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Perspectives of Primary Agricultural Stakeholders

Research Report

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ABBREVIATIONS

ADB	Asian Development Bank
ADS	Agriculture Development Strategy
BIPPA	Bilateral Investment Promotion and Protection Agreement
CIT	Corporate Income Tax
CPA	Comprehensive Peace Accord
CPI	Consumer Price Index
FDI	Foreign Direct Investment
FITTA	Foreign Investment and Transfer of Technology Act
FY	Fiscal Year
GDP	Gross Domestic Product
GoN	Government of Nepal
IBN	Investment Board Nepal
ILO	International Labour Organization
IMF	International Monetary Fund
MoAD	Ministry of Agricultural Development
MoF	Minsitry of Finance
MoFA	Ministry of Foreign Affairs
MoICS	Ministry of Industry, Commerce and Supplies
NPC	National Planning Commission
NPR	Nepalese Rupee
NRB	Nepal Rastra Bank
PAD	Project Development Agreement
PIA	Project Investment Agreement
PRI	Policy Research Institute
SAARC	South Asian Association for Regional Cooperation
SDG	Sustainable Development Goal
SEZ	Special Economic Zone
WTO	World Trade Organization

FOREWORD

Policy Research Institute (PRI) is a think tank of the Government of Nepal. Central to its mandate is to undertake research on all issues of policy concern and, based on the evidence, recommend the Government to reform existing policies as relevant or enact new ones where there is a policy void.

Public policy dialogues form part of PRI's policy research. The dialogues engage policymakers, practitioners, researchers and the people concerned in debating policy issues affecting them and exploring practicable solutions to the issues involved. One of such dialogues, to which I return in the paragraphs that follow, has been the trigger for this report.

A year ago, on 4 January 2021, the Government of Nepal amended the Foreign Investment and Transfer of Technology Act (FITTA) opening the primary sector of agricultural production, which was on the negative list for Foreign Direct Investment (FDI) until then. FITTA was amended to allow FDI to enter the primary sector to enhance export-oriented production, which Nepal requires to generate resources to finance the development need of the country.

However, agricultural workers, their associations and small-scale agro-entrepreneurs opposed the rationale and justification to open the primary sector of agriculture to FDI. To hear them and explore ways to bridge the gap between their concerns and the government's desire to augment economic growth in the country, PRI hosted a national dialogue on which this report builds. The report situates FDIs to the country's politico-economic, geopolitical and institutional landscape; triangulates the perspectives of agricultural stakeholders with secondary data; and, offers recommendations to address some of the underlying issues that were discussed and debated during the dialogue.

My colleagues Mr Dipendra Prasad Pant, Dr Bikram Acharya and Dr Mukunda Raj Kattel – the authors of the report – deserve special thanks for their painstaking work. Thanks are also due to the members of the PRI Publication Review and Recommendation Committee, which carefully reviewed the report and suggested improvements.

I hope the report will trigger a policy debate on such an important issue as FDI in agriculture in Nepal and also contribute to knowledge on this field of enquiry.

Bishnu Raj Upreti, PhD
Executive Chairperson
January 2022

EXECUTIVE SUMMARY

Speedy economic growth is at the heart of Nepal's post-conflict periodic plans. Agriculture, hydroelectricity, tourism and the labour force have been identified as the key drivers of economic growth. However, despite efforts by both the governments and the private sector to exploit these pillars over the years, the overall progress has not matched aspirations and expectations. The failure to mobilise resources for export-oriented projects is said to be the main reason behind this lacklustre economic performance.

For several years, Nepal has planned to attract Foreign Direct Investment (FDI) in big infrastructures and large-scale production. The Fifteenth Plan of the country envisions building a competitive and dynamic national economy through the enhancement of products, productivity and competitiveness. To that end, it aims to attract and increase the volume of foreign investment, including FDI.

Driven by the quest for bringing in foreign investment, the Government of Nepal (GoN) amended – on 4 January 2021 – the Foreign Investment and Transfer of Technology Act (FITTA) opening the previously banned primary sector of agricultural production – poultry farming, fisheries, bee-keeping, fruits, vegetables, oilseeds, pulse seeds and dairy products – to FDI. However, the move met angry remarks from farmers, their associations and small-scale agro-investors.

The study was conducted on this background, with the overall objective to unpack why the decision to open the primary sector of agricultural production has become debatable. The study has engaged the combination of primary and secondary data that includes a national policy dialogue with primary stakeholders and books, reports and newspaper commentaries.

Macroeconomic data consulted for the study suggests that FDI has both positive and negative experiences. It has brought benefits to some countries and has created harmful consequences on some others. However, in the absence of a specific monitoring mechanism on the impact of FDI, there is no sector-wise data on which to build a definitive assessment as to which sectors are good and cost-effective and where caution is warranted.

The views and concerns of agricultural stakeholders align with the macroeconomic data. While FDI is necessary for economic growth, most of the stakeholders argue, opening agriculture to FDI before putting in place necessary infrastructure – transport systems, technology, skilled human resources, managerial efficiency, and so on – will only harm small farmers and the subsistence economy they have been nurturing.

In another key message of the study, FDI cannot be flatly rejected or accepted in agriculture. It has to be approached with caution and awareness of Nepal's social, economic, political, ecological and developmental reality. Nepal can adopt a hybrid approach to FDI in agriculture, an approach in which small farmers, domestic investors and foreign investors work in unison to complement and reinforce each other's interests and comparative advantages.

Based on the analysis of the data, both primary and secondary, the study makes the following recommendations about FDI in general as well as FDI in agriculture.

a. Integrate and align all FDI regulatory mechanisms to avoid legal and administrative overlaps and disconnect, and assure potential investors of the ease of investment and its protection in Nepal.
b. Maintain a balance between the pursuit of foreign investment and the development of domestic capital by mobilizing the private sector to establish national industries based on local resources and skills and, at the same time, to create an enabling environment for FDIs to operate in the area of their comparative advantage.
c. Consult relevant stakeholders before making any policy decisions that affect their lives as consultations make the process inclusive and transparent and the product (decision or policy) evidence-based.
d. Commission a comprehensive study on the gap between FDI promises and delivery to explore why Nepal has not been able to mobilise FDIs as expected despite significant progress vis-à-vis ease-of-doing-business over the years.
e. To ensure the smooth flow of FDIs and transfer of technology, engage in economic diplomacy by reconfiguring foreign policy priorities and strengthening the capacity of Nepali diplomatic missions abroad.
f. Open agricultural research, innovation and high-tech industries to FDI, as Nepal has no capacity or comparative advantage over these areas.
g. Allay the fear of small farmers and entrepreneurs that FDI does not harm their interests and prepare them for agricultural modernization and commercialization through FDIs.
h. Conduct an expert study to explore ways to build the capacity of small farmers so that they are, at the very least, technology-literate, skilled at crop diversification and adaptable to modern farming technologies.

CHAPTER ONE
INTRODUCTION

1.1 Background

Nepal has been struggling to achieve speedy economic growth ever since it started periodic development plans in the 1950s. Over the decades, especially since the end of the armed conflict through the Comprehensive Peace Accord (CPA)[1] in 2006, the policy community of Nepal, including political parties and governments, have made socio-economic transformation one of the objectives of post-conflict transition. The post-CPA constitution, adopted in 2015, made rapid economic growth the economic objective of the state (Article 25.3). Political parties followed suit by including these aspirations in their manifestos (ADB, 2014, pp. 26-27).

As a party to international instruments, including, among others, the Sustainable Development Goals (SDGs), Nepal is under obligation to perform better economically, which requires investment in growth-enhancing development. For example, to achieve SDG 1 (no poverty), SDG 2 (zero hunger), SDG 3 (good health and wellbeing), SDG 8 (decent work and economic growth), SDG 9 (innovation, industry and infrastructure), SDG 10 (inequality reduction) require economic growth.

Speedy economic growth is at the heart of Nepal's post-conflict periodic plans – not least the 14th and 15th plans. Agriculture, hydroelectricity, tourism and the labour force have been identified as the key drivers of economic growth. However, despite efforts by both the governments and the private sector to exploit these pillars over the years, the overall progress has not matched aspirations and expectations. The failure to mobilise resources for export-oriented projects is said to be the main reason behind this lacklustre economic performance.

As is the case with many developing countries, Nepal bases its budgetary resources required for economic growth on revenues, remittance, internal and external loans and foreign aid. For several years, Nepal has planned to attract Foreign Direct Investment in big infrastructures and large-scale production in partnership with local investors (NPC, 2020). The Fifteenth Plan (2019-2024) of the country envisions building a competitive and dynamic national economy through the enhancement of products, productivity and competitiveness. To that end, it aims to attract and increase the volume of foreign investment, including Foreign Direct Investment (FDI), to bring in capital, technology and technical skills, improve managerial proficiency and to further

1. The CPA was signed between the Communist Party of Nepal (Maoist) and the Government of Nepal, the parties to the armed conflict that raged in Nepal between February 1996 and November 2006. The conflict incurred an untold amount of socio-economic costs by way of destroyed infrastructure, stalled development projects and other opportunity costs.

exploit and utilize natural resources and develop infrastructure (NPC, 2020). To see through such investment, the Government of Nepal (GoN) has introduced a dedicated institution: the Investment Board, Nepal (IBN).

The Fifteenth Plan targets to increase the volume of FDI to NPR 260 billion (NPC, 2020) in productive sectors with comparative and competitive advantages. It suggests amending existing laws as necessary and introducing new investment-friendly legislation where required. During the Plan period, Nepal also targets to receive advanced technologies, technical skills and approaches to innovation in the industrial sectors via FDIs.

Foreign Investment Policy, 2015 and Foreign Investment and Transfer of Technology Act, 2019 (FITTA) are the key legislations enacted to manage and operationalize FDIs. These instruments seem to have made an effect. The increased FDI commitment and approval in 2017, when the GoN organized an investment summit amongst national industrialists and foreign investors, indicates that Nepal has the potential to mobilize FDIs for its economic development (TKP, 2017).

As an agricultural country, Nepal's national development depends, in large part, on the modernization and the development of the agricultural sector, which provides employment opportunities to 60.4 per cent of the total population and contributes 20.2 per cent to the GDP (MoF, 2021). Investment in agriculture is also necessary to make Nepal self-reliant in such basic agro-products as oils, soybean, sugar, maize, wheat and fine rice, whose imports have been on the rise in recent years (Prasain, 2021). Opening the primary sector of agricultural production to FDI could be a way to modernize and mechanize the entire agricultural sector through which to boost the national economy as a whole.

On 4 January 2021, two weeks after the dissolution of the House of Representatives, the GoN amended the FITTA opening the previously banned primary sector of agriculture production – poultry farming, fisheries, bee-keeping, fruits, vegetables, oilseeds, pulse seeds and dairy production (Nepal Gazette, 2077).[2] As per the requirement, those investing in the aforesaid productions should export 75 per cent of their products. The amendment to FITTA seems to have been triggered by the quest for export-oriented production, in which Nepal needs to generate resources to finance the development need of the country.

However, the move of the GoN met instant reactions from farmers, their associations and small-scale agro-investors (TKP, 2021). The rationale and justification to open the primary sector of agriculture to FDI became a national debate.

2. For more details, see Annex 1.

On this background, Policy Research Institute (PRI) organized a dialogue, on 15 March 2021, among 'primary stakeholders' (farmers, their representatives, agricultural experts and small entrepreneurs), planners and policymakers to hear their concerns and opinions about FDI in agriculture, and see what policy recommendations could be generated to bridge the gap between the concerns of the interest groups and the government's desire to augment economic growth in the country.

