electrification" for Countries along the Belt and Road, available at http://www.hrcshp.org/road_en/guihua_4.html, retrieved 15 May 2017.

⁸⁹ Daily News Reporter, 'Chinese investor receives warm welcomes in Dar' *Daily News* 24 May 2017, available at <http://www.dailynews.co.tz/index.php/home-news/50791-chinese-investor-receives-warm-welcome-in-dar>, retrieved 24 May 2017.

Through OBOR initiative Chinese government intends to cooperate with other countries including Tanzania in order to promote green and low-carbon industries. Moreover, OBOR focuses on energy investment cooperation through direct investment, merger and acquisition and Public Private Partnership.⁹⁰

Thirdly, Africa has lagged behind in industrialization because of inadequate policy and robust legal framework of attracting foreign direct investment in the manufacturing sector.⁹¹ The government has identified manufacturing sector as the engine for industrialization.⁹² In order to accelerate economic growth the government target the industry sector to account for 23.7 per cent and 25 per cent of GDP by 2025⁹³ The Chinese investment in Sub-Saharan Africa in mainly concentrated in manufacturing and has created job opportunities.⁹⁴

According to the WB manufacturing FDI has created jobs in Tanzania and accounts for 43 percent of total jobs created, that means three times more jobs created in agriculture.⁹⁵ In order to realize industrialization, the government intends to establish several initiatives such as establishing Special Economic Zones (SEZ) and Export Processing Zones (EPZ), creating the logistic center, industrial park and establishing industries with cooperation with foreign investors.⁹⁶

⁹⁰ Vision and Actions on Energy Cooperation in Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road, available at http://www.hrcshp.org/road_en/guihua_3.html, retrieved 15 May 2017.

⁹¹ G. Chen, M. Geiger and M. Fei, *Manufacturing FDI in Sub Saharan Africa: trends, Determinants and Impacts* (Washington DC, World Bank, 2015) v.

⁹² NFYDP II at 47

⁹³ *ibid*

⁹⁴ M.Pigato and W. Tang, ' China and Africa: Expanding Economic Ties in Evolving Gobar Context' *Working Paper No 8* (Washington DC, World Bank,2015) 3 .

⁹⁵ G. Chen, M. Geiger and M. Fei, *Manufacturing FDI in sub Saharan Africa: Trends, Determinants and inputs* (Washington DC , World Bank , 2015) vi

⁹⁶ NFYDP II, AT 48-52; United Republic of Tanzania, *Sustainable Industries Development Policy SIDP 1996-2020*(Dar es Salaam, Ministry of Industries and Trade , 1996) paras 3.2, 3.3 and 3.4.6 ;The Government of the United Republic of Tanzania, *Tanzania Industrial Competitiveness Report 2015:* (Dar Es Salaam, Ministry of Industry and Trade, 2015) 118;Tanzania at Crossroads-Shifting Gears Towards inclusive and sustainable Industrialization < http://www.mit.go.tz/uploads/files/TICR%20Main%20Report_Final_27Apr16.pdf> retrieved 4 April 2017

Fourthly, Transport infrastructure development suggests that African countries have made inadequate progress.⁹⁷ The infrastructure is characterized by poor road conditions as one-fourth of total Sub-Saharan Africa road network is paved.⁹⁸ According to the World Bank, inadequate infrastructure impedes growth in Africa.⁹⁹ Investment in basic infrastructure sectors such as energy, transport, telecommunication and water, and sanitation has been low because of lack of private sector participation due to long payment period and political instability.¹⁰⁰ It is estimated that by 2013 about a quarter of all Chinese engineering Contracts worldwide were in sub-Saharan Africa.¹⁰¹

The Tanzania plans to construct new central standard gauge railway line,¹⁰² roads, air transport, and port construction are priority areas in fifth term government¹⁰³ According to the Global Competitive index, Tanzania ranks 117 out of 144 countries in terms of overall infrastructure.¹⁰⁴ Moreover ranks 112 on roads quality, 88th in railroad infrastructure, 131st in the quality of air transport infrastructure.¹⁰⁵ Moreover, according to Travel and Tourism Competitive Report Tanzania ranks 121 and 102 out of 136 countries in terms of airport and ground infrastructure respectively.¹⁰⁶ However, Most rural regions in Tanzania are not paved or the transport needs to be improved so as to reduce transportation costs and help farmers access markets.¹⁰⁷ The

⁹⁷ International Monetary Fund, 'Regional Economic Outlook: Sub-Saharan Africa staying the course' (Washington DC, IMF, 2014) 43

⁹⁸ Ibid, 43

⁹⁹ V. Foster and C. B.Garmendia, *Africa's Infrastructure: A time for Transformation* (Washington Dc, World Bank,2010) 44.

¹⁰⁰ African Development Bank, *The African Development Report 2015: Growth, poverty and Inequality Nexus: Overcoming Barriers to sustainable Development* (Cote d'ivoire,AFDB,2015) 232.

¹⁰¹ W. Chen and R. Nord, 'A Rebalancing Act for China and Africa: The Effects of China's Rebalancing on Sub saharan Africa's Trade growth' (Washington Dc, IMF, 2017) 2.< available at

<http://www.imf.org/external/ns/search.aspx?NewQuery=chinese+infrastructure+in+Africa&submit>, retrieved 5 May 2017.

¹⁰² NFYDP II, at 19,20,

¹⁰³ Ibid at 11, 12

¹⁰⁴ World Economic Forum, *Global Competitive Index 2014-2015* (Geneva, WEF, 2014) 359 available at

<http://www3.weforum.org/docs/GCR2014-15/TZA.pdf> , retrieved 5 April 2017.

¹⁰⁵ Ibid 359

¹⁰⁶ World Economic Forum, *Travel and Tourism Competitive Report 2017: Paving the way for a more sustainable and inclusive future* (Geneva, WEF, 2017) 319

¹⁰⁷ World Bank, 'Poverty and shared Prosperity 2016: Taking on Inequality' (Washington DC, World Bank, 2016) 145

International community agreed that good transportation infrastructure can help to accelerate growth, poverty reduction and income inequality.¹⁰⁸ Moreover, the Chinese government has shown interest to improve Tanga port through OBOR initiative.¹⁰⁹

The above key sectors are important in order to attain SDGs by 2030. However, the legal framework must be changed. The legal framework enshrined in Tanzania China BIT must be geared toward to improve the living conditions of the majority of Tanzania, The above sectors to be successful requires, capital, human capital and technology. Hence the need to adopt SD provisions in Tanzania- China BIT.

