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Sustainability Provisions in Canadian Investment Agreements with African LDCs: A Social Licence to Operate?

by A. Aseeva and T. Beketova

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Sustainability Provisions in Canadian Investment Agreements with African LDCs: A Social Licence to Operate?

Anna Aseeva and Tatiana Beketova***

Abstract

This article provides a critical comparative overview of sustainability disciplines in selected international investment agreements (IIAs), including bilateral investment treaties (BITs), with a particular focus on model IIAs and actual BITs concluded between Canada and several African countries. Our analysis demonstrates two general tendencies. First, an overwhelming number of BITs between capital-exporting states and African countries contain no express reference to the public and further societal interest of the host state. The same goes for BITs between a developing state and an African country. Second, to date only six BITs between a developed country and an African state (all Sub-Saharan least-developed countries) do refer to the public interest and sustainable development of the host state, and all of them are concluded by Canada. We noticed, however, a major pitfall in all those BITs. Namely, they are signed in accordance with Canada's model IIA rather than various African investment codes, which clearly shows the power balance in treaty negotiations. More specifically, neither Canada's model IIA nor its actual investment agreements with African LDCs contain substantive provisions with concrete reference to labour standards—either national or international. Additionally, Canada's model includes neither societal impact assessment provisions nor those referring to the precautionary principle. Contrast, for example, Canada's model with the ECOWAS investment code. The latter stipulates a clear investors' duty to protect human rights, including labour rights in compliance with the ILO Declaration on Fundamental Principles and Rights of Work 1998. An overall character of the ECOWAS code is attributable to the sheer needs in improving standards of living of the region. On its side, the Canadian model strives to sign IIAs with African countries, particularly with LDCs, to protect Canadian foreign investments and define the strictest host state obligations possible, whilst the obligations of foreign investors are quite lax or simply non-existent. Substantively, this means that Canadian ratio of 'development funding-FDI' for Africa seems to be providing just enough foreign aid to get a social licence to operate for its investors' involvement in African mining, while maximally facilitating and protecting such involvement.

1. Introduction

At the 32nd G8 summit held on 15-17 July 2006 in Saint Petersburg, Russia, the then-brand new Canadian Prime Minister Stephen Harper promised that Canada would allocate USD 450 million in funding to the Africa Health Systems Initiative.[1] In the years that followed, the conservative Harper government (2006–2015) cut Canadian international development funding to long-standing foreign-aid groups, made Canadian mining corporations financing

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[1] World Health Organization (WHO), 'The Canadian International Development Agency—CIDA' Global Health Workforce Alliance <https://www.who.int/workforcealliance/members_partners/member_list/cida/en/> accessed 26 September 2019.

aid projects abroad jointly with the Canadian International Development Agency (CIDA), and eventually closed down the latter.[2] The plan was 'to ensure that foreign aid also fuels economic growth and international trade at home.'[3]

It comes as no surprise that throughout the Harper years, Canada greatly increased its foreign direct investments (FDIs) in the African continent, mostly in mining, and hence also backed its FDIs by signing several international investment agreements (IIAs) across the continent.[4] The liberal government of Justin Trudeau that took office after Harper has 'reaffirmed Canada's commitment to Africa.'[5] Notably, Canadian development assistance funding to support sustainable development on the continent is marginal, in 2016 languishing at 0.28 per cent of Canadian GDP.[6]

In this article, we suggest that since the Harper government and onwards, Canadian ratio of 'development funding-FDI' for Africa seems to be providing just enough foreign aid to obtain a social licence to operate for its investors' involvement in African mining, while maximally facilitating and protecting such involvement. More generally, this formula could apply to other recipients of Canadian foreign aid, such as Latin American countries. A broader perspective that this article opens on IIAs as instruments to foster sustainable development is that, in relative terms, both Canadian model IIA and actual Canadian agreements are in some respects better equipped than other developed-country investment instruments. In absolute terms, however, they are still quite deficient as instruments to protect and promote sustainability, especially in the developing world. Thus the critique elaborated in our article would apply with even more power to other IIAs negotiated by other developed countries on the African continent.

What is unique about the above situation is that the African continent is to date comprised of the highest number of the so-called least-developed countries (LDCs).[7] Canada is so far the only developed country that concludes investment agreements containing references to sustainability with African LDCs. This article, therefore, provides a critical overview of the IIAs, mostly bilateral investment treaties (BITs), concluded between Canada and selected African countries, with a particular focus on the current state of play and likely future developments of their sustainability disciplines.

The article is divided into three substantive sections. Section 2 provides an overview of key developments concerning sustainability in international investment law and arbitration. Section 3 discusses the Canadian model investment agreement and some of its actual IIAs, which are the most relevant for the present analysis. Section 4 touches upon the most relevant

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[2] *See generally* Stephen Brown, 'The instrumentalization of foreign aid under the Harper government' (2016) 97 (1) Studies in Political Economy 18-36, DOI: 10.1080/07078552.2016.1174461.

[3] Daniel Leblanc, 'CIDA funds seen to be subsidizing mining firms' (*The Globe and Mail*, 8 May 2018) <https://www.theglobeandmail.com/news/politics/cida-funds-seen-to-be-subsidizing-mining-firms/article1360059/> accessed 26 September 2019.

[4] See Annex 1.

[5] David Black, 'Back to Africa: what Canada should do' (*iPolitics*, 1 December 2016) <https://ipolitics.ca/2016/12/01/back-to-africa-what-canada-should-do/>. See also Government of Canada, 'Canada and Sub-Saharan Africa' (2018) <https://international.gc.ca/world-monde/international_relations-relations_internationales/africa-afrique/index.aspx?lang=eng> accessed 27 September 2019.

[6] ibid.

[7] United Nations CDP, 'List of Least Developed Countries' (as of December 2018) <https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/ldc_list.pdf> accessed 13 November 2019.

African model IIAs and sustainability disciplines in actual African LDCs' investment treaties. Lastly, we offer concluding remarks.