1.2 Objectives

The Fifteenth Plan of Nepal (2019/20-2023/24) has been developed with the audacious vision of '*prosperous Nepal, happy Nepali*.' The vision will be achieved through eight strategies, the first of which centres around achieving "rapid, sustainable and employment-oriented economic growth" (NPC, 2020, p. 26). FDI can be assumed to be an instrument of the economic growth through which to realise the vision of the Fifteenth Plan. However, whether the agricultural sector that employs some 60.4 per cent of the country's population should be opened to FDI remains unsettled. The overall objective of the study is, thus, to unpack this question and explore policy recommendations. Specifically, the study has the following objectives:

a. To analyze the institutional regime governing FDI in Nepal
b. To explore how Nepal fares in terms of FDI determinants
c. To assess stakeholders' perceptions of FDI in the primary sector of agriculture

1.3 Methodology

The study builds on the combination of primary and secondary data. A national policy dialogue organized by PRI among farmers' representatives, agricultural researchers, small agro-based entrepreneurs, agro-economists and agro-journalists (collectively termed 'primary stakeholders' in this report) has been the main source of primary data. The policy dialogue engaged 34 external participants (Annex 2) and 26 PRI researchers in a discussion on various facets of the FDI in agriculture. The ideas, suggestions and cautions shared in the dialogue were compared and contrasted with secondary literature, both qualitative and quantitative, to draw the conclusions presented in the report. Reports of the GoN, UN agencies and the World Bank Group, newspaper commentaries, and books and articles on FDI constituted the secondary sources of information.

1.4 Limitation

The source of the data used for this report is limited to the stakeholders present in the dialogue referred to Section 1.2. The analysis presented, conclusions drawn and recommendations generated reflect this limitation, and, as such, may not represent the viewpoints of other stakeholders.

1.5 Presentation

The report is divided into five chapters. The first chapter discusses the context of the study that led to this report as well as the sources of data that have been used for the study. The second chapter offers a brief analytical review of ongoing FDIs situating them to Nepal's broad politico-economic, geopolitical and institutional landscape. The third chapter looks into how Nepal fares in terms of key FDI determinants – investment-secure environment, inflation, labour efficiency, political stability and so on – which determine whether the expected flow of FDI is realistic. The fourth chapter presents the agricultural stakeholders' perspective on FDI in agriculture, particularly in the primary production sectors. The final chapter discusses, by way of conclusion, key themes and messages from previous sections and generates policy recommendations to address some of the underlying issues raised by the primary stakeholders.

CHAPTER TWO

FDI IN PERSPECTIVE

The International Monetary Fund (IMF) takes FDI as an investment from the residents of an economy to influence the management of an enterprise of another economy (IMF, 2010). The World Bank defines FDI as an inflow of 10 per cent or more of the voting stock of an enterprise of an economy to another economy.[3] To Okada (2013), FDI is the combination of "equity capital, reinvested earnings, other capital, and financial derivatives associated with various intercompany transactions between affiliated enterprises" (p. 141). On the whole, FDIs are considered to be a major source of economic development and modernization of transitional and emerging economies around the world.

Boghean and State (2015) argue FDIs enable the host countries to directly invest in growth-promoting projects and contribute to the increase in labour productivity through technology transfer and knowledge spillover. OECD (2002) adds the host countries with FDI-friendly policies have benefited in terms of human capital formation, international trade integration and the creation of a competitive business environment, which have led to the level of economic development that has contributed to poverty alleviation.

The other facet of FDI is, however, not that encouraging. FDIs have been responsible for stimulating resource depletion and pollution, both water and air, in host countries (Caycedo, 2018; Acharya, 2009). A sample study of seventeen non-OECD and fifteen OECD countries even found FDI harming productivity growth as a whole (Alam, Arshad & Rajput, 2013). FDI negatively correlated with economic growth in Indonesia in the long run (Mukhlis & Qodri, 2019). Following the study of FDI in China, Chen (2011) concluded that export-oriented FDIs do not necessarily support the growth of domestic firms, the engine of national economic growth. The recipient countries that lack the robust capacity – especially the policies and laws governing such underlying issues as transfer pricing, tax dynamics, management and distribution of profits and constructive dispute handling – are particularly vulnerable to the drawbacks of FDI (Sauvant, 2021). When FDI-generated profits get repatriated to parent firms, host countries are exposed to the risk of instability in the balance of payments (OECD, 2002).

Nepal's quest for FDI should be located in this context of FDI's purpose and the contrasting lessons that have been drawn over the decades.

3. For more details, see https://databank.worldbank.org/metadataglossary/jobs/series/BX.KLT.DINV.WD.GD.ZS (downloaded on 10 August 2021)

2.1 Nepal's Call for FDI

To attract and manage FDI, Nepal has enacted Foreign Investment Policy, 2015 and the Foreign Investment and Transfer of Technology Act (FITTA), 2019, which replaced the previously operational Foreign Investment and Technology Transfer Act, 1992 and broadened the scope of foreign investment by including the following:

a. Share investment in foreign currency,
b. Re-investment in an industry of dividends derived from foreign currency or shares
c. Lease finance
d. Investment through venture capital fund
e. Investment through secondary securities market
f. Investment through shares or assets of a company incorporated in Nepal
g. The investment received through the banking channel after issuing securities in a foreign capital market by the industry or company incorporated in Nepal
h. The investment made through technology transfer, or
i. Investment maintained by establishing and expanding the industry in Nepal.

Together with the above provisions, FITTA also made a 'negative list' of nine sectors in which FDIs would not be allowed (Nepal Law Commission, n.d.). One among them was the primary sector of agricultural production: poultry farming, fisheries, bee-keeping, fruits, vegetables, oilseeds, pulse seeds and dairy industry. However, on 4 January 2021, the GoN altered the FITTA's provision opening the previously restricted agriculture to FDI.

The government decision led to a national debate for and against FDI in agriculture. UNCTAD (2019) views that the expansion of agri-business under the aegis of FDI could have a key impact on growth and poverty reduction in Nepal. To Lamichhane (2021), FDI would be an untapped opportunity to transform Nepal's subsistence agriculture into a high-yield, export-promoting sector. Foreign capital and technology that would accompany FDI would help modernize Nepal's agriculture and connect it to the global market. This would help both domestic consumers and farmer: the former will get export quality-products and the latter a better price (Poudel, 2021).

Farmers' associations, however, call the move a conspiracy against domestic industries – particularly those concerned with the dairy and poultry sectors that are claimed to be almost self-reliant – taken at the behest of multinational companies (THT, 2021). Adhikari (2021) feels the GoN could have taken a different path to arrive at the decision, suggesting that such a sensitive issue had to be pursued only after taking measures to allay the fear of the farmers.

On the one hand, the Constitution of Nepal (2015) commits Nepal to a socialism-oriented prosperous economy through rapid economic growth (Article 50.3). On the other, it accords the protection and promotion of the rights and interests of farmers (Art 50.e.3). The pursuit of rapid economic growth requires capital-intensive industries and mega projects, which may not be encouraging to the people on the margin (Centre for Policy Research, 2016; United Nations, 2019). How best to balance these seemingly incompatible objectives poses a policy dilemma.

The IBN works as the central, fast-track government agency to create an investment-friendly environment through the services and processes as presented in Table 1 (IBN, n.d.). FITTA mobilises government entities to attract FDI inflows and manage their domestic implementation. These entities play the dual role of FDI's facilitation as well as regulation.

Table 1: Snapshot of Enabling Environment for FDI in Nepal

Trade Agreements and Treaties • Bilateral Investment Promotion and Protection Agreement (BIPPA) with five countries – Finland, France, Germany, Mauritius and the United Kingdom • Treaty of trade and treaty of transit with India • Double taxation avoidance agreement (DTAA) with Austria, Bangladesh, China, Norway, Pakistan, Qatar, India, Korea, Mauritius, Sri Lanka, Thailand • Transit and transport agreement with China	**Strategic Advantages** • Nepal is located between rapidly developing China and India • Duty-free and open border access to India • 8000+ products duty-free access to China • 77 items duty-free till 2026 access to the United States • Duty-free quota-free (EBA) access to EU
Financial Advantages • Up to 100% ownership allowed to foreign investors • Repatriation fully allowed • Tax holiday for some sectors and locations • Comparative corporate income tax (CIT) is 25% (general) and 20% for	**Other Advantages** **Visa Service** • Tourist visa on arrival for visitors • Non-tourist visa and business visa for foreign workers and investors • Residential visa for investors (investment ≥USD 1 million]

<table>
<tr>
<td>priority sectors – energy, transport infrastructure and manufacturing</td>
<td>Industrial Infrastructure
• Such as access roads and transmission lines to project areas Land ownership in the name of companies</td>
</tr>
<tr>
<td colspan="2">Constitutional and Legal Provisions
• Private sector-friendly laws and policies (encouraging foreign investments, prioritizing private sectors, and guaranteeing property rights, among others)
• Project development agreement (PDA) for PPP projects
• Project investment agreement (PIA) for private projects
• Provision of non-nationalization and national treatment

Other Opportunities
• 57% of the working-age (15 -59) population
• Low cost of labour compared to other peer countries</td>
</tr>
</table>

Source: IBN, n.d

FDIs need a liberal trade regime to thrive and Nepal is believed to have such an environment, as it pursues a liberal foreign investment policy (MoFA, n.d; MoICS, 2021). Nepal is also said to be among a few countries with an environment "fairly good [at] ease of doing business," which includes "one of the lowest tax slabs" among comparable countries, a dedicated mechanism to facilitate foreign investment and "fertile land" with the potential to "combine traditional and organic farming" (MoFA, n.d.; MoICS, 2021).

Rapid development – and the resultant "surge in the middle class" – in India and China is also believed to add to Nepal's opportunities to benefit from FDI (MoFA, n.d.). The new middle class is expected to pick a habit of eating organic and healthy food, which Nepal is assumed to supply. The variation in the landscape of the country and the diverse climatic zones, within about 195 kilometres from South to North, offer a unique possibility to grow a variety of crops and animal farms. Increasing attraction in agriculture among young returnee migrant workers, equipped with capital, motivation and self-confidence; big corporate and other private sector operators eying to invest in organic farming and agroforestry enterprises; and expanding access to global markets are yet other opportunities for FDIs in agriculture (NPC, 2020).

2.2 Regulatory Regime

Article 51 (d) (policy of the state/relating to economy, industry and commerce) of the Constitution of Nepal has a provision to encourage foreign capital and technological investment in areas of import substitution and export promotion in consistence with national interests. It also encourages such investment in infrastructure building. The Fifteenth Plan of Nepal has also three specific policies and corresponding strategies on FDI.

Nepal introduced its new Foreign Investment Policy in 2015 by building on policy experiences and investment regulations and also taking into consideration Nepal's obligations arising out of its membership in the international fora, such as the World Trade Organization (WTO), Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), South Asia Free Trade Agreement (SAFTA), General Agreement on Tariffs and Trade (GATT), Double Taxation Avoidance Agreement (DTAA) and other relevant agreements, both regional and multilateral. The policy is influenced by the political changes that Nepal has undergone over a decade.

The new foreign investment policy aims to mobilize foreign investment and skills in the prioritized sectors of the country's national economy for balanced national and regional development by geographical, economic, societal and environmental dimensions. It also has the objective to bridge the gap between limited domestic saving and the need for increased investments as well as between trade deficit and the imperative to attract foreign investment in the country. The policy provides for three categories of investors: (i) institutional foreign investors (ii) individual foreign investors and (iii) non-residential Nepali investors. The policy has specified hydroelectricity (production and transmission); infrastructure of transportation and agri-products, foodstuffs and herbal processing; tourism industry, mine and related product industries; and, other sectors prioritized by the government for FDI.

