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Towards an Indicative List of FDI Sustainability Characteristics

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LIST OF ABBREVIATIONS

BIT	bilateral investment treaty
CSR	corporate social responsibility
ESG	environmental, social and governance
FAO	Food and Agriculture Organization
FDI	foreign direct investment
GRI	Global Reporting Initiative
ICC	International Chamber of Commerce
ICMM	International Council on Mining and Metals
IIA	international investment agreement
ILO	International Labour Organization
IPA	investment promotion agency
MDG	Millennium Development Goal
MNE	multinational enterprise
MOFCOM	Ministry of Commerce of the People's Republic of China
NCP	National Contact Point
NDRC	National Development and Reform Commission of the People's Republic of China
NGO	non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the UN High Commissioner for Human Rights
SADC	Southern African Development Community
SDG	Sustainable Development Goal
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
US	United States
USAID	US Agency for International Development
WAIPA	World Association of Investment Promotion Agencies
WBCSD	World Business Council for Sustainable Development

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THE RATIONALE

The amount of investment needed to meet the global challenges of the future is tremendous: meeting the Sustainable Development Goals (SDGs) and climate change commitments alone requires trillions of investment dollars. Foreign direct investment (FDI) can make an important contribution to meeting these investment needs. But to make a real difference, FDI flows would have to increase significantly. In 2016, they were US$1.8 trillion (UNCTAD 2017) — but there is no reason why they could not be double or triple that amount.[1]

However, the issue is not only more FDI, but the right kind of FDI — what is referred to as "sustainable FDI" in this paper.

This issue concerns the quality of FDI. On balance, most FDI can contribute to both growth and sustainable development, at least if the conditions surrounding an investment encourage such a result. But a number of countries distinguish between different types of inward FDI on the basis of various considerations. For example, some governments submit some types of inward FDI — typically mergers and acquisitions,[2] but also greenfield project[3] (sometimes over certain size thresholds) — to various tests, such as net benefit tests or national security tests. The former tests are used, for example, by Australia and Canada.[4] The latter, for example, are used by the United States. Many governments limit, or entirely restrict, inward FDI in certain services, manufacturing industries, natural resources, and infrastructure. Many developed and developing countries have adopted this approach for a variety of reasons, including to encourage the development of domestic firms in the industries concerned, for strategic security reasons, or to protect certain cultural industries, public services or small and medium-sized firms.

Almost all governments apply criteria to proposed large-scale or ecologically sensitive investments in the form of environmental and social impact assessments, now including also human rights assessments. And maximising the positive economic and social benefits to a community is now a standard metric in many natural resources sectors, epitomised, for example, by the notion of "shared value" in the mining sector.[5]

Finally, many governments consider that some types of investment, especially when supported by national and international policies, can make a particular contribution to the development objectives of their economies. This is reflected, for instance, in the fact that more and more investment promotion agencies (IPAs) in developed and developing countries alike focus their efforts on attracting certain types of projects and FDI in certain industries that they consider as contributing most to their own development priorities. By way of examples of certain types of projects, the United Kingdom determines the value of an FDI project — and hence its eligibility for government support — by examining quantitative and qualitative indicators. Quantitative indicators (e.g., total value of an investment, number of new jobs created) relate mostly to larger projects that are expected to deliver higher economic and social benefits and capture other multiplier benefits. The government also reviews qualitative indicators, namely the salary level of new jobs created, research-and-development focus, whether or not an investment is a global or regional headquarters, the quality of the investor, and export potential.[6] The Republic of Korea's IPA mentions the enhancement of domestic economic competitiveness as a very desirable attribute.[7] By way of examples for an industry approach, Nigeria provides incentives for, inter alia, telecommunications, electricity and transport industries.[8] The Chilean IPA's targets include the food, infrastructure and tourism industries.[9] Hungary's IPA provides targeted services for, among others, the automotive and electronics industries and shared service centres.[10] Vietnam, meanwhile, provides

1 It needs to be recognised that "FDI" is an imperfect measure of the tangible and intangible assets associated with the activities of multinational enterprises, as it does not capture, among other things, various non-equity forms. To put it differently, ownership (as reflected in FDI data) is only one way through which the headquarters of firms can influence or determine the actions of their affiliates.

2 In the United States, the Committee on Foreign Investment in the United States (CFIUS) screens investments that would result in foreign control of a US business for national security concerns. See US Department of the Treasury 2012.

3 See, e.g., Namibia Investment Promotion Act, Act No. 9, 2016, Part 3, §8, *Government Gazette of the Republic of Namibia,* No. 6110 (31 Aug. 2016) (not yet in force).

4 The Investment Canada Act identifies the following factors to be considered in its net-benefit test:

a) the effect of the investment on the level and nature of economic activity in Canada, including . . . the effect on employment, on resource processing, on the utilization of parts, components and services produced in Canada and on exports from Canada;
b) the degree and significance of participation by Canadians . . . ;
c) the effect of the investment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada;
d) the effect of the investment on competition within any industry or industries in Canada;
e) the compatibility of the investment with national industrial, economic and cultural policies . . . ;
f) the contribution of the investment to Canada's ability to compete in world markets.

Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.), §20.

5 See, generally, Porter and Kramer 2011; see also Shared Value Initiative, at http://sharedvalue.org/

6 Interview with a staff member of the Department for International Trade about the DIT Investment Playbook, an internal non-published document setting out the operating principles for delivering FDI into the United Kingdom.

7 Invest Korea, at http://www.investkorea.org/en/policy/overview.do

8 Nigerian Investment Promotion Commission, at http://www.invest-nigeria.com/investment-incentives/

9 Invest Chile, at https://investchile.gob.cl/key-industries/

10 Hungarian Investment Promotion Agency, at https://hipa.hu/main

incentives for investments in new technologies, agriculture and forestry, and environmentally friendly technology.[11]

Countries that pursue a targeted investment approach (and regardless of whether or not they, for example, review incoming mergers and acquisitions) may or may not hold that there is "desirable" FDI and "non-desirable" FDI within the sectors that are open to FDI. At a minimum, however, they consider that investment with certain characteristics is particularly desirable and, therefore, might benefit from various policy measures to encourage it. In this sense, the approach is not different from the approach taken by some countries towards encouraging, for example, renewable energies or providing value-added tax exemptions in the mining sector to encourage socially desirable but privately insufficiently profitable investment.

USES OF SUSTAINABILITY CHARACTERISTICS

What, then, is "sustainable FDI" (or, for that matter, sustainable investment in general, be it foreign or domestic[12])? An approximation of a definition is "commercially viable investment that makes a maximum contribution to the economic, social and environmental development of host countries and takes place in the framework of fair governance mechanisms."[13] This is a definition that goes beyond "do no harm" and calls for efforts on the part of foreign affiliates to make an active contribution to sustainable development. In other words: sustainable FDI for sustainable development.

The challenge taken on in this paper is to identify and consolidate in an indicative list certain "sustainability characteristics" of FDI. Such an indicative list would be of use to various stakeholders:

- Negotiators of international investment agreements seeking to take sustainability considerations into account when negotiating such treaties. This is particularly important now, as investment facilitation is on the agenda of various international organisations and, hence, the question arises whether sustainable FDI might deserve special attention.

- Host country governments and IPAs seeking to attract sustainable FDI.

- Home country governments supporting their firms to invest abroad through various home country measures that are linked to certain conditions (e.g., the impact of FDI projects on the environment in host countries).[14]

- Arbitrators in international investment disputes wanting to take the development impact of investment projects into account.

- Intergovernmental organisations seeking to develop their own guidelines to further the sustainable development impact of FDI.

- Global business associations seeking to provide guidance to their members regarding sustainable FDI for sustainable development.

- Private institutional investors (which often control substantial pools of funds) seeking to provide guidance to their clients regarding sustainable FDI for sustainable development.

- Industry associations seeking to do the same.

- International investors seeking to maximise the benefit of their investments not only for themselves, but also for the sustainable development of their host countries.

- Civil society organisations or communities seeking to monitor particular FDI projects or responsible business conduct in more general terms.

Naturally, such an indicative list would also be of use to governments seeking to encourage sustainable domestic investment.

The role of host country governments and their IPAs is particularly important in the framework of an overall development strategy, as IPAs are, in many countries, the main gatekeepers of incoming investment. This role, however, requires a substantial reorientation in the direction of paying attention to sustainability characteristics of the investment they seek to attract.[15] IPAs also have a role to play, as part of their after-investment services, in encouraging existing foreign affiliates to strengthen the sustainability characteristics of

11 Vietnam Trade Promotion Agency, at http://en.vietrade.gov.vn/

12 As in the case of the International Labour Organization's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the intention here is not to introduce a distinction between multinational and domestic enterprises: "5. These principles do not aim at introducing or maintaining inequalities of treatment between multinational and national enterprises. They reflect good practice for all. Multinational and national enterprises, wherever the principles of the MNE Declaration are relevant to both, should be subject to the same expectations in respect of their conduct in general and their social practices in particular." See ILO 2017, 3.

13 See Sauvant 2015, based on Sauvant and Hamdani 2015.

14 For a discussion of the support given by countries to their outward investors (including cases in which such support is linked to certain conditions), see Sauvant et al. 2014, ch. 1.

15 See in this context the practical proposals advanced by Loewendahl, Kollinsky and van den Berghe 2017.

their investments in the course of their operations, potentially turning them into transformative investments (especially in the natural resources sector).

Currently, the single most important evaluation criterion for most IPAs is the amount of investment that is attracted. In this respect, the situation has probably not changed much from five years ago, when a survey was undertaken to determine to what extent IPAs pay attention to sustainable FDI (see Annex I).[16] At that time, the economic dimension (followed by the environmental dimension) of sustainable FDI, and especially employment creation, received most attention compared to the social and governance dimensions. However, the economic development and environmental sustainability dimensions of sustainable FDI had risen in prominence compared with the five years prior to the survey, and they were expected to acquire a bigger role in investment promotion strategies. This is perhaps not surprising as IPAs, especially if they target investors, should keep economic development in mind (perhaps further sensitised by the international community's adoption of the Millennium Development Goals), even if the quantity of FDI they attract might be the overall performance criterion. An indicative list of FDI sustainability characteristics would further help IPAs in the future evolution of their efforts to attract FDI and benefit from it as much as possible. Embracing the sustainability characteristics would also help IPAs with their image within some host countries, where, at times, they are considered as representing the interests of investors more than those of host countries.

At a time when the SDGs have become the lodestar for policymaking, it is important for national and international efforts in the investment area to contribute fully to the achievement of these goals as well. An indicative list of sustainability characteristics of FDI that are SDG-supportive provides guidance to such efforts, helping to ensure that investment law and policy play an important role in this regard.[17]

SOURCES OF SUSTAINABILITY CHARACTERISTICS

What could be the sources to identify sustainability characteristics, and hence the methodology that can be used to establish an indicative list? In the end, it is the stakeholders that need to identify those characteristics most relevant or applicable to any given project, in particular governments (including their IPAs), but also various other stakeholders. In doing so, they can draw on a great number of instruments that already reflect various desirable FDI characteristics. These characteristics need to be seen through the lens of the sustainable FDI definition provided earlier and, most importantly, they need to respond to the breadth of the 17 SDGs themselves and their 169 targets and be supportive of them.[18] Foreign direct investment that is characterised by appropriate sustainability characteristics facilitates the attainment of the SDGs. These instruments include:

- International investment agreements (IIAs) that lay out the contributions the treaty partners involved expect international investors to make to host countries and/or to mitigate or avoid possible negative impacts of their investments.[19] For example, the bilateral investment treaty (BIT) between Brazil and Malawi, the Comprehensive Economic and Trade Agreement between Canada and the European Union, the Lomé Convention between the members of the African, Caribbean and Pacific Group and the European Union, the Southern African Development Community Model BIT, and the Draft Pan-African Investment Code mention a number of contributions that could be considered as becoming part of an indicative list of sustainability characteristics. These include, by way of examples, the strengthening of local capacities through close cooperation with the local community and encouraging the development of local human capital;[20] the protection

16 But see the concept note by the World Association of Investment Promotion Agencies, which observes: "more recently, WAIPA has begun to coordinate with their long list of IPA members and have encouraged them to integrate sustainable development goals (SDGs) in their overall FDI framework" (WAIPA 2017, 1).

17 One could also consider whether there are criteria on the basis of which one might want to exclude specific projects as deserving a sustainability characterisation. Examples could include projects that violate fundamental labour standards as established by the International Labour Organization or those that cause substantial, irreversible environmental damage or loss (e.g., biodiversity). Environmental and social impact assessment processes commonly set a combination of criteria and related thresholds for such instances. Such sustainability baselines may vary depending on the type of investment as well. For a discussion of such criteria, as well as a broader discussion of sustainable FDI, see Kline 2012. See also Kline 2017, based on Klein 2012.

18 See UN Statistics Division 2017, SDG goals 7 (7.b.1), 10 (10.b.1) and 17 (7.b.1).

19 For the purpose of this analysis, no distinction has been made as to whether a characteristic is contained in the preamble of a treaty or the text itself. However, a distinction is being made between general recognition of a characteristic, for example the need to protect the environment, and more specific expressions of a characteristic, for example the need to reduce greenhouse gas emissions. It has been argued that almost all international investment agreements—whether or not they explicitly reference sustainable development—have sustainable development as a long-term purpose. See Ortino 2017.

20 Investment Cooperation and Facilitation Agreement between the Federative Republic of Brazil and the Republic of Malawi, Article 9(2)(c)–(d) (2015), http://investmentpolicyhub.unctad.org/Download/TreatyFile/4715

of labour rights, including the prohibition of forced and child labour;[21] respect for human rights;[22] and technology transfer.[23] Further, the Investment Promotion and Protection Agreement between Morocco and Nigeria mandates environment and social impact assessment screening and application of precautionary principles as ways to mitigate negative impacts.[24]

- Non-binding intergovernmental instruments that lay out the contributions foreign investors can make to host countries and/or to mitigate or avoid possible negative impacts of their investments. For example, the United Nations (UN) Guiding Principles on Business and Human Rights (endorsed by the UN Human Rights Council), the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (negotiated and adopted by governments of home and host countries of multinational enterprises (MNEs) as well as global representative bodies of employers and workers),[25] the OECD Guidelines for Multinational Enterprises from the Organisation for Economic Co-operation and Development[26] (developed primarily by MNE home country governments to guide the behaviour of their companies in host countries),[27] and the Investment Policy Framework for Sustainable Development, developed by the United Nations Conference on Trade and Development (UNCTAD) Secretariat, mention a number of contributions that could be considered as becoming part of an indicative list of sustainability characteristics. These include, by way of examples, avoidance of human rights infringements (UN Human Rights 2011, para. 11); assurance of worker safety (ILO 2017, para. 44); diffusion of technology (OECD 2011, ch. IX(2)); and building local capacity (UNCTAD 2015, 41). In addition to recommending a risk-based due diligence for MNEs (OECD 2011, ch. II(10)), the OECD Guidelines for Multinational Enterprises also provide that MNEs refrain from seeking or accepting exemptions not otherwise contemplated in the regulatory framework with regard to such an issue as human rights (OECD 2011, ch. II(5)), as a mechanism to reduce possible adverse impacts.

- Criteria used by host countries that seek to attract particularly desirable FDI and/or to mitigate or avoid possible negative impacts of any investments. A few examples of types of projects and industries that some host countries consider particularly desirable were provided earlier, in the context of the quality-of-investment discussion. Net benefit tests or environmental and social impact assessments also provide pointers that are relevant in the context of identifying sustainable FDI characteristics. For example, the Thailand Board of Investment, Australia's Foreign Investment Policy and Namibia's Investment Promotion Act 2016 mention, by way of examples, enhancement of national competitiveness by encouraging research and development, innovation and value creation in the agricultural, industrial and services sectors, small and medium-sized enterprises, fair competition, and inclusive growth (Thailand Board of Investment 2015); transparent regulation and supervision of investors, as well as ensuring a fair return to the people (Australian Government 2016, 9); and the promotion of local linkages and employment creation.[28]

- Criteria used by home countries that support their firms investing abroad and make such support dependent on a company seeking such support meeting certain conditions. The Overseas Private Investment Corporation in the US, the UK's Department for International Development (including the Commonwealth Development Corporation guidance for fund managers on respect for human rights), and Proparco, the private sector financing arm of France's Agence Française de Développement, mention a number of contributions that could be considered as becoming part of an indicative list of sustainability characteristics. These include, by way of examples, avoiding prejudice and discrimination and respecting human rights (OPIC 2017, 2–3); promoting good health and nutrition (UK Department of International Development 2017, 13); and respecting working conditions and the rights of workers (Proparco 2017). The (China) Guidelines for Environmental Protection in Foreign Investment and Cooperation encourage MNEs to take into account the impacts of their activities on the environment and to take measures to mitigate possible adverse impacts (Ministry of Commerce 2013, Article 9).