2. International Investment Law and Sustainable Development: An Overview

Traditionally, lawyers, or at least investment lawyers, assume that international investment law and arbitration represent the right setting to foster development, as for example enshrined in the very primary aim of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).[8]

Until very recently, the most industrialized states were net capital exporters and used to conclude BITs with poorer countries based on strong international standards of investment protection, including absolute standards, such as fair and equitable treatment (FET).[9] Those BITs aimed at securing foreign investors' property and to further promote, facilitate and protect FDIs without leaving much space for host states to regulate in public interest or otherwise act to ensure that investment contributes to their sustainable development.[10]

In English common law, there is a doctrine of policy reasons: a duty of care could arise in new situations if there are enough of 'policy reasons' for doing so. This means that adjudicators may take into account not just the existing legal framework, but also the establishment of a duty under new circumstances, which create new factual situations that society at large would benefit from.[11]

For our topic, a symbolic meaning of the doctrine of policy reasons could imply that new circumstances, novel factual situations and the changing needs of parties necessitate the negotiation of new investment treaties with different standards and substantive provisions. Climate change, global warming, increasing disclosure of human rights abuses in the third-world countries, and the overall global preoccupation with sustainable development fairly represent new (global) factual situations. The last decade also has seen the increasing spread of ideas that investment law and arbitration should also bring to states hosting foreign investment more of sustainable development.[12] The United Nations (UN)'s Agenda 21 stipulates that FDI in poorer countries is vital for their economic growth and, hence, crucial for their sustainable development: 'greater foreign direct investment should be encouraged and technology transfer enhanced through national policies that encourage investment.'[13]

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[8] As also emphasized in the first Report of the Executive Directors of the Convention, Christoph Schreuer, *The ICSID Convention: A Commentary* (Cambridge University Press, 2001) 4–5.

[9] Surya P. Subedi, *International Investment Law—Reconciling Policy and Principle* (2nd edn, Hart Publishing, 2012) 57. *See also*, generally Jonathan Bonnitcha, Lauge N. Skovgaard Poulsen and Michael Waibel, *The Political Economy of the Investment Treaty Regime* (Oxford University Press, 2017) ch 4.

[10] UNCTAD, '*Investment Guide to the Silk Road'* (2014) <https://unctad.org/en/PublicationsLibrary/diae2014d3_en.pdf> accessed 17 October 2019.

[11] Catherine Elliott and Frances Quinn, *Tort Law*, 7th edition (Pearson, 2009) 20.

[12] Wolfgang Alschner and Elisabeth Tuerk, 'The Role of International Investment Agreements in Fostering Sustainable Development', in Freya Baetens (ed), *Investment Law Within International Law: Integrationist Perspectives* (Cambridge University Press, 2013) 217.

[13] UNGA Res. 'Transforming Our World: The 2030 Agenda for Sustainable Development' (2015) UN Doc. A/RES/70/.

Arguments that international investment law and arbitration should promote sustainable development in Africa are also in vogue.[14]

LDCs however are often reluctant to raise their national sustainability and other societal standards because of their concerns of scaring off foreign investors. At the same time, the first-world investors coming to LDCs are expected to have high standards of environmental protection, labour standards and more eco-friendly and modern technologies. Thus, they are supposed to improve efficacy, raise the level of societal standards and bring technological know-how to a host country. In theory, this is a win-win situation. Unfortunately, there is a darker side. Following the logic of lowering factor costs, foreign investors may purposely relocate their harmful production to countries with the lowest norms of environmental and health protection, safety at work, and similar standards, thus lowering their standards and harming those states even further. In the extraction industry, if unrestricted by local laws and regulations, foreign mining companies could exhaust natural resources unreasonably. Those cases are far from a win-win situation.

At the time of writing this article, the number of IIAs has reached 3,301 in total.[15] Nowadays, IIAs cover absolute and relative standards of treatment, exceptions, dispute settlement and some of them include provisions concerning environmental, health, safety, labour and similar sustainability issues. Now there is a debate within international organizations to include those standards in all IIAs.[16]

Many recently signed IIAs (known as 'new generation' IIAs) include provisions that allow states to provide environmental and health protection and fulfil their obligations both under IIAs and international human rights, labour and environmental agreements. Sustainable development purposes are followed not only by the economically-advanced states but also by the least advanced ones. The question is whether LDCs are more likely to include sustainability disciplines in their IIAs rather than developed countries, and if so, of what nature—ie hortatory or mandatory provisions? What is the difference between approaches of LDCs and developed countries to including sustainability disciplines in their IIAs? The following sections of the article respond to those questions by drawing on relevant practices of Canada and selected African countries.

[14] Gesellschaft für Technische Zusammenarbeit (GTZ) 'Regional Economic Communities in Africa. A Progressive Overview' 8 (2009) <http://www2.giz.de/wbf/4tDx9kw63gma/ RECs_Final_Report.pdf> accessed 8 August 2019. UNECA, 'Investment Landscaping Study for Africa' (2016) <http://www.uneca.org/sites/default/files/PublicationFiles/eng_investment_landscaping_study.pdf> accessed 8 August 2019.

[15] UNCTAD, 'International Investment Agreements Navigator' (2019) <https://investmentpolicy.unctad.org/international-investment-agreements> accessed 3 October 2019.

[16] IISD, 'Investment Treaties and Why They Matter to Sustainable Development: Questions and answers' 7 (2012) <https://www.iisd.org/pdf/2011/investment_treaties_why_they_matter_sd.pdf>. WTO, 'Mainstreaming trade to attain the Sustainable Development Goals' (2018) 56 <https://www.wto.org/english/res_e/booksp_e/sdg_e.pdf>. UNCTAD, 'Investment Policy Framework for Sustainable Development' (2015) 10 <https://unctad.org/en/PublicationsLibrary/diaepcb2015d5_en.pdf>. ICSID, 'Annual report' (2018) 3 <https://icsid.worldbank.org/en/Documents/resources/2018ICSIDAnnualReport.ENG.pdf> accessed 3 October 2019.

3. Canada's Investment Agreements: Legal Tools, Policy Statements or a Social Licence to Operate?

The Canadian extractive industry is very active in investor-state dispute settlement (ISDS): at least half of the arbitral claims by Canadian investors are filed by mining corporations.[17] Through those claims, many of them successfully enforce international standards of investment protection against those host states, which decide to regulate in the public interest or simply attempt to enlarge their policy space.

