

RESPONSIBLE INVESTMENT WITHIN THE FRAMEWORK OF SUSTAINABLE DEVELOPMENT: A COMPARATIVE CONSTITUTIONAL LAW PERSPECTIVE

Mohamed Aboubakr Abdelmaqsoud Abdelhadi*

Faculty of Law Sultan Qaboos University
mabubakr@squ.edu.om

Abdullah Alhabib Ammar**

Mansoura University
abdullah.al@squ.edu.om

Received: 29 January 2025 | Last Revised: 15 April 2025 | Accepted: 25 April 2025

Abstract

Over the past few decades, sustainable development (SD) has rapidly spread into domestic legal systems after establishing itself as a norm under international law. It incorporates environmental, economic, social, and governance dimensions. This concept has evolved into a constitutional value that integrates environmental, human rights, and economic dimensions, closely aligned with responsible investing and investment law principles. This resulted in responsible investing, in which the investor should incorporate environmental, social, and governance factors and public values in company and asset management decisions. SD requires a balance between economic growth and ecological protection to ensure that future generations possess both resources and rights to economic development. Investment projects should adhere to principles and obligations that promote balance and integration for sustainable growth. Investment projects should contribute to developing a work environment capable of accommodating significant economic, social, and environmental changes, in addition to their profitability and financial status. The study explores sustainable development as

* Dr. Mohamed Aboubakr Abdelmaqsoud Abdelhadi is an Assistant Professor of Public Law. He is affiliated with the Faculty of Law at Sultan Qaboos University in Oman and also at Mansoura University in Egypt. He can be reached by email at mabubakr@squ.edu.om or via mobile at +968901223811.

** Dr. Abdullah Alhabib Ammar serves as an Assistant Professor of International Law at the Faculty of Law, Sultan Qaboos University in Oman. He can be contacted via email at abdullah.al@squ.edu.om or by mobile phone at +96871724285.



a constitutional value and an international standard, emphasising responsible investment under international and constitutional norms that balance the investor's right to profit with the host nation's right to economic advancement. The study examines how law might be used as a regulatory framework in this context. Investors are dedicated to integrating human rights, environmental conservation, social advancement, and effective governance into investment decision-making. Nonetheless, the primary focus remains the comparative constitutional legal viewpoint on responsible investment within sustainable development.

Keywords: Comparative Constitutional Law; International Investment Law; Responsible Investment; Social Responsibility; Sustainable Development; Sustainable Development Goals

I. INTRODUCTION

The concept of sustainable development has emerged as a crucial framework to guarantee a more balanced and equitable future as the modern world is under increasing strain from environmental issues and socioeconomic disparities. According to the United Nations' definition, sustainable development is the strategy to fulfil present requirements without compromising the ability of future generations to satisfy their own needs.¹ This principle underscores the imperative to develop a cohesive plan integrating social equality, economic prosperity, and environmental preservation into a unified framework.²

Constitutional recognition of sustainable development establishes a robust basis for reconciling the frequently opposing interests of individual rights and public welfare. It provides the legal framework to align environmental stewardship with economic growth, ensuring that development programs do not compromise societal welfare or ecological integrity.³

Recently, sustainable development has evolved into a crucial principle. This demonstrates that individuals have altered their perceptions of responsibilities and obligations regarding sustainability, which they now acknowledge as a

¹ James Crawford, "Sustainable Development and International Law," *Journal of International Economic Law* 24, no. 2 (June 2022): 214.

² Ilaria Dubava, "Reconciling International Investment Law and Sustainable Development: Normative Incompatibility and a Way Forward," *European Journal of International Law* 25, no. 2 (June 2014): 78.

³ James R. May and Erin Daly, "Global Environmental Constitutionalism," in *Environmental Constitutionalism* (Cambridge: Cambridge University Press, 2018), 45.

fundamental principle.⁴ Numerous states are integrating it into their legal frameworks to guarantee economic sustainability while fostering social fairness and safeguarding the environment. This approach involves the constitutionalizing of sustainability.⁵

The paper, “Responsible Investment in the Framework of Sustainable Development: A Comparative Constitutional Legal Perspective,” looks at how countries’ responsible investors might achieve the SDGs in accordance with international and constitutional requirements. To attain the Sustainable Development Goals (SDGs), nations must formulate long-term strategies grounded in refined policies, enhanced international collaboration, and mobilising more public and private resources to fund the necessary expenses. Therefore, responsible investors play a crucial role in attaining sustainable development by adhering to pertinent international and constitutional norms. Despite the progress made since the adoption of the SDGs, investors remain accountable for the companies in which they invest. In 2006, the preamble to the establishment of the six Principles of SD stated that their implementation might enhance the alignment of investors with the “broader objectives of society.”

The principle of sustainable development as a constitutional value is the study’s central issue. Therefore, does this principle, along with its constitutional safeguarding of environmental and human rights, influence the willingness of investors to agree to particular conditions in investment treaties or contracts? This paper seeks to illustrate that adherence to sustainable development goals leads to responsible investment, which reconciles the host country’s entitlement to economic growth with the rights of investors, through applying environmental, social, and governance (ESG) criteria in investment decision-making. The research methodology examines the role of national constitutions and international environmental and human rights treaties concerning states’ authority to enter into investment treaties, particularly regarding imposing restrictions on

⁴ Muhammad Taufiq Ladan, “Achieving Sustainable Development Goals through Effective Domestic Laws and Policies on Environment and Climate Change,” *Environmental Policy and Law* 48, no. 1 (March 2018): 112.

⁵ Petra Minnerop, “The Climate Change Judgment of the German Federal Constitutional Court: Judicial Innovation or Incremental Development?” *Journal of Environmental Law* 34, no. 1 (March 2022): 189.

ecological protection and human rights considerations. The study indicates that states are dedicated to incorporating human rights, environmental protection, enhancement of social conditions, and good governance into the conventional investment decision-making framework.

II. THE EMERGENCE OF SD AS AN INTERNATIONAL LAW NORM

This part of the research investigates the emergence of sustainable development in international investment law. Under this title, questions concerning the new trend and those related to the elements of SD and its integration into international investment law will be addressed.

2.1. Critical Overview

The function of international investment law has been significantly transformed by integrating the notion of sustainable development (SD). Due to advancements influenced by SD on investment, traditional philosophy is no longer upheld.

2.1.1. Traditional View

International investment law has developed into a distinct subject within the broader context of international law. It is one of several subcategories of public international law, including human rights and environmental law, pertinent to sustainable development. Historically, International investment law, although it fosters economic progress, has mainly concentrated on safeguarding foreign investment, which was widely regarded as essential for sustained growth.⁶ It has been known to the World Bank since the 1960s that private foreign investment is a key component of economic growth. Thus, an impartial and self-governing international tribunal that resolves conflicts improves the nation's investment climate. The International Centre for Settlement of Investment Disputes (ICSID) was established by the ICSID Convention, which addresses resolving investment

⁶ Marc Bungenberg et al., *International Investment Law: A Handbook* (London: Bloomsbury Publishing, 2015), 369.

disputes involving governments and foreign nationals.⁷ It provides an impartial forum for settling investor-state disputes through mixed arbitration free of political interference.

Attempts to create international regulations regarding substantive protection criteria within a multilateral, supra-regional framework have failed.⁸ Consequently, a framework of bilateral treaties (BITS) was instituted. Upon the conclusion of the ICSID Convention, nations have established numerous Bilateral Investment Treaties (BITS), which often incorporate arbitration before ICSID tribunals as a mechanism for dispute resolution.⁹ Recently, nations have increasingly engaged in bi- or multilateral free trade agreements encompassing investment protection clauses featuring investor-state dispute resolution frameworks.¹⁰

These agreements go beyond the ICSID Convention by defining “investment” and binding obligations for states when dealing with foreign investors and people. In most cases, the guarantees cover the following: 1. compensation for expropriations or comparable actions; 2. promise of impartial and fair treatment; 3. complete protection and security; 4. equal treatment as domestic entities; 5. treatment on par with the most favoured nation; 6. the ability to transfer investment and profit funds within and outside the country; 7. a general provision that guarantees the State will fulfil its obligations to foreign investors.

Typically, these treaties do not require the exhaustion of local legal remedies before commencing legal proceedings against the host State concerning the investment. Tribunals have the authority to grant financial compensation for authorised asset confiscation or to provide restitution for losses incurred due to a violation of the investment treaty. In ICSID arbitration, the financial obligations established by a verdict are legally enforceable in all nations that sign the ICSID Convention. Assume both parties’ consent to alternative arbitration norms. The

⁷ “Convention on the Settlement of Investment Disputes between States and Nationals of Other States,” opened for signature March 18, 1965, United Nations Treaty Series, no. 8359, vol. 575, registered October 17, 1966.