- Standards of intergovernmental organisations that lay out the criteria — including to mitigate or to avoid possible negative impacts of any investment — that must be

21 Comprehensive Economic and Trade Agreement (CETA) between Canada, of the One Part, and the European Union and Its Member States, of the Other Part, Article 23.3 (14 Sept. 2016), http://data.consilium.europa.eu/doc/document/ST-10973-2016-INIT/en/pdf

22 Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and Its Member States, of the Other Part, Article 9 (2000), http://www.europarl.europa.eu/intcoop/acp/03_01/pdf/mn3012634_en.pdf; and SADC 2012, art. 15.1.

23 Draft Pan-African Investment Code, Article 17 (26 Mar. 2016), http://repository.uneca.org/bitstream/handle/10855/23009/b11560526.pdf?sequence=1

24 Reciprocal Investment Promotion and Protection Agreement between the Government of the Kingdom of Morocco and the Government of the Federal Republic of Nigeria, Article 14 (3 Dec. 2016), http://investmentpolicyhub.unctad.org/Download/TreatyFile/5409

25 Updated in March 2017 to reflect the decent-work related targets of the SDGs covering employment, training, conditions of work and life, and industrial relations: ILO 2017.

26 It should be noted that the guidelines (while voluntary) are backed up by the Investment Declaration and a Council Decision of the OECD that is binding in terms of the legal obligation to create National Contact Points.

27 See also Gestrin and Novik 2017, which also discusses briefly the OECD's Due Diligence Guidance.

28 Namibia Investment Promotion Act, s. 14 (d), (g) (2016), http://www.lac.org.na/laws/2016/6110.pdf

met before such an organisation can provide support for a particular project. For example, the performance standards of the International Financial Corporation and the Safeguard Policy Statement of the Asian Development Bank mention, among other things, the following criteria that could be considered as becoming part of an indicative list of sustainability characteristics: protection of community health and safety (IFC 2012, Performance Standard 4); and the need for environmental impact assessments and managing/minimising involuntary resettlements as some specific safeguard requirements that must be satisfied during project preparation and implementation (Asian Development Bank 2009, Appendices 1 and 2). The Asian Infrastructure Investment Bank's Environmental and Social Framework goes further to include labour, gender equality, community engagement, and specific text on climate change (AIIB 2016).

- Voluntary global business codes of international business organisations that lay out the contributions foreign investors can make to host countries and/or to mitigate or avoid possible negative impacts of their investments. For example, the International Chamber of Commerce (ICC) Guidelines for International Investment and the Voluntary Principles on Security and Human Rights mention a number of contributions that could be considered as becoming part of an indicative list of sustainability characteristics. These include, by way of examples, to educate, train, and motivate employees to conduct their activities in an environmentally responsible manner (ICC 2016, VII(1)(g)); and respect for human rights in security arrangements for projects (Voluntary Principles 2000).

- Voluntary standards of private institutional investors that lay out the contributions clients of such institutions can make to host countries and/or to mitigate or avoid possible negative impacts of their investments. For example, Boston Common Asset Management, ACTIAM and Domini mention the promotion of economic development programmes that benefit women, minorities or economically disadvantaged groups (Boston Common Asset Management 2016, 3); pollution controls and prevention of biodiversity loss (ACTIAM 2017, 3.4); and commitment to workplace safety (Domini 2016, 25).

- Voluntary industry codes that lay out the contributions that their members seek to make to host countries and/or to mitigate or avoid possible negative impacts of any investments. For example, the International Council on Mining and Metals (ICMM) Ten Principles for sustainable mining, the Standard for Sustainable and Resilient Infrastructure, the Equator Principles, and the Principles for Responsible Investment supported by the UN mention the following contributions that could be considered as becoming part of an indicative list of sustainability characteristics: minimising involuntary resettlement and compensating fairly (ICCM 2015, Principle 3); environmental, social and governance reporting (Equator Principles 2013, 5–6; PRI 2017); lowering of greenhouse gas emissions (Global Infrastructure Basel 2016, para 3.1.1), and expectations relating to environmental and social governance issues for service providers (PRI 2017, Principle 4).

- Voluntary company codes that lay out the contributions that the firms involved seek to make to host countries and/or to mitigate or avoid possible negative impacts of their investments. For example, the codes of Apple (US), BP (UK), Tata Motors (India), China National Petroleum Corporation (China), and Petrobras (Brazil) mention a number of contributions that could be considered as becoming part of an indicative list of sustainability characteristics. These include, by way of examples, supply chain control and standards (Apple Inc. 2017); responsible tax practices and avoidance of artificial tax arrangements (BP plc 2016); the economic development of communities of host countries (Tata Motors Ltd 2015, Core Principle 3); development of local industrial development and preferential purchase and use of local products and services (CNPC 2017); and protection of labour rights (Petrobras 2017).

- Voluntary models and codes of non-governmental organisations (NGOs) that lay out the contributions foreign investors can make to host countries and/or to mitigate or avoid possible negative impacts of their investments. For example, the International Institute for Sustainable Development's Model International Agreement on Investment for Sustainable Development and Amnesty International's Human Rights Principles for Companies mention, by way of examples, the following contributions that could be considered as becoming part of an indicative list of sustainability characteristics: contribution to the development objectives of host countries (IISD 2005, Article 11(c)) and promoting and upholding human rights standards (Amnesty International 1998, 4).

This paper seeks to identify key sustainability characteristics as mentioned in the types of instruments that have been listed.[29] At the same time, one needs to recognise that it is important to continue to develop, especially through applied research, evidence-based insights into the extent to which FDI contributes to the wider sustainable development objectives of host countries, and the policies that can maximise the positive effects of FDI and minimise any negative ones.[30] Governments, in particular, are interested in a deeper understanding of such issues as the role of FDI in advancing

29 If an extended research programme were to be undertaken, there is also an extensive literature on the contribution that FDI can make to economic growth and sustainable development and ways and means through which possible negative impacts of FDI can be mitigated or avoided. This literature would have to be researched using the lens of sustainability. For a specific discussion of sustainability characteristics, see Yan 2017.

30 See, in this context, Echandi 2017.

structural upgrading, fostering competition in domestic markets, catalysing the expansion of domestic productive capacities, deepening backward and forward linkages between foreign affiliates and local firms (including through support for supplier development programmes), accelerating productivity growth, increasing the transfer of technology and the establishment of an innovation infrastructure, expanding the pool of decent jobs (including by upgrading local skills and managerial competence), promoting environmental sustainability, and developing corporate responsibility programmes. Investors with an interest in ensuring the long-term value and returns of their investment and mindful of preserving their social licence to operate should also be interested in understanding these issues of concern to host countries and finding ways and means to address them.

It should be noted that the list to be established is deliberately characterised as "indicative." The reason is that determining what kind of commercially viable investment[31] makes the maximum contribution to the economic, social and environmental development of host countries depends on a number of variables, including the sector in which it takes place, the level of development of a host country, the size of a project, and whether it is, for example, market seeking, natural resource seeking, asset seeking, or efficiency seeking. Moreover, many governments have established priorities for their economies. At the same time, host country governments typically must consider trade-offs between various characteristics. The classic trade-off has been employment and the generation of income for environmental concerns, as one sees in the development of heavy oil sands or deforestation to establish agricultural plantations. The viability of such trade-offs for the future, however, is now in more doubt than ever if the SDGs are to be met.

IDENTIFYING SUSTAINABILITY CHARACTERISTICS

The analysis of the research on FDI sustainability characteristics that follows goes beyond a simple statistical analysis to understand their evolution in the broader context of the global understanding of what sustainable development requires. Looked at in this context, the analysis suggests that the evolution of these characteristics broadly mirrors a similar evolution of the global development and environment policies.

Historically, the global development policy manifested itself in the UN programmes adopted for the Development Decades. Parallel to that, the discussion of environmental issues began with the 1972 United Nations Conference on the Human Environment. The UNCED's Earth Summit in Rio de Janeiro in 1992 then set out, for the first time, a global agenda on sustainable development, and the World Summit on Sustainable Development in Johannesburg in 2002 subsequently led to the adoption of the Millennium Development Goals (MDGs). In 2015, the UN General Assembly then adopted the Sustainable Development Goals. The adoption of the MDGs and SDGs merged the separate strands of development and environment discussions and actions into the sustainable development agenda, a holistic set of economic, social and environmental goals.

The FDI sustainability characteristics traced in the research undertaken for this paper broadly show the development over time of a similar trajectory, with economic and social characteristics now appearing more frequently, and with more depth and texture, in the instruments reviewed. While they remain less represented overall, the timelines show a direction towards this more holistic conception.

More specifically, for the purpose of this paper, 150 instruments were examined to determine what kinds of contributions stakeholders expect international investors to make to the sustainable development of host countries, or international investors (or associations of enterprises) envisage themselves making to the sustainable development of their host countries. These instruments span the range of stakeholders identified earlier in this paper, and (as a rule) they address issues relating to MNEs/FDI in their relationship with host countries (including local communities). Moreover, many of these instruments were most likely formulated in the knowledge of similar instruments and, therefore, might well build on each other to a certain extent. While these 150 instruments are not necessarily representative of all instruments concerning all stakeholders, they do capture a wide range of instruments across key stakeholders in the FDI space and are, therefore, suggestive of what seems to be emerging regarding the contributions international investors can make to host countries.[32] (Annex II to this paper lists the instruments that were analysed for the preparation of this paper, and Annex III sets out the research methodology in full.) These instruments, in turn, were examined in terms of their provisions concerning the four dimensions of the definition of "sustainable FDI": economic development, social development, environmental development, and governance. For each of these four dimensions, a number of sustainability characteristic were identified (some representing an aggregation of various more specific characteristics), as set out in Table 1. These dimensions and

31 In cases in which incentives are given by host countries to foreign investors with a view to encouraging socially profitable but privately insufficiently profitable investment, maximising sustainability characteristics can be an important consideration.

32 It should also be noted that the instruments were not "weighted." In other words, for the purpose of this analysis, it did not matter whether a characteristic was mentioned in, say, an international investment agreement or an industry code.

characteristics do not reflect watertight divisions. Indeed, many overlap and many are mutually interdependent. Nonetheless, they are useful for present purposes.

Human rights issues form a more unique challenge for categorisation purposes, given a broad overlap in many instances between human rights and social, economic and environmental development. Labour rights are human rights, as is non-discrimination, the right to fair wages, indigenous people's rights, gender equality rights, and various rights related to resettlement and cultural heritage, the right to a clean environment, to economic development, and so on. In addition, human rights due diligence mechanisms have to cover many issues outside the human rights listed here. At the same time, not all of the sustainability characteristics fall within a human rights framework.

Those who approach responsible investment issues starting from a human rights perspective generally rely on a different type of categorisation in their analyses, often-time more legally based than based on a sustainable development analysis. But these approaches are not in any type of competition. Indeed, it is impossible to achieve sustainable development without advancing respect for human rights, or to advance respect for human rights without promoting the achievement of sustainable development. Thus, and bearing in mind that the categories used here are not meant to suggest water-tight divisions, these analyses are complementary and hopefully mutually supportive.

The quantitative analysis of the examination of the various instruments is summarised in Figure 1, "Matrix of sustainability characteristics of FDI," that maps the sustainability characteristics against groupings of instruments for each of the dimensions of the sustainable FDI definition presented in this paper.[33]

As an inspection of Figure 1(a–d) reveals, each of the four dimensions of sustainable FDI are strongly present in the great majority of the instruments that were examined, either by way of a general or specific reference. More specifically, at least two-thirds of the instruments of seven of the eight stakeholder groups mention economic and environmental sustainability, and at least two-thirds of the instruments of all stakeholder groups mention the social and governance dimensions. This shows a high level of awareness and inclusiveness of the various dimensions of sustainable FDI.

Moving from the level of the four dimensions of sustainable FDI to the more specific level of individual sustainability characteristics, Figure 1 reveals that every one of the sustainability characteristics listed in that figure is mentioned by at least one stakeholder group and, therefore, could be part of an indicative list of FDI sustainability characteristics. This may be helpful as, in the end, it is for stakeholders to decide which characteristics are most important for them to advance sustainable development in the context of specific projects.

Moreover, as Figure 2 suggests, it appears that additional characteristics have emerged and/or have become more frequent over time. As indicated earlier, this broadly tracks the evolution of global policies on development and the environment. This is particularly obvious for the environmental and social dimensions of sustainable FDI. Perhaps a surprising result is the attention given to employment, local linkages and technology transfer in instruments published prior to 2000.

33 In undertaking the analysis of the instruments, it might well be that some sustainability characteristics were overlooked in some of these instruments. If this occurred, it would make the results more robust.

TABLE 1:

The dimensions of sustainable FDI and their sustainability characteristics

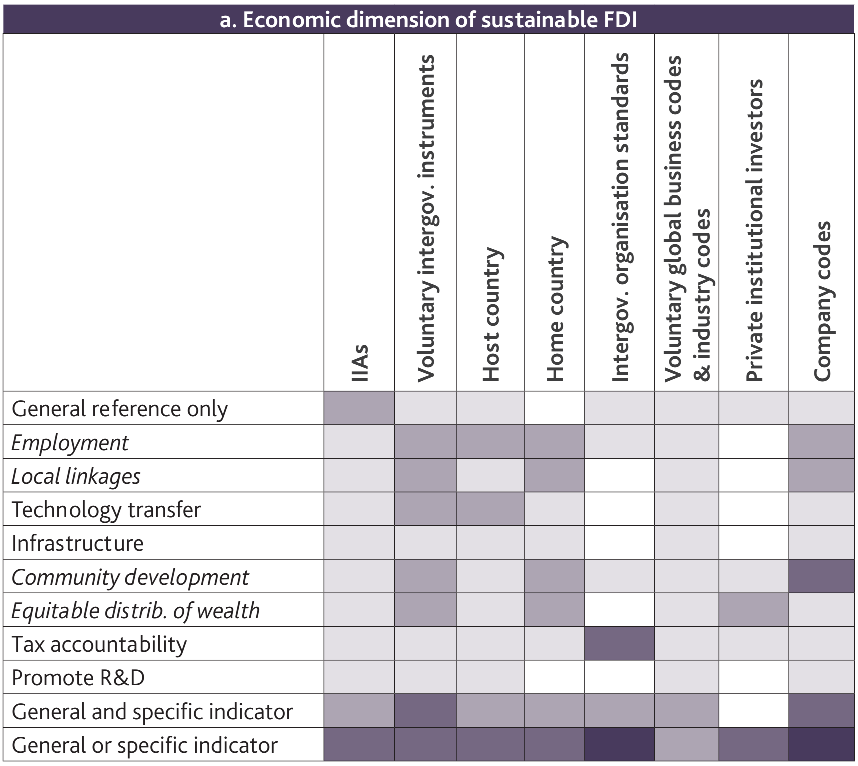
Source: Independent research conducted for this paper.