6. SUSTAINABLE DEVELOPMENT IN CHINA –TANZANIA BIT

The statistics by the United Nations Conference on Trade and Development (UNCTAD) shows that there 3304 International Investment treaties globally.¹¹⁰ Out of these China has signed a total of 132 BIT.¹¹¹ Moreover, China has signed 32 BITs with African countries.¹¹² Out of these only 18 BITs have been signed and entered into force with African countries.¹¹³ Sino- Tanzania BIT stands out as the first BIT which has been signed with African countries incorporating sustainable development clauses. Most of the existing BIT signed with china are focused on

¹⁰⁸ *ibid*

¹⁰⁹ T. Nsanzubgwano, 'Mwambani Port Prospects Brights', *Daily News* 22 May 2017, available at <http://www.dailynews.co.tz/index.php/home-news/50754-mwambani-port-prospects-bright>, retrieved 22 May 2017.

¹¹⁰ UNCTAD, *World Investment Report 2016: Investor Nationality: Policy Challenges* (Geneva, UNCTAD, 2016) XII

¹¹¹ China Bilateral Investment Treaties that have been signed up to March 2017, available at <http://investmentpolicyhub.unctad.org/IIA/CountryBits/42#iiaInnerMenu>, retrieved 20 March 2017

¹¹² *Ibid*.

¹¹³ MOFCOM, The Department of Treaty and Law of the Ministry of Commerce as of 12-12-2016< available at <http://tfs.mofcom.gov.cn/article/Nocategory/201111/20111107819474.shtml>, retrieved 20 March 2017.

economic partnership, in other words, they are for protection, liberalization, and promotion of investment, for instance, South Africa, Democratic Republic of Congo and Mauritius¹¹⁴

Though there is no unanimous international consensus as to what does the concept of sustainable development mean, However, the most preferred definition of sustainable development is ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs.’¹¹⁵ However, this paper adopts the concept of sustainable development as enshrined in UNACTAD 2015 Investment Policy Framework for Sustainable Development (IPFSD) and UNACTAD 2016 Global Action Menu for Investment Facilitation (GAMIF). Both GAMIF and IPFSD provides for guidelines on how to incorporate new generation international investment treaties that are geared towards sustainable development.¹¹⁶ The IPFSD incorporate sustainable development as the key factor to accelerate economic growth and incorporate investment promotion at a national and international level so as to accelerate sustainable and inclusive growth in infrastructure, renewable energy, water and sanitation, food security, climate change, health, poverty alleviation, and education.¹¹⁷ In addition, GAMIF call for a close relationship between the business community and the governments through transparency, efficient administrative procedure, and preventions of disputes among others.¹¹⁸

¹¹⁴ Ibid.

¹¹⁵ Report of the World Commission on Environment and Development: Our Common Future, Para 27 available at <http://www.un-documents.net/our-common-future.pdf>, retrieved 2 May 2017; G. E. Henderson, Rawls and Sustainable Development, *McGill International Journal of Sustainable Development law and Policy*, 7(2011-2012)pp 1-10; A. Newcombe, Sustainable development and Investment, *Journal of World Investment and Trade* 8 (2007)357, 361

¹¹⁶ UNACTAD, *2015 Investment Policy Framework for Sustainable development* (Geneva, UNACTAD, 2015) available at <http://investmentpolicyhub.unctad.org/ipfsd> , retrieved 12 March2017;

¹¹⁷ Ibid, at 06., UNACTAD, *World Investment Report 2012: Towards a New Generation of Investment Policies*(Geneva, UNACTAD ,2012)99; UNACTAD, ‘ *World Investment Report 2015: Reforming International Investment Governance* (Geneva, UNACTAD,2015), 105,129 and 142.

¹¹⁸ Global Action Menu for Investment Facilitation (GAMIF), available at <http://investmentpolicyhub.unctad.org/Publications/Details/148>,retrieved 12 March 2017

Most BITs are pro investors aim at protecting foreign investment against the political and non-commercial risk that may be a result of host countries actions.¹¹⁹ In addition, the BITs offer investors right but do not impose any obligation on issues related to sustainable development.¹²⁰

However, the current legal framework that exists between China and Tanzania does not stipulate clearly the obligations on the part of the Chinese investors in return for the right they are granted, for instance, the concept of corporate social responsibility(CSR) is just mentioned in the BIT and there are no details provided.¹²¹ Moreover, CSR is not defined.

CSR means a form of a voluntary initiative by private enterprises, organizations and other entities that encourage companies to go beyond their legal obligations by integrating social environmental and commercial concerns in their operations and stakeholder interaction.¹²² Moreover, the United Nations Global Compact (UNGC) remain and important initiative in order to attain sustainable Development goals (SDG’S 2016-2020).¹²³ UNGC principles call for companies to adopt support and implement important core values related to human rights, labor standards, environment, and anti-corruption¹²⁴.

¹¹⁹ A.J. Bonzon, ‘Sustainable Development in BITs: The Example of Switzerland’ *Journal of world investment and Trade* 15 (2014) pp 809- 810

¹²⁰ Ibid; Paul Blyschak, ‘State- Owned Enterprises and International Investment Treaties: When a State- Owned Entities and Their Investment Protected’, *Journal of International law and International Relations* (6) 2 (2011), pp1- 15.

¹²¹ UNACTAD, ‘World Investment Report 2012, at 103

¹²² United Nations Environmental Programme(UNEP), Corporate Social Responsibility and Regional Trade and Investment Agreements (2011)13, available at http://unep.ch/etb/publications/CSR%20publication/UNEP_Corporate%20Social%20Responsibility.pdf retrieved 12 March 2017.; Stephen Tully, *International Corporate Legal Responsibility* (The Netherlands, Kluwer Law International, 2012)20.

¹²³ M. A. Gonzalez-Perez and L Leonard, ‘The UN Global Compact’ in Alice de Jonge and Roman Tomasic (eds), *Research Handbook on transnational corporation* (Emerald Group Publishing, 2016,), pp 188-199.

¹²⁴ United Nations Global Compact, ‘The Ten Principles’, available at <https://www.unglobalcompact.org/what-is-gc/mission/principles> , retrieved 20 March 2017;United Nations Global Compact, available at <https://www.unglobalcompact.org/> , retrieved 12 March 2017.