For instance, in a recent arbitral dispute, Bear Creek, a mining corporation based in Vancouver, Canada, claimed USD 522 million of compensation for an indirect expropriation by the host state, Peru.[18] The conflict arose because the indigenous communities affected by the investor's mining project refused to give their social licence to the latter, which has eventually generated significant resistance and social unrest.[19] Given the seriousness of the unrest, Peru then revoked the mining authorization of Bear Creek. It argued that the investor had failed to consult with and obtain the social licence of all the concerned indigenous communities—as it had been required under applicable law—including relevant international human rights law and practices recommended by the government of Canada.[20] An arbitral tribunal established that Bear Creek did not make enough effort to obtain consent from the affected communities.[21] The majority of the arbitral tribunal did however decide, that Peru had not met its burden to demonstrate a causal link between the social unrest and the investor's operations and hence acted illegally in taking the investor's property.[22] It awarded Bear Creek a compensation of almost USD 25 million.[23]

On the treaty front, Canada pays significant attention to the public policy of host states. Yet, the trick is rather *how exactly* it handles the public policy questions in its IIAs. Canada's model of foreign investment promotion and protection agreement (FIPA) of 2004[24] was one of the first model IIAs to introduce public policy exceptions drawing on art XX of the General Agreement on Tariffs and Trade (GATT) and allowing states to regulate for the protection of specific concrete public policy objectives.[25] Therefore, today's Comprehensive Economic and Trade Agreement (CETA) contains art 28(3) based on the Canadian model FIPA, which offers a general exception in the CETA for measures 'necessary to protect public morals and human, animal, or plant life or health.'[26]

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[17] UNCTAD, 'Investment Policy Hub' (2019) <https://investmentpolicy.unctad.org/> accessed 27 October 2019.

[18] *Bear Creek Mining Corporation v Republic of Perú*, ICSID Case No. ARB/14/21.

[19] For an overview and analysis of the case, see Anna Aseeva and Ka Lok YIP, 'Stakes and Prospects of the Right to Free, Prior & Informed Consent in 'One Belt One Road' Projects in the context of Transnational Investment Law and Arbitration' in Julien Chaisse and Jędrzej Górski (eds) *The Belt and Road Initiative. Law, Economics, and Politics* (BRILL, 2018) 523, 553-554.

[20] *Bear Creek Mining Corporation v Republic of Perú* (Award, 30 November 2017) ICSID Case No ARB/14/21, 417-418.

[21] ibid, 408.

[22] ibid, 417, 664.

[23] ibid, 738.

[24] Government of Canada, 'Trade and investment agreements' (2019) <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/index.aspx?lang=eng> accessed 3 June 2019.

[25] Anna Aseeva, '(Un)Sustainable Development(s) in International Economic Law: a Quest for Sustainability' (2018) 10 (11) Sustainability 4022, 4032.

[26] Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member-States (signed 30 October 2016, entered into force 21 September 2017).

Canadian BITs with African LDCs represent a unique case. Based on its FIPA, Canada is the only developed country that clearly incorporates sustainability provisions into agreements with LDCs and at the same time, massively trades and concludes BITs with the largest number of African LDCs. For the last seven years, Canada signed nine agreements with African countries, six of which are with LDCs.[27] Moreover, currently Canada is negotiating BITs with Zambia, the Democratic Republic of the Congo, Rwanda and some others.[28] Canada is highly interested in Sub-Saharan Africa because it is a huge emerging market with abundant natural resources, and Canadian corporations actively invest in the mining sector there, especially since the Harper government.[29]

The 2015 Canada-Burkina Faso BIT is one of the most recent Canadian IIAs concluded in Africa, which contains sustainability disciplines.[30] It consists of 43 articles and five annexes. At the outset, it emphasizes that 'investment is a form sustainable development' and its promotion serves national and global objectives and future generations.[31] Furthermore, its preamble contains recognition of the right of each party 'to adopt or maintain any measures that are consistent with this agreement and that relate to health, safety, the environment, or public welfare.'[32]

Aside from the preambular language, some of its articles also refer to sustainable development. Its art 15 states that 'it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures.' Notably, recent Canada-Mongolia and Canada-Moldova BITs contain precisely the same provision.[33] Moreover, Canada-Burkina Faso BIT's art 16 stipulates the necessity to integrate 'internationally recognized standards of corporate social responsibility' within enterprises to ensure implementation of human, labour and environmental rights and anti-corruption management. This article does not directly bind investors though, because it takes a form of recommendation: 'each party should encourage…'.

As is commonplace, many poor countries fail to meet their international sustainability obligations[34] as well as domestic sustainability goals with the sole aim to attract new and not to scare off the existing foreign investors. In this regard, Canada-Burkina Faso BIT also contains a provision on the host states' right to regulate, which is unique because none of the other Canada's BITs with African LDCs contain a similar clause.[35] Other Canadian BITs

[27] See Annex 1.
[28] Government of Canada, 'Trade and investment agreements' (n 2424).
[29] Government of Canada, 'Global Markets Action Plan and Market Access Plans' (2013) 8, 9 <https://international.gc.ca/global-markets-marches-mondiaux/assets/pdfs/plan-eng.pdf> accessed 6 September 2019.
[30] Agreement between the Government of Canada and the Government of Burkina Faso for the Promotion and Protection of Investments (Canada-Burkina Faso) (signed 20 April 2015, entered into force 11 November 2017).
[31] Preamble, Canada-Burkina Faso BIT.
[32] ibid.
[33] Agreement between Canada and Mongolia for the Promotion and Protection of Investments (Canada-Mongolia) (signed 8 September 2016, entered into force 24 February 2017) art 15; Agreement between the Government of Canada and the Government of the Republic of Moldova for the Promotion and Protection of Investments (Canada-Moldova) (signed 12 June 2018, not yet in force) art 15.
[34] Karl P. Sauvant and Padma Mallampally, 'Policy Options for Promoting Foreign Direct Investment in the Least Developed Countries', Transnational Corporations Review, 3 September 2015 7 (3) 246 <http://ccsi.columbia.edu/files/2015/10/KPS_PM-LDC-policies-TNCR-September-2015.pdf> accessed 6 September 2019.
[35] *See* Annex 2.

with African LDCs are not so detailed regarding sustainable development and other societal issues in their preambles.[36]

For example, both Canada-Senegal and Canada-Benin BITs softly call parties in their preambles to take into account 'internationally recognized standards of corporate social responsibility.'[37] Art 16 of both BITs has the same content (namely, it requires the host state 'to voluntarily incorporate internationally recognized standards') and a recommendatory value. Notably, the same provision on corporate social responsibility (CSR) in Canada-Burkina Faso BIT reads almost identically except that it does not contain the term 'voluntarily.' Besides, in most of the surveyed BITs, there is no exact reference to concrete international standards of CSR that parties have to implement or at least strive for, so states are overwhelmingly free to choose what they deem as applicable international CSR standards.