The IBN, the Ministry of Industry, the Foreign Investment Promotion Board, the Department of Industry and the One-Stop Service Centre have been functional as the key entities to enforce the Policy. The One-Stop Service Centre was initiated – out of preliminary experiences and learning of FDIs in the country – via the budget of the fiscal year 2019/2020 to house all public offices, including those responsible for industry registrations, approvals, exchange of foreign currencies and facilitation of visas (MoICS, 2021).

Table 2: Legislation on FDI: Key Provisions and Coverage

Article 51 (10) of the Constitution of Nepal

- To encourage foreign capital and technological investment in areas of import substitution and export promotion, in consonance with national interest, and encourage and mobilize such investment in infrastructure building

Foreign Investment and Technology Transfer Act 2019

- Definition and forms of FDIs
- Provision of positive and negative lists for investments
- Technology transfer
- Monetary jurisdiction
- FDI approving agencies
- Concessions and facilities
- Nationalization and acquisition of industries under FDIs prohibited
- National treatment of FDIs
- Provisions on visas and repatriation
- Complaint mechanism
- Dispute resolution mechanism

Foreign Investment Policy 2015

- Vision, objectives and policies on FDIs stipulated
- Forms of FDIs stated
- Investors classified
- Institutional structures defined
- Operating mechanisms in place
- Employing foreigners in FDI created establishments and industries
- Visas eased
- Land acquisition provisions
- Industrial security provisioned
- Guarantee and facilities
- Prioritized areas for FDIs stated

Provisions
Industrial Enterprises Act 2076 (B.S.) • Provisions for registration of industries established under FDIs • Adoption of necessary policy decisions on foreign investment, technology transfer and supervision of studies on foreign investments conducted by the Industry and Investment Promotion Board • Approval of FDIs and foreign currency exchanges at the One-Stop Center
Electricity Act 1992 • The land, building, equipment and structure related to the electricity generation plant or transmission and distribution line established by the foreign national or corporate body investing more than 50 (fifty) per cent of the total investment will be owned by the GoN after the expiry of the term as prescribed in the license • In case foreign currency has been invested in the generation, transmission or distribution of hydroelectricity as a loan or share capital, the GoN will make available necessary foreign currency at the prevailing market rate of foreign exchange for repatriation of investment or repayment of principal or interest of the loan
Non-resident Nepali Act 2064 (B.S.) • Investment by non-resident Nepalis or foreign companies • Repatriation of investment by non-resident Nepalis in convertible foreign currencies • Operation of any industry by a foreign citizen as good as a citizen of Nepal according to the prevailing laws of the country • A foreign citizen of Nepalese origin having investment pursuant to this Act will be entitled to the facilities which are provided to any foreign national for his/her investment in Nepal in the convertible foreign currency according to relevant law
Company Act 2063 (B.S.) • Foreign companies desiring to establish a branch or liaison office in Nepal to apply for the office of the company registrar • A foreign company registered pursuant to Sub-section (4) may open its branch office and carry on business or transaction in Nepal or open its liaison office in Nepal. However, the foreign company registered as a liaison office shall not be entitled to do any income-earning activity in Nepal • No issuance of shares and debentures within Nepal by foreign companies

- Power of attorney by a foreign company declaring person/s residing in Nepal as its authorized representative/s for the service of any summons or notice or authorizing such person to receive any other lawful notices on a lawsuit or legal action instituted on behalf of or legal against the company.
- Provisions on liquidation

Public-Private Partnership and Investment Act 2019

- Approval of investment
- Implementation projects under foreign investments
- Preparation of details of comparative advantage in respect of foreign investment
- Handling of facilities and concessions to investments as per prevailing laws
- Security and protection of investment
- No nationalization of investments until the license period

Foreign Exchange (Regularization) Act 2019

- Technology transfer
- Definition of investments and investors
- Repatriation and transfer of rights of foreign investment

Labour Act 2017

- Foreign labour employment
- Skills transfer by foreign labourers to Nepali labourers
- Language of contract in foreign labour employment
- Repatriation of the remuneration of foreign labourers in convertible currencies

Income Tax Act 2002

- Inclusion of foreign companies in the definition of "company"
- Provision on tax exemption
- Taxation on industries established within SEZs
- Administration of tax exemption (by volume of employees and amounts and by location/geography of industries)

SEZ Act 2016

- Registration for the establishment of industries within SEZs
- Agreement for the establishment of industries in SEZs
- No nationalization of the industries established in SEZs

- Tax exemption
- Repatriation of income
- Special visa provisions
- Grievance handling and dispute resolution mechanisms in place

According to UNCTAD (n.d.), almost three-quarters of developing economies and almost all transitional economies have established Special Economic Zones (SEZs) both for economic growth and job creation. Nepal too has followed suit, at a time when the international community has been weighing up SEZs as opportunities for economic growth, enhancement of competitiveness, FDI attraction, export diversification and creation of jobs (World Bank, 2008).

A Special Economic Zones Authority has been established – under the Ministry of Industry, Commerce and Supply – to promote foreign trade and investment with a relaxed and liberal regime.[4] Like the international community, the Authority views export-oriented SEZs as a force to drive Nepal's economy and enhance people's living standards, and, as such, has been working to promote SEZs taking into account both commercial viability and geographical specificity of products. Nepal's ecological diversity is believed to offer a unique opportunity to develop all-climatic products – such as different varieties of rice and fruits ranging from tropical (mango, banana, pomegranate, etc.) to temperate (apple, peach, pear, walnut, etc) and livestock varieties adaptable to given climatic conditions (Paudel et al, 2017; Joshi & Chaudhary, 2017; Subedi, 2019) – for export.

There have been other additional efforts. Nepal Rastra Bank (NRB) introduced "Nepal Rastra Bank Foreign Investment and Foreign Loan Management Bylaw 2078" aimed at attracting FDI (NRB, 2078 B.S.). As per the bylaw, foreign investors that have obtained foreign investment approval are not mandatorily required to seek prior approval from the NRB when it comes to sending or remitting foreign currency to Nepal. A written notice of the approval of investment, once it is achieved, is enough.

2.3 Existing FDI Status

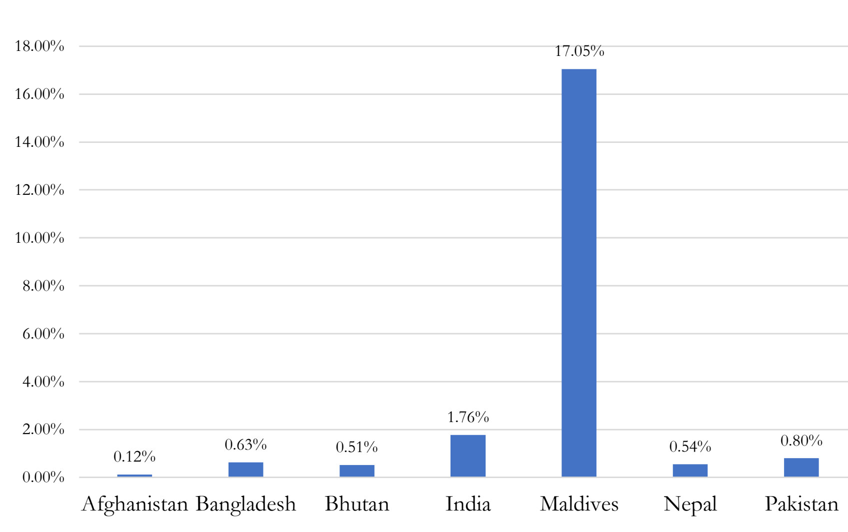
2.3.1 FDI's Contribution to GDP

The role of FDI in Nepal's economy is very nominal. It contributes only 0.54 per cent to Nepal's GDP (Figure 1). In South Asia as a whole, FDI does not have a significant say in the GDP, barring the Maldives, where FDI's contribution is 17.05 per cent. India ranks a distant second, with less than two per cent.

4. See Special Economic Zone, Nepal at https://www.seznepal.gov.np/

If the figure below is any indication, FDI may be a small stimulant for economic activities that contribute to enhancing growth. However, it cannot be relied on as an instrument for a nation's development.

Figure 1: FDI in SAARC Countries by Percentage of GDP



Source: World Bank (Web Page Data)[5]

2.3.2 Sector-wise Distribution of FDI

Electricity, gas and water sectors are the main ones to attract FDI (82%) in Nepal (Table 3). Transport storage and communication sectors follow them, with seven per cent. Agriculture is not separately counted. It is included under 'others' – which receive 11 per cent of FDI's share – probably because of its insignificant value.

Table 3: FDI Inflow by Major Sectors in FY 2019/20

Sectors	Rs Million	Share in Gross FDI Inflows (%)
Electricity, Gas and Water	16,072.6	81.7
Transport Storage and Communication	1,368.2	7.0
Others	2,237.7	11.3
Total	19,678.5	100

Source: NRB, 2021, p. 7

5. Downloaded on 10 September 2021 from: https://data.worldbank.org/indicator/BX.KLT.DINV.WD.GD.ZS?contextual=region&end=2019&locations=8S-IN-MV-NP-BT-BD-PK-LKAF&start=2019&view=bar

According to the NRB (2021), the share of FDI in agriculture is decreasing. As of mid-July 2019, it was 0.1 per cent, down from 0.6 per cent in mid-July 2018. The percentage decrease is due to a remarkable increase in the service and industry sectors. In the agricultural sector too, the investment is concentrated on production, basic processing and retailing instead of value generation in international upstream stages (MoAD, 2016).

Agriculture and FDI appear to have an asymmetrical relation. Agriculture's contribution to the national economy is huge: It offers 60.4 per cent of total employment, contributes 20.2 per cent to GDP and generates 25.8 per cent gross added value (Table 4). However, the sector receives a mere 0.1 per cent of FDI. Evidence from elsewhere also suggests that FDIs do not find agriculture a profitable sector to engage in (Lowder et al, 2015). All this indicates that Nepal should have cautious optimism about mobilizing FDI in agriculture as the driver of economic growth.

Table 4: Agriculture vis-a-vis its Contribution and the Share of FDI it Receives

Particulars	Percent	Year	Data Source
Contribution to gross value added to national economy	25.8%	2020/2021	MoF, 2021
Contribution to employment generation	60.4%	2018	MoF, 2021
Contribution to GDP	20.2%	2020/2021	MoF, 2021
Share of FDI received by agriculture	0.1%	Mid-July 2019	NRB, 2021

2.3.3 Regional Distribution

By region, Bagmati Province has the largest share of FDIs (65.5%). The concentration of service sectors in the Kathmandu Valley and the FDIs having their corporate offices in Kathmandu are believed to make the province the largest recipient of FDIs. Gandaki Province ranks second, with 14 per cent of FDI concentration and Province 2 third, with ten per cent. The remaining ten per cent is distributed among Lumbini, Karnali and Sudur Paschim provinces (NRB, 2021)

This uneven distribution of FDIs has resulted in the uneven distribution of FDI-run industries as well. According to MoICS (2021), Bagmati Province, the highest recipient of FDIs, also has a high concentration (81.5%) of such industries. Gandaki Province ranks a distant second with some nine per cent of such industries. Other provinces have less than a 3.5 per cent share, with Sudur Paschim Province faring poorly, as detailed in Table 5.