The Sino- Tanzania BIT incorporates CSR in the preamble and not in the substantive provisions.¹²⁵ The importance of CSR provision is one of the core principles for investment policymaking for sustainable development.¹²⁶

Sino- Tanzania contains non-binding provisions on substantive provisions related to CSR and SD¹²⁷ Moreover, the BIT does not provide any provision related to investment facilitation.¹²⁸

The concept of Sustainable Development in Sino- Tanzania BIT is enshrined in the preamble and not substantive provisions. The Preamble plays an imperative role with regard to the interpretation of IIA.¹²⁹ The tribunal in *Ping-Ann* case while refereeing to Vienna Convention on the Law of Treaties (VCLT) Article 31(1) (2) stated that the general principle of treaty interpretation must include the ordinary meaning that is given to treaty preamble and annexes and in the light of its objective and purpose and the circumstances of its conclusion.¹³⁰ Moreover, with regard to the preamble of the BIT, the IPFSD proposes that treaties should stipulate the purpose of the BIT in the preamble and substantive provisions.¹³¹

The Tanzania – China BIT preamble stipulates that the objective such as ‘encourage respect corporate social responsibility and promote healthy, stable and sustainable economic development so as to improve the standard of living of nationals.¹³² The BIT is the departure from the language found in other Sino- Africa that provides that the main thrust of the BIT is to

¹²⁵Tanzania- China BIT, preamble.

¹²⁶ World Investment Report 2015, p 129 ;UNACTAD, ‘ *Investment Policy Framework for Sustainable Development* (Geneva, UNACTAD, 2012), pp 77- 91, available at <http://investmentpolicyhub.unctad.org/ipfsd> , retrieved 25 March 2017.

¹²⁷ UNACTAD, Investment policy 2015, at 77

¹²⁸ UNACTAD, Investment Facilitation: A review of policy Practices (2017), available at <http://investmentpolicyhub.unctad.org/News/Hub/Home/536> , retrieved 25 March 2017.

¹²⁹ Ibid 142

¹³⁰ *Ping An Life Insurance Company of China, Limited and Ping An Insurance (Group) Company of China, Limited v. Kingdom of Belgium*, ICSID Case No. Arb/12/29, Award 30 April 2015, para 164 and 165, *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000 , para 70 and 71

¹³¹ UNACTAD,World Investment Report 2015, at 142-143.

¹³² Tanzania – China BIT, Preamble

recognize the importance of encouragement and reciprocal protection of such investment under the international treaty is conducive and to increase prosperity in both countries and do not mention matters related to SD and CSR. The thrust of Tanzania – China BIT is in line with China Policy towards African countries that is geared improving living conditions.¹³³ This is also echoed by the Chinese President in Johannesburg during FOCAC where he reiterated that china is ready to cooperate with an African country in order to alleviate poverty.¹³⁴

However, the current SD clauses found in Sino- Tanzania do not provide legal obligation for either party to enforce it. The SD clauses in Sino- Tanzania reflect rules of customary law.¹³⁵ As observed above the incorporation of CSR in the BIT play a major role to assist the parties in treaty interpretation when the tribunal wants to establish the objective of the treaty.¹³⁶ Hence, the preambular wording found in Tanzania- China BIT cannot compel foreign investor or states.¹³⁷

UNCTAD recommends countries to adopt BITs that are geared towards sustainable development through investment facilitation.¹³⁸ The thrust of investment facilitation is to enable investment to contribute to sustainable development goals through improvement in transparency and information sharing to investors, effective administrative procedures, consultations, mitigating investment disputes, cross-border coordination and collaboration and technical

¹³³ China- Africa Economic and Trade Cooperation (2013) Information Office of the State Council the People’s Republic of China (August 2013),available at <http://www.scio.gov.cn/zfbps/ndhf/2013/Document/1344914/1344914.htm> ; retrieved 25 March 2017

¹³⁴ FOCAC, Xi jiping speech 2015

¹³⁵ M. Chi, ‘The ‘Greenization’ of Chinese bits:An Empirical Study of the Environmental Provisions in Chinese bits and its Implications for the China’s Future- bit Making’,) *Journal of International Economic law* 18 (2015) pp 511-516.

¹³⁶ Ibid

¹³⁷ Marc Jacob , ‘International Investment Agreements and Human Rights, p 10 (INEF Research Paper Ser. on Human Rights, Corp. Responsibility and Sustainable Development , Ser. No. 3, 2010), available at http://www.humanrights-business.org/files/international_investment_agreements_and_human_rights.pdf ,retrieved 1 June 2017.

¹³⁸ UNCTAD, Global Action Menu for investment facilitation (Geneva, UNCTAD, 2016) available at <http://investmentpolicyhub.unctad.org/Publications/Details/148>, retrieved 25 March 2017.

cooperation and another support mechanism.¹³⁹ However, the majority of the BIT signed including China- Tanzania does not contain a provision on investment facilitation.¹⁴⁰

In order to have a sustainable and harmonious conducive implementation of these project financed by the Chinese government, the government may consider to re-examine its current BIT and adopt several provisions on sustainable development. These provisions include environment, anti-corruption, human rights, anti-corruption and labour labour

(a) Environmental provisions

The concern among states to redefine the international investment regime is the result of corporate misconduct in host states because foreign investment law cannot protect the host states from the effects of investors’ operations.¹⁴¹ Corporations to a large extent play a big role to the environmental problems such as pollutions, hazardous waste and global warming and all this call for a corporation to ensure that environmental standards are strictly followed.¹⁴²

In 2015 the world adopted 2030 Agenda for SDGs, agenda 13 was adopted that is geared towards promoting human welfare and protecting the environment in order to protect humankind, especially in less developed countries. In order to implement these agenda countries are required to incorporate climate protection measures in the national policies¹⁴³.

In order to adhere to the International Conventions, Tanzania enacted laws and regulations so as to create a conducive environment. The laws that are in place include The Environment

¹³⁹ Ibid, p 4

¹⁴⁰ Ibid, pp 4-10.

¹⁴¹ K. Miles, ‘International Investment Law Origins, Imperialism and Conceptualizing the Environment’, *Colorado Journal of International Environmental Law and Policy*, 21 (2010), pp 21- 26.

¹⁴² R. Mullerat, *International Corporate Social Responsibility: The Role of Corporations in the Economic Order of the 21st Century* (The Netherlands, Walter Kluwer,2010), 210

¹⁴³ See 2030 Agenda for Sustainable Development: Goal 13 available at <http://www.un.org/sustainabledevelopment/sustainable-development-goals/> , retrieved 1 April 2017.