Drawing on 2004 Canadian FIPA, Canada-Burkina Faso BIT's art 18 presents general exceptions and allows the host state to enforce any measure that is essential for the protection of human, animal, plant life or health and (non)living exhaustible natural resources. Art 35 requires expert reports as evidence of factual situations if a concern about 'the environment, health, safety, security, or another scientific field […] is raised by a disputing party, subject to any terms that are determined by the disputing parties.'

Furthermore, the treaty's Annex I considers the issue of expropriation. If a proportionate non-discriminatory measure of a party applies in order to protect the health, the safety of a society or the environment, it does not constitute indirect expropriation.[38] Annex 4 (para 5.4) elaborates on *amicus curiae* submissions. Third parties, presented by a person or entity, can file an *amicus curiae* brief to the arbitral tribunal. There are also rules regarding submission and criteria for accepting it. Interestingly, one of the criteria is 'the extent to which the subject of the arbitration is a matter of public interest.' The above demonstrates that the treaty signatories not only recognize the right of third parties to express their point of view in the arbitral proceedings but also pay particular attention to public interest in that treaty and potential disputes. The example of including provisions on *amicus curiae* in BITs with LDCs is an inspiring path to follow in future agreements. Consequently, this BIT can be considered more sustainability-oriented than others concluded by LDCs so far.

Nevertheless, in order to make BITs more socially and sustainability-tuned, and generally more precise regarding the protection of the public interest, the negotiating states should insert references to concrete recognized international standards, or, even better, make a list of what standards are included/excluded. A similar approach has already been used in the 2016 draft Pan-African Investment Code (PAIC),[39] India's model BIT, and Brazil's Cooperation

[36] ibid.

37 Agreement Between Canada and the Federal Republic of Senegal for the Promotion and Protection of Investments (Canada-Senegal) (signed 27 November 2014, entered into force 5 August 2016) art 16; Agreement Between the Government of Canada and the Government of the Republic of Benin for the Promotion and Reciprocal Protection of Investments (Canada-Benin) (signed 9 January 2013, entered into force 12 May 2014) art 16.

[38] Canada-Burkina Faso BIT, Annex I, IV (n 30).

[39] African Union Commission, 'Draft Pan African Investment Code' (December 2016) <https://au.int/sites/default/files/documents/32844-doc-draft_pan-african_investment_code_december_2016_en.pdf> accessed 1 October 2019.

and Facilitation Investment Agreement (CFIA).[40] All three expressly exclude the FET standard but keep the due process of law, non-discrimination and impartiality standards.[41]

In order to compare Canada's approach to the inclusion of sustainability and other societal provisions, we looked at its recent IIAs with various countries. In the Canada-Czech Republic BIT concluded in 2009, for instance, even though there is no mention of sustainable development in its preamble, there are provisions elaborating on indirect expropriation, as well as typical general exceptions with regard to the protection of health, safety and the environment.[42] Canadian BITs with Latvia and Romania (both concluded in 2009) do not refer to sustainable development in their preambles. Canada's BITs with other countries, including economies in transition and developing states, do refer to sustainable development—as this is the case with, for instance, Serbia (2004) and Peru (2006).[43]

Our above survey shows that the generation of an agreement, that is, a period in time of signing an agreement is not necessarily critical—namely, Canada-Peru treaty (2006) was concluded earlier than agreements with Czech Republic, Latvia, and Romania (2009), but seems to be more advanced in terms of sustainability disciplines. The question that could consequently arise based on which criteria does Canada decide whether to refer to sustainable development in the preamble and/or substantive provisions? One avenue could be that Canada is more likely to refer to sustainable development in agreements concluded with developing economies, economies in transition and LDCs. Indeed, according to the UN classification, Latvia and Romania are considered to be developed countries and, at the same time, there is no express sustainability mention in their preambles, while Serbia is an economy in transition and Peru—a developing economy, and the IIAs with both of them refer to sustainability in the preamble.[44]

Notably, in spite of a rather broad scope of sustainability disciplines, Canada's agreements with African LDCs lack some more specific but crucial references. For example, to prevent repercussions for the environment and society of a host state, state-parties should include in an IIA some substantive obligations for foreign investors, such as to provide environmental impact assessment, follow the precautionary principle, etc.

Furthermore, clearer standards for human and labour rights and environmental protection should be established in order not only raise but also avoid diminishing the existing levels of such standards in the countries of the region. Remarkably, on the one hand, neither in

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[40] Model Text for the Indian Bilateral Investment Treaty (2016) <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/3560/download>; Investment Cooperation and Facilitation Agreement (2015) <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/4786/download> accessed 19 October 2019.

[41] PAIC, art 11; India's model BIT, art 3.1; CFIA, art 4.

[42] Agreement between Canada and the Czech Republic for the promotion and protection of investments (Canada-Czech Republic) (signed 6 May 2009, entered into force 22 January 2012).

[43] Agreement between the Government of Romania and the Government of Canada for the promotion and reciprocal protection of investments (Romania-Canada) (signed 8 May 2009, entered into force 23 November 2011); Agreement between the Government of Latvia and the Government of Canada for the promotion and reciprocal protection of investments (Latvia-Canada) (signed May 2009, entered into force 24 November 2011); Agreement between the Government of Serbia and the Government of Canada for the promotion and reciprocal protection of investments (Serbia-Canada) (signed 1 September 2014, entered into force 27 April 2015); Agreement between Canada and the Republic of Peru for the promotion and protection of investments (Peru-Canada) (signed 14 November 2006, entered into force 20 June 2007).

