



Achieving Sustainable Justice through Foreign Investment: A Narrative Synthesis

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Abstract

Foreign Direct Investment (FDI) remains a powerful driver of economic growth, yet its potential to foster equitable and enduring development is often unrealized. This paper argues that achieving *sustainable justice*—the equitable and enduring distribution of economic, environmental, and social benefits—requires the deliberate harmonization of investment law, human rights obligations, and governance mechanisms. Drawing on international frameworks such as the United Nations Guiding Principles on Business and Human Rights (UNGPs; United Nations, 2011), OECD Due Diligence Guidance (OECD, 2018), and the International Finance Corporation (IFC) Performance Standards (IFC, 2012), this analysis explores how legal and policy reforms can reconcile investor protection with social and environmental responsibility. Through comparative case studies—including *Philip Morris v. Uruguay* (ICSID, 2016) and *Vedanta v. Lungowe* ([2019] UKSC 20)—and an examination of regional reforms in Saudi Arabia (Saudi Ministry of Investment, 2023), the United Arab Emirates, Morocco (World Bank, 2021), Egypt, and Jordan, the paper demonstrates a paradigm shift towards embedding justice in investment governance. It concludes with policy recommendations for aligning FDI with the Sustainable Development Goals (SDGs) and the imperatives of sustainable justice.

Keywords: foreign direct investment, sustainable justice, investment law, human rights, Arab countries, sustainable development, governance

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1. Introduction

Foreign direct investment (FDI) has become one of the most influential channels for the global circulation of capital, technology, and managerial expertise. For developing and emerging economies—particularly in the Arab region—FDI promises accelerated economic growth and diversification beyond hydrocarbons (UNCTAD, 2023). However, the same investments can also deepen inequalities, degrade environments, and marginalize local communities when not guided by robust ethical and legal safeguards (Muchlinski, 2021). The notion of *sustainable justice* seeks to reconcile these tensions by embedding justice, rights, and equity into the very architecture of economic globalization.

In the context of foreign investment, sustainable justice refers to the realization of economic development that respects human rights, protects the environment, and distributes benefits fairly across generations (Ruggie, 2011). It entails a transformation from the traditional investment paradigm—focused predominantly on investor protection and profit maximization—toward a normative model that balances rights and obligations among states, investors, and host communities (Titi, 2020). In this sense, achieving sustainable justice through foreign investment is both a legal and moral project, demanding reforms in investment treaties, corporate governance, and accountability mechanisms.

Legal scholars increasingly recognize that investment law is not insulated from broader questions of justice and sustainability (Schill & Djanic, 2022; Titi, 2020). The evolution of investor-state dispute settlement

(ISDS), the mandatory use of environmental impact assessments, and the incorporation of human-rights due diligence into corporate practice all indicate a growing awareness of the need for legal coherence across domains. The 2030 Agenda for Sustainable Development reinforces this convergence, emphasizing partnerships between public and private sectors to advance the Sustainable Development Goals (SDGs).

This paper contributes to this emerging dialogue by critically examining how FDI can serve as an instrument for sustainable justice, with a particular focus on the evolving legal landscape of the Arab world. It draws from both doctrinal analysis and real-world cases to demonstrate the dual nature of investment: as a catalyst for prosperity or a source of harm, depending on the governance structures in place. It further proposes concrete policy pathways for jurisdictions to align their investment laws with global sustainability and justice standards.

2. Conceptual and Legal Foundations

2.1 Defining Sustainable Justice in the Context of Foreign Investment

The concept of *sustainable justice* extends beyond traditional notions of distributive and procedural justice by embedding sustainability principles into the pursuit of fairness (Dobson, 2003). It aims to ensure that the economic, environmental, and social benefits of development are not only equitably shared among current populations but also preserved for future generations, a principle often traced to Rawls's (1971) theory of justice and Weiss's (1989) work on intergenerational equity. In the field of foreign investment, sustainable justice calls for a legal architecture that safeguards communities, ecosystems, and human rights while enabling legitimate profit and economic growth.

The term connects directly to the Sustainable Development Goals (SDGs), particularly SDG 16 ("Peace, Justice and Strong Institutions") and SDG 17 ("Partnerships for the Goals"), which emphasize transparent institutions, the rule of law, and responsible international partnerships. In this framework, foreign investors are not merely economic actors but participants in a broader social contract that binds them to obligations of due diligence, accountability, and environmental stewardship (Titi, 2020).