⁸ R. Hofmann and C. J. Tams, *International Investment Law: Situating an Exotic Special Regime within the Framework of General International Law* (Baden-Baden: Nomos, 2011), 10.

⁹ United Nations Trade and Development Agency, *Investment Policy Hub Report, Treaties with Investment Provisions* (December 2023), UNCTAD.

¹⁰ UNCTAD, *Investment Policy Hub Report* (December 2023).

acknowledgement and implementation of awards may be executed under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards¹¹. The principal objective of state parties in entering investment protection treaties is to promote and enhance economic development.

2.1.2. Developments

The term ‘sustainable development’ is well established in international politics and has rapidly gained significance in contemporary international law. Recently, there has been an increasing focus on sustainable development, resulting in the incorporation of specific terminology in investment protection treaties designed to harmonise investment protection objectives with sustainable development.¹² In 1987, the World Commission on Environment and Development, in its report “Our Common Future,” defined sustainable development as progress that satisfies current demands without jeopardising the capacity of future generations to fulfil their own needs.¹³ For various reasons, this is nevertheless a relatively succinct presentation of the core ideas of sustainable development. This description acknowledges the limited capacity of our planet and its natural resources. Moreover, it addresses the needs of future generations, including our grandchildren, to meet their wants, underscoring the principle of intergenerational equity. Consequently, sustainable development expanded significantly in subsequent years since it encompassed several issues such as economic progress, environmental preservation, and social enhancement.¹⁴

International investment protection and sustainable development seek to create a global framework based on the rule of law, providing an adequate legal basis for investments to foster sustainable development. The relationship between a regulatory framework based on the rule of law and the advancement of

¹¹ “Convention on the Recognition and Enforcement of Foreign Arbitral Awards,” adopted June 10, 1958, entered into force June 7, 1959, UN Treaty Series, vol. 330.

¹² Kathryn Gordon, J. Pohl, and M. Bouchard, “Investment Treaty Law, Sustainable Development and Responsible Business Conduct: A Fact-Finding Survey,” *OECD Working Papers on International Investment* 2014/01 (2014): 5–6.

¹³ UN, “Report of the World Commission on Environment and Development: Our Common Future,” UNGA Res 42/87, December 11, 1987.

¹⁴ International Court of Justice (ICJ), *Gabčíkovo-Nagyymaros Project* (Hungary/Slovakia), Judgment of September 25, 1997, *ICJ Reports* 1997, para. 140.

sustainable development is particularly evident in eco-friendly energy production. In this context, investment will be essential to successfully transitioning to more ecologically sustainable technology. An explicit purpose is to guarantee the enduring sustainability of the energy sector without undermining living standards or endangering social and environmental protections, which could impede nations' ability to fulfil their aspirations about environmental preservation and human rights. To stimulate private investment in the green economy, creating a comprehensive legislative framework that incorporates an efficient conflict resolution process and binding rulings is imperative. At the same time, this system must support the fundamental laws that states impose to balance the various, sometimes-contradictory interests of human rights, environmental preservation, and economic advancement. This aim is implied in the concept of sustainable development. International investment legislation may facilitate the procurement of essential financial and technological resources to advance the green economy and create the requisite conditions for the fulfilment of human rights, which are vital for the developmental dimension of sustainable development.¹⁵

2.2. The Foundations and Tenets of Sustainable Development

Sustainable development is founded upon and incorporates three principal components of international law: 1. international environmental law; 2. international economic law, about development; and 3. human rights law, encompassing substantive and procedural dimensions. Thus, sustainable development represents the most beneficial elements of all the situations that could occur. The year 2015 has been eventful. Faced with exceptional problems, the world has come together in two unprecedented agreements: the Sustainable Development Goals within the 2030 Development Agenda, agreed in September, and the Paris Climate Change Agreement. These agreements focus on the result that will be attained, the goals: The Paris Agreement, among other things, aims

¹⁵ Mohamed A. Abdelhadi, "State Objections to the Illegality of Investment in Investor-State Arbitration," *Journal of Law and Economic Research*, no. 2 (2024): 128.

to keep global average temperature increases well below 2°C and work to restrict them to 1.5°C. The SD goals prioritised poverty eradication and sustainable development in the 2030 development agenda, noting that there is little prospect for human development without it.

Several fundamental components (principles) make up sustainable development. As established by international law, the primary principle is the sustainable use of natural resources. Numerous treaties emphasise this aspect, irrespective of their specific focus. The second is environmental preservation, essential to sustainable development and achieving its facets. Third, equity involves fairness and justice, addressing the needs of both current and future generations. The fourth is sustainable development's temporal dimension, which encompasses short and long-term timeframes. This is especially evident in the 2015 Paris Climate Treaty.¹⁶ Immediate action is necessary to prevent additional harm to the essential planetary climate system. A long-term plan is required. The Paris Agreement calls for a global temperature increase of no more than two degrees Celsius by 2100 and for us to become as energy-neutral as possible by 2050. The fifth component pertains to human rights, public engagement, and equitable justice for all individuals.

Integration as an element of SD in terms of how to integrate environmental, developmental, and human rights concerns into a comprehensive, integrated, and effective international law system in pursuit of sustainable development is still the most important element that requires more effort by the international community.

It is possible that the beginnings of sustainable development in international law can be traced back to several early treaties. These treaties include those concerning the management of nature and the prevention of river pollution. Several of these treaties date back to the nineteenth century. The concept of sustainable development, in its legal form, was initially presented during the time of the United Nations by using instruments that were not legally binding.

¹⁶ "The Paris Agreement," adopted in Paris on December 12, 2015, entered into force November 4, 2016, United Nations Treaty Series, no. 54113, vol. 3156.

The *1972 Stockholm Declaration*¹⁷ and the *1992 Rio Declaration on Environment and Development*¹⁸ have prioritised sustainable development in global politics. New multinational environmental accords were shortly achieved in their course. Many additional initiatives were built upon the Stockholm Declaration, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 1973) the 1974 Convention on Wetlands of International Importance especially as Waterfowl Habitat.¹⁹ *The Rio Declaration* also led to the creation of several important treaties, such as the UN Climate Change Convention in 1992, the Convention on Biological Diversity, and the Ozone Convention and its Montreal Protocol, which were adopted earlier and have successfully protected the ozone layer.²⁰ Therefore, one can currently observe the integration of the concept of sustainable development in international accords. Adopting the 1994 treaty that formed the World Trade Organisation is also a significant example since it incorporates sustainable development as a key purpose of this new global economic entity.

2.3. SD is the Essential Substance of Modern Investment Treaties

Historically, as demonstrated above, investor protection treaties seldom mention sustainable development or its many aspects, such as environmental protection, labour rights, or human rights. There has been a shift in recent years, and investment protection treaties now commonly incorporate sustainable development-related topics. The UNCTAD investment policy website displays a vast number of investment protection agreements. However, only 39 refer to all three sustainable development-related issues: health and environment, corruption, and labour.²¹ In addition, among the 302 treaties mentioned between January 1, 2014, and May 16, 2022, a total of 77 treaties have been studied. Out of these

¹⁷ UN Conference on the Human Environment, Stockholm, June 15–16, 1972.

¹⁸ UN, "Rio Declaration on Environment and Development," UNGA Doc A/Conf.151/26(Vol 1), annexed to the Report of the UN Conference on Environment and Development, August 12, 1992.

¹⁹ "Convention on Wetlands of International Importance Especially as Waterfowl Habitat," adopted in Ramsar, Iran, February 2, 1971, entered into force December 21, 1975, UNESCO, United Nations Treaty Series, no. 14583, vol. 996.

²⁰ "Montreal Protocol on Substances that Deplete the Ozone Layer," adopted September 16, 1987, entered into force January 1, 1989, United Nations Treaty Series, no. 26369, vol. 1522.

²¹ UNCTAD.