Table 5: Distribution of FDI-Involved Industries by Province

Province	Industries			Total	%
	Small	Medium	Large		
Province No. 1	60	43	25	128	2.5
Province No. 2	84	36	41	161	3.2
Bagmati Province[6]	3557	388	173	4118	81.5
Gandaki Province	363	29	44	436	8.6
Lumbini Province	37	18	19	74	1.5
Karnali Province	73	11	4	88	1.7
Sudur Paschim Province	41	1	5	47	0.9
Total	**4215**	**526**	**311**	**5052**	**100**

Source: MoICS, 2021, p. 15

3.3.4 Foreign Investors in Nepal

India ranks first, with Rs. 56.05 billion, by the size of the amount of investment in Nepal. Nearly 31 per cent of the total FDI flow is of India. China, Saint Kitts and Nevis are the second and third investors in Nepal, with Rs. 27.56 billion and 24.94 billion respectively. The two occupy some 29 per cent of the total FDI flow. Ireland, Singapore, Australia, UAE, Bangladesh and USA cover some 27 per cent of the remaining share of FDI (Table 6).

In terms of the sector, the service sector is the recipient of 51.1 per cent of the total FDI. The industrial sector accounts for the remaining 48.8 per cent. As of mid-July 2019, Rs 182.92 billion was received as FDI (NRB, 2021).

6. The largest concentration of FDIs in Bagmati Province is due to (a) FDI-supported service sector companies being predominantly located in Bagmati Province, and (b) almost all the companies that mobilise FDIs having their corporated offices in the Province.

Table 6: FDI Stock by Major Countries as of Mid-July 2019 (NPR in Million)

S.N	Country	Paid-up Capital	Reserves	Loan	FDI Stock	Share in Total (%)
1	India	24,202.8	31,047.2	804.6	56,054.6	30.6
2	China	22,113.2	-4,242.4	9,689.4	27,560.2	15.1
3	Saint Kitts and Nevis	80.0	24,855.9	-	24,935.9	13.6
4	Ireland	4,506.0	7,088.3	-	11,594.3	6.3
5	Singapore	5,243.0	3,262.6	222.9	8,728.5	4.8
6	Australia	4,263.6	3,371.9	-	7,635.5	4.2
7	UAE	233.5	6,618.8	-	6,852.3	3.7
8	Bangladesh	3,333.8	1,785.8	-	5,119.6	2.8
9	South Korea	5,645.8	-1,041.1	159.4	4,764.1	2.6
10	USA	1,761.6	2,126.3	588.9	4,476.8	2.4
11	Others	16,775.0	3,508.6	4,914.2	25,197.8	13.9
	Total	88,158.3	78,381.9	16,379.4	182,919.6	100.0

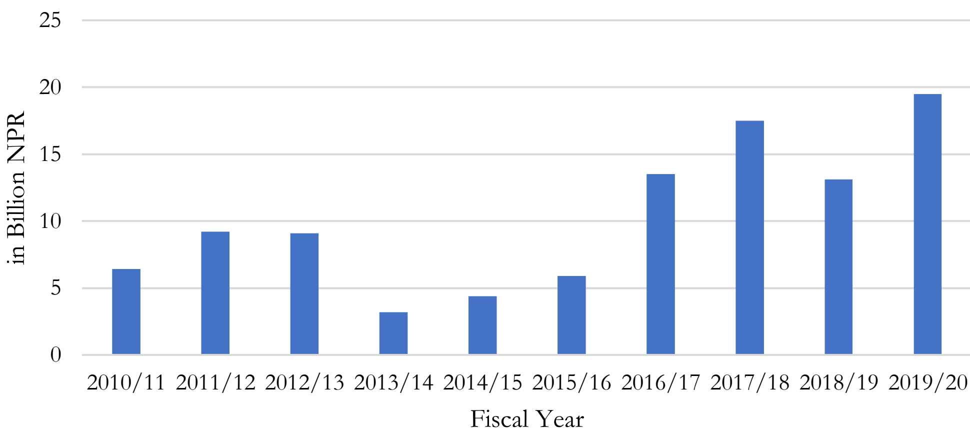
Source: NRB, 2021, p. 9

The Treaty of Peace and Friendship (1950) between India and Nepal allows the nationals of either country to own land and property, invest and do business without let or hindrance in either of the countries. Indian investors and business persons receive the same treatment as Nepali investors to invest, earn profit and dispose of. Investors from other countries do not have this leverage, which should be one of the reasons why the flow of FDIs from these countries is low.

2.3.5 Approval and Realisation of FDI

The flow of FDI has not been even. Until 2015, it was nominal in amount (Figure 2). After 2015, when the Constitution of Nepal was promulgated promising both political and policy stability and peaceful transformation of Nepal, the flow of FDI has picked up. The reforms in laws and policies, which have been aggressively pursued since 2015, are believed to contribute to the rise in the flow of FDI (US Department of State, 2021).

Figure 2: Net FDI Inflow (NPR Billion) by Year



Source: NRB, 2021, p. 6

According to NRB (2021), however, there is a huge gap between the promise and reality. The data of the flow of FDI between 2009 and 2020 shows that the rate of average realization has been only 50 per cent. Barring one fiscal year (2011/2012), Nepal has failed to mobilise the approved amount of FDI (Table 7). In 2009/2010, Nepal's FDI realization was 31.3 per cent. Ten years later, in 2019/20, the rate of realization increased to 51 per cent. This is a sizable increase. However, it is far short compared against the enabling environment that has been created over the years by way of political stability and policy liberalization, which are believed to be key conditions to attract FDI.

Table 7: Foreign Investment Approval and Realization (NPR in Million) in Nepal since Fiscal Year 2009/10

FY	Approved FDI	Actual Net FDI	Difference (Approved - Actual (%)
2009/10	9,100.00	2,852.00	31.3
2010/11	10,053.21	6,437.1	64.0
2011/12	7,138.31	9,195.4	128.8
2012/13	19,818.73	9,081.9	45.8
2013/14	20,132.42	3,194.6	15.9
2014/15	67,455.04	4,382.6	6.5

FY	Approved FDI	Actual Net FDI	Difference (Approved - Actual (%)
2015/16	15,254.33	5,920.9	38.8
2016/17	15,206.46	13,503.9	88.8
2017/18	55,760.48	17,512.8	31.4
2018/19	25,484.44	13,068.8	51.3
2019/20	38,155.31	19,478.7	51.1

Source: NRB, 2021, p. 15

CHAPTER THREE

CRITICAL ANALYSIS OF NEPAL'S FDI DETERMINANTS

Analysis of Nepal's policies on FDI suggests that the regulatory regime, on the whole, is FDI friendly. Existing laws provide for, among others, tax exemptions and easy facilitation of all phases of FDI. The regime accords national treatment to foreigners having FDIs, nullifies the possibility of the nationalization or expropriation of foreign investment in Nepal and provides for grievance handling mechanisms – through the department of industry or the one-stop service centre – should disputes arise (Ghimire, 2020).

Making foreign investment promotion one of the objectives of revenue mobilization, the budget for the fiscal year 2078/79 has reconfirmed policy facilitation for FDI in a start-up business and adventure tourism and promises to simplify repatriation processes (MoF, 2021). It has also provided that FDIs that produce 100 per cent of exportable goods will get an income tax consideration and that bilateral trade agreements will be reached with more countries to attract FDI (MoF, 2021).

However, international entities overseeing or governing international development and investment suggest Nepal should do more to create an investment-friendly environment. UNCTAD (2019) suggests revising regulatory frameworks on FDI for clarity and predictability and reforming operating conditions in the labour policy. USAID (2020) adds Nepal needs to have smart policy reforms for promoting worldwide integration meant for improving the investment climate and ease of doing business. IMF (2018) encourages swift implementation of reform agendas for easing the entry of foreign business firms in Nepal. The US Department of State (2021) insists that what Nepal has done over the years does not satisfy investors' concerns. Nepal's key policy documents, too, acknowledge that some genuine issues need to be fixed (NPC, 2020; MoAD, 2016). These include a timely revision of laws related to FDI, development of industrial infrastructure, production of skilled manpower, investment in research and knowledge development and promotion of economic diplomacy.

According to Sahoo (2012), the condition of infrastructure, yearning for economic reforms, trade openness, macroeconomic stability and labour relations are the key factors that determine the inflow of FDI and its sustainability.

How Nepal fares concerning these determinants should be critically analysed in order to gauge how FDI would relate to the primary production sector of Nepal's agriculture.

3.1 Investment-secure Environment

Investment security is the key determinant of FDI. To ensure such security, a firm political commitment is necessary to enact – and enforce – legislation that ensures a smooth inflow of capital, protects investments and profits, facilitates the movement (entry and exit) of foreign investors without administrative hassles and deals promptly with unruly behaviour that poses risk to investment (US Department of State, 2021).

Investment security also requires an environment in which enterprises have collegial relations between the labour and the management. Nepal has a history of unpredictable labour relations which have, at times, resulted in the halting of operations and services of industrial establishments. Strikes by political parties, transport unions, students and other interest groups create business risks of various kinds (US Department of State, 2021).

Between 2008 and 2013, for which a complete set of data is available, the number of strikes has decreased by 38 per cent (Table 8). So has been the trend of strikes called by political parties or politically associated groups, such as rebellion groups and transport unions, which were responsible for 87 per cent of strikes in 2008. In 2013, such 'political strikes' have come down to 25 per cent. Yet, the fear of strikes and the perception of imminent disturbances are not over (Ways, 2022).

Strikes are only one element – an external element, if you like – of investment insecurity. There are internal elements as well. Administrative lacklustre and bureaucratic delays – in creating basic infrastructure, such as road, for the smooth operation of companies and facilitating the supply of basic services, such as electricity – have been as influential in creating hurdles and adding to the reduction in investor confidence (Shrestha, 2019).

Table 8: Number of Strikes in Nepal by Year and Initiators

Initiators of Strikes	Year					
	2008	2009	2010	2011	2012	2013
Political Parties	367	402	604	91	104	53
Rebellion Groups	158	264	105	132	37	46
Transport Unions	93	11	149	101	18	11
Local Communities	13	14	128	92	83	45
Ethnic and Alliance Groups	-	53	121	47	5	226
Students' Union	21	27	11	12	22	3
Struggle Committees	20	13	30	56	63	12

Initiators of Strikes	Year					
	2008	2009	2010	2011	2012	2013
Business Communities	-	51	22	1	89	1
Trade/labour Unions	-	-	2	6	-	-
Others	35	175	101	120	169	42
Total	707	1010	1273	658	590	439

Source: Opennepal.net, 2014

To address this scenario and possibility the government should redouble its efforts to ensure that the rule of law applies to all and is abided by all. In case of labour disputes, which are common in democratic societies, recognized dispute handling mechanisms should come into play to find negotiated settlements offered by labour conventions, which Nepal is a State Party. This history of labour relations, and the cost they have imposed on the national economy, should serve as an eye-opener to all political parties that political protection of unruly elements has negative implications for investment, whether domestic or foreign.

3.1.1 Ease of Doing Business

By ease of doing business benchmarked in May 2019, Nepal ranks 94th among 191 countries (World Bank, 2020). This scenario is not bad in itself. However, investors have pinpointed that the ease of doing business situation should further be reformed (World Bank, 2020), which the GoN claims to have already done. The passage of the Foreign Investment and Technology Transfer Act, in 2019, is presented as one of the major undertakings aimed to consolidate the regulatory efforts towards the ease of doing business. Other measures initiated to this end include the following (MoF, 2021):

a. Business policies, laws, structures and procedures have been reformed
b. Online services focused and mobile apps are developed and functional
c. Integrated service on food technologies and quality standards, animal quarantines and poisons managements have started
d. Integrated checkpoints for import exports are in place
e. Safeguards, anti-dumping and countervailing legislation are introduced and reformed
f. Inter-governmental committees have been active in easing and reforming business facilitation and infrastructure development and provisions of agreements signed with neighbourly countries.

The World Bank (2020) presents the following scenario of the ease of doing business in Nepal, based on the combination of six indicators that it has developed following the assessment of 190 economies around the world. Nepal's scenario is mixed (Box 1).