Management Act (EMA),¹⁴⁴ The Occupational Health and Safety Act, 2009,¹⁴⁵ the National Environment Policy, 1997¹⁴⁶ and the Occupational Health and Safety National Policy, 2009.¹⁴⁷

S.4(1) the Management and Management Act, defines environment to mean physical factors of the surroundings of human beings including air, land, water, climate, sound, light, odor, taste, microorganism, the biological factors of animals and plants¹⁴⁸ S.6 provides requires persons and corporate entities to protect the environment.

On the other hand, China is keen on emphasizing the importance of environmental protection as enshrined in the Chinese Constitution by providing protection on people lives, ecological controls pollution and other public hazards and encourages afforestation.¹⁴⁹ Moreover, the China’s Environmental Protection Law requires enterprises, public institutions, and business operators to take measures that protect the environment.¹⁵⁰ Moreover, OBOR calls for Chinese enterprises to practice environment protection in the foreign countries.¹⁵¹

The Chinese companies operating in Tanzania can be categorized into two groups. The state owned enterprises (SOE) and private enterprises. Some SOEs tend to abide by socio-environmental issues; however, private enterprises tend to ignore environmental protections.¹⁵²

¹⁴⁴ The Environment Management Act, Cap. 191 RE 2002,

¹⁴⁵ The Occupational Safety and Health Act, Cap. 297 RE 2002

¹⁴⁶ The National Environment Policy, 1997

¹⁴⁷ The Occupational Health and Safety National Policy, 2009

¹⁴⁸ S.4 The Environmental Management Act, Cap 191 RE 2002, S.3

¹⁴⁹ Constitution of the People's Republic of China (2004 Amendment) Art. 9 and 26, available at <http://en.pkulaw.cn/display.aspx?cgid=51974&lib=law> , retrieved 3 April 2017.

¹⁵⁰ Environmental Protection Law of the People's Republic of China (Order No. 9 of the President of the People's Republic of China, 01 January 2015) <Order No. 9 of the President of the People's Republic of China> retrieved 20 April 2017.

¹⁵¹ Ministry of Environmental Protection the people’s Republic of China, ‘China prioritizes a ‘Green Belt and Road’’ *Global Times* 11 May 2017 available at http://english.mep.gov.cn/News_service/media_news/201705/t20170511_413883.shtml, retrieved 14 May 2017.

¹⁵² T. Xiaoyang and I. Y. Sun, ‘Social Responsibility or Development Responsibility? What is the Environmental Impact of Chinese Investment in Africa: What are its Drivers , and what are the Possibilities for Action?’, *Cornell International law Journal*, 49, (2016), pp .69,25

There have been a number of reported cases in which Chinese investors ignored the importance of safeguarding environment, for example, the hailed completion of Mtwara- Dares Salaam gas pipeline constructed by a Chinese investor.¹⁵³ The project destroyed natural trees and farmers plantations such as coconut trees. Some areas were discovered to have industrial waste and water polluted while local community using the same water for irrigation and for livestock.¹⁵⁴ Moreover, the Chinese company The An Bang International investment company was fined 25 million for polluting the environment and discharging polluted water into msimbazi river.¹⁵⁵ Not only that the investor violated Tanzania environmental law, but it is against Chinese law that requires SOE’s to abide by the environmental protection of the host countries and perform necessary social responsibilities and carry out due diligence before and during their operations.¹⁵⁶ Moreover, the Chinese state-owned enterprises that have been approved to be issued loan by china EximBank are required among other things to abide by laws, regulations, and policies of the host state.¹⁵⁷ The SOE that do not abide the host laws are punished by the State- Owned Assets Supervision and Administration Commission. (SASAC).¹⁵⁸

¹⁵³ K. Senelwa, 'Tanzania to start tests on 542km long new Mtwara-Dar gas pipeline', *East African*, 25 July 2015, available at <http://www.theeastafrican.co.ke/business/Tanzania-tests-on-542km-long-new-Mtwara-Dar-gas-pipeline/-/2560/2808568/-/pebir7z/-/index.html>, retrieved 5 April 2017.

¹⁵⁴ Tanzania Human Rights Centre, *Human Rights and Business Report 2014: Taking Stock of Labour Rights, Land Rights, Gender, Taxation, Corporate Accountability, Environmental Justice and Performance of Regulatory Authorities* (Dar Es Salaam, LHRC, 2015) 126 available at <http://www.humanrights.or.tz/downloads/Human%20Rights%20and%20Business%20Report%202014%20final.pdf>, retrieved 28 March 2017)

¹⁵⁵ A. Rweyemamu, 'Mpina bangs factory 25M fine for pollution', *The Guardian*, 8 October 2016, available at <http://www.ippmedia.com/en/news/mpina-bangs-factory-sh25m-fine-pollution>, retrieved 28 March 2017

¹⁵⁶ Provisions on Regulating Competitive Behaviors in the Field of Overseas Investment Cooperation (came into force 18 April 2013, Art 7. available at <http://en.pkulaw.cn/display.aspx?id=13074&lib=law>> retrieved 15 April 2017; Administrative Measures for Outbound Investment Order No 3/ 2014 of 10 June 2014, Art 20 available at <http://edu.westlawchina.com/maf/china/app/document?&docguid=idcb5b308000014859df28af5d42bf52&hitguid=idcb5b308000014859df28af5d42bf52&srguid=i0ad82b440000015bbf210810fae1ca34&spos=7&epos=7&td=44&crumb-action=append&context=91&lang=en> retrieved 15 April 2017; Environmental Protection Guidelines for Outbound Investment Cooperation No. 74/2013 of 18 February 2013, Art 12-14 available at <http://edu.westlawchina.com/maf/china/app/document?&src=nr&docguid=i3cf76ad30000013d23edc2afd2d1c49c&lang=en&crumb-action=append&crumb-label=>> retrieved 15 April 2017.

¹⁵⁷ Notice on Further Regulating the Overseas Investment Cooperation of Chinese Enterprises of 6 January 2008, Art 2

¹⁵⁸ Ibid, Art 5; Measures for Overseas Investment Management of 6 October 2014, Art 27 and 32.

Moreover, The government should consider cooperating with China through Public Private Partnership (PPP) so as to adopt green industry infrastructure that may need heavy financing and the government must be ready to meet its share in the implementation of the project.¹⁵⁹ In order for this to be successful, the government may consider adopting policies and strong regulatory and institutional structure in order to adopt green industries.¹⁶⁰

Governments around the world have begun to recognize the importance of environment issues in their treaty negotiation.¹⁶¹ Only three out of 24 BIT signed by Tanzania provide for provisions related to the environment. These are BIT with China, Canada¹⁶² and Iran¹⁶³. Both BIT states that the parties recognize the importance of environment and states shall not adopt measures that are arbitrary or unjustifiable.