2.2 The International Legal Frameworks Governing Responsible Investment

2.2.1 The UN Guiding Principles on Business and Human Rights (UNGPs)

The UN Guiding Principles on Business and Human Rights (UNGPs), endorsed by the UN Human Rights Council in 2011, constitute the foundational global framework for embedding human rights into corporate conduct (Ruggie, 2011). They establish three interdependent pillars: the State Duty to Protect, the Corporate Responsibility to Respect, and Access to Remedy. The UNGPs, while not legally binding *per se*, have been widely integrated into domestic legislation and corporate codes. For example, the European Union's forthcoming Corporate Sustainability Due Diligence Directive (CSDDD) operationalizes the UNGPs by imposing binding due diligence obligations on multinational enterprises (European Commission, 2024). Similar reforms are now being studied by Arab governments seeking to enhance investment governance and ESG compliance.

2.2.2 OECD Guidelines and Due Diligence Guidance

The OECD Guidelines for Multinational Enterprises (OECD, 2023) complement the UNGPs by providing detailed recommendations on responsible business conduct across sectors. Their companion document—the *OECD Due Diligence Guidance for Responsible Business Conduct* (OECD, 2018)—sets out a risk-based process for identifying, mitigating, and accounting for adverse impacts throughout an investment's life cycle. Though primarily associated with OECD member states, these guidelines have global reach through National Contact Points (NCPs), which provide mediation for disputes. For instance, NCPs have adjudicated disputes involving European companies operating in North Africa and the Middle East, illustrating the extraterritorial influence of these soft-law instruments (OECD, 2021).

2.2.3 The IFC Performance Standards on Environmental and Social Sustainability

The International Finance Corporation (IFC) Performance Standards (IFC, 2012) function as operational benchmarks for managing environmental and social risks in large-scale investment projects. They cover

critical areas such as labor rights (PS2), resource efficiency (PS3), community health and safety (PS4), and biodiversity conservation (PS6). The standards are mandatory for projects financed by the IFC and are widely adopted by private banks adhering to the Equator Principles. These standards have significantly influenced project finance across Arab countries. For example, the Noor Ouarzazate Solar Complex in Morocco and renewable energy projects in Egypt's Benban Solar Park have been structured around IFC-compliant frameworks, ensuring that environmental and community considerations are integrated into project design and operation (World Bank, 2021).

2.2.4 Bilateral Investment Treaties (BITs) and Sustainable Development Clauses

Bilateral Investment Treaties (BITs) remain the backbone of the global investment protection regime. Traditionally, BITs prioritized investor protection through guarantees such as fair and equitable treatment (FET) and access to investor-state dispute settlement (ISDS). However, the new generation of BITs has begun incorporating sustainability and public-interest provisions. For example, Morocco's 2019 BIT with Nigeria includes explicit commitments to environmental and social standards, human-rights obligations, and corporate social responsibility (CSR) (UNCTAD, 2020). This shift demonstrates a growing trend toward embedding justice-oriented clauses into investment treaties, balancing protection with accountability.

2.3 Regional Legal Frameworks in the Arab World

2.3.1 The Arab Investment Agreement and the Role of the Arab League

The Unified Agreement for the Investment of Arab Capital in the Arab States (1980, amended 2013) represents a regional attempt to harmonize FDI governance among Arab League members. The agreement promotes intra-Arab investments and provides for investor protection and dispute settlement. However, early iterations were largely focused on liberalization, with limited attention to sustainability and justice. The 2013 amendments began integrating sustainable development objectives, signaling a shift toward more balanced regulation (ESCWA, 2019).

2.3.2 National Frameworks and Reforms

National reforms across the Arab world illustrate this normative shift. Saudi Arabia has undergone a remarkable transformation under *Vision 2030*, focusing on diversifying the economy and attracting responsible investment. The Saudi Investment Law (2023) emphasizes transparency, equal treatment of domestic and foreign investors, and alignment with international environmental and governance standards (Saudi Ministry of Investment, 2023). The United Arab Emirates has implemented ESG-linked incentives and free-zone regulations that encourage sustainable business practices, particularly in renewable energy as seen in Masdar City. Egypt revised its Investment Law (2017) to streamline administrative procedures while incorporating environmental licensing and labor safeguards. Similarly, Jordan's Investment Environment Law (2022) introduced dispute-resolution reforms and CSR clauses to promote socially responsible investment. Collectively, these developments signal a paradigm shift in Arab investment regimes—from investment attraction at any cost to an increasingly balanced focus on sustainability, accountability, and justice (Ghoneim, 2024).