77 treaties, 27 specifically address all three concerns associated with sustainable development.²²

The mention of sustainable development or its elements is more frequently seen in the introductory section of treaties. The 2015 Canada/Burkina Faso Bilateral Investment Treaty includes references to sustainable development and many topics related to it.²³ Another example is the 2002 Austria/Malta BIT, which can serve as an example of a treaty that contains only a reference to one SD-related issue in its preamble, namely, workers' rights: "*Reaffirming* their commitment to the observance of internationally recognised labour standards, in striving to achieve the objectives of this Agreement".²⁴ Since the preamble of a treaty is an essential component of the document in the event of interpretation under Article 31(1) of the Vienna Convention on the Law of Treaties, and because it seeks to ensure sustainable development or its elements on the one hand, such treaty language in preambles serves important interpretive purposes.²⁵

In most cases, when SD or any of its parts are talked about, an investor cannot expect the host state to stop doing things that help these goals, even if those things hurt the investment. Using this language shows that the agreement parties want to keep their power to carry out public policies that support sustainable development. In this situation, the Preamble's requirements sometimes match the language used in the Annexes of investment protection treaties' meanings of expropriation. The Canada/Burkina Faso Bilateral Investment Treaty (BIT) exemplifies this particular strategy.²⁶ Considering the presence of such a provision, activities undertaken to protect sustainable development

²² OECD, "Investment Treaty Law, Sustainable Development and Responsible Business Conduct: A Fact Finding Survey" (Working Papers on International Investment, January 2014).

²³ "Agreement between the Government of Canada and the Government of Burkina Faso for the Promotion and Protection of Investments," adopted April 20, 2015, entered into force October 11, 2017, United Nations Treaty Series, no. 55913.

²⁴ "Agreement between the Republic of Austria and Malta on the Promotion and Mutual Protection of Investments," adopted June 29, 2002, entered into force March 1, 2004, UNCTAD.

²⁵ Article 31 of the 1969 Vienna Convention on the Law of Treaties, General rule of interpretation stated that: 1. a treaty shall be interpreted in good faith under the ordinary meaning to be given to the terms of the treaty in their context and the light of its object and purpose. 2. The context for the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes. "Vienna Convention on the Law of Treaties," done at Vienna on May 23, 1969, entered into force January 27, 1980, United Nations Treaty Series, vol. 1155.

²⁶ "Agreement between the Government of Canada and the Government of Burkina Faso for the promotion and protection of investments (with annexes)," adopted in Ottawa on 20 April 2015, entered into force on 11 October 2017., United Nations Treaty Series no. 55913.

objectives will be regarded as indirect expropriations only under extraordinary circumstances.²⁷ Certain treaties contain provisions that forbid lowering standards in the agreement's main body. These clauses include a stipulation requiring the Parties to consult one another if one Party suspects the other has breached the clause. The 2016 Bilateral Investment Treaty (BIT) between Canada and Mongolia contains an example of such a clause.²⁸

The case law shows that investment tribunals have been aware of corruption problems for a long time. They typically look to "host state law" rules for guidance when faced with such a situation. Depending on the exact text of the treaties, investment protection agreements may reject jurisdiction or deny the validity of a claim if corruption is shown. Despite lacking a "following host State law" clause, they managed to do this. Several states have recently included explicit references to the 2003 UN Convention against Corruption in the introductory declarations or provisions of bilateral investment treaties.²⁹ The treaties do not outline any fines for investors, but it is unlikely that a tribunal would uphold the validity of an investment acquired through deception.³⁰

Declaring clearly in investment protection treaties that both States expect investors to uphold corporate social responsibility and fulfil their business and human rights commitments is another way for States to encourage sustainable development. In this sense, the inclusion of terms in treaties may differ. Treaties often underscore that States should encourage and assist investors in complying with the OECD Guidelines for Multinational Enterprises or the UN Guiding Principles on Business and Human Rights. Some individuals explicitly recognise

²⁷ August Reinish and Christoph Schreuer, *International Protection of Investments: The Substantive Standards* (Cambridge: Cambridge University Press, 2020), 100–111.

²⁸ "Agreement between Canada and Mongolia for the Promotion and Protection of Investments," Article 15, UNCTAD.

²⁹ "United Nations Convention against Corruption," adopted October 31, 2003, entered into force December 14, 2005, United Nations Treaty Series, no. 42146.

³⁰ For an example, Article 16 Canada/Mongolia BIT (2016) that states "Each Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognized standards of corporate social responsibility in their practices and internal policies, such as statements of principle that have been endorsed or are supported by the Parties. These principles address issues such as labour, the environment, human rights, community relations, and anti-corruption. The Parties should remind those enterprises of the importance of incorporating such corporate social responsibility standards in their internal policies." See "Agreement between Canada and Mongolia for the Promotion and Protection of Investments," Article 16, UNCTAD.

these soft law instruments, while others merely refer to them in general terms, regarding the responsibilities of investors and home states concerning foreign investments.

Furthermore, treaties impose obligations on investors in certain situations. One example of a treaty that included provisions for investor duties within the scope of sustainable development is the 2016 Morocco/Nigeria Bilateral Investment Treaty (BIT).³¹ According to Article 14 of the treaty, investors must comply with environmental impact assessment protocols and conduct social impact evaluations. As they think about the environmental impact assessment and how it will be implemented, they also need to follow the precautionary principle.³² Article 18 (1) mandates that investors are accountable for maintaining an environmental management system following its establishment. It delineates specific criteria for the allocation of resources. The pact contains two sections that specifically address human rights issues. Article 15 delineates the obligations of the state parties, which will furnish essential context for the interpretation of the investment protection standards within the treaty. This contrasts with Article 14, which addresses the obligations of investors. Article 18 (2) - (4) delineates the obligations of investors post-establishment to maintain essential labour standards.³³ Moreover, the investor must manage and direct the investment under the human rights standards agreed upon by the investor's home and host states. It is defined in Article 17 what does not fall "under the laws of the host country" and what the obligations of investors are in fighting corruption. According to tribunals that previously used this clause, investments obtained by corrupt means are not eligible for investment protection. Furthermore, according to Article 20, in the event of serious harm, physical injury, or death in the host state, the investor's home state is held civilly liable.

³¹ "Agreement between Morocco and Nigeria on Investment Promotion and Protection," adopted December 3, 2016, UNCTAD.

³² "Agreement between Morocco and Nigeria on Investment Promotion and Protection," Article 14, UNCTAD.

³³ "Agreement between Morocco and Nigeria on Investment Promotion and Protection," Article 18(1), UNCTAD. Investments shall, in keeping with reasonable practice requirements relating to the size and nature of the investment, maintain an environmental management system. Companies in resource exploitation and high-risk industrial enterprises shall maintain a current certification to ISO 14001 or an equivalent environmental management standard.

III. PRINCIPLE OF SUSTAINABLE DEVELOPMENT AS A CONSTITUTIONAL VALUE AND RESPONSIBLE INVESTMENT

In this section, the paper will examine two main issues: the first explains the constitutional context of the concept of sustainability, and the second addresses the impact of constitutionalization on sustainable development.

3.1. The Constitutional Context of the Concept of Sustainability

From a comparative constitutional approach, it is imperative to explore the constitutional status of sustainable development and its impact on investment and responsible investors.

3.1.1. Constitutionalising Sustainability

Constitutionalizing sustainability to gain its current status of constitutional value in many nations reflects the increased awareness of the interconnection of existing economic development, social equity, and environmental health. People in most lands now believe the relationship between these elements must be balanced.³⁴ As the states continue to deal with climate change, they increasingly understand the importance of sustainability. They are consistently drifting toward incorporating sustainability as a vital part of their constitutional frameworks.³⁵ It also indicates a massive shift in legal thinking. The process necessitates acknowledging that sustainability is not just a policy objective but must be treated as a fundamental legal value guiding individual behaviour and state action.³⁶

Norway's constitution was amended in 2014, emphasizing the need for the state to manage its natural resources more sustainably and promote the defensive principle. This constitutionalizing proves that the state is fully committed to

³⁴ Irina Gerasimova, "Environmental Justice and Sustainable Development: A Comparative Analysis," *Journal of Environmental Law* 29, no. 2 (July 2017): 234.

³⁵ Jonathan Wright, "Constitutional Environmentalism: The Evolution of Sustainability as a Legal Principle," *Georgetown Environmental Law Review* 32, no. 1 (Winter 2020): 118.

³⁶ James R. May and Erin Daly, "Global Environmental Constitutionalism," in *Environmental Constitutionalism* (Cambridge: Cambridge University Press, 2018), 42.

balancing its economic development with conservation efforts to protect the environment.³⁷

Another example is South Africa. Its constitution was passed in 1996 and contains information that accords environmental rights. The constitution clearly says that citizens' right to live in an environment that is not polluted and is not harmful to their health.³⁸ This means the country has recognized the connection between human rights and environmental protection. Therefore, it seeks to achieve social justice through sustainability. The constitution also mandates that national initiatives include reasonable legislative actions to prevent pollution and ecological degradation while promoting conservation and sustainable development.³⁹

Ecuador has also constitutionalized sustainable development. Its 2008 Constitution granted the nature of having legal rights.⁴⁰ This constitution states that nature must be given rights and respected, ensuring its generative properties are not negatively affected. It provides innovative approaches to ensuring that the country protects the environment. As a result, people are empowered to take legal actions on behalf of nature during ecological harm.⁴¹

The Egyptian Constitution of 2014 is one of the Arab constitutions that paid great attention to the constitutionalizing of the principle of sustainable development. Article (27) stipulates that "the economic system aim to achieve prosperity in the country through sustainable development and social justice, in a way that ensures raising the real growth rate of the national economy, raising the standard of living, increasing job opportunities, reducing unemployment rates, and eliminating poverty. The economic system is socially committed to ensuring equal opportunities and fair distribution of development returns, reducing income disparities, and committing to a minimum wage and pension that guarantees a decent life and a maximum in state agencies for all those who

³⁷ Christina Voigt, "The Principle of Sustainable Development: Integration and Ecological Integrity," in *Sustainable Development as a Principle of International Law* (Leiden: Martinus Nijhoff Publishers, 2009), 145.