Box 1: Ease of Doing Business Status of Nepal

☒ **Starting Business**

Starting a business was made more difficult by introducing rule requiring in-person follow-up for the registration for social security.

☑ **Dealing with Construction Permits**

Dealing with construction permits was made easier and less costly as fees for building permits and the online e-submissions platform was improved.

☒ **Registering Property**

Property registration was made more expensive by increasing the property transfer registration fee.

☑ **Getting Credit**

The coverage of the credit bureau was expanded to improve access to credit information.

☑ **Trading Across Borders**

The time and cost to export and the time to import were reduced by opening an integrated check post in the city of Birganj.

☑ **Enforcing Contracts**

A new code of civil procedure introducing time and standards for key court events was introduced to make contracts enforcement easier.

☑ *Reform (making it easier to do business)* ☒ *Change (making it more difficult to do business)*

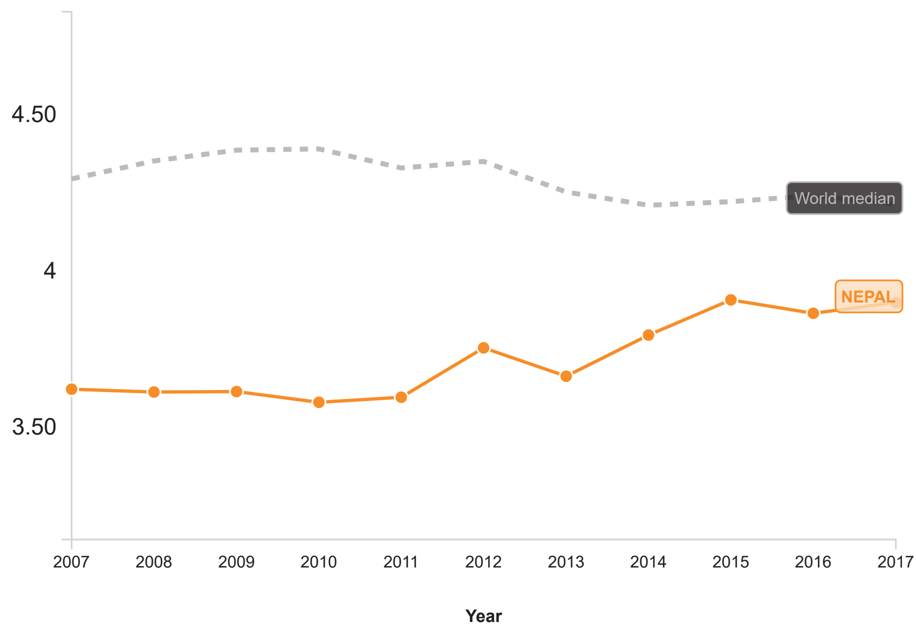
Source: Adapted from World Bank, 2020

The Department of Industry (2021) also states that the reforms made by Nepal to business policies, laws, structures and procedures are not sufficient and they require additional managerial reforms. Neupane (2020), however, has a contrary view that Nepal has a good track record in terms of law- and policymaking. However, it fares poorly in the implementation of existing laws and policies, which has had a negative impact on foreign investment. A study by Bista (2011) – of FDI under BIPPA between India and Nepal – also finds the gap between policy decisions and implementation behaviour of the government. This gap is found to have negative implications for the business and investment environment.

3.1.2 Labour Market and Efficiency

Out of 137 countries, Nepal was in the 97th rank in the year 2017 by the labour market efficiency index. As the data between 2007 and 2017 shows (Figure 3), Nepal's efficiency index dropped to its lowest in 2012/13. From 2014, it increased and reached the 97th rank in 2017. Labour market efficiency depends on factors such as skillsets and job suitability, employment policies, talent attraction and retention schemes, training provisions and unemployment insurance.

Figure 3: Labour Market Efficiency Index of Nepal



Source: World Bank, TCdata360 (Web Page Data)[7]

The availability of an efficient labour force is a major opportunity for FDI. According to CBS (2019), 908,000 working-age people are unemployed. And, some 60 per cent of them are aged between 15 and 34 years, an indication that the availability of an active workforce is not an issue in Nepal.

Around 69 per cent of the unemployed – or 628,800 individuals – are engaged in the 8,384 industries operating as of the end of March 2021 in the country (MoICS, 2021). Another 25 per cent or so migrate to third countries for employment, suggested by the

7. Downloaded on 8 August 2021 from: https://tcdata360.worldbank.org/indicators/lbr.mkt.efcy?country=NPL&indicator=737&viz=line_chart&years=2007,2017

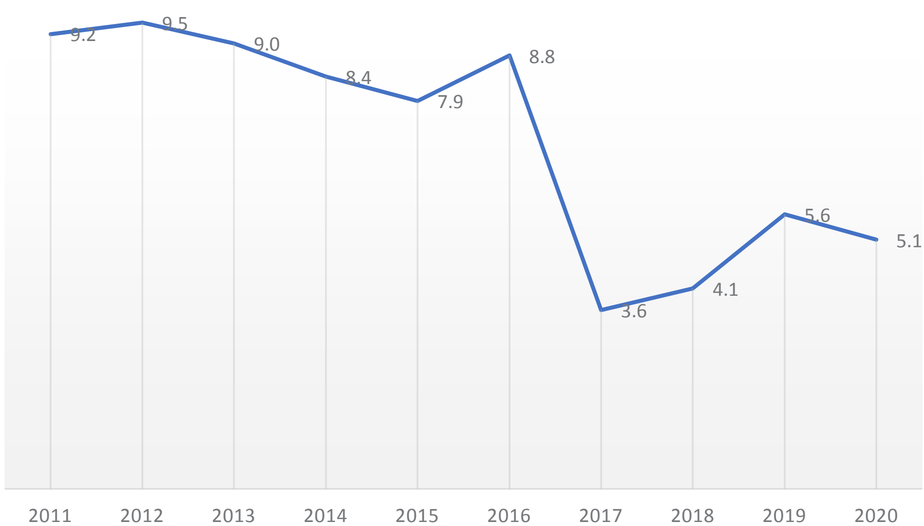
fact that over 230,000 labour approvals were issued by the GoN for employment in 128 countries in 2018/19 (MoLESS, 2020). This figure does not include those who go to India for labour, for which no passport, visa, or labour approval is required, and there is no other system to track their flow and document. This surplus labour force can be readily employed by the industries and enterprises that operate under FDI.

What should be noted, however, is engaging the surplus labour force in agriculture requires special incentives. As NPC (2020) cautions, agriculture is not the preferred sector of employment for the youth force, which finds foreign employment far appealing. This has been one of the reasons behind the decline in agricultural productivity in the country. The workforce may also need special training to develop the skillsets – or efficiency – required by the enterprises.

3.1.3 Inflation

Inflation and variability of inflation indicate a negative sign on FDI (Sahoo, 2012; Rashid et al, 2017; Boateng, 2015). Conversely, FDI works well in an environment of economic stability where the GDP price deflator is low. Between 2011 and 2020, Nepal's inflation rate has decreased almost by half. Since 2017, it has remained relatively stable, ranging between 3.6 and 5.1 per cent (Figure 4). Still, it continues to remain above two per cent, which is not considered normal.

Figure 4: Inflation Rate (%) of Nepal by Year



Source: World Bank (Web Page Data)[8]

8. Downloaded on 5 September 2021 from: https://data.worldbank.org/indicator/FP.CPI.TOTL.ZG?locations=NP

NRB (2021) also reveals that the average Consumer Price Index (CPI) is, as of Mid-June 2021, above normal, with 4.19 per cent, an indication of inflation affecting everyday life.

What all the above points to is the fact that inflation is still an issue. And, exploring a sustainable way to control it and rein in its tendency to fluctuate should be the priority of the GoN and the policy community at large.

3.1.4 Labour Law and Employment

Literature has it that FDI is not necessarily friendly to labour conditionalities, such as respect for labour rights and other social obligations. Bilateral investment treaties (BITs) most often remain silent about the social obligations of investors (Penfold, n.d). Even the host country policymakers, focused on maximizing the benefits of FDI, may tend to overlook or undermine such social risks associated with FDI (OECD, 2021).

As a party to core international labour conventions (Table 9), Nepal has certain, non-compromising labour obligations. The imperative to mobilize FDI, whether in agriculture or other sectors, cannot be an excuse for the delay or denial of the rights and protection accorded by the conventions.

Table 9: Ratification of ILO Conventions by Nepal

Conventions	Date	Status
C014: Weekly Rest (Industry) Convention, 1921 (No. 14)	10 Dec 1986	In Force
C029: Forced Labour Convention, 1930 (No. 29)	03 Jan 2002	In Force
C098: Right to Organize and Collective Bargaining Convention, 1949 (No. 98)	11 Nov 1996	In Force
C100: Equal Remuneration Convention, 1951 (No. 100)	10 Jun 1976	In Force
C105: Abolition of Forced Labour Convention, 1957 (No. 105)	30 Aug 2007	In Force
C111:Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	19 Sep 1974	In Force
C131: Minimum Wage Fixing Convention, 1970 (No. 131)	19 Sep 1974	In Force

Conventions	**Date**	**Status**
C138: Minimum Age Convention, 1973 (No. 138) Minimum age specified: 14 years	30 May 1997	In Force
C144:Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	21 Mar 1997	In Force
C169: Indigenous and Tribal Peoples Convention, 1989 (No. 169)	14 Sep 2007	In Force
C182: Worst Forms of Child Labour Convention, 1999 (No. 182)	03 Jan 2002	In Force

Source: ILO (Web Page Data)[9]

A study by (Doytch et al, 2014) on the impact of FDI on child labour found a negative link in the manufacturing sector (carpet industry) in Nepal and India, but not in seed producing companies (in India). It suggests the carpet sector is sensitive to social obligations and practise fair and ethical trade practices. And, Nepal can emulate this learning in other sectors too. However, the negative link is only suggestive, and not conclusive. According to ILO and CBS (2021), 87 per cent of child workers are engaged in the agricultural sector. This means no excess child workers are available for other sectors, including the carpet industry, to tap into. In essence, how FDI features vis-à-vis social obligations in the agricultural sector remains untested.

For rights-confirming labour relations, a regulated labour market is necessary. As the mainstream literature suggests, such a market imposes additional costs on firms (Parcon, 2008), which FDIs do not find encouraging. Given their profit orientations, FDIs desire labour flexibility to the extent possible. Balancing these competing interests is, at times, challenging.

Nepal's emphasis on FDI in recent years has also to do with achieving Sustainable Development Goals (SDGs): education (SDG4) and economic growth (SDG8), among others. Job creation and skill development are other expectations of FDI, for which a favourable investment environment has to be created first (IMF, 2018). If 'by favourable' means the compromise with FDI's disregard for labour relations and other social obligations, Nepal's call for FDI in the agricultural sector, as in others, would be more complex than it appears outwardly (Doytch et al, 2014). Nepal's policies governing agricultural investments are not linked to decent work (ILO, 2019). As such, workers

9. Downloaded on 15 December 2021 from: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103197

involved in the sector are difficult to retain and those in other jobs are hard to attract back into the sector.

3.1.5 Political Stability

Political stability is a key determinant of FDI. And the rule of law and institutional checks and balances are primary indicators of political stability (Naudé & Krugell, 2007). A study in Nigeria, which is based on time-series data, finds a positive correlation between FDI and agriculture in an atmosphere of political stability (Oloyede, 2014). Political instability, the same study underlines, has a negative impact. Just having a democratic system is not sufficient for FDI (Yang, 2007; ADB, 2020). What determines the attraction of FDI is the set FDI-promoting policies with matching political commitments to implementing the policies (Sumner, 2008; Dimitrova et al, 2019). Put differently, good governance – the situation in which national institutions respect the principles of checks and balances in their function – is crucial for FDI to enter a developing economy and deliver (Walsh & Yu, 2010). Conversely, political instability weakens the state of good governance and, thus, gives rise to numerous risks, including expropriation, breach of contract and many others (Table 10) that detract FDI.