3. Theoretical Framework — Sustainable Justice and FDI Law

3.1 The Evolution of Justice Theories in Economic Law

Justice has long been a central concern of legal philosophy, but its relationship to economic globalization is complex. Classical theories of justice, from Aristotle's distributive justice to Rawls's (1971) concept of fairness as equality of opportunity, emphasize balance and reciprocity within society, but were largely confined to domestic settings. With globalization, justice increasingly requires a *transnational dimension* that acknowledges the power asymmetries between investors and host states. Amartya Sen (1999) advanced this by introducing the *capability approach*, which defines justice not merely as the distribution of wealth or rights but as the enhancement of people's substantive freedoms—the ability to live the lives they value. Applied to foreign investment, Sen's framework implies that investments are just only if they expand local capabilities—through education, health, employment, and environmental protection. Thus, *justice in investment* must be assessed not solely by profitability or GDP growth but by its

effects on human flourishing.

3.2 The Concept of Sustainable Justice

The term *sustainable justice* merges two intellectual traditions: sustainability theory, rooted in environmental ethics and intergenerational equity (Bosselmann, 2016; Weiss, 1989), and justice theory, grounded in fairness, rights, and inclusion (Dobson, 2003). Sustainable justice entails three interconnected dimensions:

1. Intergenerational justice --- ensuring that current investments do not compromise the rights and well-being of future generations.
2. Intragenerational justice --- distributing the benefits and burdens of investment equitably among current populations, especially marginalized groups.
3. Ecological justice --- recognizing the intrinsic value of ecosystems and the need for environmental stewardship in development decisions.

These principles correspond closely with international legal instruments such as the Rio Declaration (1992), the Paris Agreement (2015), and the UN Sustainable Development Goals (2015), all of which embed environmental and social safeguards within the broader development paradigm. In the context of foreign investment, sustainable justice thus requires that the rights of investors, host communities, and future generations be simultaneously respected—a triadic balance that law must mediate.

3.3 Law and Development: From Growth to Justice

The law-and-development movement of the mid-20th century largely treated law as an instrument for stimulating economic growth. However, early models—heavily influenced by modernization theory—were criticized for neglecting issues of equity, participation, and social rights (Trubek & Santos, 2006). A second wave of scholarship reframed law not merely as a facilitator of growth but as a tool for achieving justice and sustainability (Upham, 2002). This "third generation" of law-and-development thought integrates rights-based and sustainability-based approaches, arguing that legal systems should shape markets to deliver equitable and environmentally sound outcomes (Kennedy, 2013). Within this context, FDI law becomes a testing ground for reconciling market efficiency with justice. Investment treaties, corporate regulations, and international adjudication must not only protect capital but also serve public goods. *Sustainable justice through FDI*, therefore, lies at the intersection of economic governance, human-rights law, and environmental law.

3.4 The Corporate Justice Gap and the Accountability Turn

A major challenge in achieving sustainable justice is the corporate justice gap—the structural imbalance between the legal privileges granted to investors and the limited accountability mechanisms for their misconduct (Muchlinski, 2021). Multinational corporations (MNCs) often operate through complex corporate networks designed to limit liability and shift risk to subsidiaries or contractors. This fragmentation creates what Deva (2012) calls "the governance gap," where transnational economic power outpaces the regulatory capacity of states.

In response, we are witnessing an accountability turn in both law and practice. Domestic courts are increasingly asserting jurisdiction over parent companies for extraterritorial harms, as in *Vedanta v. Lungowe* (UK, 2019). Soft-law standards like the UNGPs and OECD Guidelines are being codified into hard law, as in the EU's due diligence directive (European Commission, 2024). Investor-state dispute reform efforts within forums like UNCITRAL Working Group III aim to balance corporate protection with social and environmental accountability (UNCITRAL, 2022). These developments collectively mark a paradigmatic shift from investment liberalization toward *investment accountability*, central to the realization of sustainable justice.

4. Global and Comparative Perspectives

4.1 Global Governance of Investment and Justice Concerns

Foreign investment has long been governed by a fragmented network of bilateral investment treaties (BITs), free trade agreements, and investor–state dispute settlement (ISDS) mechanisms. These regimes were initially designed to protect investors from expropriation and arbitrary treatment by host states (Dolzer & Schreuer, 2012). However, as these treaties proliferated—exceeding 3,000 by the early 21st century—they often privileged corporate rights over public interests, leading to a legitimacy crisis (Sornarajah, 2017). Many ISDS cases involved claims against governments implementing environmental or social regulations. For example, *Philip Morris v. Uruguay* (2016) challenged tobacco control laws, and *Vattenfall v. Germany* (2012) contested environmental standards on coal and nuclear energy. Although Uruguay and Germany ultimately prevailed, these cases exposed the tension between investor protection and state sovereignty in pursuing sustainability and public welfare. Today, international investment law is evolving toward a more balanced model, integrating principles of sustainable development, corporate accountability, and policy space for host states (Schacherer, 2018).