	Characteristic [a]
Economic dimension	• Employment[b] • Local linkages[c] • Technology transfer[d] • Infrastructure[e] • *Community development*[f] • *Equitable distribution of wealth*[g] • Tax accountability[h] • Promote research & development (R&D)[i]
Environmental dimension	• *Resource management*[j] • *Pollution controls*[k] • **Low carbon/greenhouse gases footprint**[l] • *Waste reduction*[m] • *Biodiversity protection*[n] • Climate change[o] • *Water*[p] • *Renewable energy*[q]
Social dimension	• **Labour rights**[r] • *Skills enhancement*[s] • *Public health*[t] • **Workplace safety**[u] • **Non-discrimination**[v] • *Fair wages*[w] • *Benefits*[x] • **Human rights**[y] • *Indigenous rights*[z] • *Gender*[aa] • **Resettlement**[bb] • *Cultural heritage protection/diversity*[cc]
Governance dimension	• **Transparency**[dd] • Local management[ee] • **Supply chain standards**[ff] • Consumer protection[gg] • **Stakeholder engagement**[hh] • *Anti-corruption*[ii] • **Legal compliance**[jj] • *Risk management systems*[kk] • Environmental management systems[ll] • *Environmental impact assessment/social impact assessment*[mm] • Human rights due diligence[nn] • Corporate governance[oo]

[a] Bolded characteristics are common characteristics and italicised characteristics are emerging common characteristics, as defined in the text.
[b] Job creation in the host country.
[c] Linkages with the local economy, such as procurement from local suppliers.
[d] Includes provisions that require MNEs to transfer technology to the host country, domestic partners in the host country, etc.
[e] Obligations on MNEs to develop/build infrastructure in host countries.
[f] Relating to commitments by MNEs to provide financial or other support for the development of communities in a host country.
[g] Includes, for example, references such as in paragraph 42 of the ILO Declaration: "Governments, especially in developing countries, should endeavour to adopt suitable measures to ensure that lower income groups and less developed areas benefit as much as possible from the activities of multinational enterprises."
[h] Including, for example, the obligation of MNEs to comply with tax laws or to prevent tax avoidance.
[i] Relating to commitments by MNEs to undertake research and development activities in the host country.
[j] Relates to the conservation of resources or other preservation techniques for the protection of resources.
[k] Includes obligations on MNEs to undertake their activities with due regard to reducing pollution etc.
[l] Reducing emission of greenhouse gases/carbon emissions.
[m] Includes reducing waste generation as well as management of disposal of waste.
[n] Includes protection of natural habitats, species and other biodiversity.
[o] Includes climate change related adaptation plans.
[p] Includes water pollution control, but also water uses, water allocation and water quantity issues, including ongoing technology processes to minimise water use on a continuing basis.
[q] Includes, among other things, the use of renewable energy in products and services or promotion of use of renewable energy in its activities.
[r] Includes, among others, freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; and the effective abolition of child labour.
[s] Includes, among others, skills development of workers so as to allow them to access better work opportunities.
[t] Relates to all aspects of the health of communities and commitments on the behalf of MNEs to adhere to laws relating to protection of health of communities in a host country.
[u] Relates to health and safety of workers.
[v] Relates to commitment by MNEs to undertake their activities in a non-discriminatory manner etc.
[w] Includes obligations to pay minimum wages according to national laws, fair wages according to international conventions, etc.
[x] Includes pension plans, other employee and social security benefits.
[y] Includes adhering to international human rights standards.
[z] Includes issues such free, prior and informed consent of indigenous communities.
[aa] Includes issues relating to women's participation in community engagements, equal opportunities to participate in the workforce, access to land rights, specific problems associated with women's access to utilities, etc.
[bb] In addition to aspects relating to the minimisation of resettlement, this characteristic also includes other important elements about how to do so, establishing compensation levels, whose responsibility it is, etc.
[cc] Relates to protection/preservation of local culture, cultural artifacts, etc.
[dd] Includes aspects related to disclosure of information (relating to tax payments, supply chain due diligence, contracts, corporate governance practices, human rights, etc.) by MNEs.
[ee] Includes, for example, the presence of local management and references such as the one contained in Article 12(2) of the Peru–Japan Free Trade Agreement that provides: "A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment."
[ff] Includes aspects relating to sustainable and responsible business practices vis-à-vis ethics, labour, health and safety, diversity, and the environment for supply chains of MNEs.
[gg] Includes, for example, no false or misleading advertisements.
[hh] Includes consultations with communities related aspects.
[ii] Includes compliance with corruption related laws, provisions against bribery of public officials, etc.
[jj] Relates to compliance with the laws and standards promulgated by host countries.
[kk] Includes, for example, Honda's Risk Management Policy (Honda is one of the companies reviewed in this research), which includes, e.g., aspects such as risk analysis and risk management structures within the group.
[ll] Refers to ongoing management frameworks for handling any environmental issues related to an investment/project.
[mm] Assessment procedures/framework mandated for investment/projects at inception.
[nn] Includes processes to identify, prevent and address adverse impacts on human rights.
[oo] Includes aspects such as transparency, accounting practices and corporate accountability. Does not include aspects related to board processes or executive compensation.

FIGURE 1:

Matrix of sustainability characteristics of FDI: by dimension, group of instruments and characteristic[a]



KEY:

0%

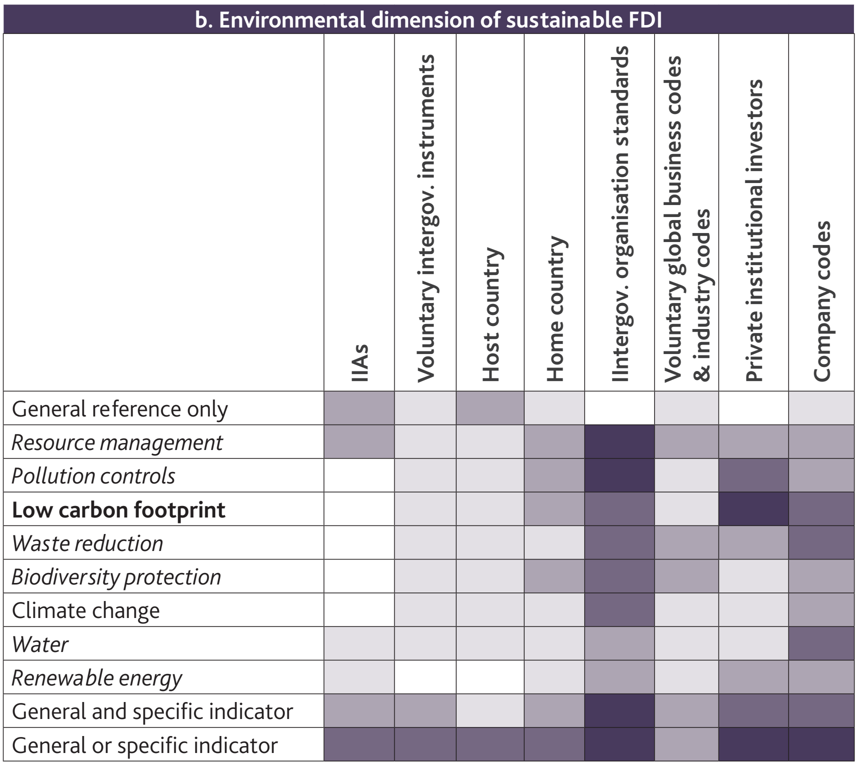
1% - 33%

34% - 66%

67% - 99%

100%

[a] Bolded characteristics are common characteristics and italicised characteristics are emerging common characteristics, as defined in the text.



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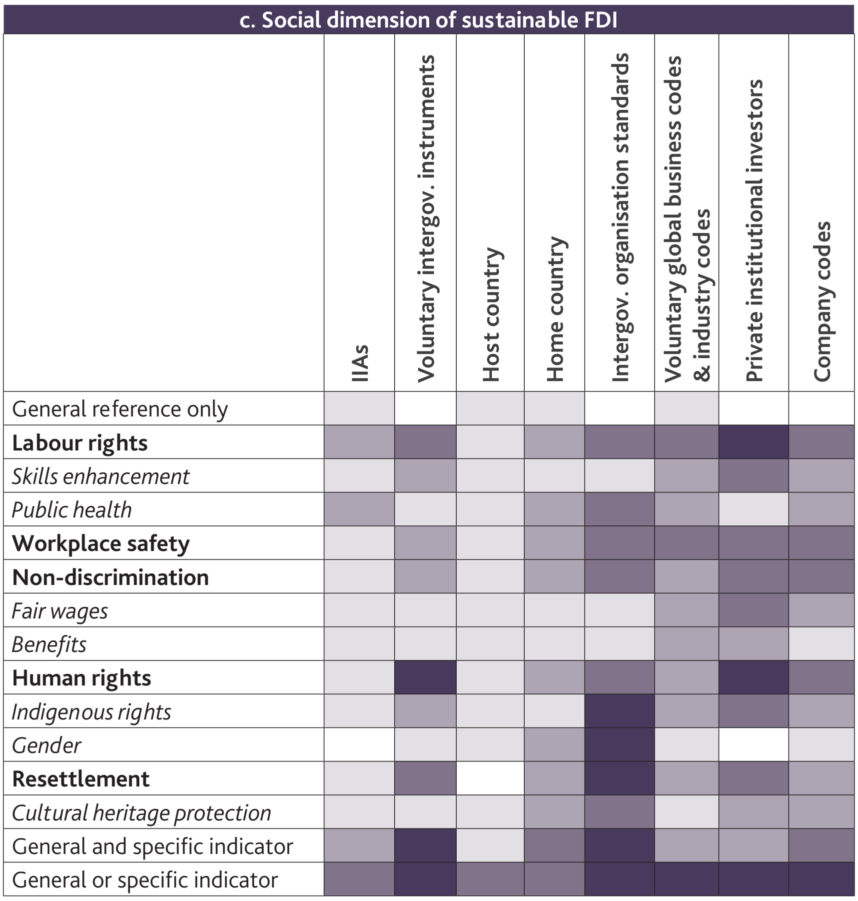
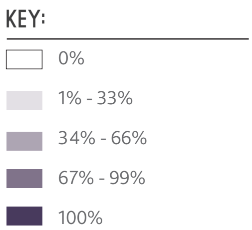
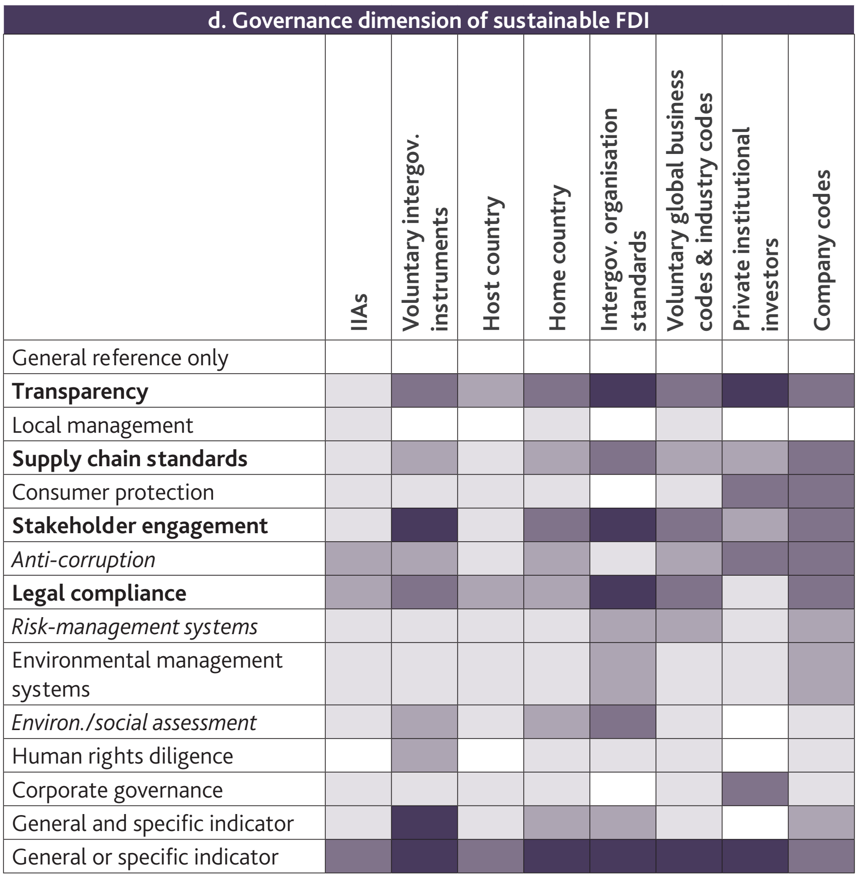
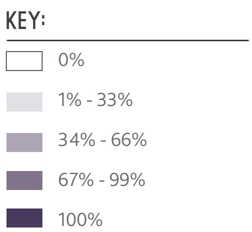








Source: Independent research conducted for this paper.

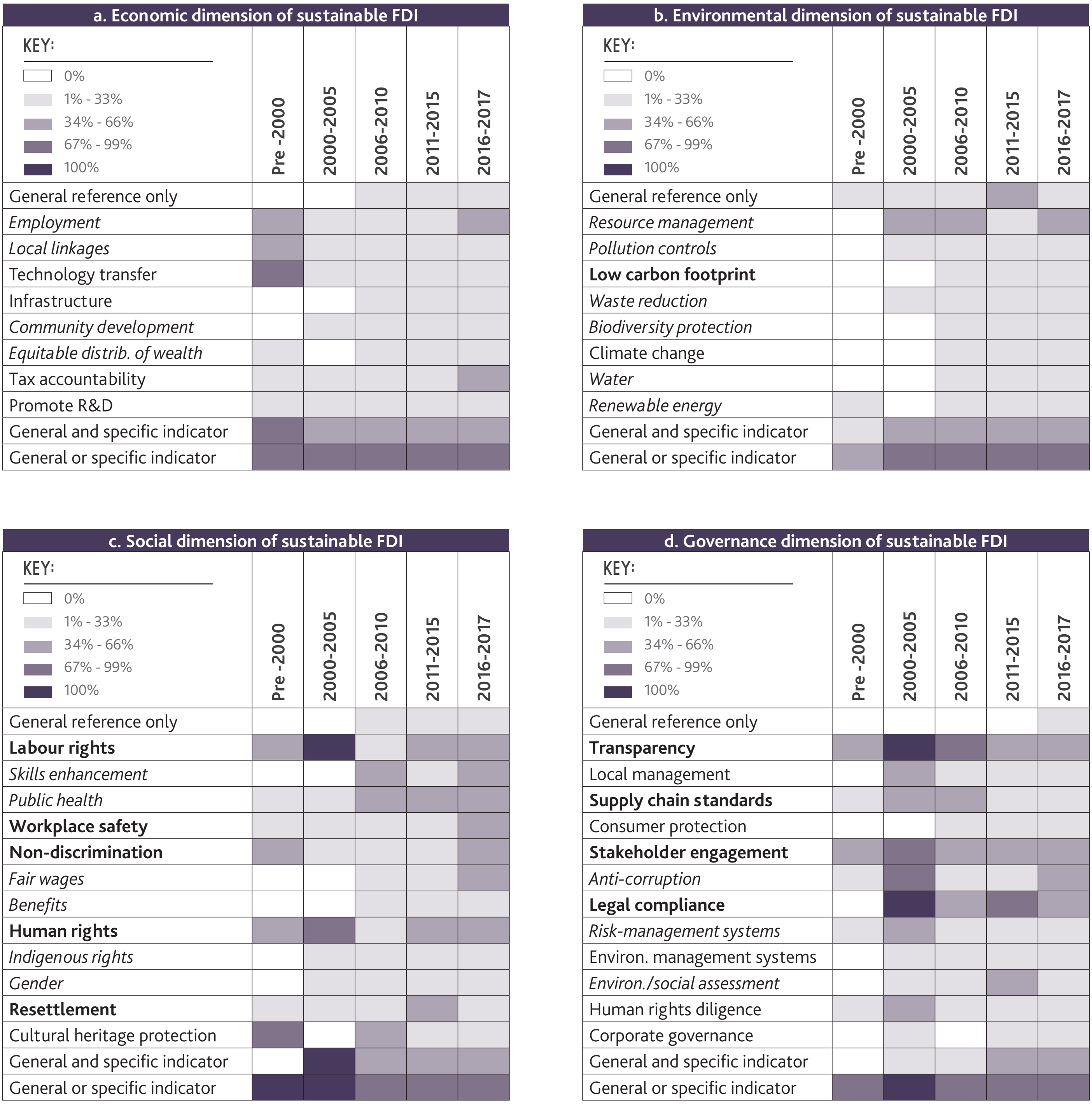
FIGURE 2:

Matrix of sustainability characteristics of FDI, by dimension and characteristic, over time [a b]

Source: Independent research conducted for this paper.

[a] This analysis excludes all company codes because most do not identify the date of publication. Similarly, Proparco (a home country standard) and Domini (a private investor standard) are excluded because they do not identify the date of publication. Because nine of the ten United Nations Global Compact principles were adopted in 2000, this year is used for that standard. The ICMM Ten Principles revision date of 2015 is utilised.

[b] Bolded characteristics are common characteristics and italicised characteristics are emerging common characteristics, as defined in the text below.



Going beyond this broad analysis, it emerges that there are a number of sustainability characteristics that have 50 percent or more coverage in at least four out of the eight categories of stakeholders/instruments (for example, at least half of the instruments categorised as home country, intergovernmental organisation standards, private institutional investors, and company codes mention the characteristic "low carbon footprint"). These "common FDI sustainability characteristics" (which can thus be seen as a core set of characteristics) are the following:[34]

- Low carbon footprint
- Labour rights
- Workplace safety
- Non-discrimination
- Human rights
- Resettlement
- Transparency
- Supply chain standards
- Stakeholder engagement
- Legal compliance

Any stakeholder including any of these common sustainability characteristics in any of their instruments could feel confident that these are widely accepted FDI sustainability characteristics. This conclusion is bolstered by the fact that different types of instruments — relating to different stakeholders in the field — included these common characteristics.

Beyond this group of common FDI sustainability characteristics, there are also a number of sustainability characteristics that are labelled here "emerging common FDI sustainability characteristics" (again in the sense of being increasingly widely accepted). These are characteristics that are present in at least one-third of the instruments examined in at least three of the eight categories of stakeholders/instruments. For example, 33 percent or more of the voluntary intergovernmental instruments, home country instruments and company codes identify "local linkages" as a desirable FDI characteristic. As can be seen from Figure 1, there are quite a number of other sustainability characteristics that meet this threshold of being mentioned in at least one-third of the instruments by at least three of the stakeholder groups.

More specifically, these "emerging common FDI sustainability characteristics" are the following:[35]

<u>Economic</u>
Employment
Local linkages
Community development
Equitable distribution of wealth

<u>Environmental</u>
Resource management
Pollution controls
Waste reduction
Biodiversity protection
Water
Renewable energy

<u>Social</u>
Skills enhancement
Public health
Fair wages
Benefits
Indigenous rights
Gender
Cultural heritage protection

<u>Governance</u>
Anti-corruption
Risk-management systems
Environmental/social assessment

Interestingly, this threshold of one-third or more of the instruments by at least three of the stakeholder groups is reached most frequently in the social and environmental sustainability dimensions, followed closely by the economic dimension. Even this lower threshold indicates a relatively high awareness and broader acceptance of certain FDI sustainability characteristics by various stakeholder groups.