Table 10: Types of Political Risks

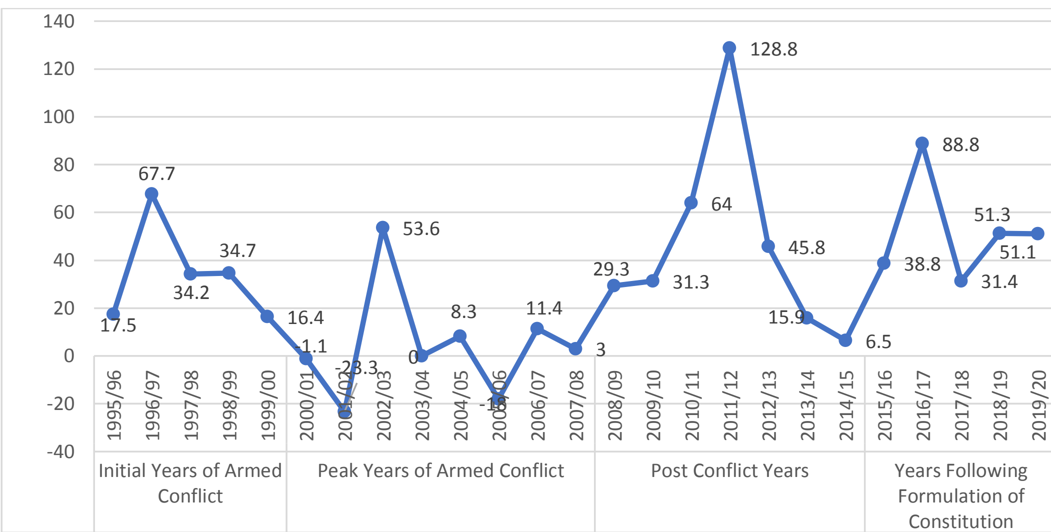
Expropriation
Breach of Contract
Currency Inconvertibility and Transfer Restrictions
Adverse Regulatory Changes
Terrorism
War
Civil Disturbance
Non-Honoring of Sovereign Financial Obligations

Source: Multilateral Investment Guarantee Agency (MIGA), n.d.

Armed conflict, another indicator of political instability, is inversely related to FDI, as the data of FDI inflow in Nepal between 1995 and 2020 shows (Figure 5). The inflow of FDI started to drop since 1997/98, when the conflict started to affect the socio-economic life of the country, and exacerbated to the level of disinvestment (repatriation of FDI) between 2000 and 2002, when the intensity of the conflict was at its peak. The inflow picked up significantly from 2010/11, when the country was comparatively peaceful and stable. The years 2011 and 2012 that marked the political parties' commitment to peaceful social transformation through democratic means also saw the highest inflow of FDI, suggesting that the inflow of FDI requires the presence of peace in the host country.

The latest report from the Department of Industry (2021) also reconfirms the correlation between political stability and FDI by demonstrating that Nepal has had an upward trend of FDI commitments since 2015, when Nepal promulgated a post-conflict constitution with the commitment, among others, to address the issues that triggered instability and violence in the past.

Figure 5: Correlation between Armed Conflict and the Inflow of FDI



Source: Adapted from NRB, 2021

In terms of political commitment to foreign investment, Nepal has a checkered history. The Arun III hydro project, located on the Arun River in Sankhuwasabha, is a case in point. Conceptualized and surveyed in the late 1980s as a low-cost power project, it was delayed, until 2014, because of controversy and political differences among political parties (Mahat, 2007). In 2014, with the post-conflict transition entering into the phase of political stability, the Arun III project began (and is up and running now), as a joint venture of the Government of India and the Government of Himachal Pradesh in India. The other foreign-funded ventures and projects, including Dabur Nepal, Ncell, Hongshi Cement, Dangote Cement, Sinohydro Corporation, Huaxin

Narayani Cement and Budhi Gandaki Hydropower project also faced labour and other issues at different times.

Nepal has had no experience of FDI in the primary sector of agro-production, as it was on the negative list until recently. The World Bank (2016) suggests that FDI is necessary to enhance the quality – and export potential – of some primary agri-products, such as teas, herbal medicines and spices, and establish them as Nepal's brand products in the international market. However, if ideas and perceptions of the agricultural stakeholders are any indications, as reviewed in the next chapter, the road to the future of FDIs in the primary sector of agriculture does not seem smooth.

3.1.6 Economic Diplomacy

Since the 1990s, and particularly after the end of the Cold War, economic instruments – trade, aid, access to market, exchange rates, sanctions and foreign investment, to name a few – have become a tool of foreign relations of major global powers (Bilal & Hoekman, 2019). The economic diplomacy so began has been a key factor to determine the flow of FDI in the third decade of the 21st century (dos Santos, 2021). Nepal has, however, not yet been able to use this tool to promote its national interests and priorities vis-à-vis its economic development and get them linked to the investment discourse of foreign investors (Shrestha, 2021).

The Fifteenth Plan breaks this gap by stating that economic diplomacy would be pursued as a tool to mobilize "international economic relations for the country's prosperity and development," including its graduation from a Least Developed Country (LDC) category and the achievement of SDGs (NPC, 2020, p. 364). However, Nepal does not have sufficient human resources and institutional mechanisms necessary to undertake economic diplomacy efficiently (NPC, 2020). It is about time that Nepal had this infrastructure.

CHAPTER FOUR

STAKEHOLDER PERSPECTIVES

FDI has both positive and negative experiences. It has brought benefits to some countries and has created harmful consequences on some others (Awunyo-Vitor & Sackey, 2018; FAO, 2012).[10] There is no specific monitoring mechanism regarding the impact of FDI. As such, there is no reliable data on which to build a definitive assessment as to which sectors are good and cost-effective and where caution is warranted. Common perception holds that foreign investment in primary production sectors such as farming, fishing, dairy and poultry farming, may be counterproductive. This perception holds even among policymakers (Walsh & Yu, 2010). It was perhaps this perception that led certain primary production sectors to be kept on the negative list in Nepal.

Primary stakeholders believe that while there can be certain areas within the primary production sectors in which FDI can be relevant, the unrestrained opening of primary production sectors to FDI will be harmful. These areas should be carefully explored and judiciously acted upon. These suggestions resonate with the findings of Lowder et al (2015) who note that despite concentrated efforts by the governments in middle-income countries to enhance the role of FDIs, the flow of FDI in the primary areas of agriculture has been small and often overstated.

The stakeholders underline that the scope of FDI in agriculture should be assessed and attempted from the following perspectives.

4.1 Food Security

The World Food Summit 1996 defines food security as the state in which "all the people, at all times, have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life" (FAO, 2009, p. 1). This definition includes four components of the food security compact: 'availability' of quality food in sufficient quantities, 'access' to food by all individuals as an entitlement (as a right and not as mercy), 'utilization' of food in a manner that enhances one's nutritional well-being as well as satisfies all physiological needs, and 'stability' in which those in need have access to adequate food all times (FAO, 2006).

10. Awunyo-Vitor and Sackey find FDI positively connected to agriculture in Ghana while acknowledging that the findings from other contexts are mixed. The comprehensive report by FAO, which is based on the case studies of countries that have implemented FDIs in agriculture, notes that FDI can pose a threat to food security given its tendency to replace traditionally used food crops local consumption with export-promoting goods. Policymakers, the reports suggest, should pay due attention to this possibility and develop measures towards minimizing such risks that are inherent to FDIs in agriculture.

According to the Economist Impact (EI), Nepal scores 79th position in the food security global ranking. Out of 100 full marks, Nepal scores 58.3 in terms of affordability, 64.5 in terms of availability, 53.7 in terms of quality and safety and 44 in terms of natural resources and resilience (EI, 2021). Cumulatively, this is just a moderate performance. Nepal lacks an action plan to deal with an emergency food security situation, such as the COVID-19 pandemic that has affected almost all the components of the food security compact (FAOSTAT, n.d.). The ongoing pandemic has given Nepal's planners and policymakers a lesson that a higher amount of food stock should be managed (Adhikari et al, 2021). However, the management of the stock alone does not respond to the entire gamut of the food security challenge.

Agricultural stakeholders, in particular, argue that the unrestrained flow of FDI into primary agriculture production may displace small farmers, destroy their livelihoods that largely depend on subsistence agriculture and even retards economic growth by upsetting the contribution small farmers have made to the national economy. The combination of these effects will affect the food security compact besides affecting the overall GDP of the country.

4.2 Respect for Human Rights

The opening up of agriculture to FDI risks running against the spirit of Nepal's constitution in general and the human rights protection accorded by Article 36 in particular. It also may not concur with the obligations arising from the human rights treaties that Nepal is a State Party and the family farming guidelines of the Food and Agricultural Organisation (FAO). More importantly, it contradicts the nation's strategic vision for agricultural development for 20 years (2015-2035), which states that FDI will not be allowed "in the primary production activities to ensure the rights of domestic farmers" (MoAD, 2016, p.139).

Protection of the rights of small farmers requires the adoption of human rights-based approaches (HRBA), which comprises two elements: the participation of the 'rights holders,' the domestic farmers in this case, in decision-making processes about agricultural issues in an informed, non-discriminatory and transparent manner; and the responsibility of the 'duty bearers' (the State, private sector, etc) to ensure that the rights holders have been properly consulted and their concerns addressed (FAO, 2016).

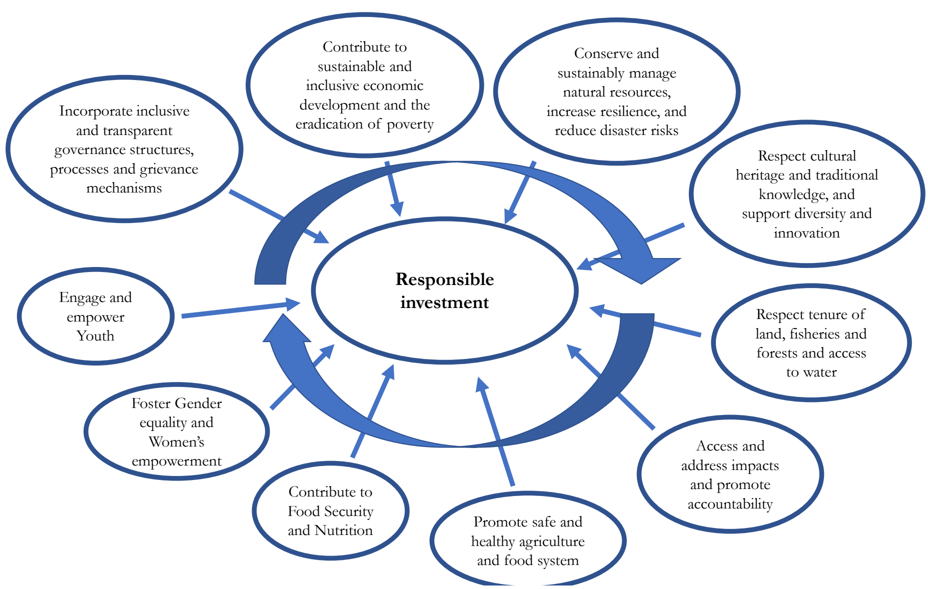
Listening to the stakeholders suggests that none of these processes has been adopted before the decision to open primary agri-production activities to FDI was taken in January 2021. On the contrary, the decision came two weeks after the House of Representatives was dissolved amidst political differences within the ruling party, giving credence to the suspicion that the decision was taken under the pressure of foreign investors eying to invest in Nepal's primary agricultural sector (myRepublica, 2021). If the decision is implemented as things stand now, it is feared to put the families of small farmers – who, as per the economic survey of NRB (2021), are unable to fend for themselves and, thus, are supported by the government, both federal and local – to the risk of hunger and malnutrition.