The good example is the 2012 SADC Model BIT which is broader by incorporating issues related to environmental and social impact assessment and environmental management and improvement.¹⁶⁴ However, the provisions provide on the outset that parties understand and share the importance of environment issues in the operation of their investment activities.¹⁶⁵

(b) Labor Standards

The International Labour Organization (ILO) Declaration on Fundamental Principles and Right at work require member countries to respect labour principles such as freedom of association, rights to collective bargaining, elimination of all forms of forced or discrimination in

¹⁵⁹ UNIDO, 35

¹⁶⁰ UNIDO 37

¹⁶¹ C. L. Beharry & M. E. Kuritzky, ‘Going Green: Managing The Environment Through International Investment Arbitration’, *American University International Law Review* , 30 (3) (2015)pp 383, 429

¹⁶² Tanzania- Canada BIT (2014), Art 15 provides for “Article 15: Health, Safety, Labor and Environmental Measures”

¹⁶³ Iran- Tanzania BIT (2015), Art 9

¹⁶⁴ Southern Africa Development Community Model Bilateral Investment Treaty Template with Commentary, Art 13,14,15,22 available at <http://investmentpolicyhub.unctad.org/Download/TreatyFile/2875>, retrieved 15 April 2017.

¹⁶⁵ A.J. Bonzon, ‘Balance Between Investment Protection and Sustainable Development in BIT’ pp 809-822.

employment and occupation.¹⁶⁶ Most international investment agreements do not provide provisions related to labor issues this is because the main thrust is to provide a conducive environment for investors and often times contains declaratory and non-binding provisions.¹⁶⁷ Furthermore, investors favor countries with lower labor standards which in turn lead to lower costs.¹⁶⁸ The Tanzania BIT’s survey shows that Tanzania-Canada BIT (2013) and Tanzania-Iran BIT (2015) contain provisions that address labor matters¹⁶⁹.

Tanzania is a member of International Labor Organization. These core principles are enshrined in the eight conventions which Tanzania has ratified.¹⁷⁰ The main duties of ILO are to develop international labor standards and to supervise their observance.

Tanzania has enacted three important legislations which regulate labour standards in Tanzania, namely Employment and Labour Relations Act, Cap.366 R.E 2002 (ELRA) Labour Institutions Act, Cap 300 R.E2002(LIA) , and Occupational Health and Safety Act , Cap 297 R.E 2002(OHSA). Sections.7-11 of ELRA reiterates the importance of fundamental rights and protections rights and protections as enshrined in the labour conventions.

The studies have found that there is a positive link between FDI and core labour standards to the effect that they could lead to a favorable impact on political stability, human capital, and economic growth.¹⁷¹

¹⁶⁶ ILO, *Fundamental Rights at Work and International labour standards*, Geneva , 2004

¹⁶⁷ Bonnie Penfold, *Labor and Employment Issues in Foreign Direct Investment: Public Support Conditional ties* (Int'l Labour Office, Working Paper No. 95, 2003)

¹⁶⁸ Ibid

¹⁶⁹ Tanzania- Iran BIT (2015), Art 9, Tanzania- Canada BIT (2014), Art 15 provides for “Article 15: Health, Safety, Labor and Environmental Measures”

¹⁷⁰ For the list of Conventions visit

¹⁷¹ J. A. Panareda and S. Puig, ‘ Labour Protection and Investment Regulations: Promoting a Virtuous Circle’ *Stanford Journal of International Law*, 51 (2015) pp 105 -109

The Tanzania- China BIT does not contain any provisions on labour matters, however, other countries such as Austria incorporate the labour standards on the BIT and on the preamble and substantive provisions BIT¹⁷².

However, Some countries such as Liberia has adopted provisions on labour in their investment Act. For instance, section 13 provides that foreign investors and their employees shall be regulated by labor agreements and the standard provided shall not be lower than the mandatory requirement of Liberia.¹⁷³

Chinese investment in Tanzania has created jobs and help improve the living standard of Tanzanian. For instance, while visiting the factory owned by the Chinese investor under Export Processing Zone(EPZ), the Prime Minister was impressed with the investment and thanked Chinese investor for investing in the country and creates more jobs.¹⁷⁴ According to Chinese ambassador to Tanzania there more than 600 Chinese companies operating in Tanzania and have created more than 150,000 direct employment.¹⁷⁵ However, ILO documented evidence that shows that in most EPZ labour standards are not adequately implemented by investors.¹⁷⁶ Moreover, It is important for the government to adopt a legal framework that will benefit both Tanzanian and Chinese investors by outlining the conditions for the development of the zones.¹⁷⁷

¹⁷² A Reinisch, 'Austrian' in Chester Brown (ed) *Commentaries on Selected Model Investment Treaties* (OUP, 2013), p.29

¹⁷³ ICSID, *Investment Laws of the World: The Investment Act of 2009 An Act Repealing and Replacing the Investment Incentives Act of 1973 and National Investment Commission Act of 1979 of the Republic of Liberia* (Oxford, OUP,2011), VOL IV, S. 13 , 13.1- 13.2

¹⁷⁴ D. Kamagi, 'Turn Mkulazi into industrial hub:Premier', *The Citizen*, 11 August 2016 ,available at <http://www.thecitizen.co.tz/News/1840340-3340336-k6jdt2z/index.html>, retrieved 1 April 2017.

¹⁷⁵ R. Athuman, ' Master Plan for Bagamoyo Mega Project in offing', *Daily News*, 17 February 2017.

¹⁷⁶ S. Tully, ' International Labour Standards' in S.Tully (ed), *International Corporate Legal Responsibility* (The Netherlands, Kluwer Law International, 2012), p. 285.

¹⁷⁷ D. Brautigam and T. Xiyong, ' African Shenzen: Cghina's Specila Economic Zones in Africa', *Journal of Modern African studies* 49,1 (2011) pp. 27,35.