What is noticeable is that none of the FDI sustainability characteristics in the economic sustainability dimension make it into the group of common sustainability characteristics (Figure 1), though they figure more prominently among the emerging common FDI sustainability characteristics. This may reflect the fact that the sustainable development discussion was previously particularly driven by developed countries and their civil societies, which have a particular interest in environmental sustainability and governance, and, in the case of social sustainability, by trade unions. On the other hand, a great number of IIAs, most of which involve developing countries, make general references to the furtherance of economic development. Since only a very small sample of these instruments (although especially recent ones) has been included in the present analysis, the overall picture may look different.

The general picture that emerges is of course influenced by a number of factors. To begin with, it needs to be recalled that only a sample of instruments was examined. Examining the full universe of instruments would likely yield additional characteristics and, therefore, a longer indicative list of FDI sustainability characteristics. Furthermore, additional instruments may also lead to a more frequent appearance of some of the characteristics already covered, potentially resulting in a higher percentage of instruments containing these characteristics and, therefore, moving the classification of these

34 It should be noted that this might well be a *minimum* list of common FDI sustainability characteristics as the present list is based on the examination of 150 instruments only. If additional (especially recent) instruments were examined and these contained a number of the characteristics already identified, more common characteristics could appear. Note, however, that the opposite could also occur (especially if older instruments were added), namely if the additional instruments do not contain the characteristics.

35 The consideration mentioned in the previous footnote applies here as well.

characteristics from, say, the 1–33 percent range of coverage to the 34–66 percent range. This is especially likely if additional instruments were tilted more towards newer instruments, given the general trends shown in Figure 2. Finally, a number of the instruments examined are not of a general nature but rather issue specific, industry specific or company specific. For example, the Voluntary Principles on Security and Human Rights are focused on safety and security principles that encourage respect for human rights and are designed specifically for extractive sector companies. In these instances, certain sustainability characteristics may not be relevant to the industries or companies involved and, therefore, skew the picture in favour of one sustainability dimension or another.

This last consideration is particularly obvious if one looks at the three instruments adopted by the United Nations on business and human rights, the ILO on social policy and the OECD on responsible business conduct in general (Figure 3). Among these three, the first two are subject specific (i.e., they deal, respectively, with human rights and social issues), while the third one spans the entire range of expectations that governments have vis-à-vis foreign investors, providing, in a sense, cross-cutting standards that constitute a chapeau for various other standards. The most substantial overlap among these three instruments can be found in the economic, social and governance dimensions. Importantly, the three instruments together complement and supplement each other; they cover a wide range of sustainability characteristics; and they are relatively strong, as they reflect a broad consensus among governments. Interestingly, moreover, there is also a substantial overlap with the International Chamber of Commerce Guidelines, suggesting a broad-based consensus between governments on the one hand and the global business community on the other as regards the contributions FDI and MNEs can make to sustainable development.

More generally, what emerges from this analysis is that there is a remarkable overlap in the types of contributions stakeholders expect international investors to make to the sustainable development of host countries, and international investors (or associations of enterprises) envisage themselves as making to the sustainable development of host countries.[36] And these contributions typically go beyond "do no harm" and call for efforts on the part of foreign affiliates to make an active contribution to sustainable development. Moreover, these expected contributions have become more specific over time. This suggests that, de facto, an international consensus exists across a range of stakeholder groups as to what sustainable FDI is, reflected in the common and emerging common sustainability characteristics of FDI. In addition, given the evolutionary trajectory of these characteristics, a number of the "emerging common FDI sustainability characteristics" might well "graduate" to become "common FDI sustainability characteristics" themselves in a few years. This could occur when new instruments are being formulated, including because such new instruments will most likely build on existing instruments or complement them.[37] Also in light of the developments in the recent past and the saliency of the SDGs, it is quite possible that, in the future, additional characteristics will be added and existing characteristics will become more specific. It is also possible that there will be a broader movement on what might be called the intensity of some characteristics, from voluntary to mandatory, as is already occurring in some sectors and in relation to the national implementation of business and human rights standards.

In fact, the "common" and "emerging common" sustainability characteristics reflect what there is already in various instruments (i.e., what is current practice)—they are the result of a stock-taking. But the question needs to be raised whether, in light of the SDGs, one should think about what there *should be*, in a forward-looking manner, to help advance sustainable development. This may become particularly relevant as countries pursue their national SDG priorities and, in their light, add specific characteristics that are particularly important for them, for example, hiring and skilling young people; contributing to vocational skill training; or the formalisation of workers in enterprises linked through business relationships.

In short, the consensus that is emerging is strong, as it includes a wide range of stakeholders and geographic regions, and it is underpinned by intergovernmental instruments that are based on a broad consensus of governments.

This convergence, in turn, has a strong signalling effect for all stakeholders seeking to promote sustainable FDI for sustainable development.[38] By providing broad-based precedents — and a common language — across stakeholder groups, the most widely accepted sustainability characteristics, in particular, provide not only guidance as to what is acceptable, but they also confer a certain amount of legitimacy to those stakeholders that use and promote them, especially if they are contained in widely accepted international instruments endorsed by governments. The convergence also constitutes a basis on which the interaction between international investors and host countries can build, for example, in the case of countries with weak legislation and in the negotiation of contracts.

Beyond that, the challenge is: how can one actively encourage the use of an indicative list of sustainability characteristics by the various types of users identified earlier and what mechanisms would be available to promote their implementation? This will be addressed in the next section of this paper.

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36 It is possible that the result, as far as MNEs are concerned, is influenced by the selection of the firms involved, namely firms that are among the largest MNEs worldwide (measured by their foreign assets) and that, by virtue of being members of the World Business Council for Sustainable Development and/or the United Nations Global Compact, are leading-edge companies as regards attention to sustainability issues.

37 See, e.g., the reference to the ILO MNE Declaration in the Reciprocal Investment Promotion and Protection Agreement between the Government of the Kingdom of Morocco and the Government of the Federal Republic of Nigeria.

38 Not every characteristic may be relevant for every user group, or some may be more relevant for some than for others, but some may be relevant for all (e.g., the observance of human rights). This reality is part of the observation that one size does not fit all, but rather depends on a number of factors mentioned in the text.

FIGURE 3:

Matrix of sustainability characteristics of FDI: three intergovernmental instruments, by dimension and characteristic

Source: Independent research conducted for this paper.

a. Economic dimension of sustainable FDI

	ILO MNE Declaration	OECD Guidelines	UNGPs[39]	Memorandum: ICC Guidelines
General reference only				
Employment	■	■		■
Local linkages	■	■		■
Technology transfer	■	■		■
Infrastructure				
Community development		■		
Equitable distrib. of wealth	■			
Tax accountability		■		■
Promote R&D		■		■
General and specific indicator	■	■		■
General or specific indicator	■	■		■

b. Environmental dimension of sustainable FDI

	ILO MNE Declaration	OECD Guidelines	UNGPs	Memorandum: ICC Guidelines
General reference only				
Resource management		■		
Pollution controls				
Low carbon footprint				
Waste reduction		■		
Biodiversity protection		■		
Climate change				
Water				
Renewable energy				
General and specific indicator		■		
General or specific indicator		■		■

c. Social dimension of sustainable FDI

	ILO MNE Declaration	OECD Guidelines	UNGPs	Memorandum: ICC Guidelines
General reference only				
Labour rights	■	■	■	■
Skills enhancement	■			■
Public health				
Workplace safety	■	■		■
Non-discrimination	■	■		
Fair wages	■	■		■
Benefits	■	■		■
Human rights	■	■	■	■
Indigenous rights	■			
Gender				
Resettlement			■	
Cultural heritage protection				
General and specific indicator	■	■	■	■
General or specific indicator	■	■	■	■

d. Governance dimension of sustainable FDI

	ILO MNE Declaration	OECD Guidelines	UNGPs	Memorandum: ICC Guidelines
General reference only	■	■	■	
Transparency		■	■	■
Local management				■
Supply chain standards		■	■	■
Consumer protection		■		
Stakeholder engagement	■	■	■	■
Anti-corruption		■		■
Legal compliance	■	■	■	■
Risk-management systems		■	■	
Environ. management systems		■		
Environ./social assessment	■	■		■
Human rights diligence	■		■	
Corporate governance		■		■
General and specific indicator	■	■	■	■
General or specific indicator	■	■	■	■

39 United Nations Guiding Principles on Business and Human Rights.

OPPORTUNITIES AND MECHANISMS TO ADVANCE THE APPLICATION OF SUSTAINABILITY CHARACTERISTICS

Given this list of FDI sustainability characteristics, in what contexts and through what mechanisms can one envisage them being used and applied? Again, the focus is on indicative examples: there is, in some senses, no limit as to the types of specific mechanisms or contexts that can be suggested or developed in this regard. Equally, it will be important in many instances for mechanisms to be specifically developed for very case-specific circumstances. For example, a community engagement process in a remote environment with indigenous peoples will be different from an engagement process in an urban environment. One-size-fits-all approaches will only go so far.

A second caveat to note is that measuring positive and negative sustainability impacts can be a difficult task. While environmental contaminants can be relatively easily understood and measured, all of the permutations of employment, taxation, local purchasing, and other social-economic benefits are more difficult to assess.[40] The more varied the applicable characteristics, the more complex the measurements are likely to become. In many instances, however, simply addressing the issues in a deliberate and specific manner may help improve the sustainability outcomes compared to not addressing them because full measurements may not be accomplishable at the beginning of a project. Addressing the suite of measurement tools that may be useful is beyond the scope of this paper.[41]

These caveats aside, there is still value in a discussion of user mechanisms and opportunities. This raises critical temporal issues or phases for the application of the characteristics (and especially the common and the emerging common FDI sustainability characteristics), generally defined here as (1) before specific investments are made; (2) decision-making at the stage of entering a host country; (3) decision-making while investments are operating; and (4) reviews of those decisions or operations after they have been made and implemented (whether investments continue to operate or not). In other words, the FDI sustainability characteristics can be relevant in designing international FDI policies long before governments consider any particular investments, when legislating on FDI, when designing and applying national admission criteria to particular proposals that may require approval, and in the development of local sustainable development benefit agreements where these are needed to enhance an investment. They may be equally relevant for reviewing the operation of investments, whether in environmental terms, employment terms or local linkages, etc., or related conduct of governments, in a dispute-settlement context. They ought, therefore, to be understood as relevant to the entire life-cycle of a given investment and its relationship with a host country government and local communities.[42] They could be relevant, for example, in such activities as aftercare services for investments, for institutions such as ombudspersons and thematic working groups between host and home country governments (which can also invite international investors to participate in their deliberations), and corporate social responsibility (CSR) provisions in IIAs.[43]

Within the context of applying the sustainability characteristics, one also finds different stakeholder perspectives. As previously identified, these include treaty negotiators; negotiators of voluntary intergovernmental instruments; host and home country governments (including their IPAs, both national and subnational, as well as communities); arbitrators; the business community; and civil society. Perspectives on the appropriate goals and balances in relation to any given investment may vary widely, and quite legitimately so, among stakeholders.

PRE-INVESTMENT USES OF THE CHARACTERISTICS

International investment agreements are a major element in today's global FDI policy framework. One of the most controversial elements of these agreements is the lack of a clear linkage between sustainable development, and hence sustainable FDI, to the object and purpose of these agreements. This lack of a linkage is reflected in the

40 The complexities can be seen in one sector, mining, in relation to employment, taxation and local purchasing in a recent study, Cosbey et al. 2016.

41 This is, however, an important task — businesses and IPAs need metrics. As one roundtable participant said: "What gets measured, gets done." There are, of course, various efforts to measure the performance of firms in regard to various indicators (such as, e.g., governance, due diligence, governance mechanisms, transparency); see e.g., the Corporate Human Rights Benchmark, https://www.corporatebenchmark.org

42 Measuring impacts on a life-cycle basis may also add complexity to the measurements processes already alluded to. To the extent this is achievable, a comprehensive understanding of the full impacts can be obtained. Even if it is not fully achievable, however, appropriate legal direction or policy guidance can be established to promote positive results.

43 Some of these mechanisms are contained in the recent Brazilian investment treaties.

definition of investment, the absence of provisions setting out investor rights and responsibilities, and the often weak provisions defining government rights to regulate. In each of these instances, the analysis set out earlier shows how more modern agreements have already begun to include some of the characteristics described, giving investors a clearer sense of the responsibilities they need to meet when planning an investment. This establishes some precedents to ensure that a clearer, holistic objective is articulated for investment agreements that could, expressly or by reference, promote investment for sustainable development. In pursuing this objective, governments can do so in the knowledge that a number of the common and emerging common sustainability characteristics are widely recognised among various groups of stakeholders. Indeed, the existing precedents already begin to scope out obligations for investors as well, crossing a legal threshold that invites them to be expanded upon in keeping with the broader set of characteristics.[44]

Including sustainability characteristics into a treaty can be done by implication (such as a provision on anti-corruption); by direct statement (such as seen in the so-called Salini test, to be discussed, which has since been referenced in fact in many bilateral investment treaty texts[45]); or by reference to a document that sets out a series of characteristics that the negotiating parties adhere to. Examples of such references are already seen in relation to, for example, the use of the OECD Guidelines as a source of CSR-type responsibilities of investors.

Beyond that, a growing number of IIAs now include review mechanisms that either allow for, or require, the parties to review progress under their agreements in terms of investment flows and their impacts. The characteristics can provide assistance here as well, to assess impacts from a sustainable development perspective. Measurement tools would be most helpful in this task.

A major potential opportunity for investment negotiators that may or may not become available in the future concerns an international agreement on investment facilitation.[46] Here, one can envisage the characteristics being used to answer the critical questions: for what purposes is investment being facilitated and, in particular, how can sustainable FDI be given preference? The characteristics can provide a strong, evidence-backed set of sustainability guidelines, or even expectations, for this purpose, moving investment facilitation into a more purposeful, development-oriented rather than purely investor-centric direction.

A number of international organisations, especially the ILO and the OECD, have a long history of addressing the expectations that are placed on investors and their investments. Although governments have adopted instruments in the context of these organisations, they are voluntary. Importantly, however, they include international compliance monitoring processes that allow their effective implementation. More specifically, the ILO's MNE Declaration, as a result of its 2017 revisions, provides for a set of operational tools, including regional follow-up mechanisms, tripartite appointed national focal points to promote the instrument, ILO technical support in all its member states, ILO company–union dialogue facilitation, and a procedure for the examination of disputes concerning the application of the declaration (see ILO 2017, Annex II). The ILO MNE Declaration reflects many of the social sustainability characteristics identified earlier.

The OECD Guidelines set out a range of expectations regarding the behaviour of MNEs. The guidelines include a unique implementation and grievance mechanism, the National Contact Points (NCPs). Cases (known as "specific instances") can be brought to the National Contact Points by individuals, communities and civil society groups (particularly trade unions and NGOs) against MNEs and their affiliates for non-observance of the guidelines.[47] The National Contact Points seek to find solutions via mediation. About half of the cases accepted for meditation since 2011 have led to some form of agreement between the parties. If agreement

44 See, e.g., the Reciprocal Investment Promotion and Protection Agreement between the Government of the Kingdom of Morocco and the Government of the Federal Republic of Nigeria. There are also examples of this dating back to the 1980s: Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organisation of the Islamic Conference (Baghdad, 5 June 1981, entered into force 23 September 1986), http://investmentpolicyhub.unctad.org/Download/TreatyFile/2399, and the Unified Agreement for the Investment of Arab Capital in Arab States, signed 26 November 1980 in Amman, Jordan, during the Eleventh Arab Summit Conference, and entered into force 7 September 1981.

45 See, e.g., the Draft Pan-African Investment Code, Article 4.4: "In order to qualify as an investment under this Code, the investment must have the following characteristics: the substantial business activity according to Paragraph 1, commitment of capital or other resources, the expectation of gain or profit, the assumption of risk, and a significant contribution to the host State's economic development." The Morocco–Nigeria BIT specifies in Article 1.3: "Investment means an enterprise… which contribute sustainable development of that Party [host country] and has the characteristics of an investment involving a commitment of capital or other similar resources, pending profit, risk-taking and certain duration." And the Canada–EU Comprehensive Economic and Trade Agreement (CETA), Article 8.1: "**investment** means every kind of asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, which includes a certain duration and other characteristics such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk." (Note, however, that this definition leaves out the contribution to the development/sustainable development element.)

46 An international agreement on this subject was proposed in Sauvant 2015. See also Hees and Cavalcante 2017.

47 While voluntary, the OECD Guidelines, when applied by National Contact Points, can have serious consequences. Thus, in an instance raised before the Canadian NCP regarding China Gold International Resources Corp., the contact point concluded: "As the Company did not respond to the NCP's offer of its good offices, the Company's non-participation in the NCP process will be taken into consideration in any applications by the Company for enhanced advocacy support from the Trade Commissioner Service and/or Export Development Canada (EDC) financial services, should they be made. As the goal of both the NCP and the [Canadian] CSR Strategy is to encourage improvement in terms of a company's use and integration of CSR standards and best practices, should the Company wish to be able to access future support of this type, it will need to submit a Request for Review to the NCP, or show the Government of Canada it has engaged in good-faith dialogue with the Notifier." See http://www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-gyama-valley.aspx?lang=eng

cannot be achieved, the NCPs make recommendations to the companies. Moreover, there is a provision in the Commentary on the Procedural Guidance allowing an adhering country, the Business and Industry Advisory Committee, the Trade Union Advisory Committee, and OECD Watch to make a substantiated submission about a National Contact Point not fulfilling its procedural responsibilities to the OECD's Investment Committee. The same entities can also ask the Investment Committee for clarifications about the guidelines.