Profit-making, the stakeholders argue, is the motto of foreign investors. The profit motive may not consider the livelihood security (of small farmers who subsist on daily wages or small production they generate) and other human rights obligations, which the government is duty-bound to fulfil at all times. Without stronger mechanisms to regulate FDIs – or make them comply with responsible investment (discussed in Section 4.3.) – the farmers who eke out their living by engaging in the production of industrial crops, such as sugarcane, tea, cardamom, cotton, coffee and herbal crops, will have to struggle to sustain their business.

4.3 Responsible Investment

Since November 2006, Nepal has been in a post-conflict transition. By 2015, when Nepal adopted its post-conflict constitution, most of the elements of the Comprehensive Peace Agreement that triggered the transition had been completed. The constitution has adopted the remaining task – socio-economic transformation – and offered measures to realise it while promoting 'social justice,' 'rights and 'interest' of marginalized communities, including small farmers engaged in subsistence farming, with the vision to usher Nepal in a socialism-oriented polity.

Figure 6: Ten Principles of Responsible Investment



Source: FAO and IISD, 2020, p. 7

Referring to the context, letter and spirit of the constitution, the stakeholders underlined that FDIs in the primary sector of agriculture may impede Nepal's socio-economic transformation as envisioned in the context of post-conflict transformation. To avoid the risk of harms and hazards associated with FDIs and redress the harms when they occur, FDIs should be tied to the 'Principles for Responsible Investment in Agriculture and Food Systems,' the principles which now have been a global benchmark for the design and implementation of agricultural investments with responsibility (FAO & IISD, 2020). Nepal's bid for bringing in FDIs should well consider the ten principles, which are considered to make investment responsible and, as such, responsive to fundamental human rights and governance concerns, such as food security and nutrition, inclusive development, gender equality and women's empowerment, respect for cultural heritage, sustainable management of natural resources, respect for tenure land, fisheries and forest, promotion of safe and healthy agriculture, inclusive and transparent governance and accountability (Figure 6).

4.4 Collaboration between Foreign and Domestic Investors

Collaborating between foreign investors and the domestic private sector can be a way to mitigate some of the harms to which FDIs are vulnerable. This hybrid approach can nurture local industries, both agriculture-based and others, by way of knowledge transfer and spillovers. It also creates an enabling environment for FDIs to operate in a local context. Once this model comes into play, both the domestic and foreign investors mutually find areas of comparative advantage and invest accordingly in a manner that reinforces one another. This is also the vision of the Fifteenth Plan as regards FDI mobilisation.

Similarly, certain agricultural sectors cannot be operated without FDIs. Fertilizer production is one, on which Nepal's agriculture is direly dependent. Herbal processing is another. Almost 90 per cent of Nepal's medical herbs are exported unprocessed at a cheap price. Had Nepal had high-tech processing plants, these raw herbs could have been processed and exported worldwide as finished products at a competitive price. FDIs should be invited to invest in such sectors, which have both local consumption as well as export potential. There can be other sectors and areas where FDIs have a comparative advantage. Such areas should be jointly explored and prioritized. The key message here is FDIs should not be promoted at the cost of domestic investment. Instead, a level playing field should be created for the two to work together.

An empirical study that compared the impact of foreign and domestic investment on the overall output and productivity growth of ten Southeast European countries (Bacovic, 2021) is quite instructive in this regard. The study of the 25-year experience (1995-2020) not only finds domestic capital outperforming foreign investment but also suggests that the inflow of FDIs in disregard of domestic capital will, in the long run, produce negative effects on the people as well as the national economy as a whole.

The experience from Zambia adds to this caution. FDIs did not have the expected spillover effect on Zambian domestic players. Instead, the investment policies enacted to attract foreign investors weakened the morale and ability of domestic players to compete with their foreign counterparts and contributed to the "erosion of people's rights, including development rights, the right to food, education, a clean environment and women's participation in political decision-making" (Muyoyeta, 2010, p.184).

Stakeholders' suspicion that FDI in the primary sector of agriculture fails to protect domestic investors aligns with these findings. To protect domestic investors requires the promotion of small farmers, who have to be enabled and connected to the corporate world. Failure to do so contradicts the constitutional vision of food secure Nepal and food sovereign Nepali, which has since 2015 guided Nepal's economic policy and planning processes. Here comes the responsibility of domestic investors: to act as the bridge between small farmers and foreign investors. This can be part of their corporate social responsibility and can be counted and recognized as their social contribution to the empowerment (or capacity building) of small farmers.

4.5 Participatory Policymaking

When policies that affect the lives of the people are rushed through without debates and consultations with the people concerned, it will be difficult to get their buy-in. The policy decision to open the previously banned agricultural sector to FDI was a hasty act. It followed the suspension of the HoRs, which precluded parliamentarians from debating the issue. It also freed the council of ministers of the obligation to report its policy decisions to the HoR. Other primary stakeholders were not consulted.

What made the government take this decision in haste – going against its own pledges and promises made in the Fifteenth Plan[11] as well as the ADS – remains unclear. The stakeholders connect it to the interest of some foreign investors unhappy at Nepal's primary production sector being on the negative list for FDI. The absence of parliament, the stakeholders argue, was an opportunity for the foreign investors to get the government to take the decision it took. While the stakeholders have no evidence to justify the claim that the government acted out of ill intention, the government too does not have a convincing argument to justify its hasty decision. Consultation with the stakeholders could have avoided this scenario and prevented the government from the popular perception of it acting at the behest of foreign investors.

11. The Fifteenth Plan states that foreign investment will be allowed in "large industries and import management sectors while protecting local labour, skills, and raw materials needed for small industries" (NPC, 2020, p. 195).

Participatory policy-making has its own merits. Participation generates evidence on which to take informed decisions. It enhances the buy-in of concerned stakeholders and creates an enabling environment for the policy to implement. More important, it is the constitutional obligation. The Directive Principles (Article 50) state in no uncertain terms that the objectives of the state will be achieved through a process that includes and respects "the rule of law… human rights, gender equality … participation and social justice." These norms and values were not found to be followed.

4.6 Intra- and Inter-Ministerial Coordination

Lack of resources is said to be the main concern that has triggered the decision to open the primary sector of agriculture to FDI. However, the stakeholders are adamant to accept that Nepal lacks resources to achieve incremental economic growth. The presence of bad governance is, to them, the main hurdle. "Every year," a participant said, "a big chunk of money budgeted for the ministry of agriculture and the departments under it goes unused. It is either because of the lack of will or spending capacity due to the lack of coordination or otherwise." As allocated budgets are not implemented for whatever reasons, it will affect investment and growth. The ministries of agriculture and supply work in the same sector, but rarely coordinate, other participants lament. They suggest that the government should first build its spending capacity by enhancing intra- and inter-ministerial coordination and firming up a partnership with the private sector. Until such coordination becomes a part of governance, the flow of foreign investment, even if it is ensured, does not yield expected results.

CHAPTER FIVE

CONCLUSION AND POLICY RECOMMENDATIONS

This section presents the summary of findings, drawing on the analysis in the preceding sections, as the conclusion of the report. A set of recommendations follow the conclusion underlying specific actions to be taken by the GoN. For ease of reference, conclusions have been presented in two parts. The first focuses on general issues related to FDI while the second concentrates on issues that are specific to the primary sector of agriculture. The recommendations discussed do not follow any order of priority. Each is equally important and should be addressed as such.

5.1 Conclusion

5.1.1 FDI in General

Rapid economic growth has been the economic agenda of the country over the decades. After the end of the armed conflict in 2006, the agenda has achieved unprecedented national ownership. The nation's constitution has embraced it. All political parties have committed to it. Development plans and policies of the country have set strategies and operational plans accordingly, with time-bound targets and milestones to realize it.

There is also a national consensus that achieving economic growth requires investment in growth-enhancing and export-promoting projects. Accordingly, Nepal has identified FDI as the potential source of economic growth. To bring in FDI, Nepal has liberalized its policy regimes to ease the process of foreign investment and create an ease-of-doing-business environment for foreign investors in Nepal. Foreign Investment Policy (2015), Foreign Investment and Transfer of Technology Act (2019) and Foreign Exchange (Regularization) Act 2019 have been enacted to specifically address the issues underlying foreign investment. A mechanism has also been constituted to establish SEZ in which to operate FDI-supported projects.

However, despite legal liberalization, there still are laws – or part thereof – that should be reviewed to ensure their compatibility with the FITTA. There is no legislation governing entrepreneurship based on intellectual property and knowledge. Nepal has a mixed record in terms of the implementation of existing laws and policies. The GoN has, despite promises, also been unable to establish a one-window service centre to provide services attached to the FDI ecosystem: entry of FDI, approval, registration, operation, exit and repatriation. Scattered laws and practices delay administrative processes by creating overlapping tasks and responsibilities, which take a significant amount of time to deal with. To a potential investor, this is the first deterrence and the signpost of how things would develop in different stages of investment, production and export.

Evidence has it that political stability positively correlates with FDI. The 2015 Constitution of Nepal has paved the road to such stability by committing the nation to honour – and learn from – the history of sacrifices for democracy and progressive transformation, end discriminations and divisions of all kinds, protect socio-cultural diversity and unity and fulfil the nation's yearning for sustainable peace through democratic governance and development. Six years down the line, the parties who saw through the development of the constitution have been starkly divided. In July 2021, after the Constitutional Bench of the Supreme Court nullified the dissolution of the parliament by the then Prime Minister KP Sharma Oli and triggered his resignation, the inter-party animosity and rancour deepened amongst the parties. This does not bode well for the future of political stability in Nepal and, consequently, for the inflow of FDI. Until the guarantee of the rule of law and institutional checks and balances is ensured, potential investors may find it risky to invest. Ensuring political stability should thus be the priority of political parties and other concerned.

Economic diplomacy is another area Nepal should aggressively pursue to realise the expected inflow of FDI. Lacking skills and infrastructure for such diplomacy, Nepal does not seem to have been able to effectively communicate its economic aspirations, vision and priorities at the international level. Nepal also has not been effective in explaining how it seeks to promote international financial and trading rules and norms in the domestic arena and what Nepal can offer to the international community. Together with diplomatic offices abroad, the strength and agility of non-resident Nepalis should also be tapped. They can serve as the bridge between the investors and the GoN in terms of communication and trust-building.

An enterprise does not operate smoothly, and deliver, in the absence of congenial industrial relations between the labour and the management of the enterprise. The texture of such relations is defined by the combination of an enabling environment in the workplace,[12] the scope for collective bargaining, clearly defined grievance procedures and dispute settlement mechanisms and fair adjudication of issues in line with national legislation and international standards, particularly the ILO conventions governing industrial relations. Given that Nepal has a history of disturbing industrial relations, it should review the dispute handling procedures and mechanisms, fix the lacunas, if any, and convince potential investors that the rule of law will prevail at the enterprise level at all times.

12. An enabling environment is one in which (a) communication between the labour and management is open and transparent, (b) no employee feels discriminated and insecure, (c) options are available for work-life balance, (d) opportunities exist for training and career growth, and (f) hard work is recognised and appreciated.