[44] UnitedNations, Country Classification' <https://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_country_classification.pdf> accessed 7 September 2019.

Canadian FIPA nor in its examined actual BITs are there concrete references to specific international labour instruments. On the other hand, it is widely recognised that most African countries have a relatively cheap labour force and hardly regulated labour conditions.[45] That is why the question of including not only strict, but also accurately defined labour and related standards is crucial. The treaty disciplines on CSR should also be expressed in more precise manner.

More generally, the sustainability provisions seem to be inadequate even in the most recent Canadian agreements with the 'strictest' sustainability standards, such as those in the surveyed Canadian BITs. This implies a further complexity: a distinction between provisions creating policy space for host states, and those that set standards for host state regulation. For the likely effectiveness of standards for the host state, policy space could be rather limited, due to first and foremost, the limit*ed*, if not limit*ing* effect of preambles and hortatory provisions to guarantee host state policy space. Consequently, these provisions seem to merely whitewash Canadian intentions in its BITs with African LDCs.

4. Relevant African Approaches to Investment Agreements

According to Investment Policy Hub, there are currently 54 IIAs that contain or refer to sustainability-related matters in their preambles, main text, and/or annexes.[46] Among these treaties, four are concluded between LDCs and developing countries (but three of them are not in force), and six—between developed states and LDCs.[47] Canada is a party to all six of those agreements.[48]

At the time of writing this article, there are 219 agreements of African LDCs with either developed or developing countries that do not refer to sustainability and the number of them is only growing.[49] Among them, 109 BITs were concluded between LDCs and developed states. Furthermore, 11 treaties belong to LDCs in Africa.[50] Some of these treaties were signed many years ago when sustainability was not yet on the agenda.[51] Others were created when sustainability issues were just starting to emerge.[52] However, a number of those treaties

[45] Richard Samans and Saadia Zahidi, 'The Future of Jobs and Skills in Africa Preparing the Region for the Fourth Industrial Revolution' World Economic Forum (Geneva, May 2017) 3-5 <http://www3.weforum.org/docs/WEF_EGW_FOJ_Africa.pdf> accessed 7 November 2019; Thomas Farole, 'Making Foreign Direct Investment Work for Sub-Saharan Africa Local Spillovers and Competitiveness in Global Value Chains', The World Bank (Washington, 2014) 92 <https://openknowledge.worldbank.org/bitstream/handle/10986/16390/9781464801266.pdf;sequence=1> accessed 7 November 2019; Punam Chuhan-Pole, 'Africa's Pulse', World Bank Group (October 2017) 43 <http://documents.worldbank.org/curated/en/572941507636665377/pdf/120334-REVISED-100p-WB-AfricasPulse-Fall2017-vol16-webfinal-english.pdf> accessed 7 November 2019.

[46] UNCTAD, 'International Investment Agreements Navigator' (n 15).

[47] Angola - Brazil BIT (2015), Benin - Canada BIT (2013), Brazil - Malawi BIT (2015) – not in force, Brazil - Mozambique BIT (2015) – not in force, Burkina Faso - Canada BIT (2015), Canada - Guinea BIT (2015), Canada - Mali BIT (2014), Canada - Senegal BIT (2014), Canada - United Republic of Tanzania BIT (2013), Ethiopia - South Africa BIT (2008) – not in force.

[48] *See* Annex 2.

[49] Economic Commission for Africa, 'Investment Policies and Bilateral Investment Treaties in Africa. Implications for Regional Integration' (2016) 17 <https://www.uneca.org/sites/default/files/PublicationFiles/eng_investment_landscaping_study.pdf> accessed 8 October 2019.

[50] *See* Annex 1.

[51] ibid.

[52] ibid.

were concluded starting from the 2000s when sustainability questions became widespread within the international community and also in the context of investment agreements.[53]

On the one hand, African countries try to actively attract FDI to support and improve their development. On the other hand, foreign investors often have an interest in African raw materials as well as in cheap labour force and overall lower labour, safety and other societal standards. Countries of the continent could also have some concerns in attracting FDI because of the potential risks foreign investors often expect there. That is why many countries and the African continent as a whole make efforts to improve their national and regional policy towards IIAs and investment climate in general. For this purpose, African regional organizations establish their own models of IIAs.

Some of those model agreements address region-specific needs. For example, according to art 3 of the Community Rules on Investment and the Modalities for Their Implementation with Economic Community of West African States (ECOWAS), the Community aims to 'promote investment that supports the sustainable development of the region' (the instrument does not define the term 'sustainable development' though).[54] The ECOWAS investment code is of particular relevance for our analysis, because five of six African LDCs that have BITs with Canada make part of the ECOWAS.[55]

Another interesting feature is that investors have to harmonise the provisions of the ECOWAS Supplementary Act with already existing IIAs and future ones within 24 months (art 4). This is an important detail as it provides consistent guidance and common standards for foreign investors and host countries. The Act includes Chapter III, which is devoted to the obligations and duties of investors and investments. It contains outstanding sustainability provisions. Art 12 concerns the pre-investment phase (prior to the establishment of investment) and requires a preliminary impact assessment to the results of which the general public must have access. Standards and assessment screening criteria are established by states during the first meeting of the parties. Moreover, the parties must apply the precautionary principle to impact assessment.

Besides, foreign investors have post-establishment obligations (art 14). They should respect the rules of the host state regarding security, health, and social welfare. Investors must protect human rights, including labour rights, in compliance with the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights of Work 1998. They must not take any actions that may breach human rights. According to art 16 on CSR, investors are obliged to act in accordance with the Millennium Development Goals.

This model agreement also has a comprehensive chapter on the host state's obligations. They include provisions of non-relaxing domestic labour, environmental and public health and safety standards to attract investments and minimum standards for their protection. According to art 31, all ECOWAS member-states should renegotiate their investment agreements in force in order to comply with this Supplementary Act. Art 38 lays down general exceptions:

[53] ibid.
[54] Supplementary Act A/SA.3/12/08 Adopting Community Rules on Investment and the Modalities for Their Implementation with ECOWAS (signed 12 December 2008, entered into force 19 January 2009) art 3 <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/3266/download> accessed 1 October 2019.
[55] Annex 2.

states can take a measure or adopt a law to promote equality and struggle with historical discrimination. Art 8 allows expropriation for certain public purposes.[56]

All in all, one of the main strengths of this investment code in the context of our analysis is that it clearly refers to not only concrete host states' and investors' obligations and related general international standards and principles, but also precise international instruments.