³⁸ Ibon Galárraga, "Constitutional Environmental Rights and Sustainable Development," *Journal of Environmental Policy & Planning* 22, no. 3 (May 2020): 386.

³⁹ Galárraga, "Constitutional Environmental Rights and Sustainable Development," 387.

⁴⁰ Galárraga, "Constitutional Environmental Rights and Sustainable Development," 389.

⁴¹ Esperanza Martínez, "The Rights of Nature in Ecuador's Constitution," *Environmental Policy and Law* 46, no. 1 (February 2016): 89–92.

work for a wage, in accordance with the law.⁴² The article (46) of the Constitution explicitly states that every person has the right to a healthy environment, and its protection is a national duty. The State is committed to taking the necessary measures to preserve it, not harm it, and to the rational use of natural resources in a way that ensures sustainable development and guarantees the rights of future generations therein.⁴³

Among the Arab constitutions that refer to the principle of sustainable development, the Qatari Constitution of 2003. The article (33) states that the state shall work to protect the environment and its natural balance, in order to achieve comprehensive and sustainable development for all generations.⁴⁴ The Tunisian Constitution 2014, in the article (12), states that the state seeks to achieve social justice, sustainable development, and equality based on the principle of positive discrimination. In addition, it works based on the interests of development and the common good of national wealth.⁴⁵

In the same context, the Omani Constitution of 2021 stipulated in Article (15) that the state works to protect the environment and its natural balance, to achieve comprehensive and sustainable development for all generations, and citizens and residents must preserve it and not harm it.⁴⁶ The article (14) also stipulates that the state guarantees freedom of economic activity based on social justice, cooperation, and balance between public and private activities to achieve economic and social development, increase production, achieve prosperity for citizens, raise their standard of living, provide them with job opportunities, and eliminate poverty.⁴⁷

The countries considered here come from different regions of the world and reflect what their fellow states are doing as they increasingly recognise the sustainability principles and adopt them in their constitutions. Nonetheless,

⁴² Constitution of the Arab Republic of Egypt, art. 27 (2014), 15.

⁴³ Constitution of the Arab Republic of Egypt, art. 46 (2014), 22.

⁴⁴ Permanent Constitution of the State of Qatar, art. 33 (2003), 18.

⁴⁵ Constitution of the Republic of Tunisia, art. 12 (2014), 8.

⁴⁶ Basic Law of the Sultanate of Oman, art. 15 (2021), 9.

⁴⁷ Basic Law of the Sultanate of Oman, art. 15 (2021), 9.

this constitutional recognition varies between states depending on their diverse environmental, social, and cultural contexts. It is vital to note that despite the minor differences, all these nations exhibit one common goal: institutionalizing sustainability by making it the key guiding principle for their development and guidance.⁴⁸

3.1.2. Elements of the Sustainability Concept

Several core elements must be incorporated when constitutionalizing the principles of sustainability. This is to create a comprehensive framework to ensure that a country's development is sustainable. The first element is the protection of the environment. The entire concept of sustainability is established on the need for each stakeholder to fully commit to preserving biodiversity and natural ecosystems. The constitution's provisions require the people to prevent pollution, enhance conservation efforts, and improve resource management. The goal of these provisions has been to ensure that environmental considerations become an integral part of all the nation's decision-making processes.⁴⁹

The second element is social justice and attaining equity. Constitutionalization (constitutionalizing) efforts mention two factors that are crucial to attaining sustainability. Constitutions state that environmental degradation disproportionately affects minority groups and marginalized communities. Therefore, these constitutions prioritize these issues by having provisions for protecting vulnerable populations, participation in decision-making, and equitable access to resources.⁵⁰

The constitutionalizing of sustainability has brought out the idea of intergenerational equity as an essential principle worthy of consideration. This principle is seen through the emphasis on ensuring that current generations understand their responsibility. This role entails preserving the limited resources

⁴⁸ Hoda Haghighi and Amirhossein Takian, "Comparative Analysis of Constitutional Sustainability Frameworks: Global Patterns and Regional Variations," *International Journal of Environmental Law and Policy* 18, no. 2 (April 2024): 157.

⁴⁹ Jamon Tuholske, "Constitutional Environmental Rights: A Case for Implementation," *Environmental Law Review* 17, no. 3 (September 2015): 189.

⁵⁰ David R. Boyd, "The Constitutional Right to a Healthy Environment," *Environment: Science and Policy for Sustainable Development* 54, no. 4 (July/August 2012): 7.

available to them. They must also ensure their actions do not compromise the opportunities available for future generations⁵¹. Constitutional provisions have effectively enshrined this principle, mandating proper long-term planning and sustainable resource management. Public participation has also emerged as a vital factor in the discussion. Public participation is essential when dealing with environmental decision-making. According to Dernbach et al. (2018), constitutions prioritizing sustainability have also made deliberate moves to include provisions for ensuring public involvement, access to information, and transparency to actively empower citizens to contribute to the efforts toward sustainable development.⁵²

The issue of sustainable development cannot be complete without considering the principle of economic development. Even though the environmental and social considerations are essential, the principles show that countries should also seek economic development.⁵³ However, this economic growth must be pursued in a manner that shows responsibility on the part of stakeholders, promoting long-term prosperity and respecting environmental limits.⁵⁴

3.1.3. Balancing Individual Interests and Public Initiatives

The core of sustainable development is balancing the needs of current generations with the responsibility of safeguarding the future for coming generations. This balance is especially vital considering constitutional law, in which the rights and duties of citizens must be reconciled.⁵⁵ Constitutional courts across the globe have applied the sustainable development principle to offer a mechanism for attaining a balance by prioritizing policies meant to integrate social, economic, and environmental issues.⁵⁶

⁵¹ Lucy Rodina, "Intergenerational Justice and Sustainable Development in Constitutional Law," *Environmental Ethics* 42, no. 4 (Winter 2020): 245.

⁵² John C. Dernbach, Donald A. Brown, and John H. Knox, "Environmental Rights in Practice: Public Participation in Environmental Decision-making," *William & Mary Environmental Law and Policy Review* 42, no. 3 (Spring 2018): 178.

⁵³ Rodina, "Intergenerational Justice and Sustainable Development in Constitutional Law," 248.

⁵⁴ Rodina, "Intergenerational Justice and Sustainable Development in Constitutional Law," 249.

⁵⁵ Mohamed A. Abdelhadi and Abdullah A. Almahjoub, "The Balance between the Public Interest and Investor Protection," *Kilaw Journal* 7, no. 4 (December 2019): 123.

⁵⁶ Carl Bruch, Wole Olanipekun, and Meredith Wilensky, "Constitutional Environmental Law: Giving Force to Fundamental Principles in Africa," *Columbia Journal of Environmental Law* 26, no. 1 (2001): 138.

Key policy initiatives and legal doctrines reflect the need to balance individual interests and public incentives. For example, the public trust doctrine holds that essential natural resources like wildlife, water, and air must be held within the governmental authority for the public's benefit.⁵⁷ This is the doctrine that experts use when arguing that it is the fiduciary duty of the federal and state governments to ensure maximum protection of these essential natural resources from harm and ensure that they are made available to future generations.⁵⁸

There has also been an increased rate of integration of the principles of sustainable development into land-use policies and urban planning. Excellent examples of ways the government seeks to balance its developmental goals with the need to protect the environment and attain social equity include intelligent growth initiatives, environmental impact assessments, and zoning regulations.⁵⁹ The development of these policies shows that the government is fully committed to ensuring that growth initiatives are sustainably managed, with stakeholders considering the long-term impacts of their projects on ecosystems and communities.⁶⁰

The public trust doctrine has been demonstrated in environmental law, where legal experts have argued favouring sustainable development principles. These individuals say that stakeholders should prioritize the collective interests of the environment.⁶¹ For example, in the landmark case of *Illinois Central Railroad Co. v. Illinois*, the U.S. Supreme Court held that the government is prohibited from granting private corporations' control over the waterfront located in Chicago because doing so would lead to the public trust doctrine violation.⁶² This decision is essential as it reflects the importance of ensuring that the state remains the steward of natural resources, and that there is a balance between

⁵⁷ Tuholske, "Constitutional Environmental Rights," 192.