4.2 The European Union's Sustainable Investment Paradigm

The European Union (EU) has become a global leader in embedding sustainability and justice into economic governance. The EU Investment Court System (ICS) proposal, for example, seeks to reform ISDS by introducing transparency, ethical standards for arbitrators, and the right of states to regulate for environmental and social goals (EU Commission, 2019). Moreover, the EU's Corporate Sustainability Due Diligence Directive (CSDDD, 2024) imposes legal obligations on corporations to identify and mitigate human rights and environmental risks throughout their global supply chains. This directive operationalizes the UN Guiding Principles on Business and Human Rights (UNGPs) and reflects the EU's broader "*Green Deal*" strategy. The European approach represents a shift from voluntary CSR to binding due diligence, thereby transforming justice from an ethical aspiration into a legal requirement (European Commission, 2024).

4.3 The United States: Market Freedom and Selective Accountability

The United States adopts a more market-oriented model, emphasizing property rights and investor freedom. While U.S. treaties and domestic law protect investors, they also increasingly include environmental and labor provisions, as seen in the United States–Mexico–Canada Agreement (USMCA, 2020). However, the enforcement of sustainability clauses in U.S. agreements remains inconsistent. U.S. courts typically apply a territorial approach, limiting jurisdiction over extraterritorial corporate conduct, as evidenced in the landmark case *Kiobel v. Royal Dutch Shell* (2013), which restricted the use of the Alien Tort Statute for human rights violations abroad. Nonetheless, civil society pressure and ESG investment trends have led to the rise of soft accountability mechanisms, including SEC disclosure requirements on climate risks and corporate diversity (Johnson, 2017). Thus, the U.S. model relies more on market-based incentives than binding sustainability duties—a contrast to the European normative approach.

4.4 The Global South and Emerging Economies

Emerging economies have historically viewed FDI as essential for economic growth, often prioritizing investment attraction over justice safeguards. However, several developing states are now challenging the asymmetries of the traditional investment regime. South Africa terminated several BITs and adopted a Promotion and Protection of Investment Act (2015) that replaces ISDS with domestic judicial review and emphasizes public interest. India's 2016 Model BIT restricts investor rights and enhances state regulatory autonomy. Ecuador and Bolivia withdrew from the ICSID Convention, citing sovereignty concerns (Sornarajah, 2017). These developments represent a post-neoliberal turn in investment law—seeking not isolationism, but a more equitable governance model that integrates economic growth with environmental and social justice (Ostřanský, 2024).

5. Case Studies in Sustainable Justice and FDI

5.1 *Philip Morris v. Uruguay: Protecting Public Health vs. Investor Rights*

Background: Philip Morris International (PMI) initiated an investor–state dispute against Uruguay under the Switzerland–Uruguay BIT after the government implemented tobacco control measures, including graphic warning labels and restrictions on cigarette branding (ICSID Case No. ARB/10/7). PMI claimed these measures violated fair and equitable treatment (FET) and expropriated its investments. **Analysis:** The case highlighted the conflict between investor protection and a state's right to regulate in the public interest. Uruguay defended its regulations as necessary to protect health, invoking its police powers. The tribunal ultimately ruled in favor of Uruguay, confirming that reasonable public health measures do not constitute unlawful expropriation or a breach of FET (ICSID, 2016). **Sustainable Justice Implications:** The case demonstrates that FDI law can support sustainable justice when tribunals recognize state regulatory autonomy. It also underscores the need for explicit treaty language that protects public-interest regulations, thereby preventing regulatory chill (Titi, 2020).

5.2 *Vedanta v. Lungowe: Corporate Accountability for Environmental Harm*

Background: Zambian villagers sued Vedanta Resources plc, a UK-based mining company, for pollution caused by its subsidiary, Konkola Copper Mines, in Zambia. The UK Supreme Court allowed the claim, establishing that parent companies may owe a duty of care for harms caused abroad (*Vedanta v. Lungowe*, 2019).

Analysis: This landmark ruling reinforces extraterritorial corporate accountability. The court held that parent companies cannot insulate themselves behind corporate structures to avoid responsibility for environmental and human-rights harms where they exercise sufficient control over their subsidiaries. **Sustainable Justice Implications:** Access to remedy is central to sustainable justice. The decision strengthens procedural and distributive justice by enabling affected communities to seek compensation in the home courts of multinationals, compelling corporate due diligence and providing a powerful tool for accountability (Muchlinski, 2021).