Availability of labour is another important element that foreign investors would like to be sure of. In Nepal, given 31 per cent of the labour force is unemployed, labour supply should not be an issue. What may, though, be an issue is to mobilise the labour force, which has had the taste, and aspiration of, foreign employment, in the country. How to balance the domestic need for labour and the aspiration to go abroad for employment should be seriously thought of and delivered. One way would be to train the surplus labour, enable them to develop specific skill sets required by foreign investment and ensure wages and perks comparable to foreign employment.

Inflation fluctuation is an indicator of economic instability, which have a negative correlation with FDIs. Although Nepal's inflation fluctuation is relatively under control, it is above the margin of two per cent, which is not considered normal in the discourse of FDI. Control of inflation should, therefore, be another issue the GoN should include in its list of priorities as regards FDI attraction in general.

Attracting FDI is also has to do with consultative processes that lead to a policy based on evidence and facts. Consultations help clear confusions and misconceptions, rectify shortcomings or distortions and enhance multi-stakeholder ownership. On such a contested issue as the FDI, consultations and debates and discussions are a prerequisite. When policies are rushed through on emotional arguments and without debates and consultations with stakeholders, the intent becomes questionable. It is one of the reasons why the decision to amend FITTA was challenged by farmers and small agro-investors.

5.1.2 FDI in Agriculture

The views and concerns of agricultural stakeholders align with the macroeconomic data. While FDI is necessary for economic growth, most of the stakeholders argue, opening agriculture to FDI before putting in place necessary infrastructure – transport systems, technology, skilled human resources and managerial efficiency, at the very least – will only harm the small farmers and the subsistence economy they have been nurturing. The GoN should, thus, focus first on building strategies and capability to enhance agricultural productivity and deal with the risk of natural disasters and other climate shocks. It should, with the same rigour and concern, develop mechanisms to protect the interest and rights of farmers and other relevant stakeholders.

FDI cannot be flatly rejected or accepted in agriculture. It has to be approached with caution and awareness of Nepal's social, economic, political, ecological and developmental reality. Nepal can adopt a hybrid approach to FDI in agriculture, an approach in which small farmers, domestic investors and foreign investors work in unison to complement and reinforce each other's interests and comparative advantages.

5.2 Recommendations

Based on the foregoing analysis of experiences, perceptions, opportunities and gaps, the following recommendations can be drawn concerning FDI in general and FDI in agriculture in particular. In framing these recommendations, the perspectives of primary stakeholders have particularly been taken into account.

5.2.1 FDI in General

a. Integrate and align regulatory mechanisms to create an enabling environment for FDIs

About half a dozen domestic laws and regulations come into play while implementing the FITTA, the main law that governs FDI. Banking and insurance, which closely relate to FDI, operate under separate laws. All these acts and regulations should be aligned and integrated to avoid legal and administrative overlaps, incongruence and disconnect and assure potential investors of the ease of investment and its protection in Nepal. Policy alignment and integration is also necessary to realise the one-stop – or one-window – service centre, which Nepal has promised to facilitate FDIs both in agriculture and other sectors.

b. Maintain a balance between the pursuit of foreign investment and the development of domestic capital

The primary stakeholders appear unconvinced that FDIs positively contribute to the development of a national economy. They, instead, fear that FDIs would harm the foundation of the national economy in the long run as FDIs do not necessarily strengthen domestic capital. There should be a balance, most of the primary stakeholders underline, between the pursuit of FDIs and the development of domestic capital. The balance can be maintained by mobilizing the private sector to establish national industries based on local resources and skills and, at the same time, to create an enabling environment for FDIs to operate in the area of their comparative advantage. This hybrid approach is also necessary to ensure knowledge transfer through which to modernize the agricultural sector and other drivers of domestic capital.

c. Consult relevant stakeholders before making any policy decisions that affect their lives

FITTA was amended without consulting agricultural stakeholders. This lent credence to the suspicion that the amendment was influenced by ulterior motives. Had the government consulted the stakeholders, it would have had the opportunity to hear multiple views and perspectives, both in favour and against the amendment, weigh the pros and cons critically and take the decision that would not meet the backlash the amendment did. Consultations should be at the heart of public decision making, as they make the process inclusive and transparent and the product (decision or policy) evidence-based.

d. Commission a comprehensive study on the gap between FDI promises and delivery

Nepal has established FDI as a key element of its economic development. Over the years, significant efforts have been made to reform laws and policies and to create an ease-of-doing-business environment. The political atmosphere, too, is relatively stable. Yet, there exists a huge gap between the FDIs promised and realised. To explore why the mismatch continues, a comprehensive study should be commissioned involving experts of relevant fields of expertise.

Such a study is also recommended to explore ways to decentralize the concentration of FDIs. Should the current trend of the FDI concentration continue, Nepal risks perpetuating the history of unequal and lopsided development which the ADS aims to dismantle.

e. Invest in economic diplomacy to ensure the smooth flow of FDIs and transfer of technology

The current international order is governed as much by political interests as by economic ones. Trade, aid, access to the market and foreign investment are among the catchwords that define the economic order of the day. Nepal's foreign policy architecture does not appear to have been sufficiently reconfigured to engage in the field of 'economic diplomacy' and, as a result, Nepal has not been able to benefit from associated dividends, including foreign investment. The GoN should, without further delay, reconfigure its foreign policy priorities and build mechanisms and capacity to effectively engage in 'economic diplomacy.' To this end, Nepali diplomatic missions abroad should be reoriented and well equipped to promote Nepal's economic interests and priorities abroad and mobilise FDIs, new technologies as well as skills, expertise and capital of non-resident Nepalis to realise the economic vision and priority of the country.

5.2.2 FDI in Agriculture

a. Open agricultural research, innovation and high-tech industries to FDI

Investment in agricultural research and innovation is very limited in Nepal although research is necessary to enhance the quality of agricultural products, improve their supply chains, forecast the impact of climate change on them, control diseases and other shocks and explore alternatives to unpredictable harvests. Foreign investors can be invited to these and other related areas of 'knowledge economy,' in which they have a comparative advantage. FDIs can also be invited to operate high-tech plants to produce fertilizers, both for national consumption and export, and process a variety of medicinal herbs into finished products, which Nepal has no capacity for.

b. Allay the fear of small farmers and entrepreneurs that FDI does not harm their interests

Opening the primary sector of agriculture to FDI is feared to upset Nepal's agricultural ecosystem as a whole. Small farmers are fearful of the possible deprivation of food security, which largely depends on the small farms they own and operate. Agro-entrepreneurs are worried about the loss of raw materials that feed their enterprises. Agricultural labourers have the fear of them being displaced by high skilled labourers that industries under FDI require. These fears should be reasonably allayed. Unless it is done and these primary stakeholders taken onboard, any decision taken towards agricultural modernization and commercialization runs the risk of failure, as these stakeholders have to be involved in the process in one way or another.

c. Conduct an expert study to explore ways to build the capacity of small farmers

Capacity building of small farmers will be central to the modernization and transformation of Nepal's agriculture both in the context of FDI and otherwise. How to make them technology-literate and prepare for the adoption of modern technology in their agricultural practices may be one of the immediate needs to focus on. How to promote crop diversification may be another. The GoN should conduct an expert study to develop a comprehensive picture of the capacity needs of small farmers of all ecological zones and develop a concrete national plan to address those needs. Unless small farmers become technology savvy and are able to adopt modern farming technologies, agricultural transformation will be difficult to achieve.

ANNEXES

Annex 1: Nepal Gazette Notifying Amendment of FITTA that Opened Primary Sector of Agriculture to FDI

नेपाल राजपत्र

नेपाल सरकारद्वारा प्रकाशित

खण्ड ७०) काठमाडौं, पुस २० गते, २०७७ साल (संख्या ३६

भाग २

नेपाल सरकार

उद्योग, वाणिज्य तथा आपूर्ति मन्त्रालयको

सूचना

नेपाल सरकारले विदेशी लगानी तथा प्रविधि हस्तान्तरण ऐन, २०७५ को दफा ५० ले दिएको अधिकार प्रयोग गरी सो ऐनको अनुसूचीको क्रमसङ्ख्या १ को सट्टा देहायको क्रमसङ्ख्या १ राखी हेरफेर गरेकोले यो सूचना प्रकाशन गरिएको छः-

"१. आफूले उत्पादन गरी कम्तीमा पचहत्तर प्रतिशत निकासी गर्ने पशुपन्छी पालन, माछापालन, मौरीपालन, फलफूल, तरकारी,

तेलहन, दलहन, दुग्ध व्यवसाय र कृषिका प्राथमिक उत्पादनसँग सम्बन्धित ठूला उद्योग बाहेकका सो क्षेत्रका अन्य उद्योग वा व्यवसाय,"

आज्ञाले,
चन्द्रकुमार घिमिरे
नेपाल सरकारको सचिव ।

Annex 2: Participants of the Public Policy Dialogue on FDI in Agriculture

SN	Participants' Name	Office/Organization	Designation
1.	Dhruba Ghimire	Office of the Prime Minister and Council of Minister	Joint Secretary
2	Awantika Rimal	Nepal Rastra Bank	Deputy Director
3	Panchakaji Shrestha	National Farmers Group Federation	Vice-Chairperson
4	Baburam Adhikari	Central Livestock Cooperative – Federation, Nepal	Chairperson
5	Dr. Pradeep Chandra Bhattarai	Ministry of Agriculture and Livestock Development	Chief, Policy Section
6	Dr. Debendra Gauchan	Bio-diversity International	Agro-Economics Expert
7	Keshav Acharya	Economic Policy Incubator, Palladium	Economist
8	Dr. Ganesh Acharya	Freelancer	-
9	Meena Pokharel	Nepal Agriculture Cooperative Central Federation Limited	Deputy General Manager
10	Jagat Basnet	Community Self- Reliance Center	-
11	Asha Kumari Shah	Agro Enterprise Center	Section Officer
12	Dr. Krishna Prasad Timsina	Nepal Agriculture Research Council, National Agricultural Policy Research Centre	Chief
13	Kamal Raj Mainali	Nepal Tea Association	Chairperson
14	Shiva Hari Khanal	All Nepal Peasants Federation	Central Representative
15	Nahendra Khadka	National Peasants Coalition	Coordinator
16	Rabindra KC	Nepal Dairy Association	Secretariat Chief

SN	Participants' Name	Office/Organization	Designation
17	Sanjina Shrestha	Association of Nepali Agricultural Journalists	Board Member
18	Sandip Shrestha	Community Self-Reliance Center	Research Officer
19	Naree Ram Lohar	National Land Rights Forum, Nepal	National Coordinator
20	Arjun Khanal	Agriculture Development Bank, Limited	Loan Officer
21	Suresh Shrestha	Department of Industry	Director
22	Krishna Prasad Sapkota	Central Dairy Co-operative Association	Treasurer
23	Kiran Acharya	Association of Nepali Agricultural Journalists	Chairperson
24	Shiba Prasad Sharma (Paudel)	Federation of Nepali Beekeepers	Chairperson
25	Pralhad Dahal	Nepal Dairy Association	General Secretary
26	Jhanak Prasad Paudel	Nepal Poultry Farmers' Association	Chairperson
27	Raj Kumar Dahal	Dairy Industry Association	President
28	Yadav Poudyal	Confederation of Nepalese Industries	Director General
29	Sangam Mahat	Nepal Television	Reporter
30	Laxmi Sapkota	Karobar Daily	Reporter
31	Bhim Gautam	Karobar Daily	Reporter
32	S. B. Khadka	Trichandra College	Lecturer
33	Kedar Sapkota	Nepal Coffee Federation	Central Member
34	Mahesh Kharel	National Planning Commission	Programme Director

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नीति अनुसन्धान प्रतिष्ठान

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