The sustainability characteristics may help provide a reference point for the interpretation of the ILO MNE Declaration and the OECD Guidelines (e.g., when general concepts need to be clarified as to what they cover), and assist in their periodic updating. This could include the interpretation and application of these instruments by NCPs when investigating complaints. Other organisations, too, like UNCTAD and the Commonwealth, may be able to utilise the set of FDI sustainability characteristics in ongoing work developing their investment and sustainable development frameworks. These in turn help provide a deeper policy-based bridge to formal negotiating processes.

Global business associations also operate in the pre-investment space, for example the World Business Council for Sustainable Development. The articulation of a growing consensus around the common FDI sustainability characteristics, and the ongoing emergence of additional characteristics, can help such organisations to continue to show a sense of leadership and progression towards a more holistic understanding of their objectives and work products. In turn, the further articulation by such organisations of general sustainable development standards in the FDI context, as well as sector-specific standards, can rely on the characteristics for assisting in their own evolution.

INVESTMENT DECISION-MAKING AT THE STAGE OF ENTERING A HOST COUNTRY, BY GOVERNMENTS AND INVESTORS

In many cases, the critical point in setting the direction of an investment comes in the formation of the investment design by investors and admission of the investment within host countries' FDI regulatory frameworks. In many instances, especially for larger-scale and natural resources projects, their governments may have set out criteria regarding the sectors in which investments may be made, and for the approval of these investments. It is thus important to canvass a range of issues in relation to which the sustainability characteristics may be useful in this context.

Moving closer to the decision point and operational issues for investors and governments, one can identify the role of **host country governments and investment promotion agencies** in promoting investments as part of the "life-cycle" of a government's interaction with potential investors. Here, a significant opportunity for the use of the FDI sustainability characteristics arises for IPAs and ministers tasked with attracting FDI and benefiting from it as much as possible. First and foremost, of course, is the role they might play in solidifying the already growing move away from promoting simply the *quantity* of new investment towards focusing on the *quality* of such investment. The 2016 Namibia Investment Act, referenced previously, shows such an approach in action. The development of investment acts that set out such criteria is a trend that should be encouraged, whether in the form of an express sustainable FDI test or the more traditional form of a net benefit test. The FDI sustainability characteristics would assist in this respect.[48] In fact "investment" in such instruments could be defined as "sustainable investment."

A major element of formulating sustainable development-oriented investment policies, as well as related laws and regulations, involves seeking a broad consensus within countries on what should be considered as quality investment for sustainable development. Of course, doing so requires recognition that national development priorities and related FDI strategies might be different, depending on the specific situation of each country, including its opportunities to attract FDI. The structured FDI sustainability characteristics identified in this paper — and especially the common and emerging common characteristics — can help support a constructive dialogue towards such a consensus, by providing information on what is widely recognised in various instruments and contexts in this respect. They might also help support the identification of what background studies might be needed to promote better-informed choices that are specific to local needs.

Once the laws and regulations are set for general application in a national context, they can help IPAs attract the type of investment governments seek, by focusing not just on specific sectors, but on specific qualities of an investment.[49] IPAs can, for instance, present projects to investors that meet the sustainability characteristics; they can designate (some of) the characteristics as required qualifications for investment support (including incentives); and they can assist investors that are already established in moving towards stronger sustainable projects (e.g., by moving them in the direction of more environmentally friendly operations or helping them to find suppliers). In turn, agencies responsible for assessing potential investors for admission (in some cases, these are the

48 In fact, screening takes place in multiple forms in many countries today. This includes more limited tools like environmental impact assessments and social and environmental impact requirements, net benefit tests and economic development tests. The role of a broad set of characteristics that is made specific to each country's individual needs can help create a more consistent approach to this process, while still ensuring that individual needs are addressed.

49 It would most likely be too ambitious to expect IPAs to switch from attracting all FDI to attracting only sustainable FDI. However, it may be possible for governments to establish a kind of quota system, i.e., require their IPAs to attract a certain percentage of FDI that is characterised by a certain combination of sustainability characteristics. See Loewendahl, Kollinsky and van den Berghe 2017.

IPAs, in many others these are specific ministers or separate ministers with specific decision-making powers, especially in natural resources) can verify the actual ability of investors to implement the characteristics in a manner consistent with national policy under relevant national laws. This can include rules to prevent harm, as well as rules to promote positive impacts. Moving towards a strategy that puts more emphasis on sustainable FDI is of course not easy. It requires strong direction based on a clear long-term commitment from the highest levels of government.

In any event, several of the sustainability characteristics are contained in national laws on environmental, social and economic impact assessments, and they can, and should, feed into a review and update of such processes when appropriate. This relates both to the content of these rules, and to thresholds and sectors that are often set for reviewing different types of projects based on the potential scale of impacts.

One can also foresee the role of the sustainability characteristics in amplifying certain issues, in particular, the use of the characteristics in national decision-making in relation to FDI. This would reflect the critical linkage of FDI to SDG 1, the reduction of poverty. This is something one already sees in the context of the extractives sector, where local purchasing and related economic issues are often part of the debate around new mines and oilfields, and in the agricultural sector. But it may be no less important in other sectors, such as retail, construction and infrastructure. Again, one sees this as an element already in net benefit tests and in large government procurement contracts. The characteristics can assist in supporting not just the legitimacy of this approach and acting as a basis for it, but also further the basic principle that this must be a cooperative relationship between investors, governments and local communities for such efforts to succeed.

One might also consider the role of the characteristics in assessing the nature and utility of investment incentives when these are used. While there is a growing body of literature that suggests the need for caution in the use of investment incentives,[50] all governments use them to attract FDI and, often also, to improve its contribution to their economies. Hence, reorienting at least some incentives towards increasing sustainable development benefits, using the sustainability characteristics as a basis, could encourage more beneficial impacts.[51]

When one moves from uses of general application of the characteristics, such as developing laws and regulations or setting inward FDI policy, to the specific application of the laws, regulations and policies to concrete proposed investments, the roles of different stakeholders are likely to become more defined. It is increasingly common practice for governments to make decisions approving the initiation of large investments with significant potential economic, environmental or social impacts dependent on the result of impact studies and public consultations in the locations where the investments are planned. The characteristics can provide a common basis for such processes, allowing the most pertinent local issues to be highlighted from a broad-based internationally accepted set of FDI sustainability characteristics.

In some cases (especially mergers and acquisitions), net benefit tests are undertaken not just to assess positive and negative impacts at the community level, but also in national economic terms. The nature and scope of these tests may vary from sector to sector, or they may be based on the potential size of impact. And the relevant laws may vary from environmental and other impact assessments to investment laws more broadly applying a net benefit type of test. The characteristics can create an opportunity for harmonising these types of screening processes with a more consistent set of characteristics that reflects the full scope of the issues raised within them.

Over the past five to six years, the scope of these assessments has been extended to human rights issues, following the issuing of the UN Guiding Principles on Business and Human Rights, which are being implemented through new regulations by many governments. Given this evolution, it is not inconceivable that in the future such assessments could be extended to a systematic and widespread consideration of the impacts of (at least large) FDI projects on economic development and, more broadly, poverty reduction. The OECD Policy Framework for Investment, for instance, raises the question of "poverty impact assessments" in the context of infrastructure projects (OECD 2015, 98). It may therefore well be that a comprehensive set of FDI sustainability characteristics will promote a growing emphasis on economic and social development issues, in addition to human rights issues. This has been mentioned with reference to local purchasing, but issues related to quality and equality in employment, for example, are also increasingly addressed.

In all these types of situations in which assessments are undertaken on whether or not to permit the entry of a potential investment (or under what conditions it may enter) governments leave themselves a significant degree of discretion as to the conduct of the process, public input into the process and final decision-making in the process. But investors provide the critical factual and analytical inputs in most cases, and the sustainability characteristics can assist in lining up the expectations of government, business and the local community in terms of the necessary breadth of an assessment in any given instance.

A key result of an assessment process may be the adoption of longer-term management plans for economic, environmental, social, and human rights impacts. These plans then become binding on investors and set clear (one expects) rules in place

50 See, most recently, Tavares-Lehmann et al. 2016.

51 See, for example, IMF et al. 2015.

for investors to comply with, often going beyond the generally applicable law. These plans will often reflect both sides of the sustainable FDI characteristics: avoiding harm and providing sustainable development benefits. The characteristics can assist in assessing what is needed in such plans, by way of amplifying or providing assistance to interpret the underlying legal requirements.

In all these cases, there are judicial or administrative review processes that can be engaged, and often are engaged, to review both positive and negative decisions by the appropriate authorities (see, e.g., OECD 2008; Abaza, Bisset and Sadler 2004). Indeed, for large projects with complex implications and impacts, it has become almost routine to see such challenges after a decision is made. As a result, the full process may take two to three years to complete, or more. For smaller investments (e.g., in the service sector), to take an opposite example, the assessment process will be likely to be much less demanding and the time frame much shorter, if it needs to take place at all.

Under these conditions, rules that seek to impose short decision deadlines on governments of 30-60-90-day periods, for example, may impose undue and unrealistic constraints on the ability of governments fully to assess and test the information provided for a large project prior to making an informed decision. Tight deadlines also may impact the role of informed public participation in these processes, a critical element in complex natural resource, infrastructure and other major projects. More generally, what may be appropriate for a small project in, say, the services sector, may not be reasonable for a large project in the natural resources sector — and vice versa. Ensuring that adequate human and technical resources are available to government officials reviewing investment applications is essential for objective and informed decision-making.

In many instances today there are, in addition to specific criteria for the admission of an investment, additional processes in place to encourage higher levels of contributions to the sustainable development of host countries. Tax incentives, for example, are increasingly used to support employment, local purchasing and related training programmes (Nigeria Investment Promotion Commission 2016). Local purchasing programmes that can increase multiplier benefits of investments may see tax credits attached to them, as may research and development projects in a host country. These programmes are often set out in performance agreements between governments and investors and/or communities and investors (often referred to as Community Development Agreements when the community is directly engaged in the process) that seek to engage cooperative processes to maximise the local development benefits of any given investment. Today, governments are including such requirements directly into their legislation, as part of the minimum entry criteria, with or without incentives to support them. Employment training and local purchasing of goods and services are frequent examples of this, especially in the natural resources sector. But these issues are no longer reserved just for the extractive industries: tourism, transportation, large retail investments, and others are equally likely to attract variations on this theme.[52] All of these approaches could make use of the sustainability characteristics.

More generally, what is important here is for host country governments to define a clear decision-making role in a transparent process. No investors under a proper environmental impact assessment process or net benefit test or similar assessment are guaranteed the result they seek. The discretion to accept or reject a proposal subject to such tests rests with governments, and must be clearly expressed as such in the governing laws. The adoption of criteria is a first step in such a process.

For potential **international investors**, an indicative list of FDI sustainability characteristics can provide a checklist to assist them in identifying the sustainable development needs of the host countries in which investments might be made. "Assist" is the operative word here, as investors must also be sensitive to the specific needs and contexts of the individual countries and communities and physical environments into which they are proposing to invest. The costs of applying the characteristics may be a negative factor for some investors, unless those costs are generally evened out by a need to apply the characteristics to any investment made, regardless of whether at home or abroad. However, the knowledge that a company understands and seeks to apply the characteristics can also be a selling point for a company in terms of reputational benefits and reduced risks. In those instances in which a social licence to operate is essential, a company's record in applying the characteristics will undoubtedly become a factor for host countries and local communities. The more extensive the potential impacts and benefits/costs of a proposed investment, the more relevant the application of a wider range of the characteristics will become.

When large investment processes are associated with community development agreements and/or community approval requirements or the right to "free, prior and informed consent of indigenous peoples,"[53] the characteristics should assist investors in understanding the legitimacy of many types of cultural, environmental and social demands of these communities, and thus improve corporate understanding of the need to address such issues at all levels.

In addition, it is not far-fetched to consider here the use of the common (or even emerging common) sustainability characteristics in establishing a corporate certification

52 The Namibian Investment Act 2016 provides an example of this, with an explicit allowance for the Minister to negotiate a performance agreement with an investor when that potential investment is subject to a review by the Minister. These investments will be set out in regulations not yet made public.

53 See UN Declaration on the Rights of Indigenous Peoples, ILO Convention 169 on the Rights of Indigenous Peoples, International Financial Corporation Performance Standard 7, all reviewed in ILO 2008.

programme for MNEs that routinely and transparently apply them in their operations, wherever situated.[54] This could lead to a novel way to assist governments in making investment decisions, and open a number of opportunities for governments to use a well-regarded certification scheme as a criterion for government procurement or investment licensing, or government auctions for various natural resources investments. The obvious analogy here is the Forest Stewardship Council certification for certain goods and the ISO 9000 and 14000 certification standards for companies, as criteria.

Other actors in an investment decision-making context include financial institutions. In the finance sector, reference was already made to the Equator Principles playing a large role in financing decisions. The International Finance Corporation applies its own standards as well. In both instances, the characteristics may be of value in the periodic review of these standards, as well as in their application in any given context.

Home country governments — ranging from official outward investment insurance agencies to IPAs whose briefs include outward FDI — also could benefit from the use of the FDI sustainability characteristics. While home countries users such as these are ancillary to, and not determinative of the role of host country government processes in relation to a proposed investment, they can have major impacts on the design and bankability of projects. Indeed, home country governments are in a pole position to promote certain requirements that developing countries, especially least developed countries, may not be in a position to do.[55] The role of home countries provides, therefore, an important potential opportunity to use the sustainability characteristics, and indeed could determine the fate of a project. Further, the multiplication of processes can assist in ensuring a robust and more independent result from a broad sustainable development perspective. Support by outward investment insurance agencies and by foreign embassies[56] in host countries could well be made conditional on potential investors conforming with sustainability characteristics most germane to a given sector and location.

Home countries also have a direct role in setting operational rules for their own state-owned enterprises. This can be done relatively easily through policy and regulatory means. For example, the Council on Social Responsibility for Sustainable Development of Chile[57] established a requirement of corporate sustainability reporting for state-owned enterprises in 2013. The sustainability characteristics can serve as a signpost for developing such an approach. The number of state-owned enterprises that are active global investors makes this a step that could have a significant impact.

DECISION-MAKING WHILE INVESTMENTS ARE OPERATING

Operation-oriented decision-making during the life-cycle of an investment is generally the responsibility of the investor. (This differs from the review of such decisions after they are made, which may involve various processes and stakeholders, as discussed in the next subsection.) It is during this part of the life-cycle of an investment that the characteristics and expectations for admission are translated into action by the investor. Several sources of law may apply to such action, including the generally applicable domestic law and (in the case of contracts) the agreed management plans flowing from the impact assessments or net benefit tests. Other sources may also provide reference points for corporate conduct, including codes promulgated by industry associations that tend to be more sector specific and operationally oriented.

In addition, as already noted, one sees an increase in the role of company–community agreements, particularly in the natural resources sector. These agreements often detail specific sustainable development related obligations of companies towards local communities, usually aimed at maximising the social and economic benefits — the critical economic development goals — of foreign investments.

Many instruments set specific legal obligations for investors during their operation and thus impact the scope or nature of investors' decision-making. Accordingly, the key responsibility for any decisions rests with investors. Where sustainable development was until recently often seen as part of the (voluntary) CSR role of companies, sustainability characteristics are increasingly being turned into post-admission operational obligations on investors. These may come in the form of obligations under applicable investment laws or sectoral codes such as in the extractive sector, performance agreements with governments, community development agreements, or investment contracts with governments. Often thought of as mainly associated with the extractives sector, they are now moving to other large-scale projects in other sectors.

54 Who, how and on the basis of what criteria such certification might be done are, of course, issues that would need significant discussion and development.

55 The issue is one of capabilities: it is not only home countries that may have better capabilities to promote certain characteristics, but also institutional investors (interested in making sure that their funds are as safe as possible) and business organisations vis-à-vis their members.

56 Included as a remedy for companies that fail to participate in processes to examine or redress community and civil society issues in Canada's new policy on Canadian extractives companies operating abroad. See Global Affairs Canada 2016. As noted elsewhere, there is also an increasing reliance on the UN Guiding Principles on Business and Human Rights and the OECD Guidelines as mandatory requirements for financing by national and international development funding institutions and export credit agencies.