The best approach is the government to be the shareholder and be able to attend the board meetings and make decisions with Chinese investors.¹⁷⁸

In order to safeguard the interest of Tanzanian working in the different sectors stated above against working long hours, the government should consider providing an inspection system to make sure Chinese investors are complying with the Tanzania laws.¹⁷⁹ The case in point is the Sun Shine Mining Limited owned by Chinese investor where it was found that most workers lacked safety gears and medical services and did not have residence and working permit as required by the labour law.¹⁸⁰ Moreover, government authorities found more than 50 Chinese workers were working as chefs, welders, and drivers while these jobs could have been done by Tanzanian.¹⁸¹ Moreover some Tanzanian have protested against low salary paid by Chinese investors, for instance, one contractor paid Tanzanian 5000 Tsh per day as opposed to 12,500 Tsh per day.¹⁸²

Moreover, The Chinese companies operating in Tanzania are required by Chinese Government to abide by national laws and specific provisions on employment and labour requirement and exist- entry administration.¹⁸³

¹⁷⁸ Ibid,p 37.

¹⁷⁹ Ibid 284. D. Brautigam, *Will Africa feed China?*, (Oxford, Oxford University Press, 2015),pp.102-106.

¹⁸⁰ H.Kiama, 'Minister orders arrest, repatriation of illegal Chinese miners in Chunya,' *Daily News*, 15 January 2017, available at <http://www.dailynews.co.tz/index.php/home-news/47885-minister-orders-arrest-repatriation-of-illegal-chinese-miners-in-chunya>, retrieved 1 April 2017; Guardian Reporter, 'Three Chinese dragged to court in ongoing illegal immigrant sweep,' *The Guardian*, 13 January 2016, available at <http://www.ippmedia.com/en/three-chinese-dragged-court-ongoing-illegal-immigrant-sweep>, retrieved 1 April 2017.

¹⁸¹ *ibid*

¹⁸² The Guardian Reporter, 'Protestors 'confront' DC over abuse at Chinese firm', *The Guardian*, 24 February 2016, available at <http://www.ippmedia.com/en/news/protesters-%E2%80%98confront%E2%80%99-dc-over-abuse-chinese-firm>, retrieved 1 April 2017.

¹⁸³ Notice of the Ministry of Commerce, the Ministry of Foreign Affairs and the State-owned Assets Supervision and Administration Commission of the State Council on Further Regulating the Foreign Investment Cooperation of Chinese Enterprises No 222 of 06 June 2008, S.2-3, available at <http://edu.westlawchina.com/maf/china/app/document?&src=nr&docguid=i3cf76ad30000011ef354c42d6343a480&lang=en>, retrieved 1 April 2017.

Most BITs signed including the BIT signed with Tanzania that contains labor provisions does not explicitly aim at improving labor standards but the trust is to prevent derogation of labor standards so as to attract and encourage investment.¹⁸⁴ Corporation investing in Tanzania should be encouraged to adopt labour standards that are geared toward improving labor standards. The above provision is binding to both host state and investors and clearly provides that there is a consequence for not abiding by labor standards.

Moreover, other countries in the world such as European countries have adopted a text on trade and sustainable development.¹⁸⁵ The said text incorporates among others the importance of labour provisions.¹⁸⁶

(c) Human Rights Provisions

International investment law and human rights are considered by many scholars and commentators as two distinct branches of international law.¹⁸⁷ The distinction lies in the fact that human right is about individual human being and investment law is about investors who can be a legal person and often times private corporations.¹⁸⁸ When disputes occur between an investor and the host state party resort to arbitration. Investment arbitration is the most effective means of solving investors – state dispute, as a result, there has been an interaction between investment

¹⁸⁴ V. Prislán and R. Zandvliet, 'Mainstreaming Sustainable Development into International Investment Agreements: What Role for Labor Provisions?' Grotius Centre Working Paper 2014/023-IEL, 10 June 2014, at p 13 available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2448205, retrieved 20 April 2017.

¹⁸⁵ European Commission, "EU Textual Proposal: Trade and Sustainable Development", 6 November 2015, available at http://trade.ec.europa.eu/doclib/docs/2015/november/tradoc_153923.pdf, retrieved 2 May 2017;

¹⁸⁶ F. D. Ville, J. Orbie, L. V.D. Putte, 'Sustainable Development in TTIP: A Highest Common Denominator Compromise?', *European Journal of Risk Regulation* 7 (2016), pp 290-294; C. Malmström, 'TTIP – what's in it for labour, environment and sustainable development?' available at https://ec.europa.eu/commission/commissioners/2014-2019/malmstrom/blog/ttip-whats-it-labour-environment-and-sustainable-development_en, retrieved 1 June 2017.

¹⁸⁷ P. Dupuy, 'Unification Rather than Fragmentation of International Law? The case of International Investment Law and Human Rights Law' in P. Dupuy, F. Francion and E. Petersmann (eds), *Human Rights in International Investment Law and Arbitration* (Oxford, Oxford University Press, 2010), p. 45

¹⁸⁸ *ibid*

laws with other non-investment obligation.¹⁸⁹ Some BIT stipulates the importance of labor, environment and health and safety, however, most BITs do not make reference to human rights.¹⁹⁰ James Fry states that the BIT freezes the human rights situation in the host state at the signing of the BIT and making it difficult for the host state to change the situation in the pursuit of development.¹⁹¹ This is because the BITs are signed with the sole purpose of attracting foreign investment and protect investors from the undue state action.¹⁹²

Most Model BIT surveyed by the author do not incorporate provision on matters related to human rights for example the Model BIT of China (2003), France(2006), Germany (2009), Russia (2002), Austria (2008), Canada (2004), United States (2012), Italy (2003), Korea (2001), Draft India (2015), United Kingdom (2008) and The Netherlands (2004) do not mention human rights in the BIT.¹⁹³ However, Norwegian model BIT (2015) provides in its preambular paragraph the importance of human rights.¹⁹⁴ The ICSID Conventions adjudicate matters related to procedural and not substantial issues henceforth do not have a provision relating to human rights¹⁹⁵.

Furthermore, the OECD Guidelines for Multinational Enterprises provide non-binding principles and standards for responsible business conduct and member countries are required to adhere to applicable laws and internationally recognized standards.¹⁹⁶ The current guidelines issued on 2011 to reflect changes in the international investment and multinational enterprises have

¹⁸⁹ C. Reiner and C. Schreuer, ‘ Human Rights and Investment Arbitration’ in P.M. Dupuy, F. Francion and E.U Petersmann (eds), *Human Rights in International Investment Law and Arbitration*, (Oxford, Oxford University Press, 2010), p.82

¹⁹⁰ *ibid*

¹⁹¹ J. D. Frey, ‘International Human Rights Law in Investment Arbitration: Evidence of International Law's Unity,’ *Duke Journal of Comparative and International law*, 18 (2007-2008),pp 77, 103.