The standardization of investment provisions and rules is a significant step towards the enhancement of investment climate in the region and, as a further result, increase of FDI flows. ECOWAS Supplementary Act entered into force in 2009.[57] Since the entry into force of the Supplementary Act, 38 IIAs were signed between all ECOWAS members and other countries; from them, 24 IIAs were signed between LDCs and other countries.[58] However, among them only one BIT (Morocco-Nigeria, 2016) contains substantive sustainability provisions, such as those on impact assessment: its art 14 lays down obligations of environmental and social impact assessment.[59] Moreover, the treaty sets positive obligations to 'strive' for sustainable development through high levels of CSR (art 24). Unfortunately, this agreement is not (yet) in force. Besides, not so many international investors have either Morocco or Nigeria as their 'home' country.[60]

Another regional model, the draft 2016 PAIC, addresses sustainable development as the main objective of its member states.[61] Its art 2 ('Objective') says that its objective is to 'promote, facilitate, and protect investments that foster the sustainable development of each member state, and in particular the member state where the investment is located.' This could have suggested that only investment that contributes to the sustainable development of the host country should be promoted, facilitated, and eventually protected.[62] However, there are at least two major issues here. Primarily, the code does not offer any definition of sustainable development. It 'takes into account' in its preamble the reference to the usual suspects, that is, the UN SDGs, as well as the Investment Policy Framework for Sustainable Development of the United Nations Conference on Trade and Development (UNCTAD).[63] Secondly, in investment arbitration, treaty preambles serve at best as guidance to adjudicators.[64]

PAIC art 4.4 states, however, that in order to qualify as investment covered by applicable investment law, 'the investment must have the following characteristics: the substantial business activity according to Paragraph 1, commitment of capital or other resources, the expectation of gain or profit, the assumption of risk, and a significant contribution to the host State's economic development.' That is, this substantive law provision bears a rather traditional set of investment characteristics[65] defining investment in a comprehensive manner

[56] ibid.
[57] ECOWAS (n 54).
[58] UNCTAD, ECOWAS <https://investmentpolicy.unctad.org/international-investment-agreements/groupings/26/ecowas-economic-community-of-west-african-states-> accessed 14 September 2019.
[59] Reciprocal Investment Promotion and Protection Agreement between the Government of the Kingdom of Morocco and the Government of the Federal Republic of Nigeria (Morocco-Nigeria) (signed 3 December 2016, not yet in force).
[60] Aseeva (n 25) 4032.
[61] African Union Commission (n 39).
[62] Aseeva (n 2525) 4031.
[63] ibid.
[64] ibid.
[65] To date, most of investment tribunals apply so-called *Fedax/Salini* criteria: (i) a certain duration of performance of the contract, (ii) a certain regularity of profit and return, (iii) participation in the risks of the

and with no trace of sustainable development. Still, the draft PAIC contains GATT art XX-style general exceptions clause, namely, art 14, allowing host states to adopt measures necessary for the protection of particular accepted objectives, such as public health, safety, and the environment (see also its arts 8, 9, and 10).[66]

Notably, in August 2018, the Republic of Côte d'Ivoire, although not an LDC, adopted a new investment code,[67] which seems quite innovative in light of our analysis. The aim of this code is to promote sustainable development through productive and socially responsible investment (and even 'green' investment, see point P of the code) in the country. Its art 36 determines mandatory rules for all foreign investors. They are obliged to follow existing domestic laws and regulations or, in cases when domestic law is silent, international standards; their products and services must respect technical norms of quality management (sanitary, environmental etc.). Moreover, foreign investors have to respect and ensure human rights, labour rights and protection of the environment. Importantly, in case of non-compliance with the above-mentioned provision, art 48 allows a suspension of investor's authorization, which is a rather bold and innovative message to foreign investors—in particular, on behalf of a poorer country. Despite this, it remains to be seen how many countries, especially the most economically advanced, including Canada, will sign BITs with Ivory Coast actually applying the new code, incorporating the mentioned provisions.

To summarize, the draft PAIC, and—especially—the ECOWAS, models could and should be used by African LDCs for concluding their IIAs. However, precisely because they are mere models, states are not obliged to follow them. Notably, the point that all ECOWAS member-states are supposed to renegotiate their investment agreements in force in order to comply with the ECOWAS code (art 31 of the ECOWAS Supplementary Act) is controversial. It remains to be seen whether the ECOWAS members will renegotiate their BITs concluded with Canada, and, if not, with what consequences for them under the code. Both the potential renegotiation of BITs according to ECOWAS code art 31, and a more general inclusion of the above-mentioned African models' provisions in BITs thus depend on the ability of concerned states to negotiate IIAs—and in particular, lobby to include more of *substantive sustainability obligations*, including obligations of investors—with developed countries, which might actually have limited interest in that.

5. Conclusions

Notwithstanding their weaknesses, the most relevant African IIA models, namely the draft PAIC, and even more so the ECOWAS code, seem to pay more attention to actual development and societal concerns of host states than the Canadian model IIA.

More specifically, neither Canadian FIPA nor its actual investment agreements, including with African LDCs, contain substantive provisions with particular reference to labour standards—either national or international. Additionally, Canada's model neither contains

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transaction, and (iv) certain contributions to the host state's development. In *Fedax*, and later in *Salini* cases, the tribunals considered the criteria generally identified by the Convention's commentators. *See Fedax N.V. v Venezuela*, ICSID Case No. ARB/96/3, Decision on jurisdiction, 11 July 1997, para 43; *Salini Costruttori SpA and Italstrade SpA v Morocco*, ICSID Case No. ARB/00/4, Decision on jurisdiction, 23 July 2001, e.g., para 52.

[66] Aseeva (n 25) 4031.