57 See further at http://consejors.economia.cl/

A globally recognised set of FDI sustainability characteristics will likely strengthen the expectations of CSR performance, whether in a voluntary or mandatory context. These characteristics add texture and longer-term depth to company decision-making and help set out expectations above and beyond the legal obligations on a company — expectations as set out by governments, investors and other stakeholders. This has been the traditional role of business standards, as well as international standards, such as the ICC's Guidelines for International Investment, the ILO's MNE Declaration and the OECD's Guidelines. Today, some governments, such as Canada's, take these voluntary processes further by removing consular and other support services from Canadian companies that do not meet, on an ongoing basis, the requirements set out in such instruments.[58] And, as has been seen, governments are also incorporating more references in IIAs either to CSR generally (including references to, e.g., the OECD Guidelines) or to a range of specific CSR activities, thus enhancing their legitimacy while hardening purely "voluntary" conduct into legal obligations.

REVIEW AND MONITORING OF INVESTMENT DECISIONS AND OPERATIONS

The issue of the review and monitoring of decisions by governments or investors (or their investments) after investments have taken place and throughout their operational life-cycles is becoming more complex, as more stakeholders enter the investment and sustainable development arena. The review of decisions prior to an investment has already been discussed. The review and monitoring of government and company decisions during (or sometimes after) the operation of an investment is another matter.

Traditionally, the focus here has been on legal compliance and enforcement, managed by host country government enforcement agencies. These processes of enforcing compliance with the applicable law (or contract) will remain the predominant form of monitoring company decisions, and will remain the primary responsibility of governments. Without in any way limiting the importance of the agencies involved, it is a growing reality that the sustainable development requirements of investments are also being reviewed through additional mechanisms that supplement government enforcement processes. This is especially so for larger projects in the natural resources and infrastructure (including energy) sectors.

Importantly, these mechanisms increasingly include companies engaging in specified processes with communities and/or government agencies. Companies may engage communities through internal grievance mechanisms, a process made well known by the UN Guiding Principles on Business and Human Rights,[59] but are also included in other international standards such as the ILO's MNE Declaration[60] and the International Bar Association's Model Mine Development Agreement.[61] The concept of a "grievance mechanism" is simple: companies should have a defined process for ensuring that community complaints with respect to their operations can be brought to them by any member of the community. ("Community" can include individuals, local NGOs, local governments, and in some contexts also employee representatives or trade unions.) This allows for the resolution of complaints at the ground level, at the lowest cost to all concerned. While some of the first discussions of grievance mechanisms took place in relation to the process leading to the UN Guiding Principles on Business and Human Rights, it was and remains widely understood today that effective grievance mechanisms cannot be limited to just one category of issues, but must capture the essence of the complaints between a community or individuals and the company involved; thus the mechanism must be broadly based.

Grievance mechanisms address specific complaints. However, grievance mechanisms do not currently necessarily address broader issues of companies' compliance with their obligations to limit the negative impacts and maximise the positive sustainability impacts of their investments, although they could be expanded to do so. This can be approached as a narrow government enforcement issue, as noted. However, there is also a growing understanding of a role for communities in this process, supported directly by companies providing annual reports on the implementation of their obligations on economic, social, environmental, and governance issues, which one might expect increasingly to recognise the breadth of the sustainability characteristics.[62] The characteristics can thus promote a stronger sense of the scope for reporting requirements in this regard as well.

The initial steps towards company self-reporting began with the Extractive Industries Transparency Initiative. Today, there is an expanding role for communities to review all of the sustainable development related obligations of large investors, in particular in the extractives and infrastructure sectors, ranging from training programmes for employees, to environmental management to gender equity plans. This "report-and-review" approach seeks to do two things. First, it makes compliance by companies a routine and observable process, that is, it does not wait until an official arrives from a capital to determine compliance. Second, it promotes active engagement between investors and communities, itself a positive contribution to the ongoing foreign investors' social licence to operate within host countries and

58 The policy set out in Global Affairs Canada 2016 provides that the government can withdraw supports for breaches of required standards.

59 See Business and Human Rights Resource Centre 2017. For a review of internal grievance mechanisms before 2008, see Rees and Vermijs 2008. See also the resources available at the Access Facility, http://www.accessfacility.org

60 See ILO 2017, paras 64–8 (part of the industrial relations chapter).

61 See http://www.mmdaproject.org/?p=2474

62 The International Bar Association's Model Mine Development Agreement, for example, covers annual reporting on fiscal, employment, local purchasing, and environmental obligations of the investor.

communities.[63] While many companies originally balked at such reporting requirements, and some undoubtedly still do, they are nevertheless a growing part of the implementation process in the natural resources sector, and could be expanded to other sectors. This is especially relevant for investments with larger economic, social, environmental, and governance footprints.

The Global Reporting Initiative provides a model for broad-based corporate reporting that could be attached to, or operate in conjunction with the sustainability characteristics. This is seen in its existing cooperative processes with the World Business Council for Sustainable Development and the Global Compact.[64] This highlights the potential for both corporate reporting processes and global standardisation platforms for reporting to be harmonised.[65] This would promote comparability among its users, offering common benchmarks.

Self-reporting to the local community may not be appropriate for smaller companies and those in sectors with low levels of local impacts, though recent evidence suggests that doing so can improve sustainability performance higher up the supply chain.[66] Besides, having hundreds of companies reporting to the local community would likely overwhelm community capacities to monitor the reports. In these instances, reporting to industry associations based on their sectoral codes might be considered, or the associations involved could undertake compliance monitoring of randomly selected small and medium-sized firms. Industry codes are also more directly relevant to assessing which of the sustainability characteristics are most germane to a given sector. In addition, industry associations could include periodic reporting of sustainable development based standards for their members, including as a condition of membership.[67]

Finally, it has already been noted that a rising number of IIAs include a stronger focus on sustainable development, and it is likely that there will be a growth in provisions on investor obligations as well. There is also a growing recognition of the specific rights of host country governments to maximise the benefits of FDI for their economies. An indicative list of sustainability characteristics can contribute to a harmonisation of these processes over the coming years.

In this context, the dispute settlement process also deserves attention. To date, a number of international arbitrations convened under investment treaties have already brought various aspects of the sustainability characteristics set out in this paper into their decisions. This has been done largely in the absence of a specific focus on sustainable development. Some examples of this include *Salini v. Morocco, Biwater v. Tanzania, Inmaris Perestroika Sailing v. Ukraine*, and *Alpha Projektholding v. Ukraine*, which include references to contribution to infrastructure,[68] transfer of technology,[69] local employee training,[70] and the generation of government revenue as characteristics associated with the notion of investments contributing to development.[71] Indeed, "development" is often discussed by arbitrators in the application of the "Salini test," which mentioned "the contribution to the economic development of the host State of the investment as an additional condition" in determining whether an investment is covered by a treaty.[72]

With the growing trend expressly to reference sustainable development in investment treaties, the role of arbitrators and other dispute settlement processes at the national and international levels in relation to understanding what this means in practice is likely to grow. This is especially likely to be the case if a future dispute settlement mechanism is opened to other stakeholders in a more meaningful way. For example, it has been suggested that an expanded concept of an international investment dispute settlement process should be open to governments, communities affected or specific individuals who have been harmed to initiate proceedings for alleged breaches of a broader array of obligations on investors under domestic or international law in exchange for the investor's right to initiate proceedings against a government.[73]

63 The International Bar Association's Model Mine Development Agreement provides a good example of extensive reporting and review requirements for all company sustainable development obligations.

64 For more of the work of the Global Reporting Initiative (GRI) and its broad-based approach to reporting on the SDGs, see https://www.globalreporting.org/information/SDGs/Pages/SDGs.aspx

65 Indeed, the International Integrated Reporting Council is coordinating an effort called the Corporate Reporting Dialogue that involves the major financial reporting standard setters plus GRI, the Sustainability Accounting Standards Board and the Carbon Disclosure Project, in an effort to move towards harmonisation in the reporting process.

66 See GRI and IOE 2016, showing how reporting can be of benefit to small and medium-sized enterprises.

67 The Mining Association of Canada (MAC) does this for its members under its Accountability programme: "Accountability: Participation in TSM [Towards Sustainable Mining] is mandatory for all MAC members. Assessments are conducted at the facility level where the mining activity takes place—the only program in the world to do this in our sector. This provides local communities with a meaningful view of how a nearby mine is faring." See http://mining.ca/towards-sustainable-mining. Industry associations in other sectors could replicate this approach.

68 *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, para. 57 (23 July 2001), http://www.italaw.com/cases/documents/959

69 *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, para. 320 (24 July 2008), http://www.italaw.com/cases/157

70 *Inmaris Perestroika Sailing Maritime Services GmbH and Others v. Ukraine*, ICSID Case No. ARB/08/8, Decision on Jurisdiction, para. 132 (8 March 2010), http://www.italaw.com/cases/documents/566

71 *Alpha Projektholding GmbH v. Ukraine*, ICSID Case No. ARB/07/16, Award, para. 330 (8 November 2010), http://www.italaw.com/cases/71

72 *Salini Costruttori,* para. 52. For a further discussion of the definition of an "investment" under international investment law, see Mortenson 2010; Gaillard 2010; García-Bolívar 2012.

73 See IISD 2016. See also Sauvant 2016, 31, envisioning the investor–state dispute settlement mechanism being turned into an investment dispute settlement mechanism to which various stakeholders have access. It is important to distinguish here the investor from the investment. The investment, as a legal entity, can easily be subject to a suit in the host country. However, a significant incident may leave the investment inoperative and/or bankrupt. An investor is often more difficult to sue in a host country, as compared to in its home jurisdiction, where barriers to a suit such as *forum non conveniens* often exist. An internationalised process could ensure such barriers are abolished.

Even without this, however, there are evident needs for investment treaty arbitrators to consider whether an investment has contributed to development and, more specifically, sustainable development. One such requirement flows from the need for an investment to contribute to development, as seen in the Salini test mentioned earlier. If one can imagine a simple extension of this approach to a definition of "investment" that requires an investment to make a contribution to sustainable development (i.e., "sustainable investment"),[74] then the utility of an indicative list of FDI sustainability characteristics will rise even more. This would further be enhanced if there were investor obligations included in IIAs, or a broader statement on the right of governments to regulate to promote sustainable development benefits from the investments they receive.

In addition, even without such reforms, the characteristics could be used to support the legitimacy of a broader array of government measures in the context of challenges to laws and regulations under investment treaties. This role in legitimising expectations of governments' rights to regulate would potentially then be juxtaposed against possible arguments of investors' legitimate expectations not to be regulated in certain ways. These potential developments open the door to thinking afresh about how sustainable development may be reflected in a new generation of investment treaties, and the related dispute settlement changes that may arise.

But there are also growing calls for the use of mediation in investment treaty disputes. Mediation in this context is about finding solutions, not imposing decisions. And in the course of such efforts, the characteristics — and especially the common and emerging common characteristics — could provide a widely accepted basis for finding solutions to issues, especially those that are most directly related to sustainable development issues.

CONCLUSIONS

Flows of foreign direct investment to developing countries have to rise significantly to help meet the SDGs. However, the issue is not only more FDI but sustainable FDI, that is, investment that has certain sustainability characteristics. An indicative list of FDI sustainability characteristics constitutes a checklist that can help interested parties determine what sustainable FDI is. In fact, the very process of seeking to identify such sustainability characteristics can make an important contribution to the international investment debate, including by highlighting particular desirable characteristics of FDI and outlining how these can be promoted and encouraged.

Translating this process into changed action by principal stakeholders, while not always easy, is increasingly being done and becoming ever more doable. Many of the IPAs, at both the national and subnational levels (and there are literally thousands of them), as one of the main actors (and gatekeepers) involved in attracting FDI, are largely interested in obtaining more FDI — and not necessarily sustainable FDI — and they are involved in fierce competition with each other to attract investment. However, where in the past this has led to some stagnation in promoting sustainable investment, this is now changing in a more sustainable direction. A broad adoption of sustainable characteristics can help reverse the competition from a negative one to a more positive, higher-level one. This can increasingly become the case as many IPAs move to target specific types of FDI that they consider particularly useful to advance the development of their economies. Hence, they are becoming more familiar with the instruments and techniques that are required for a targeted purpose.

Moreover, as discussed, there are also a number of other — important — stakeholders whose actions are directly relevant to increasing the flow of sustainable FDI, in order to meet the SDGs. The analysis in this paper has shown that there is a broad set of increasingly agreed parameters of what sustainable FDI means, with all stakeholder groups showing a growing propensity to recognise and accept them.

The interplay of these various actors can be expected to continue to grow into a virtuous cycle that changes the mindsets of the principal stakeholders towards promoting sustainable FDI for sustainable development. A broadly accepted indicative list of sustainability characteristics of FDI, constructed around the common and emerging common FDI sustainability characteristics, is helpful in this respect, as it lends credibility to such an effort and gives it direction in terms of both legal and policy-oriented development. The current paper outlines some of the issues, complexities and challenges that this difficult process has encountered to date. It is a process that promises rewarding results.

74 Such an extension is not unreasonable, as many agreements have begun using the term "sustainable development" in preambular and other treaty language; the logic behind the Salini requirement was that the treaty mentioned the promotion of development in its preamble. More than 75% of IIAs concluded between 2008 and 2013 referenced "sustainable development" or "responsible business conduct." See Gordon, Pohl and Bouchard 2014, 10–11.

ANNEX I: RESULTS OF A SURVEY OF IPAs ON SUSTAINABLE FDI

What follows are the results of a 2012 survey undertaken by the Vale Columbia Center on Sustainable International Investment (now the Columbia Center on Sustainable Investment) and the World Association of Investment Promotion Agencies regarding the extent to which investment promotion agencies seek to attract sustainable foreign direct investment.

In general IPAs are moving toward what might be termed "the fourth generation" of investment promotion, namely, targeting sustainable FDI. This follows the first generation of investment promotion, when countries liberalized their regulatory frameworks for such investment; the second generation, when many IPAs were established to attract FDI; and the third generation, when IPAs targeted particular types of FDI in line with their national objectives. The main findings of the survey are summarized below:

1. The four dimensions of sustainable FDI (economic development, environmental sustainability, social development, good governance) are unevenly addressed by IPA investment promotion strategies. The volume of FDI they attract matters most to IPAs, but that alone is not a consideration of "sustainable FDI." Among the dimensions of sustainable FDI, IPAs are especially concerned about the economic development dimension.

2. The economic development dimension, particularly employment creation, features prominently in investment promotion strategies. The environmental sustainability dimension follows, especially the sustainable management of natural resources. The social dimension is less important; however, labor standards are especially prominent in this category. Good governance is the least visible in IPA strategies.

3. The economic development and environmental sustainability dimensions of sustainable FDI have increased in prominence today compared with five years ago. Going forward, it is again these two dimensions that are poised to acquire a bigger role in investment promotion strategies.

4. Most IPAs are interested in attracting FDI projects that adhere to a cost-benefit analysis of economic, environmental and social impacts, but are also interested in international labor norms and project monitoring. IPAs pay less attention to principles if these have been framed in the context of well-defined initiatives associated with particular organizations that are internationally recognized. Going forward, they see most of the existing norms that can be used in assessing the four dimensions of sustainable FDI becoming more important.

5. The majority of IPAs require social and environmental assessments for at least certain types of projects (infrastructure, natural resources), typically prior to entering into contracts, but a substantial number do not require such assessments.

6. For IPAs, the governance dimension translates in the transparency of contracts and the public disclosure of information. The majority of IPAs disclose a variety of information as required, although a significant number does not; that has not changed much compared with five years ago.

7. As regards investment incentives, IPAs favor those applied in support of specific economic development objectives, followed by environmental sustainability goals. An important share of IPAs also states explicitly that they do not offer specific incentives for any sustainable FDI dimension. Going forward a new approach is needed as regards the structure of incentives to cover all dimensions of sustainable FDI.

8. As regards their assessment of investment incentives, IPAs feel that those supporting economic development are the most successful, followed by those in support of environmental sustainability.

9. On the whole, the majority of IPAs report that foreign investors pay attention to sustainable FDI, though it is not entirely the case that they do so equally for each of the four dimensions.

10. Going forward, IPAs see themselves in a position to play a greater role in shaping policies of governments conducive to attracting sustainable FDI because their policy advocacy function is expected to become more important for the overwhelming majority.