⁵⁸ James R. May, "Constituting Fundamental Environmental Rights Worldwide," *Pace Environmental Law Review* 23, no. 1 (Fall 2017): 115.

⁵⁹ James R. May and Erin Daly, "Environmental Rights and Liabilities," in *Global Environmental Constitutionalism* (Cambridge: Cambridge University Press, 2021), 78.

⁶⁰ May and Daly, "Environmental Rights and Liabilities," 80.

⁶¹ May, "Constituting Fundamental Environmental Rights Worldwide," 117.

⁶² Joseph D. Kearney and Thomas W. Merrill, "The Origins of the American Public Trust Doctrine: What Really Happened in *Illinois Central*," *University of Chicago Law Review* 71, no. 3 (Summer 2004): 802.

private property rights and the right of the public to access and even benefit from such resources.⁶³

The Supreme Court in India has been at the forefront of incorporating sustainability into its jurisprudence. This has proven that sustainable development is now a constitutional value. The landmark case of *M.C. Mehta v. Union of India* (1988) is a good example. In this case, the Supreme Court invoked this principle. It justified closing industries responsible for pollution in Delhi.⁶⁴ The move emphasized the need for economic progress to be made in a manner that considers economic progress. The court held that preserving the environment is a paramount issue that the constitution must protect, and the financial loss due to the closure was justified by the long-term benefits the people of India would reap by having a healthy environment.⁶⁵

In South Africa, the Constitutional Court reinforced the importance of sustainable development by interpreting environmental rights. For example, in 2007, in the case of the *Fuel Retailers Association of Southern Africa v. Director-General Environmental Management*, the Court held that all projects directed toward development should consider environmental regulations. It also stressed that the stakeholders behind these projects must protect the public's interest. This shows that the country understood that economic benefits could only be pursued through a balanced approach that prioritizes ecological sustainability.⁶⁶

In Germany, the state's Federal Constitutional Court has also acted in a way that indicates that the issue of sustainable development is now an essential constitutional value. The government has effectively addressed the balance between individual rights and public interest concerning the issue of sustainability.⁶⁷ A ruling issued by the Court in 2021 highlighted the need to ensure that future

⁶³ Kearney and Merrill, "The Origins of the American Public Trust Doctrine," 805.

⁶⁴ Malini Niyati, "Environmental Jurisprudence in India: A Study of Contributions Made by the Supreme Court," *International Journal of Legal Studies and Research* 4, no. 2 (August 2015): 184.

⁶⁵ Niyati, "Environmental Jurisprudence in India," 186.

⁶⁶ Matthew Hall, "Environmental Rights in Post-Apartheid South Africa: An Analysis of Constitutional Court Jurisprudence," *Journal of Human Rights and the Environment* 12, no. 1 (March 2021): 57.

⁶⁷ Donald P. Kommers and Russell A. Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany* (Durham: Duke University Press, 2012), 352.

generations' rights are protected by strictly enforcing measures to curb climate change.⁶⁸ It held that the climate policies enacted by the government initiatives must be aligned with constitutional rights, thus ensuring that the country's obligation to protect its environment does not unreasonably infringe on the people's liberties.⁶⁹

The ruling of the German Federal Constitutional Court issued on March 24, 2021 is one of the most prominent and important judicial applications of the constitutional value of the principle of sustainable development. The Court concluded that the Climate Change Act was unconstitutional to the extent that it failed to provide adequate protection. For persons against future restrictions on their rights, which will be necessary as the pace of climate change increases.⁷⁰ Hence, the state must contain this risk that the state may be forced to restrict the fundamental rights of persons in the future in an extremely severe manner, precisely because it does not affect these rights at the present time, and this is what the Court called the restrictive effect in advance on fundamental rights and intertemporal safeguarding of liberties. The Court explicitly noted that the measures taken by the state could be wholly inadequate, and thus the state would have failed to fulfil its constitutional duty to protect if it did not aim to achieve climate neutrality.⁷¹

The court ruled that the law was unconstitutional because there was no specific plan for how Germany would continue to reduce emissions after 2030. The constitutional judge considered that the violation lay in the failure of legislation to comply with the principle of proportionality between the rights of present and future generations. This makes the distribution of benefits and burdens between present and future generations inconsistent with the principle of proportionality. The challenged law allows a particular generation to consume the largest share of the carbon emissions budget, while bearing only a relatively small share of

⁶⁸ Petra Minnerop, "The Climate Change Judgment of the German Federal Constitutional Court: Judicial Innovation or Incremental Development?" *Journal of Environmental Law* 34, no. 1 (March 2022): 121.

⁶⁹ Minnerop, "The Climate Change Judgment," 123.

⁷⁰ Agnes Hellner and Yaffa Epstein, "Climate Change and Intergenerational Equity: The German Constitutional Court's Climate Decision," *Transnational Environmental Law* 12, no. 1 (March 2023): 75.

⁷¹ Hellner and Epstein, "Climate Change and Intergenerational Equity," 78.

the greenhouse gas emission reduction effort. This places a very large burden on future generations in the aforementioned reduction effort, exposing their lives to enormous losses and imposing ever more severe and harsh restrictions on their fundamental rights.⁷²

According to the above analysis, it can be said that the basic reasoning on which the Court relies is as follows: Germany's legal duty to aim for climate neutrality entails a total balance of residual emissions. Therefore, the more Germany uses its share of the total emissions budget until 2030, the more stringent restrictions on individuals' freedoms will be imposed after 2030, to achieve the constitutional requirement for climate protection and climate neutrality.⁷³ The more a country emits by 2030, the greater the risk that the country will have to intervene more quickly and forcefully in the period after 2030 to impose restrictions on basic rights to be able to achieve climate neutrality. This expectation is not only a realistic result, but also has legal implications, as the state will find itself forced and even obligated to restrict fundamental rights, because the weight of these rights will be less compared to the state's duty to intervene to protect the climate. The weight of these rights will gradually decrease as the pace of climate change increases.⁷⁴

Based on the above, the Court decided that: "under certain circumstances, the Constitution requires that constitutional freedoms be protected over time and that the possibility of protecting these rights be distributed equitably".⁷⁵ In other words, the risk of present-permitted emissions jeopardizing the future exercise of fundamental rights must be justified by the legislator in the present by taking adequate precautionary measures to ensure that fundamental rights will continue to be protected in the future, not just now". This means that there is a constitutional duty not only to achieve climate neutrality, but also to undergo gradual transformation over time in an appropriate manner to achieve this goal.⁷⁶

⁷² Hellner and Epstein, "Climate Change and Intergenerational Equity," 80.

⁷³ Jannika Jahn, "A Climate Constitutional Moment? German Federal Constitutional Court Orders Legislature to Rectify Climate Protection Act," *Cambridge Law Journal* 82, no. 2 (July 2023): 264.

⁷⁴ Jahn, "A Climate Constitutional Moment?" 266.

⁷⁵ Mustafa Hilal and Walid Al-Shennawy, "Constitutional Dimensions of Climate Change Litigation," *Arab Law Quarterly* 37, no. 3 (September 2023): 213.

⁷⁶ Hilal and Al-Shennawy, "Constitutional Dimensions of Climate Change Litigation," 215.

The Egyptian Supreme Constitutional Court has confirmed that sustainable development is a principle of constitutional value and has argued that the legislator must consider sustainable development as a supreme goal of the economic system. Accordingly, investment is not protected unless this goal is achieved.⁷⁷ It ruled that Article (32) of the Constitution obliges the state to preserve natural resources, exploit them well, not deplete them, and take into account the rights of future generations therein. The Constitution specified in Articles (27 and 28) a supreme goal for the country's economic system. The result of which is achieving prosperity through sustainable development, to raise the rate of real growth that is balanced geographically and environmentally for the economy, guarantee the different types of ownership, encourage investment and provide an attractive climate for it. Mechanisms and means to achieve its ultimate goal, and protect all productive, service, and informational economic activities. Investment, as the locomotive of economic development, expands the contribution of the state's production units and the private sector, which means that both public and private investments have a role in development. Whenever the state sees a public interest in that, there is no violation in its direction to support investment through the private sector of the provisions of the constitution. Rather, it is a dedication to the economic values that it calls for foremost among which is that the best investment. In addition, the one most worthy of protection is always linked to the circle in which it operates, and on the assumption that public and private investments are complementary partners, they do not compete or conflict, but rather each of them undertakes tasks for which it is qualified and more capable.⁷⁸

In confirmation of the constitutional value of the principle of sustainable development, the Supreme Court of Justice approved the law criminalizing the violation of the principle of sustainable development. It ruled that the overall objectives of issuing the Building Law legislation are determined by establishing an integrated system for urban planning, urban coordination, and organizing

⁷⁷ *Supreme Constitutional Court of Egypt*, Case No. 120 of Judicial Year 36 (January 14, 2023), 8.