[67] Ordinance No. 2018 646 of 1 August 1, 2018, available in French at < http://www.tourisme.gouv.ci/uploads/Ordonnance-2018-646-du-01-08-2018code-investissement.pdf.pdf >, accessed 20 October 2019.

impact assessment provisions nor refers to the precautionary principle. In contrast, one of the most prominent African regional model investment agreement, the ECOWAS code, stipulates a clear investors' duty to protect human rights, including labour rights in compliance with the ILO Declaration on Fundamental Principles and Rights of Work 1998. The problems of inequality and discrimination are urgent for most African countries. As the ECOWAS members are better acquainted with regional issues, they are more likely to reflect them in their IIAs.

Based on that model, to date, one investment agreement concluded by an LDC, namely, Morocco-Nigeria BIT sets positive obligations to strive for sustainable development through high levels of CSR, as well as obligations of environmental and social impact assessment. Unfortunately, this BIT is concluded between two African countries. At the same time, none of the Canadian investment agreements surveyed above contains similar far-reaching sustainability obligations, especially concerning foreign investors.

Furthermore, approaches to expropriation differ in Canadian and ECOWAS models. In Canada's model IIA, the provision on expropriation lists specific areas of protection (environment, health, safety) that do not entail expropriation, whereas the relevant ECOWAS code provision uses a rather broad term 'public purposes.' Host states could thus apply the ECOWAS provision on expropriation to a far broader scope of exceptional situations protecting societal interests. General exceptions are also formulated differently.

An overall character of the ECOWAS code is attributable to the sheer needs in improving the standards of living in the region. Developed countries, in contrast, strive to achieve signing IIAs with African states, and, particularly, with LDCs, to protect investments and define the strictest host state obligations possible, while the sustainability obligations of foreign investors are superficial, meaning that their substantive sustainability obligations are simply non-existent.

Our general analysis (see Annex 1) clearly shows two tendencies. First, an overwhelming number of BITs (109 at the time of writing) between a developed country and an African one do not contain any discernible reference to public and further societal interest of the host state (the same goes for precisely the same number, 109, of BITs between developing states from elsewhere and African ones). Secondly, to date, only six BITs between a developed country and an African state (all Sub-Saharan LDCs) do refer to public interest and sustainable development of the host state, and all of them are concluded by Canada. There is, however, a significant pitfall in all those BITs. Namely, they are signed in accordance with Canada's model rather than the ECOWAS one, which clearly shows the current power balance in treaty negotiations.[68]

[68] For a nuanced argument on Canada's political and economic power defining the outcome of BIT negotiations with African countries see generally, Anthony Van Duzer, 'Canadian Investment Treaties with African Countries: What Do They Tell Us about Investment Treaty Making in Africa?' (2017) 18 Journal of World Investment and Trade 556.

Annex 1. Taxonomy of BITs concluded with African countries[69]

BITs without sustainability provisions (developed countries and African LDCs)	BITs without sustainability provisions (developing countries and African LDCs)	BITs with sustainability provisions (developed countries and African LDCs)	BITs without sustainability provisions (between two LDCs)
1) BLEU (Belgium-Luxembourg Economic Union) - Benin BIT (2001) 2) BLEU (Belgium-Luxembourg Economic Union) - Burkina Faso BIT (2001) 3) BLEU (Belgium-Luxembourg Economic Union) - Burundi BIT (1989) 4) BLEU (Belgium-Luxembourg Economic Union) - Comoros BIT (2001) (not in force 5) BLEU (Belgium-Luxembourg Economic Union) - Mozambique BIT (2006) 6) BLEU (Belgium-Luxembourg Economic Union) - Congo, Democratic Republic of the BIT (2005) 7) BLEU (Belgium-Luxembourg Economic Union) - Rwanda BIT (1983 8) BLEU (Belgium-Luxembourg Economic Union) - Rwanda BIT (2007)	1) Algeria - Ethiopia BIT (2002) 2) Algeria - Mali BIT (1996) 3) Algeria - Niger BIT (1998) 4) Algeria - Sudan BIT (2001) 5) Argentina - Senegal BIT (1993) 6) Benin - Ghana BIT (2001) 7) Benin - Lebanon BIT (2004) 8) Benin - Mauritius BIT (2001) 9) Benin - Morocco BIT (2004) (not in force) 10) Burundi - Mauritius BIT (2001) 11) Benin - China BIT (2004) 12) Benin - United Arab Emirates BIT (2013) (not yet in force) 13) Cameroon - Mali BIT (2001) (not in force) 14) Cameroon - Mauritania BIT (2001) 15) Central African Republic - Egypt BIT (2000) (not in force)	1) Benin - Canada BIT (2013) 2) Burkina Faso - Canada BIT (2015) 3) Canada - Guinea BIT (2015) 4) Canada - Mali BIT (2014) 5) Canada - Senegal BIT (2014) 6) Canada - United Republic of Tanzania BIT (2013)	1) Benin - Chad BIT (2001) 2) Benin - Burkina Faso BIT (2001) 3) Burkina Faso - Chad BIT (2001) 4) Burkina Faso - Guinea BIT (2003) 5) Burkina Faso - Mauritania BIT (2001) 6) Burundi - Comoros BIT (2001) 7) Chad - Guinea BIT (2004) (not in force) 8) Eritrea - Uganda BIT (2001) 9) Gambia - Guinea BIT (2002) (not in force) 10) Gambia - Mauritania BIT (2001) (not in force) 11) Ethiopia - Sudan BIT (2000)

[69] Authors' compilation.

BITs without sustainability provisions (developed countries and African LDCs)	BITs without sustainability provisions (developing countries and African LDCs)	BITs with sustainability provisions (developed countries and African LDCs)	BITs without sustainability provisions (between two LDCs)
9) BLEU (Belgium-Luxembourg Economic Union) - Sudan BIT (2005) 10) BLEU (Belgium-Luxembourg Economic Union) - Togo BIT (2009) 11) BLEU (Belgium-Luxembourg Economic Union) - Uganda BIT (2005) 12) BLEU (Belgium-Luxembourg Economic Union) - Zambia BIT (2001) 13) Burundi - Germany BIT (1984) 14) Austria - Ethiopia BIT (2004) 15) Benin - Germany BIT (1978) 16) Benin - Netherlands BIT (2001) 17) Benin - Switzerland BIT (1966) 18) Benin - United Kingdom BIT (1987) 19) Burundi - Netherlands BIT (2007) 20) Burundi - United Kingdom BIT (1990) 21) Central African Republic - Switzerland BIT (1973) 22) Central African	16) Central African Republic - Morocco BIT (2006) (not in force) 17) Chad - Egypt BIT (1998) 14/03/1998 Signed (not in force) 18) Chad - Lebanon BIT (2004) Signed (not in force) 19) Chad - Mauritius BIT (2001) Signed (not in force) 20) Chad - Morocco BIT (1997) Signed (not in force) 21) China - Egypt BIT (1994) 22) China - Ethiopia BIT (1998) 23) China - Mali BIT (2009) 24) China - Myanmar BIT (2001) 25) China - Uganda BIT (2004) 26) Comoros - Egypt BIT (1994) 27) Comoros - Mauritius BIT (2001) (not in force) 28) Congo - Korea, Republic of BIT (2006) 29) Congo - Libya BIT		