11. To assist IPAs in attracting sustainable FDI, governments have an important role to play in several areas that include: training IPAs to increase awareness of sustainable FDI overall; establishing clear procedures for assessing and monitoring sustainable FDI projects; training IPAs in assessing projects from a sustainable FDI perspective; adjusting incentive structures to promote sustainable FDI, to the extent that these are needed; removing legislative obstacles that inhibit IPAs from tackling sustainable FDI issues; and rewarding IPAs for success in this area. (VCC and WAIPA 2010, 4–5)

ANNEX II: LIST OF INSTRUMENTS CONSULTED FOR THIS STUDY

A. INTERNATIONAL INVESTMENT AGREEMENTS

1. Agreement between Canada and Mongolia for the Promotion and Protection of Investments, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5373

2. Agreement between the Government of Canada and the Government of Burkina Faso for the Promotion and Protection of Investments, http://investmentpolicyhub.unctad.org/Download/TreatyFile/3460

3. Agreement between the Government of Canada and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the Promotion and Protection of Investments, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5094

4. Agreement between the Government of the Federal Republic of Nigeria and the Government of the United Arab Emirates on the Reciprocal Promotion and Protection of Investments, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5478

5. Agreement between the Government of Japan and the Government of the Republic of Kenya for the Promotion and Protection of Investment, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5374

6. Agreement between Japan and the Islamic Republic of Iran on Reciprocal Promotion and Protection of investment, http://investmentpolicyhub.unctad.org/Download/TreatyFile/3578

7. Agreement between Japan and the Sultanate of Oman for the Reciprocal Promotion and Protection of Investment, http://investmentpolicyhub.unctad.org/Download/TreatyFile/3481

8. Agreement between Japan and the Republic of Peru for the Promotion, Protection and Liberalization of Investment, http://investmentpolicyhub.unctad.org/Download/TreatyFile/1733

9. Agreement between Japan and the State of Israel for the Liberalization Promotion and Protection of Investment, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5575

10. Agreement between the Government of the Kyrgyz Republic and the Government of the State of Kuwait for the Encouragement and Reciprocal Protection of Investments, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5421

11. Agreement between the Government of the Republic of Rwanda and the Government Kingdom of Morocco on the Reciprocal Promotion and Protection of Investments, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5417

12. Agreement between the Government of the Republic of San Marino and the Government of the Republic of Azerbaijan on the Promotion and Reciprocal Protection of Investments, http://investmentpolicyhub.unctad.org/Download/TreatyFile/4732

13. Agreement between Government of Republic of Rwanda and the Government of the Republic of Turkey concerning the Reciprocal Promotion and Protection of Investments, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5415

14. Agreement between the Macedonian Government and the Government of the Kingdom of Denmark for the Promotion and Reciprocal Protection of Investments, http://investmentpolicyhub.unctad.org/Download/TreatyFile/4734

15. Agreement between the Government of the United Arab Emirates and the Government of the United Mexican States on the Promotion and Reciprocal Protection of Investments, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5359

16. Agreement between the Government of the United Arab Emirates and the Government of Republic of Mauritius for the Promotion and Reciprocal Protection of Investments, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5358

17. Agreement between the Slovak Republic and the Islamic Republic of Iran for the Promotion and Reciprocal Protection of Investments, http://investmentpolicyhub.unctad.org/Download/TreatyFile/3601

18. Agreement for the Promotion and Protection of Investment between the Government of the Republic of Austria and the Government of the Kyrgyz Republic, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5500

19. Agreement for the Promotion and Reciprocal Protection of Investments between Canada and the Republic of Guinea, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5095

20. Agreement on Investment under the Framework Agreement establishing a Free Trade Area between the Republic of Korea and the Republic of Turkey, http://investmentpolicyhub.unctad.org/Download/TreatyFile/4729

21. ASEAN Comprehensive Investment Agreement, http://www.asean.org/storage/images/2013/economic/aia/ACIA_Final_Text_26%20Feb%202009.pdf

22. Commonwealth Secretariat, Integrating Sustainable Development into International Investment Agreements: A Guide for Developing Countries, https://www.iisd.org/pdf/2012/6th_annual_forum_commonwealth_guide.pdf

23. Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States, http://data.consilium.europa.eu/doc/document/ST-10973-2016-INIT/en/pdf

24. Draft Pan-African Investment Code, http://repository.uneca.org/bitstream/handle/10855/23009/b11560526.pdf?sequence=1

25. Economic Partnership Agreement (EPA) between the European Union and its Member States and the Southern African Development Community (SADC) EPA States, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5326

26. Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part, http://investmentpolicyhub.unctad.org/Download/TreatyFile/4736

27. Energy Charter Treaty, http://www.energycharter.org/fileadmin/DocumentsMedia/Legal/ECTC-en.pdf

28. Free Trade Agreement between the Dominican Republic, Central America and the United States (CAFTA), http://www.wipo.int/edocs/trtdocs/en/cafta-do/trt_cafta_do.pdf

29. Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China, http://investmentpolicyhub.unctad.org/Download/TreatyFile/3454

30. Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Korea, http://investmentpolicyhub.unctad.org/Download/TreatyFile/3461

31. Free Trade Agreement between the Eurasian Economic Union and its Member States and the Socialist Republic of Vietnam, http://investmentpolicyhub.unctad.org/Download/TreatyFile/3455

32. Free Trade Agreement between the Republic of Korea and Vietnam, http://investmentpolicyhub.unctad.org/Download/TreatyFile/3582

33. Free Trade Agreement between New Zealand and the Republic of Korea, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5578

34. Free Trade Agreement between EFTA States and Georgia, http://investmentpolicyhub.unctad.org/Download/TreatyFile/4854

35. Investment agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Chile, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5413

36. Investment Cooperation and Facilitation Agreement between the Federative Republic of Brazil and the Republic of Malawi, http://investmentpolicyhub.unctad.org/Download/TreatyFile/4715

37. Investment Promotion and Protection Agreement between the Government of the Federal Republic of Nigeria and the Government of the Republic of Singapore, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5410

38. Mainland and Hong Kong Closer Economic Partnership Arrangement, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5580

39. Model Text for the Indian Bilateral Investment Treaty, https://www.mygov.in/sites/default/files/master_image/Model%20Text%20for%20the%20Indian%20Bilateral%20Investment%20Treaty.pdf

40. Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States and the European Community and its Member States (Lomé Convention), http://ec.europa.eu/development/body/cotonou/pdf/agr01_en.pdf#zoom=100

41. Reciprocal Investment Promotion and Protection Agreement Between the Government of the Kingdom of Morocco and the Government of the Federal Republic of Nigeria, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5409

42. SADC Model Bilateral Investment Treaty Template, http://www.iisd.org/itn/wp-content/uploads/2012/10/sadc-model-bit-template-final.pdf

43. The Reciprocal Promotion and Protection of Investments between the Argentine Republic and the State of Qatar, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5383

44. Trade and Investment Framework Agreement between the Government of the United States of America and the Government of Argentine Republic, http://investmentpolicyhub.unctad.org/Download/TreatyFile/5099

B. NON-BINDING INTERGOVERNMENTAL INSTRUMENTS

1. African Commission on Human and Peoples' Rights, Resolution on a Human Rights-Based Approach to Natural Resources Governance, http://www.achpr.org/sessions/51st/resolutions/224/

2. African Union Commission (AUC), the African Development Bank (AfDB), and the UN Economic Commission for Africa (UNECA), Guiding Principles on Large Scale Land Based Investments in Africa, https://www.uneca.org/sites/default/files/PublicationFiles/guiding_principles_eng_rev_era_size.pdf

3. Committee on World Food Security, Principles for Responsible Investment in Agriculture and Food Systems, http://www.fao.org/fileadmin/templates/cfs/Docs1314/rai/Endorsement/CFS_RAI_Principles_For_Endorsement_Ver_11_Aug_EN.pdf

4. ECOWAS Directive on the Harmonization of Guiding Principles and Policies in the Mining Sector, http://documentation.ecowas.int/download/en/publications/Ecowas%20Directive%20and%20policies%20in%20the%20minning%20sector.pdf

5. Food and Agriculture Organization of the United Nations, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, http://www.fao.org/docrep/016/i2801e/i2801e.pdf

6. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

7. ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration) — 5th Edition, http://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm

8. OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-Garment-Footwear.pdf

9. OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, http://www.oecd.org/corporate/mne/mining.htm

10. OECD-FAO Guidance for Responsible Agricultural Supply Chains, http://mneguidelines.oecd.org/OECD-FAO-Guidance.pdf

11. OECD Guidelines for Multinational Enterprises,[75] http://www.oecd.org/daf/inv/mne/48004323.pdf

12. OECD Policy Framework for Investment, http://www.oecd-ilibrary.org/finance-and-investment/policy-framework-for-investment-2015-edition_9789264208667-en;jsessionid=2fuenit1jorcj.x-oecd-live-02

13. OHCHR, Principles for Responsible Contracts: Integrating the Management of Human Rights Risks into State–Investor Contract Negotiations, http://www.ohchr.org/Documents/Publications/Principles_ResponsibleContracts_HR_PUB_15_1_EN.pdf

14. Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources, http://siteresources.worldbank.org/INTARD/214574-1111138388661/22453321/Principles_Extended.pdf

15. UNCTAD Investment Policy Framework for Sustainable Development, http://unctad.org/en/PublicationsLibrary/diaepcb2015d5_en.pdf

C. HOST COUNTRY STANDARDS

Developed countries

1. Australia: Australia Jobs Act, 2013, https://www.legislation.gov.au/Details/C2013A00069; Foreign Investment Policy (see National Interest Test), https://firb.gov.au/files/2015/09/Australias-Foreign-Investment-Policy-2016-2017.pdf

2. Canada: Investment Canada Act (see Net Benefit Test), https://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/h_lk00007.html#q8

75 It should be noted that the Guidelines (which are voluntary) are backed up by the Investment Declaration and an OECD's Council Decision that is binding in terms of the legal obligation to create National Contact Points.

3. European Union: Towards a Comprehensive European International Investment Policy, http://trade.ec.europa.eu/doclib/docs/2011/may/tradoc_147884.pdf

4. Germany: The Sustainability Code, http://www.deutscher-nachhaltigkeitskodex.de/fileadmin/user_upload/dnk/RNE-Broshure_The_Sustainability_Code.pdf

5. United States: California Transparency in Supply Chains Act of 2010, http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0651-0700/sb_657_bill_20100930_chaptered.pdf

Emerging markets

6. Chile: Law Establishing the Framework for Foreign Investment in Chile,

7. China: NDRC's 12th Five-Year Plan on Foreign Investment Utilization and Outbound Investment Plan, MOFCOM's Opinions on Constructing Composite Assessment System for Foreign Merchant and Investment Selection

8. Ghana Investment Promotion Act, http://images.mofcom.gov.cn/gh/accessory/201212/1354895014005.pdf

9. India: Consolidated FDI Policy, https://cdn.caclub.in/wp-content/uploads/indias-consolidated-fdi-policy-2017-dipp-circular-dt-28-aug-2017.pdf; Companies Act, 2013 (S. 135 and Schedule VII), http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf; Companies (Corporate Social Responsibility Policy) Rules, 20 I 4, http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2_2014.pdf

10. Jamaica: National Investment Policy Statement, http://www.miic.gov.jm/sites/default/files/pdfs/National%20Investment%20Policy%20Statement%20-%20Jamaica.pdf

11. Myanmar: Myanmar Investment Law, 2016, http://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/myanmar_investment_law_official_translation_3-1-2017.pdf

12. Namibia: Namibia Investment Promotion Act, 2016, http://www.mti.gov.na/downloads/Gazetted%20Nam%20Investment%20Promotion%20Act%202016.pdf

13. Thailand: Policies for Investment Promotion, Board of Investment Thailand, http://www.boi.go.th/index.php?page=policies_for_investment_promotion

14. South Africa: Code for Responsible Investing in South Africa, http://c.ymcdn.com/sites/www.iodsa.co.za/resource/resmgr/crisa/crisa_19_july_2011.pdf; Codes of Good Practice for the South African Minerals Industry, https://cer.org.za/wp-content/uploads/2014/02/Codes-of-Good-Practice-for-the-Minerals-Industry.pdf; King IV Report on Corporate Governance, http://www.adamsadams.com/wp-content/uploads/2016/11/King-IV-Report.pdf

D. HOME COUNTRY STANDARDS

1. Belgian Corporation for International Development, Strategy, http://www.bmi-sbi.be/en/strategie/regles_ethiques.html

2. Canada: Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad, http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng

3. China: China International Contractors Association, Sustainable Infrastructure Guidelines for Overseas Chinese Enterprises, http://www.chinca.org/cms/html/files/2016-11/11/20161111164504598769496.pdf; MOFCOM Guide on Social Responsibility for Chinese International Contractors; MOFCOM Guidelines on Environmental Protection in Foreign Investment and Cooperation, http://english.mofcom.gov.cn/article/policyrelease/bbb/201303/20130300043226.shtml

4. European Union: Directive 2014/95/EU of the European Parliament and of the Council, as regards disclosure of non-financial and diversity information by certain large undertakings and groups, which amended the Directive 2013/34/EU of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings,
France: Proparco, CSR Framework, https://www.proparco.fr/en/responsibility

5. Japan: Bank for International Cooperation, Guidelines for Confirmation of Environmental and Social Considerations, https://www.jbic.go.jp/wp-content/uploads/page/2013/08/36442/Environemtal_Guidelines2015.pdf

6. United Kingdom: Department for International Development, Economic Development Strategy (2017), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/587374/DFID-Economic-Development-Strategy-2017.pdf; Modern Slavery Act 2015, http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted

7. United States: Overseas Private Investment Corporation, Environmental and Social Policy Statement, https://www.opic.gov/sites/default/files/consolidated_esps.pdf; USAID, Operational Guidelines for Responsible Land Based Investments, https://www.land-links.org/wp-content/uploads/2016/09/USAID_Operational_Guidelines_updated-1.pdf; Sections 1502 and 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, https://www.sec.gov/about/laws/wallstreetreform-cpa.pdf

E. INTERGOVERNMENTAL ORGANISATIONS STANDARDS

1. African Development Bank Group, Integrated Safeguards System:, Policy Statement and Operational Safeguards, https://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December_2013_-_AfDB%E2%80%99S_Integrated_Safeguards_System__-_Policy_Statement_and_Operational_Safeguards.pdf

2. Asian Development Bank, Safeguard Policy Statement, https://www.adb.org/site/safeguards/policy-statement

3. Asian Infrastructure Investment Bank, Environmental and Social Framework (2016), https://www.aiib.org/en/policies-strategies/_download/environment-framework/20160226043633542.pdf

4. European Bank for Reconstruction and Development, Environmental and Social Policy, http://www.ebrd.com/news/publications/policies/environmental-and-social-policy-esp.html

5. Inter-American Development Bank, Safeguards and Sustainability, http://www.iadb.org/en/topics/sustainability/about-us,19563.html

6. International Finance Corporation, Performance Standards on Environmental and Social Sustainability, http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards

7. Multilateral Investment Guarantee Agency, Performance Standards on Environmental and Social Sustainability, https://www.miga.org/Pages/Projects/Environmental%20and%20Social%20Sustainability/Performance-Standards.aspx

8. United Nations Global Compact Ten Principles, https://www.unglobalcompact.org/what-is-gc/mission/principles

9. World Bank, Environmental and Social Framework, http://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/materials/the_esf_clean_final_for_public_disclosure_post_board_august_4.pdf

F. VOLUNTARY GLOBAL BUSINESS CODES

1. Global Reporting Initiative Standards, https://www.globalreporting.org/standards/

2. International Chamber of Commerce, Guidelines for International Investments, https://cdn.iccwbo.org/content/uploads/sites/3/2017/01/ICC-Guidelines-For-International-Investment-2016.pdf

3. International Chamber of Commerce, Business Charter for Sustainable Development, https://cdn.iccwbo.org/content/uploads/sites/3/2015/01/ICC-Business-Charter-for-Sustainable-Development.pdf

4. Voluntary Principles on Security and Human Rights, http://www.voluntaryprinciples.org/what-are-the-voluntary-principles/

G. VOLUNTARY PRIVATE INSTITUTIONAL INVESTOR STANDARDS

1. ACTIAM (Netherlands), https://www.actiam.nl/en/sustainability/why-actiam-invests-responsibly

2. Boston Common Asset Management (United States), https://www.bostoncommonasset.com/Membership/Apps/Boston_IntegratedESG_Input_App.aspx?IX_mId=8

3. Calvert Investments (United States), https://www.calvert.com/the-calvert-principles.php

4. Domini Social Investments (United States), http://www.domini.com/responsible-investing/choosing-our-investments

H. VOLUNTARY INDUSTRY CODES

1. Accord on Fire and Building Safety in Bangladesh, http://bangladeshaccord.org/wp-content/uploads/2013/10/the_accord.pdf

2. Alliance for Bangladesh Worker Safety, http://www.bangladeshworkersafety.org/who-we-are/about-the-alliance

3. Better Cotton, Production Principles and Criteria, http://bettercotton.org/wp-content/uploads/2014/01/Better-Cotton-Production-Principles-and-Criteria-Explained_Final-2013_eng_ext.pdf

4. Ethical Trading Initiative Base Code, http://s3-eu-west-1.amazonaws.com/www.ethicaltrade.org.files/shared_resources/eti_base_code_english.pdf?ppXz9ivoyynr1uTTo5e.Z5n.ZHaQvQfN

5. Equator Principles, http://www.equator-principles.com/index.php/ep3/ep3

6. Fair Labor Association, Workplace Code of Conduct, http://www.fairlabor.org/our-work/labor-standards

7. Forest Stewardship Council, Principles and Criteria, https://ic.fsc.org/en/what-is-fsc-certification/principles-criteria

8. International Council on Mining and Metals, ICMM Ten Principles, https://www.icmm.com/en-gb/about-us/member-commitments/icmm-10-principles/icmm-principle-6

9. Pharmaceutical Industry Principles for Responsible Supply Chain Management, https://pscinitiative.org/resource?resource=1