¹⁹² N. Klein, ‘ Human Rights and International investment Law: Investment Protection as Human Rights’, *Goettingen Journal of International Law*,4(1)(2012), pp179,188.

¹⁹³ Model Agreements, available at <http://investmentpolicyhub.unctad.org/IIA/AdvancedSearchIRIRResults>, retrieved 10 April 2017.

¹⁹⁴ *Ibid*.

¹⁹⁵ M. Jacob, *International Investment law and Human Rights*, p 29-30

¹⁹⁶ OECD Guidelines for Multinational Enterprises 2011 Edition, p 3, available at <http://www.oecd.org/daf/inv/mne/48004323.pdf>, retrieved 10 April 2017

introduced new issues relate to human rights.¹⁹⁷ Multinational Corporations are required to operate in abiding by internationally recognized human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations.¹⁹⁸ The fact that most countries in the OECD have signed BIT with Tanzania shows that Tanzania can negotiate the model BIT which includes human rights in the proposed model BIT. Likewise, China has issues regulations to regulation state-owned enterprises and

Kulick, observes that the UN Global Compact and the OECD Guidelines for multinational enterprises are soft law and do not provide mandatory obligation though they help to prove the importance of human rights or the environment.¹⁹⁹ However, the host country can still negotiate the BIT with human right provision take into account the statistics of human violation perpetrated by Multinational Corporation.²⁰⁰

Though Chinese investors are encouraged to abide by the laws of Tanzania. It is equally important to incorporate mandatory language that may strengthen the China- Tanzania BIT, for instance, to make specific reference to internationally standards of responsible business conducts such as the UN guiding Principles on Business and Human Rights.²⁰¹ The language might be incorporated in the preamble and substantive provisions

Tanzania has ratified 10 out of 18 international human rights instrument as of march 2016.²⁰² Moreover, The Tanzania Investment Act ,Cap 38 RE 2002 is silent on matters related to

¹⁹⁷ Ibid, pp 31-34

¹⁹⁸ ibid

¹⁹⁹ A. Kulick, *Global Public Interest in International investment law* (Cambridge, Cambridge University Press,2012),pp 58-61

²⁰⁰ ibid

²⁰¹ D. Weissbrodt, 'Humana Rights Standards Concerning Transnational Corporations and other business entities', *Minnesota Journal of International law* ,23 (2014),pp 135-140.

²⁰² Legal and Human Right Center, Tanzania *Human Right Report, 2015* (Dar Es Salaam, LHRC, 2015) 215, available <http://www.humanrights.or.tz/> retrieved April 30 , 2017.

sustainable development. It is submitted that the government may consider amending the Act so as to incorporate human right protections.²⁰³

It is submitted that the government may consider to adopt Article 15 of the SADC Model investment that prohibit investors and investment to engage and be complicit on any acts of human rights violations.²⁰⁴

(d) Anti-corruption provisions

Corruption is one of the most important impediments to economic, social, political and human development in the African continent.²⁰⁵ The 2016 United Kingdom summit on corruption called for government leaders worldwide to fight corruption where it can be found is another evidence to show that corruption is a serious problem in the world and Tanzania in Particular.²⁰⁶ According to the Transparent International both china and Tanzania are not doing well to fight corruption.(Table 4). Although the fifth phase government has been serious about fighting corruption, the problem still exists.²⁰⁷ Tanzania is determined to combat corruption at all levels.²⁰⁸ The Chinese government had taken into account multinational companies that pay bribes to governments and CPC Party officials.²⁰⁹ On the other hand, The government of China has been cracking down on corruption officials.²¹⁰ Chinese Ambassador to Tanzania while donating equipment worth US\$

²⁰³ M. Jacob, 'International Investment Agreements and Human Rights' p 43

²⁰⁴ SADC Model Investment Treaty, Art 15.1- 3

²⁰⁵ J. Mbaku, 'International Law and the fight against Bureaucratic corruption in Africa,' *Arizona Journal of International and Comparative Law*, 33 (2016), pp 661, 688.

²⁰⁶ Anti-corruption Summit | London 2016 – Communiqué, available at [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522791/FINAL - AC Summit Communiqué - May 2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522791/FINAL_-_AC_Summit_Communique_-_May_2016.pdf), retrieved 10 February 2017

²⁰⁷ NFYDP II, at 107.

²⁰⁸ NFYDP II at 76.

²⁰⁹ D. Chow, 'How China Promotes its State-owned Enterprises at the Expense of Multinational Companies in China and Other Countries', *North Carolina Journal of International Law*, 41(3) (2016) 455,460.

²¹⁰ China Daily, 'President's vision inspires new vigor', *China Daily European Weekly*, 03 March 2017 available at http://europe.chinadaily.com.cn/epaper/2017-03/03/content_28417136.htm, retrieved 20 March 2017; Xinhua, 'Xi urges anti-corruption cooperation in Belt and Road development' *Xinhua*, 14 May 2017, available at http://news.xinhuanet.com/english/2017-05/14/c_136281350.htm, retrieved 14 May 2017; D.Chow, 'Why China's crackdown on

1.5 million to Prevention and Combatting of Corruption Bureau (PCCB) stated that China is committed to working with the Tanzania government to fight corruption.²¹¹ The current-China-Tanzania economic relationship can be beneficial if both countries cooperate to fight corruption. According to Transparency International, the risk area which needs to address is the area related to Public Private Partnership (PPP). The Government of China during FOCAC 2015 agreed to cooperate with African countries in different projects through PPP. This is a gray area where investors may be awarded huge contracts in infrastructure.²¹² Tanzania has witnessed a number of grand corruptions in the country such as Tegeta escrow account. Some magistrates have been involved in soliciting bribes to Chinese officials.²¹³ The FYDP II has included corruption eradication, good leadership, governance, accountability and transparency as priority areas for the next five years.²¹⁴

Corruption Perception Index for China and Tanzania

Rank 2016	country	2016 score	2015 score	2014 score	2013 score	2012 score
79/176	China	40	37	36	40	39
116/176	Tanzania	32	30	31	33	35

Source:Transparency

International<http://www.transparency.org/news/feature/corruption_perceptions_index_2016.

Commercial Bribery Threatens U.S Multinational Companies Doing Business in China’ *Arizona . Journal of international and Comparative .Law*, 31 (2014), pp 511,518-519.