⁷⁸ *Supreme Constitutional Court of Egypt*, Case No. 120 of Judicial Year 36 (January 14, 2023), 12.

construction work, and preserving real estate wealth, through a vision for urban development to achieve sustainable development, and (development and) determine future needs for urban expansion. In the field of deterrence that ensures the achievement of the aforementioned legislative objectives, the contested law prohibited the establishment of any facilities outside the boundaries of the approved urban areas or taking any measures regarding the division of these lands. This is in appreciation of the danger of any of the aforementioned actions to national security in its social and cultural sense, their waste of elements of national wealth at the state and citizen levels, and their harm to the components of sustainable development. This prompted the legislator to criminalise the actions that violate this prohibition.⁷⁹

IV. THE IMPACT OF CONSTITUTIONALISING ON SUSTAINABLE DEVELOPMENT

Since sustainable development is treated as a constitutional value, many implications will result concerning the principles of sustainable development regarding the question of responsible investors.

4.1. Legal Implications

When sustainable development is incorporated into constitutional law, its status is raised from a mere policy objective to a significant legal principle that binds. For this transition to happen, the government must prioritize sustainability in their administrative and legislative actions, thus ensuring that all the critical development initiatives align with social and environmental objectives.⁸⁰ If sustainability is mandated as a constitutional value, the states are held accountable for upholding these principles in every governance issue, including urban planning and resource management.⁸¹

Constitutionalizing sustainability can also significantly impact the judicial interpretation of environmental standards issues, empowering the courts to protect

⁷⁹ *Supreme Constitutional Court of Egypt*, Case No. 75 of Judicial Year 35 (January 16, 2022), 8.

⁸⁰ Ilaria Dubava, "Reconciling International Investment Law and Sustainable Development: Normative Incompatibility and a Way Forward," *European Journal of International Law* 25, no. 2 (June 2014): 457.

⁸¹ Dubava, "Reconciling International Investment Law and Sustainable Development," 459.

ecological integrity more effectively. For example, the constitutional courts have been at the forefront of reviewing the actions taken by governments to ensure compliance with sustainability principles, thereby keeping the legislative and executive powers in check concerning these matters.⁸² Therefore, by making sustainable development a constitutional value, a legal framework is formed where robust mechanisms are developed to prevent environmental degradation and promote sustainability.⁸³

4.2. Human Rights for a Clean and Healthy Environment

Sustainable development has been widely recognized as a constitutional value. As such, this value has effectively strengthened the human right to live in a clean and healthy environment⁸⁴. Through the initiatives of the United Nations, this right has been viewed by most nations worldwide as an integral part of the broader human rights framework, highlighting the connection between human well-being and environmental health.⁸⁵ All the member states under the UN have included specific constitutional provisions meant to protect human rights by conserving the environment, ensuring that individual citizens and communities are adequately empowered to hold their governments and entities accountable for all the environmental harm they cause.⁸⁶ The Colombian Constitutional Court is an excellent example in this case, as it recently ruled that it favoured granting Atrato River rights, recognized as a legal entity. The ruling shows that the constitution in that country is committed to protecting the ecosystems, more as a constitutional duty than a mere policy objective.⁸⁷ When the Constitutional Courts make such decisions, they have taken seriously their duty to safeguard environmental rights to promote sustainable development.⁸⁸

⁸² Blake Hudson, "Structural Environmental Constitutionalism," *Widener Law Review* 21, no. 2 (Spring 2015): 173.

⁸³ Hudson, "Structural Environmental Constitutionalism," 175.

⁸⁴ Daniel B. Magraw and Peggy Rodgers Kalas, "The Right to a Healthy Environment," in *International Human Rights and Environment* (Cambridge: Cambridge University Press, 2014), 124.

⁸⁵ Magraw and Kalas, "The Right to a Healthy Environment," 126.

⁸⁶ Isabel Nemesio, "Constitutional Environmental Rights: A Case for Environmental Justice," *Journal of International Affairs* 73, no. 1 (Fall/Winter 2014): 87.

⁸⁷ Silvia Bagni, "The Colombian Constitutional Court Recognizes Rights of the River Atrato: A New Case of Rights of Nature," *Journal of Constitutional Law in Latin America* 4, no. 2 (December 2022): 143.

⁸⁸ Bagni, "The Colombian Constitutional Court Recognizes Rights of the River Atrato," 145.

4.3. Impact on Investment Treaties

States ensure that the investment treaties they approve do not interfere with the government's power and mandate to protect public interests and enforce environmental regulations⁸⁹. Constitutionalizing sustainable development has dramatically influenced international treaties related to investments. Since the critical government stakeholders involved in these processes have cultivated the view of sustainable development principles as fundamental constitutional values, they have been embracing the constraints imposed by the new policies when their states enter into agreements that could adversely affect the social and environmental standards.⁹⁰

Environmental clauses are primarily developed to safeguard the regulatory autonomy of the federal and state governments, making it possible for them to implement vital steps toward protecting the environment without experiencing legal challenges from potential investors. An excellent example of this integration of the clause is seen in the North American Free Trade Agreement (NAFTA). This agreement specifically expressed the necessity of protecting the environment and promoting sustainable development.⁹¹ Despite being replaced by the United States-Mexico-Canada Agreement (USMCA), NAFTA's total commitment to sustainable development has been maintained throughout. The investment treaties enforced currently have specific clauses and provisions to affirm that the states have the right to regulate operations in the public's interest, including the move to protect the environment, ensure public safety, and safeguard health. Thus, environmental factors are increasingly important when entering investment and trade agreements.⁹²

⁸⁹ Dernbach, Brown, and Knox, "Environmental Rights in Practice," 180.

⁹⁰ Ernst-Ulrich Petersmann, "Constitutional Economics of Sustainable Development and Investment Agreements," *Journal of International Economic Law* (March 2024): 7.

⁹¹ Dubava, "Reconciling International Investment Law and Sustainable Development," 464.

⁹² Dubava, "Reconciling International Investment Law and Sustainable Development," 465.

4.4. Environmental Rule of Law as an Avenue to Achieving Ecologically Sustainable Development

In most countries guided by the UN, this law is essential in ensuring that natural resources are protected (protected,) and development initiatives are based on sustainability principles.⁹³ The environmental rule of law is a crucial concept that scholars and legal experts have used to design a legal framework for attaining ecologically sustainable development. The idea is vital in ensuring that the laws created to protect the environment are equitably enforced, effective, and fair to ensure public participation, transparency, and accountability in environmental governance.⁹⁴

The first principle is accountability. It indicates that the government and private corporations must be compelled to take responsibility for their activities affecting the environment⁹⁵. According to Kreilhuber and Kariuki (2019), accountability is one of the significant factors used to enforce laws and hold violators accountable for their actions. Thus, every government decision involving environmental policies must be scrutinized with transparency and ensure compliance.⁹⁶

Another vital principle is participation. It requires people from all backgrounds, especially marginalized communities, to be involved fully in environmental decisions. This ensures more inclusiveness and equity.⁹⁷ Public participation is the cornerstone of environmental decision-making, as provided within the ecological rule of law. The principle ensures that people affected by these policies can affect their implementation. This ensures that all accept the outcomes.⁹⁸

The other key principles are equity and justice, ensuring equitable decisions involving the environment. The idea is to share the benefits and burdens related

⁹³ Wright, "Constitutional Environmentalism," 120.

⁹⁴ Muhammad Taufiq Ladan, "Achieving Sustainable Development Goals through Effective Domestic Laws and Policies on Environment and Climate Change," *Environmental Policy and Law* 48, no. 1 (March 2018): 42.

⁹⁵ Arnold Kreilhuber and Angela Kariuki, "Environmental Rule of Law and the Critical Role of Good Environmental Governance," *Environmental Policy and Law* 49, no. 3 (June 2019): 234.

⁹⁶ Kreilhuber and Kariuki, "Environmental Rule of Law," 236.

⁹⁷ Kreilhuber and Kariuki, "Environmental Rule of Law," 238.