10. Principles for Responsible Investment, Six Principles, https://www.unpri.org/about/the-six-principles

11. Social Accountability International, SA8000 Standard, http://www.sa-intl.org/index.cfm;jsessionid=F70B84E9C16AEAB33649803944FA4A01.cfusion?fuseaction=Page.ViewPage&pageId=1689&CFID=18410253&CFTOKEN=166f19407b466b68-79765C33-1C23-C8EB-804E4EFCBAEA8F9B

12. Sustainable Stock Exchanges Initiative, Model Guidance on Reporting ESG Information to Investors, http://www.sseinitiative.org/wp-content/uploads/2015/10/SSE-Model-Guidance-on-Reporting-ESG.pdf

13. Standard for Sustainable and Resilient Infrastructure, http://www.gib-foundation.org/sure-standard/

14. Roundtable on Sustainable Palm Oil, Principles and Criteria for the Production of Sustainable Palm Oil,[76] http://www.rspo.org/file/revisedPandC2013.pdf

I. VOLUNTARY COMPANY CODES

Developed countries

1. Apple (US), https://www.apple.com/supplier-responsibility/

2. BP (UK), https://www.bp.com/en/global/corporate/sustainability.html

3. Enel (Italy), https://www.enel.com/en/aboutus/a201608-vision.html

4. Ford Corporation (US), https://corporate.ford.com/microsites/sustainability-report-2016-17/index.html

5. Honda (Japan), http://csr.honda.com/

6. Procter & Gamble (US), http://us.pg.com/sustainability

7. Royal Dutch Shell plc (UK), http://www.shell.com/sustainability.html

8. Total SA (France), http://www.total.com/en/commitment

9. Toyota (Japan), http://www.toyota-global.com/sustainability/csr/index.html

10. United Technologies (US), http://www.utc.com/How-We-Work/Pages/Sustainability.aspx

11. Volkswagen (Germany), http://en.volkswagen.com/en/company/responsibility/social-responsibility.html

12. Walmart (US), https://corporate.walmart.com/global-responsibility/sustainability/

Emerging markets

1. América Móvil SAB de CV (Mexico), http://www.americamovil.com/about-us/sustainability

2. Cemex SAB de CV (Mexico), http://archive.cemex.com/SustainableDevelopment.aspx

3. China National Petroleum Corporation (China), http://www.cnpc.com.cn/en/environmentsociety/society_index.shtml

4. Fomento Económico Mexicano SAB (Mexico), http://www.femsa.com/en/actions-with-value

5. Gold Fields Ltd (South Africa), https://www.goldfields.co.za/sustainability-reporting.php

6. Lukoil (Russia), http://www.lukoil.com/Responsibility

7. MTN (South Africa), https://www.mtn.com/en/mtn-group/sustainability/Pages/default.aspx

8. Petrobras (Brazil), http://www.petrobras.com.br/en/society-and-environment/society/social-responsibility-policy/

9. Sasol Ltd (South Africa), http://www.sasol.com/contact-us/corporate-social-investment

10. Sonatrach (Algeria), http://www.sonatrach.dz/index.php?option=com_content&view=article&id=50&Itemid=114

11. Steinhoff International Holdings NV (South Africa), http://www.steinhoffinternational.com/04-corporate-responsibility.php

12. Tata Motors (India), http://www.tatamotors.com/about-us/sustainability-approach-reports/

13. Vale (Brazil), http://www.vale.com/en/aboutvale/sustainability/pages/default.aspx#comunidades

76 The Roundtable on Sustainable Palm Oil issued RSPO Next (2016), which is a voluntary add-on certification standard that members can apply for. The RSPO Next was not reviewed for this study.

J. NGO MODELS AND CODES

1. Amnesty International, Human Rights Principles for Companies, https://www.amnesty.org/en/documents/act70/001/1998/en/

2. International Institute for Sustainable Development, Model International Agreement on Investment for Sustainable Development, https://www.iisd.org/pdf/2005/investment_model_int_agreement.pdf

ANNEX III: METHODOLOGY NOTE

1. In order to develop an indicative list of sustainability characteristics of foreign direct investment, a variety of instruments were reviewed to ascertain what kind of contributions governments have indicated that MNEs can make to host countries, what kind of contributions MNEs themselves have indicated they can make to host countries, and what others expect from MNEs in this respect.

2. The scope of this paper is limited to a review of instruments that deal with issues relating to FDI, the regulation of MNEs and the relationship between the two. Furthermore, the research and findings in this paper are limited to sustainability characteristics of FDI from the perspective of host countries.

3. The 17 Sustainable Development Goals of the 2030 Agenda for Sustainable Development were used as the core guiding principles to contextualise the discussion on sustainable FDI and to develop the various characteristics identified in this paper.

4. The following is the list of types of instruments reviewed for the purposes of this paper:

    (a) International investment agreements (IIA)

    (b) Non-binding intergovernmental instruments (Inter-governmental instruments)

    (c) Criteria used by host countries that seek to attract particularly desirable FDI and/or to mitigate or avoid possible negative impacts of any investments (Host country FDI standards)

    (d) Criteria used by home countries that support their firms investing abroad and make such support dependent on companies seeking such support meeting certain conditions (Home country standards)

    (e) Standards of intergovernmental organisations that lay out the criteria—including to mitigate or to avoid possible negative impacts of any investment—that must be met before such an organisation can provide support for a particular project (Intergovernmental organisation standards)

    (f) Voluntary global business codes of international business organisations that lay out provisions the contributions foreign investors can make to host countries and/or to mitigate or avoid possible negative impacts of their investments (Voluntary global business codes)

(g) Voluntary industry codes that lay out the contributions foreign investors can make to host countries and/or to mitigate or avoid possible negative impacts of their investments (Voluntary industry codes)

(h) Voluntary standards of private institutional investors that lay out provisions the contributions clients of such institutions can make to host countries and/or to mitigate or avoid possible negative impacts of their investments (Private institutional investor standards)

(i) Voluntary company codes that lay out the contributions that the firms involved seek to make to host countries and/or to mitigate or avoid possible negative impacts of their investments (Company codes)

(j) NGO models and codes that lay out the contributions foreign investors can make to host countries and/or to mitigate or avoid possible negative impacts of their investments (NGO models and codes). Only two such models were identified that deal specifically with expectations that NGOs have regarding FDI/MNEs and their contributions to host countries. Furthermore, it should be noted that the Model International Agreement for Investment for Sustainable Development (developed by the International Institute for Sustainable Development) is essentially focused on issues specific to international investment agreements. Similarly, the Human Rights Principles for Companies developed by Amnesty International is also focused on issues related to the protection and promotion of human rights.

5. With respect to intergovernmental organisations, such as the International Labour Organization or the OECD, to the extent such organisations have specific instrument(s) relating to FDI and MNEs, more comprehensive instruments issued by such organisations were reviewed. For example, with respect to the ILO, the review was focused on the 2017 revised version of the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and did not extend to the various ILO conventions that may become applicable in the context of MNE conduct. With regard to other instruments issued by the OECD with a narrower scope, these instruments were reviewed only to the extent such instruments elaborated on the principles/guidance set out in the comprehensive governing instrument.

6. Instruments devised as issue-specific tools, i.e., non-prescriptive instruments aiming to provide MNEs with a checklist to undertake a specific type of investment etc., were not reviewed for the purposes of this paper. For example, the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones, a tool addressed to MNEs that includes "a list of questions [for companies] considering actual or prospective investments in weak governance zones…"(OECD 2006) was not reviewed for the purposes of this paper.

7. Instruments that exclusively deal with sustainability characteristics with respect to trade and do not include sustainability characteristics with respect to FDI were not reviewed for this paper.

8. The instruments reviewed for this paper are generally the primary or flagship document of an organisation on issues relating to FDI, the regulation of MNEs and the relationship between the two. It should be noted that these organisations might also have other additional instruments that bear upon the characteristics discussed in the matrix. These additional instruments were not reviewed for this paper.

9. In reviewing the corporate social responsibility/sustainability codes and policies for the MNEs selected for review (as described in the following), the review was as a rule restricted to the global codes and policies and did not extend to a review of codes and policies applicable to specific regions. For example, in reviewing the corporate social responsibility/sustainability codes and policies of Toyota (Japan), the global policies of the Toyota Group were reviewed and the specific codes and policies adopted by the group of companies in different geographical regions, such as North America, were not reviewed.

10. With respect to the company codes, best efforts were made to ensure that all relevant materials/corporate policies that were readily accessible on the relevant companies' websites were reviewed within the parameters identified for the review.

11. Generally, only those instruments available in the English language were reviewed for this paper. However, for example, in the case of MOFCOM's Opinions on Constructing Composite Assessment System for Foreign Merchant and Investment Selection (China) and the NDRC's 12th Five Year Plan on Foreign Investment Utilization and Outbound Investment Plan, translated versions of the respective texts were reviewed.

12. The various characteristics identified in the matrix are integrated and interrelated. This means that if an instrument is identified as dealing with one of the characteristics, one can also make the argument that such instrument also covers other characteristics. Illustratively, human rights encompass within their ambit a broad range of rights, such as economic, labour, social, and environmental rights, where each of these rights is often both individually valid and interdependent. Accordingly, it

can be deduced that recognition of any of the economic, labour, social, and environmental characteristics in an instrument may contribute to the advancement of human rights as well. While acknowledging this relationship, it is recognised that not all the social, labour, economic, or environmental characteristics are necessarily defined as human rights. Similarly, if an instrument advances employment (which is included as one of the economic characteristics), it can be argued that such instrument also advances the social characteristics, as it is plausible that employment is the basis for or a facilitator of a number of social characteristics identified in the matrix.

13. A number of the instruments reviewed for this paper do not address each of the subcharacteristics identified in the matrix expressly. Instead, these instruments contain general statements that could include the specific economic, environmental, social, and governance characteristics identified in the matrix. Lack of specific language regarding a more specific subcharacteristic should, therefore, not necessarily be interpreted to mean that an instrument does not include them in its general language. In part, this is as a result of an evolution from broader language to the express inclusion of more specific issues as various types of documents have evolved and matured over time. For this purpose, the text of an instrument should be reviewed in its entirety along with an understanding of all attendant circumstances to establish the scope of the characteristics included in an instrument.

14. It is recognised that some provisions in the instruments reviewed for this paper imply an indirect expectation as to what MNEs can contribute to a host economy. For example, if an instrument allows certain exceptions from prohibitions on performance requirements, e.g., promotion of research and development, it can be inferred that promotion of research and development is a desirable contribution that MNEs can make to the host economy.

15. Selection methodology:

(a) IIAs

The IIAs reviewed for this research include all full-text English-language treaties between February 2015 and June 2017 available (as of 19 June 2017) on the UNCTAD website (Investment Policy Hub). They are a mix of multilateral and bilateral instruments, as well as model investment treaty framework(s) from different geographic regions in the world.

(b) Intergovernmental instruments

With respect to the selection of the intergovernmental instruments, the following factors were taken into account: (i) the reach and scope of the instrument, (ii) a broad group of international government stakeholders, and (iii) the impact or effect of such instruments.

(c) Host country standards

A small selection of FDI and MNEs related laws and policies from host countries in the world's different geographic regions were reviewed for this paper. They indicate the criteria adopted by these countries to attract particularly desirable FDI to meet their sustainable development goals and targets.

(d) Home country standards

With respect to home country standards, the term "home country" as used here refers broadly to countries that are still the most important sources of outward FDI. In this regard, while the countries reviewed for this paper are primarily developed countries, it is recognised that there is an increasing number of MNEs from countries that have traditionally been primarily host countries. In addition, on account of the increasing outward FDI by Chinese MNEs, a few laws and policies for outward FDI by Chinese MNEs were also reviewed.

(e) Intergovernmental organisation standards

Guidelines of leading intergovernmental organisations/institutions were reviewed for this paper since these institutions are leaders in providing project development and implementation support.

(f) Voluntary global business codes

The most important in this group are the International Chamber of Commerce Guidelines, as they reflect the views of the global business community.

(g) Voluntary private institutional investor standards

For identifying the private institutional investor standards, the list of the top 20 active signatories of the Principles for Responsible Investment (as identified in its Annual Report 2016) was relied upon. Further, out of this list, four of the private institutional investors with specific standards with regard to responsible investments were reviewed. The Principles for Responsible Investment (PRI) are internationally recognised principles for responsible investments, and among its signatories are leading asset owners and asset managers. While the PRI represent an independent effort, they are supported by two United Nations agencies: the United Nations Environment Programme Finance Initiative and the Global Compact. Given its universal recognition among institutional investors, the PRI was used as a frame of reference to identify the most active institutional investors for this paper.

(h) Voluntary industry codes

For identifying the industry codes to be reviewed for this paper, reference was primarily made to the instruments and initiatives relevant to the OECD Guidelines for Multinational Enterprises, as included in a resource document compiled by the OECD (2012). Further, additional industry codes and initiatives (including to account for the passage for time since the OECD compilation) were also reviewed.

(i) Voluntary company codes

i For this paper, based on the process as detailed in the following, a subset of 60 MNEs (selected MNEs list) was derived to ascertain their codes and policies relating to corporate social responsibility and sustainability.

ii The following two lists included by UNCTAD in its *World Investment Report 2016* were used as the primary reference lists to prepare the selected MNEs list:

A. The world's top 100 non-financial MNEs, ranked by foreign assets, 2015

B. The top 100 non-financial MNEs from developing and transition economies, ranked by foreign assets, 2014

These lists are hereinafter collectively referred to as "UNCTAD list(s)."

iii As a first step, the companies in the UNCTAD lists were compared against the members of the World Business Council for Sustainable Development (WBCSD). The World Business Council for Sustainable Development is a global CEO-led organisation comprised of leading MNEs in the world working together to promote sustainable development. The WBCSD members "come from all business sectors and all major economies, representing a combined revenue of more than US$8.5 trillion and with 19 million employees" (WBCSD 2017). The list of WBCSD members was used to refine the UNCTAD lists in light of the fact that the WBCSD members are leaders on issues relating to sustainable development strategies for MNEs. By reviewing the codes and practices of MNEs adopting high impact business practices to address key issues relating to sustainable development, the best practices of MNEs leading the field on issues relating to corporate social responsibility and sustainability were identified.

iv Upon such comparison of the members included in the UNCTAD lists and the WBCSD members, a total of 44 companies were identified and included in the selected MNEs list.

v Because the comparison of the lists as mentioned did not identify sufficient MNEs from Africa, Asia and Latin America, the UNCTAD lists were further compared with the list of participant companies of the United Nations Global Compact (Global Compact participants). The Global Compact is an international platform that provides a universal framework for responsible business practices. By becoming a participant of the Global Compact, a MNE makes a statement about its commitment to corporate social responsibility and sustainable business practices. The Global Compact has widespread representation in terms of participants, both from developed and developing countries. As such, the list of Global Compact participants served as an important reference point to identify companies from developing countries, i.e., the geographic regions mentioned earlier. In this fashion, 13 companies were added to the selected MNEs list.[77]

vi Finally, in addition to the 57 MNEs so far identified, three companies — namely, Petróleos de Venezuela SA (Venezuela), Sonatrach (Algeria) and Ternium SA (Argentina) (which are neither WBCSD members nor Global Compact participants) — were included in the selected MNEs list. This was done to ensure a better regional distribution and to include more companies from Asia, Africa and Latin America. These three companies are part of the UNCTAD lists.

vii The regional distribution of the companies included in the selected MNEs list is as follows:

REGION	NUMBER OF COMPANIES
North America	5
Europe	25
Asia	16
Australasia	1
Latin America	8
Africa	5

viii The sectoral distribution of the companies included in the selected MNEs list is as follows (the classification is as used in the UNCTAD lists):

77 The 13 companies identified in this manner are: (1) América Móvil SAB de CV, (2) BHP Billiton Group Ltd, (3) Embraer – Empresa Bras De Aeronautica SA, (4) Fomento Económico Mexicano SAB, (5) Gold Fields Ltd, (6) Hyundai Motor Company, (7) Lukoil OAO, (8) MTN Group Ltd, (9) Oil and Natural Gas Corp Ltd, (10) Petroleo Brasileiro SA, (11) Sasol Ltd, (12) Singapore Telecommunications Ltd, and (13) Steinhoff International Holdings Ltd.

SECTOR CLASSIFICATION	NUMBER OF COMPANIES
Aircraft	2
Chemicals and allied products	4
Computer and data processing	1
Computer equipment	2
Electricity, gas and water	7
Food and beverages	5
Metals and metals products	3
Mining, quarrying and petroleum	9
Motor vehicles	10
Petroleum refining and related industries	6
Pharmaceuticals	3
Retail trade	2
Stone, clay, glass, and concrete products	2
Telecommunications	3
Wholesale trade	1

ix Finally, the selected MNEs list was further refined in the following manner: the top five companies from each of North America, Latin/South America, Europe, Asia, and Africa were selected for review of their corporate social responsibility/sustainable development policies.

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Implemented jointly by ICTSD and the World Economic Forum, the E15Initiative was established to convene world-class experts and institutions to generate strategic analysis and recommendations for government, business, and civil society geared towards strengthening the global trade and investment system for sustainable development.

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