5.3 *Noor Ouarzazate Solar Complex (Morocco): FDI for Green and Social Justice*

Background: The Noor Ouarzazate Complex is one of the world's largest concentrated solar power (CSP) plants, financed through a combination of FDI, public investment, and multilateral support (World Bank, 2021). The project exemplifies the Arab region's push for sustainable investment aligned with climate action.

Analysis: The project's governance was structured around adherence to IFC Performance Standards, which required comprehensive environmental and social impact assessments (ESIAs), local employment quotas, and land-use consultations with local communities.

Justice Outcomes: Benefits include significant green energy access, job creation, and reduced carbon emissions. However, scholars and reports note that challenges remain in ensuring long-term community participation and fully equitable benefit distribution, highlighting the gap between project-level safeguards and sustained local development (World Bank, 2021).

Lessons: The project illustrates how contractual conditions, multilateral oversight, and legal standards can align FDI with sustainable justice in Arab countries, serving as a model for future renewable energy investments (Ghoneim, 2024).

6. Conclusions

This study has examined the intersection of foreign direct investment (FDI), law, and sustainable justice, with particular focus on Arab countries. Drawing on theoretical frameworks, global and regional practices, and illustrative case studies, several key conclusions emerge. First, sustainable justice is multidimensional: Achieving justice through FDI requires balancing economic growth, social equity, environmental stewardship, and intergenerational responsibility. It is not solely a legal issue but involves ethics, governance, and institutional capacity. Second, investor protection and public interest can coexist: Cases such as *Philip Morris v. Uruguay* illustrate that FDI law can respect both investor rights and

state regulatory autonomy when legal frameworks explicitly protect public welfare. Arab reforms are increasingly embedding such safeguards, aligning with international norms and indigenous ethical principles. Third, corporate accountability is central: *Vedanta v. Lungowe* and Arab ESG-driven projects demonstrate that parent companies and investors must be responsible for social and environmental impacts, with access to remedies for affected communities. Finally, while Arab countries are innovating legal and institutional mechanisms through initiatives like Saudi Vision 2030 and Morocco's Noor Ouarzazate, challenges such as regulatory enforcement gaps, transparency deficiencies, and limited community engagement continue to constrain the full realization of sustainable justice in FDI.

In sum, sustainable justice in FDI requires multi-level governance, legal clarity, corporate accountability, and ethical integration, demonstrating that investment can serve as a tool for equitable and environmentally responsible development.

Policy Recommendations

Based on the analysis, the following recommendations are proposed for lawmakers, regulators, investors, and multilateral institutions:

A. Legal and Regulatory Reforms

- Embed explicit sustainability clauses in national FDI laws, investment contracts, and bilateral/multilateral treaties, following the example of Morocco's BIT with Nigeria (UNCTAD, 2020).
- Mandate environmental and social impact assessments (ESIAs) with public disclosure, using standardized methodologies like those in the IFC Performance Standards (IFC, 2012).
- Enforce human rights due diligence obligations consistent with the UNGPs (United Nations, 2011) and OECD Due Diligence Guidance (OECD, 2018).

B. Institutional Strengthening

- Build specialized regulatory bodies capable of monitoring ESG compliance, drawing on the model of Saudi Arabia's regulatory oversight under its Investment Law (Saudi Ministry of Investment, 2023).
- Establish independent monitoring and grievance mechanisms to allow communities to seek remedies efficiently, as seen in IFC-compliant projects.
- Develop capacity-building programs for regulators and legal practitioners to enforce sustainability standards effectively, potentially supported by regional knowledge-sharing platforms (OECD, 2021).

C. Corporate Accountability

- Require mandatory ESG disclosure to enhance transparency and investor accountability, as pioneered in UAE free zones.
- Clarify parent company liability for subsidiary actions in foreign jurisdictions, building on the precedent of *Vedanta v. Lungowe* ([2019] UKSC 20).
- Tie investment approvals and incentives to verified sustainability and social outcomes, using conditional incentives as seen in Morocco and the UAE.

Final Remarks

Achieving sustainable justice through FDI is both a legal and normative challenge. As demonstrated by the evolving practices in the Arab world and globally, investor protection, economic development, and social and environmental justice are not mutually exclusive. By combining robust legal frameworks, institutional oversight, corporate accountability, ethical integration, and innovative contracts, FDI can be transformed from a mere driver of profit into a powerful tool for equitable, sustainable, and just development. The ongoing reforms and cases discussed provide a roadmap for practitioners, policymakers, and investors to operationalize this vision in a rapidly globalizing economic landscape.

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