⁹⁸ Nemesio, "Constitutional Environmental Rights," 90.

to the environment equally without disproportionately affecting marginalized people. Therefore, everyone will have a good chance to get clean air, a healthy environment, and clean water.⁹⁹

The last principle included in this paper is transparency; the environmental rule of law requires all relevant information concerning environmental impacts, practices, and policies to be accessible to the public¹⁰⁰. The principle was created with the idea that if people have access to the information, they will understand that they have a vital responsibility and rights related to their environment. It was designed to support decisions that are more informed. It also empowers the citizens to participate actively in environmental governance.¹⁰¹

Although significant strides can be seen in how the environmental rule of law has promoted sustainable development, there are still various significant challenges in this case. The main issue is ensuring these laws are enforced consistently across different regions and states. The problem arises when there is a shift in political priorities.¹⁰² Moreover, states that environmental issues are very complex. Things like biodiversity loss and climate change need innovative strategies to deal with them. They may also require international cooperation for adequate resolution, which is challenging.¹⁰³

Advancements in modern technologies and trends in the digital world present an excellent opportunity to strengthen the environmental rule of law. Stakeholders can use data analytics and digital tools to improve accountability and transparency. These items can deliver real-time information concerning compliance with these laws and new developments.¹⁰⁴ Technology is also helpful in enhancing international collaboration when environmental issues arise. The stakeholders can use the tech to share the best practices and solutions.¹⁰⁵

⁹⁹ Wright, "Constitutional Environmentalism," 124.

¹⁰⁰ Wright, "Constitutional Environmentalism," 125.

¹⁰¹ Magraw and Kalas, "The Right to a Healthy Environment," 132.

¹⁰² Wright, "Constitutional Environmentalism," 127.

¹⁰³ Magraw and Kalas, "The Right to a Healthy Environment," 135.

¹⁰⁴ Carl Bruch and John Broderick, "Digital Technologies for Environmental Rule of Law," *Environmental Policy and Law* 51, no. 4 (December 2021): 232.

¹⁰⁵ Bruch and Broderick, "Digital Technologies for Environmental Rule of Law," 235.

V. CONCLUSION

This paper examines the constitutional aspects of sustainable development and how they affect the practices of responsible investors. It accomplishes this by reviewing constitutional provisions, court decisions, and investment frameworks in various jurisdictions while keeping in mind that international law has given sustainable development a global norm that has dramatically influenced the domestic legal systems, including constitutions, and has become a constitutional value that the responsible investor should observe. This study, however, concluded with the following results and suggestions.

5.1. Results

Sustainable development has quickly gained widespread support in international law. Contemporary international investment law is no longer only concerned with protecting foreign investors' capital from domestic law risks. It has evolved to include sustainable development as a legal criterion that must be considered to balance competing interests. It has been proven that in recent decades, sustainable development has become an international legal norm that has quickly transferred to domestic legal regimes. Bilateral and multilateral investment treaties have normative value and are the primary source of global standards to be observed in the investment governance system. Sustainable development is based on and integrates three main components of international law: international environmental law, international economic law, as far as development is concerned, and human rights law.

Sustainable development goals bring many benefits to the investor needs, the most important of which are: encouraging decision-making based on a developed understanding of community aspirations, the opportunities associated with social responsibility, and the risks of not fulfilling social responsibility. Moreover, improving risk management practices, enhancing the organization's reputation, and encouraging greater public trust. Improving stakeholder relationships; enhancing employee loyalty and morale and improving the safety and health of

both male and female workers; and positively affecting the organization's ability to recruit, motivate, and retain employees. As well, achieving savings associated with increased productivity and resource efficiency, reducing energy and water consumption, reducing waste, recovering the value of derived products, and increasing the availability of raw materials. In addition to, improving the reliability and integrity of transactions through responsible political participation, fair competition, the absence of corruption, and preventing or mitigating potential conflicts with consumers regarding products or services and contributing to the organization's long-term vitality by promoting the sustainability of natural resources and environmental services, contributing to the public good, and strengthening civil society and institutions.

Establishing an adequate international legal framework harmonizing environmental protection, development, and human rights is crucial for the global community. Adopting sustainable investment strategies through a critical integrative process is essential to ensuring coherence across all dimensions of sustainability.

Most countries' constitutions now incorporate legal aspects that recognise the interconnection of economic, social, and environmental issues to balance public interests with individual rights. Constitutional courts in Germany, India, and South Africa, for example, have elevated sustainability to constitutional status through judicial interpretation; other countries, including Norway, Ecuador, Egypt, and Qatar, have explicitly incorporated sustainable development principles into their constitutional frameworks. The legal impact of such practices allows communities and individuals to demand accountability from investors who engage in harmful activities that violate environmental and human rights.

5.2. Suggestions

The global community must prioritize the integration of environmental, developmental, and human rights concerns within an adequate international legal framework to foster sustainable development. To achieve this, countries

must establish new regulations, enhance transparency, and implement effective enforcement mechanisms across all aspects of sustainable development. Equally important, they should create avenues for meaningful public participation to engage in discussions about environmental protection and human rights, particularly in the context of investment and sustainable development. By combining robust legal structures with inclusive public dialogue, nations can ensure a comprehensive and equitable approach to sustainability.

BIBLIOGRAPHY

Abdelhadi, Mohamed A. "State Objections to the Illegality of Investment in Investor-State Arbitration." *Journal of Law and Economic Research*, no. 2 (July 2024): 128. <https://doi.org/10.21608/lalexu.2024.405040>.

Abdelhadi, Mohamed A., and Abdullah A. Almahjoub. "The Balance between the Public Interest and Investor Protection." *Kilaw Journal* 7, no. 4 (December 2019): 123–36. <https://journal.kilaw.edu.kw/wp-content/uploads/2020/06/117-136-Dr.-Abubaker-Dr.-alhabeeb.pdf>.

Agreement between Canada and Mongolia for the Promotion and Protection of Investments. UNCTAD Investment Policy Hub. Accessed August 5, 2024. <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/3698/canada---mongolia-bit-2016->.

Agreement between the Government of Canada and the Government of Burkina Faso for the Promotion and Protection of Investments (with annexes). Adopted 20 April 2015; entered into force 11 October 2017. United Nations, Treaty Series no. 55913. <https://edit.wti.org/wti-filesystem/20230927/b93a31ed-c881-4318-8b1e-94d65c97a8ec/Canada%20-%20Burkina%20Faso.pdf>.

Agreement between the Republic of Austria and Malta on the Promotion and Mutual Protection of Investments. Adopted 29 June 2022; entered into force 1 March 2024. UNCTAD Investment Policy Hub. <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/treaties-withinvestment-provisions/259/austria---malta-bit-2002->.

- Agreement between Morocco and Nigeria on Investment Promotion and Protection. Adopted 3 December 2016. UNCTAD Investment Policy Hub. <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/tips/3711/morocco---nigeria-bit-2016->.
- Bagni, Silvia. "The Colombian Constitutional Court Recognizes Rights of the River Atrato: A New Case of Rights of Nature." *Journal of Constitutional Law in Latin America* 4, no. 2 (June 2022): 143-45.
- Boyd, David R. "The Constitutional Right to a Healthy Environment." *Environment: Science and Policy for Sustainable Development* 54, no. 4 (July 2012): 7-14.
- Bruch, Carl, and John Broderick. "Digital Technologies for Environmental Rule of Law." *Environmental Policy and Law* 51, no. 4 (2021): 232-35.
- Bruch, Carl, Wole Olanipekun, and Meredith Wilensky. "Constitutional Environmental Law: Giving Force to Fundamental Principles in Africa." *Columbia Journal of Environmental Law* 26, no. 1 (2001): 138-72.
- Bungenberg, Marc, Jörn Griebel, Stephan Hobe, and August Reinisch. *International Investment Law: A Handbook*. London: Bloomsbury Publishing, 2015.
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Adopted 10 June 1958; entered into force 7 June 1959. UNTS, vol. 2, chap. XXII. https://treaties.un.org/doc/Treaties/1959/06/19590607%2009-35%20PM/Ch_XXII_01p.pdf.
- Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Opened for signature 18 March 1965; entered into force 14 October 1966. UNTS no. 8359. <https://treaties.un.org/doc/Publication/UNTS/Volume%20575/volume-575-I-8359-English.pdf>.
- Convention on Wetlands of International Importance Especially as Waterfowl Habitat. Adopted 2 February 1971; registered 17 February 1976. UNTS no. 14583. <https://treaties.un.org/doc/Publication/UNTS/Volume%20996/volume-996-I-14583-English.pdf>.