²¹¹ M.Xuequan, ’ China lends support to Tanzania anti- corruption drive’ *Xinhua*, 17 June 2015, available at http://news.xinhuanet.com/english/2015-06/17/c_134332139.htm, retrieved 20 March 2017

²¹² Anti- corruption Resource Center, Tanzania Overview of corruption and anti-corruption, available at <http://www.docin.com/p-1475632296.html> , retrieved 20 March 2017.

²¹³ The Citizen Reporter, ‘Immigration Officer in Court over 12.6m bribe’ *The Citizen*, 3 February 2016, available at <http://www.thecitizen.co.tz/News/1840340-3060068-lrjkibz/index.html> ,retrieved 20 March 2017

²¹⁴ NFYDP II, p 45.

It is important to note that Both Tanzania and China have ratified the United Nations Conventions against Corruption.²¹⁵ The situation calls for Tanzania and China to reconsider its current BIT practice. In order to speed up sustainable development, the government needs to take serious measures to fight corruption. For instance, in one case a Chinese investor China Communications Construction Company Limited (CCCCL), was illegally awarded a tender worth \$ 523 million. to expand Dar es salaam port without an invitation to tender as prescribed in the Public Procurement Act Cap 410.²¹⁶ In addition, another Chinese company, China Sonangol International Holding Limited (CSIIHL) purported to be investor wanted to invest in the air Tanzania Company limited the state-owned airline company colluded with a government official in procurement procedure and occasioned the loss of billions of shillings.²¹⁷ In addition, some Chinese nationals colluded with Tanzania and caused a loss of one billion shillings to Tanzania Revenue Authority.²¹⁸ In addition, some Chinese nationals were convicted of attempting to bribe the police officers from wildlife department with Sh 30.2 million.²¹⁹ Moreover, the action of some Chinese companies is against Chinese laws and regulation that prohibit companies from engaging in any illicitly low price or engaging in collusive tendering or commercial bribery.²²⁰

²¹⁵ The United Nations Conventions against Corruption adopted by the UN General Assembly 31 October 2003 by resolution 58/4 and entered into force on 14 December 2005, available at <https://www.unodc.org/unodc/en/corruption/ratification-status.html>, retrieved 20 March 2017.

²¹⁶ F. Kapama, 'Former PTA boss escapes jail term' *Daily News*, 11 February 2017, available at <http://www.dailynews.co.tz/index.php/home-news/48463-former-director-general-with-tanzania-ports-authority-tpa-ephraim-mgawe-being-escorted-by-the-police-to-jail-after-being-convicted-of-abuse-of-position-charge-by-the-kisutu-resident-magistrate-s-court-in-dar-es-salaam-today>, retrieved 25 March 2017

²¹⁷ K. Kenyuko, 'Matakka's abuse of office case for November hearing' *The Guardian*, 27 October 2016, available at <http://www.ippmedia.com/en/news/mattaka%E2%80%99s-abuse-office-case-november-hearing-0>, retrieved 10 April 2017.

²¹⁸ K. Kenyuko, 'Two joined in forgery case that caused TRA 1bn/- loss,' *The Guardian*, 14 Sept 2016, available at <http://www.ippmedia.com/en/news/two-joined-forgery-case-caused-tra-1bn-loss>, retrieved 10 April 2017

²¹⁹ T. Aly, 'Chinese jailed 30 years for slaughter of 226 elephants,' *The Citizen*, 19 March 2016, available at <http://www.thecitizen.co.tz/News/Chinese-jailed-30-years-for-slaughter-of-226-elephants-/1840340-3123746-112bb2pz/index.html>, retrieved 10 April 2017.

²²⁰ Regulations on the Administration of Contracting Foreign Projects, Decree No. 527 of the State Council, 09 January 2008, Art 12.

Tanzania may consider to adopt India Model BIT, that that prohibits corrupt practices.²²¹Corruptions is one of the factors that hinder doing business in Tanzania.²²²

More importantly, the government should consider to adopt corporate governance code of conduct manual or amend Tanzania investment Act and incorporate some of the provisions so as to solve the existing problems that exist among investors and also carry the review, revision, and recommendation towards the different corporate entity. The government may consider elaborating corporate governance code on each specific sector. Some of the countries that have adopted the code of corporate governance are Indonesia. It is important for the government to consider adopting Good corporate governance code so as to provide a smooth investor-government relationship.²²³

Conclusions

This article shows that in order to have harmonious and sustainable development Tanzania and SSA countries need to reconsider to renegotiate the current legal framework that is geared towards improving the wellbeing of majority of African and reduction of poverty. . The survey shows that in exception of Tanzania, the majority of BIT signed by China with African countries do not contain provision related to sustainable development as promulgated by UN Compact, IPSD and GAMIF. It is submitted that policy makers in Tanzania to re-negotiate the BIT in order to achieve the win- win relationship. The government should consider to take serious actions when there is human rights violations, corrupt practices, failure to observe labour laws and failure to adhere to environmental protections.

²²¹ Model Text for the Indian Bilateral Investment Treaty 2015, Art 11 (ii)-(iv) and 12 available at <http://investmentpolicyhub.unctad.org/IIA/AdvancedSearchIRIResults>, retrieved 10 April 2017.

²²² World Economic Forum, *The Global Competitive Report 2014-2015* (Geneva, World Economic Forum, 2014) ,pp.358-359.

²²³ M. Kamal, ‘Corporate Governance and State- owned Enterprises: A study of Indonesia’s Code of Corporate Governance’, *Journal of International Commercial Law and Technology*, 5(4)(2010),pp. 206-221.

Furthermore the data provided by the Tanzania investment Centre are not consistent with the data provided by the Chinese Embassy in Tanzania. It is not clear to determine the number of the projects that are currently implemented and any significant job creation in Tanzania. However, if the data are correct then the Chinese investment has not contributed significantly to the economic development in Tanzania. The government should re consider changing its policy on investment and promoting more joint venture so as more Tanzanian could be employed

In order for Tanzania to continue to have robust sustainable BITs with China and other investors, the government must consider to adopt a new Model BIT that not only will provide provisions related to sustainable development but also provides provisions whereby the government can regulate its policies. Failure, to have a model BIT that addresses these issues will result for the BIT to benefit investors and Tanzanian cannot enjoy the fruits of resources available in the country. Majority of African countries that have signed BIT with China should consider to re-negotiate new model BITs that addresses SD. The government should consider cooperating with china on economic sectors that will help to reduce poverty and provide jobs to majority of Tanzanian.