- Crawford, James. "Sustainable Development and International Law." *Journal of International Economic Law* 24, no. 2 (May 2022): 214–35.
- Dernbach, John C., Donald A. Brown, and John H. Knox. "Environmental Rights in Practice: Public Participation in Environmental Decision-making." *William & Mary Environmental Law and Policy Review* 42, no. 3 (April 2018): 178–80.
- Dubava, Ilaria. "Reconciling International Investment Law and Sustainable Development: Normative Incompatibility and a Way Forward." *European Journal of International Law* 25, no. 2 (May 2014): 457–65.
- Galárraga, Ibon. "Constitutional Environmental Rights and Sustainable Development." *Journal of Environmental Policy & Planning* 22, no. 3 (June 2020): 386–89.
- Gerasimova, Irina. "Environmental Justice and Sustainable Development: A Comparative Analysis." *Journal of Environmental Law* 29, no. 2 (May 2017): 234–54.
- Haghighi, Hoda, and Amirhossein Takian. "Comparative Analysis of Constitutional Sustainability Frameworks: Global Patterns and Regional Variations." *International Journal of Environmental Law and Policy* 18, no. 2 (2024): 157–78.
- Hall, Matthew. "Environmental Rights in Post-Apartheid South Africa: An Analysis of Constitutional Court Jurisprudence." *Journal of Human Rights and the Environment* 12, no. 1 (March 2021): 57–79.
- Hellner, Agnes, and Yaffa Epstein. "Climate Change and Intergenerational Equity: The German Constitutional Court's Climate Decision." *Transnational Environmental Law* 12, no. 1 (January 2023): 75–80.
- Hilal, Mustafa, and Walid Al-Shennawy. "Constitutional Dimensions of Climate Change Litigation." *Arab Law Quarterly* 37, no. 3 (July 2023): 213–15.
- Hofmann, Rainer, and Christian J. Tams. *International Investment Law: Situating an Exotic Special Regime within the Framework of General International Law*. Baden-Baden: Nomos, 2011.

- Hudson, Blake. "Structural Environmental Constitutionalism." *Widener Law Review* 21, no. 2 (2015): 173–75.
- International Institute for Sustainable Development. "Our Common Future: Report of the World Commission on Environment and Development." UNGA Res. 42/87 (11 December 1987). <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>.
- Jahn, Jannika. "A Climate Constitutional Moment? German Federal Constitutional Court Orders Legislature to Rectify Climate Protection Act." *Cambridge Law Journal* 82, no. 2 (May 2023): 264–66.
- Kearney, Joseph D., and Thomas W. Merrill. "The Origins of the American Public Trust Doctrine: What Really Happened in Illinois Central." *University of Chicago Law Review* 71, no. 3 (Summer 2004): 802–05.
- Kreilhuber, Arnold, and Angela Kariuki. "Environmental Rule of Law and the Critical Role of Good Environmental Governance." *Environmental Policy and Law* 49, no. 3 (June 2019): 234–38.
- Kommers, Donald P., and Russell A. Miller. *The Constitutional Jurisprudence of the Federal Republic of Germany*. Durham: Duke University Press, 2012.
- Ladan, Muhammad Taufiq. "Achieving Sustainable Development Goals through Effective Domestic Laws and Policies on Environment and Climate Change." *Environmental Policy and Law* 48, no. 1 (January 2018): 42, 112.
- Magraw, Daniel B., and Peggy Rodgers Kalas. "The Right to a Healthy Environment." In *International Human Rights and Environment*, 124–35. Cambridge: Cambridge University Press, 2014.
- Martínez, Esperanza. "The Rights of Nature in Ecuador's Constitution." *Environmental Policy and Law* 46, no. 1 (January 2016): 89–92.
- May, James R., and Erin Daly. "Environmental Rights and Liabilities." In *Global Environmental Constitutionalism*, 78–80. Cambridge: Cambridge University Press, 2021.

- May, James R., and Erin Daly. "Global Environmental Constitutionalism." In *Environmental Constitutionalism*, 42–45. Cambridge: Cambridge University Press, 2018.
- Minnerop, Petra. "The Climate Change Judgment of the German Federal Constitutional Court: Judicial Innovation or Incremental Development?" *Journal of Environmental Law* 34, no. 1 (March 2022): 121–23, 189.
- Nemesio, Isabel. "Constitutional Environmental Rights: A Case for Environmental Justice." *Journal of International Affairs* 73, no. 1 (Spring 2014): 87–90.
- Niyati, Malini. "Environmental Jurisprudence in India: A Study of Contributions Made by the Supreme Court." *International Journal of Legal Studies and Research* 4, no. 2 (2015): 184–86.
- OHCHR. "Bangladesh: A Secular State with a State Religion?" September 2015. <https://www.ohchr.org/en/press-releases/2015/09/bangladesh-secular-state-state-religion>.
- Partlett, William. "Russia's Unconstitutional Zeroing Amendment." *IACL-AIDC Blog*, 16 March 2020. <https://blog-iacl-aidc.org/2020-posts/2020/3/16/russias-unconstitutional-zeroing-amendment>.
- Petersmann, Ernst-Ulrich. "Constitutional Economics of Sustainable Development and Investment Agreements." *Journal of International Economic Law* (March 16 2024): 7. <https://doi.org/10.1093/jiel/jgae004>.
- Reinisch, August, and Christoph Schreuer. *International Protection of Investments: The Substantive Standards*. Cambridge: Cambridge University Press, 2020.
- Rodina, Lucy. "Intergenerational Justice and Sustainable Development in Constitutional Law." *Environmental Ethics* 42, no. 4 (Autumn 2020): 245–49.
- Sabsay, Daniel. "Constitution and Environment in Relation to Sustainable Development." *Pace Environmental Law Review* 21, no. 1 (Winter 2003): 156–82.
- Satrio, Abdurrachman. "Restoring Indonesia's (Un)Constitutional Amendments: Soepomo's Authoritarian Constitution." *German Law Journal* 24, no. 2 (April 2023): 402–25. <https://doi.org/10.1017/glj.2023.16>.

- Scheppele, Kim Lane. "Constitutional Ethnography: An Introduction." *Law & Society Review* 38, no. 3 (September 2004): 389–411.
- Sethi, Amal. "When Should Courts Invalidate Constitutional Amendments?" *Vienna Journal on International Constitutional Law* 18, no. 1 (January 2024): 25–47.
- Stockholm Declaration on the Human Environment. UN Conference on the Human Environment, 15–16 June 1972. <https://www.un.org/en/conferences/environment/stockholm1972>.
- Takahashi, Kazuyuki. "Why Do We Study Constitutional Laws of Foreign Countries, and Why?" In *Defining the Field of Comparative Constitutional Law*, edited by Vicki Jackson and Mark Tushnet, 35–71. Delhi: Praeger, 2002.
- The Paris Agreement. Adopted 12 December 2015; entered into force 4 November 2016. UNTS no. 54113, vol. 3156. <http://treaties.un.org/doc/Publication/UNTS//Volume%203156/Part/volume-3156-I-54113.pdf>.
- The Report of the World Commission on Environment and Development: Our Common Future. UNGA Res. 42/87 (11 December 1987). <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>.
- Tuholske, Jamon. "Constitutional Environmental Rights: A Case for Implementation." *Environmental Law Review* 17, no. 3 (2015): 189–92.
- UN, Rio Declaration on Environment and Development, annexed to Report of the UN Conference on Environment and Development, 3–14 June 1992. UNGA Doc. A/Conf.151/26(Vol I). https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf.
- UNCTAD. "Investment Policy Hub." Accessed August 5, 2024. <https://investmentpolicy.unctad.org/international-investment-agreements/iia-mapping>.

- United Nations Convention against Corruption. Adopted 31 October 2003; entered into force 14 December 2005. UNTS no. 42146. <https://www.unodc.org/documents/treaties/Special/2003%20United%20Nations%20Convention%20against%20Corruption.pdf>.
- Voigt, Christina. "The Principle of Sustainable Development: Integration and Ecological Integrity." In *Sustainable Development as a Principle of International Law*, 145. Leiden: Martinus Nijhoff Publishers, 2009.
- Wohab, Abdul, and Sandro Serpa. "'Secularism' or 'No-Secularism'? A Complex Case of Bangladesh." *Cogent Social Sciences* 7, no. 1 (January 2021): 1–15. <https://doi.org/10.1080/23311886.2021.1928979>.
- Wright, Jonathan. "Constitutional Environmentalism: The Evolution of Sustainability as a Legal Principle." *Georgetown Environmental Law Review* 32, no. 1 (2020): 118–27.
- Vienna Convention on the Law of Treaties. Done 23 May 1969; entered into force 27 January 1980. UNTS, vol. 1155. https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

-