BITs without sustainability provisions (developed countries and African LDCs)	BITs without sustainability provisions (developing countries and African LDCs)	BITs with sustainability provisions (developed countries and African LDCs)	BITs without sustainability provisions (between two LDCs)
Republic - Germany BIT (1965) 23) Chad - Switzerland BIT (1967) 24) Chad - Germany BIT (1967) 25) Chad - Italy BIT (1969) 26) Congo - Germany BIT (1965) 27) Congo - Italy BIT (1994) 28) Congo - Spain BIT (2008) (not in force) 29) Congo - Switzerland BIT (1962) 30) Congo - United Kingdom BIT (1989) 31) Congo - United States of America BIT (1990) 32) Czech Republic - South Africa BIT (1998) (not in force) 33) Denmark - Uganda BIT (2001) 34) Denmark - United Republic of Tanzania BIT (1999) 35) Denmark - Ethiopia BIT (2001) 36) Djibouti - France BIT (2007) 37) Djibouti - Switzerland BIT (2001)	(2010) (not in force) 30) Congo - Mauritius BIT (2010) 31) Congo - Namibia BIT (2007) (not in force) 32) Congo - South Africa BIT (2005) (not in force) 33) Congo - Tunisia BIT (2005) (not in force) 34) Djibouti - Egypt BIT (1998) (not in force) 35) Djibouti - India BIT (2003) Terminated 36) Egypt - Ethiopia BIT (2006) 37) Egypt - Malawi BIT (1997) 38) Egypt - Mali BIT (1998) 39) Egypt - Niger BIT (1998) 40) Egypt - Senegal BIT (1998) (not in force) 41) Egypt - Somalia BIT (1982) 42) Egypt - Uganda BIT (1995) 43) Egypt - Zambia BIT (2000) (not in force) 44) Ethiopia - Iran, Islamic Republic of BIT (2003) 45) Ethiopia - Israel		

BITs without sustainability provisions (developed countries and African LDCs)	BITs without sustainability provisions (developing countries and African LDCs)	BITs with sustainability provisions (developed countries and African LDCs)	BITs without sustainability provisions (between two LDCs)
38) Eritrea - Italy BIT (1996) 39) Eritrea - Netherlands BIT (2003) (not in force) 40) Ethiopia - Italy BIT (1994) 41) Ethiopia - Netherlands BIT (2003) 42) Ethiopia - Spain BIT (2009) (not in force) 43) Ethiopia - Sweden BIT (2004) 44) Ethiopia - Switzerland BIT (1998) 45) Ethiopia - United Kingdom BIT (2009) (not in force) 46) Finland - Mozambique BIT (2004) 47) Finland - United Republic of Tanzania BIT (2001) 48) Finland - Zambia BIT (2005) 49) France - Liberia BIT (1979) 50) France - Mozambique BIT (2002) 51) France - Nepal BIT (1983) 52) France - Senegal BIT (2007)	BIT (2003) 46) Ethiopia - Kuwait BIT (1996) 47) Ethiopia - Libya BIT (2004) 48) Ethiopia - Malaysia BIT (1998) 49) Ethiopia - Russian Federation BIT (2000) (not in force) 50) Ethiopia - Tunisia BIT (2000) 51) Ethiopia - Turkey BIT (2000) 52) Ethiopia - Yemen BIT (1999) 53) Gambia - Morocco BIT (2006) 54) Gambia - Qatar BIT (2002) 55) Gambia - Turkey BIT (2013) (not in force) 56) Gambia - Ukraine BIT (2001) (not in force) 57) Ghana - Guinea BIT (2001) (not in force) 58) Guinea - Lebanon BIT (2004) (not in force) 59) Guinea - Mauritius BIT (2001) (not in force) 60) Guinea - Morocco BIT (2002) (not in force) 61) Guinea - Serbia BIT (1996)		

BITs without sustainability provisions (developed countries and African LDCs)	BITs without sustainability provisions (developing countries and African LDCs)	BITs with sustainability provisions (developed countries and African LDCs)	BITs without sustainability provisions (between two LDCs)
53) France - Sudan BIT (1978) 54) France - Uganda BIT (2003) 55) France - Zambia BIT (2002) 56) Gambia - Netherlands BIT (2002) 57) Gambia - Spain BIT (2008) (not in force) 58) Gambia - Switzerland BIT (1993) 59) Gambia - United Kingdom BIT (2002) 60) Germany - Lesotho BIT (1982) 61) Germany - Mali BIT (1977) 62) Germany - Mauritania BIT (1982) 63) Germany - Nepal BIT (1986) 64) Germany - Niger BIT (1964) 65) Germany - Rwanda BIT (1967) 66) Germany - Sierra Leone BIT (1965) 67) Germany - Somalia BIT (1981) 68) Germany - Togo BIT (1961) 69) Germany - Uganda BIT (1966) 70) Germany - United Republic of	62) Guinea - South Africa BIT (2007) (not in force) 63) Guinea - Tunisia BIT (1990) (not in force) 64) Guinea-Bissau - Morocco BIT (2015) (not in force) 65) India - Mozambique BIT (2009) 66) India - Myanmar BIT (2008) 67) India - Nepal BIT (2011) Terminated 68) India - Senegal BIT (2008) 69) India - Sudan BIT (2003) 70) Indonesia - Sudan BIT (1998) 71) Israel - Myanmar BIT (2014) 72) Jordan - Sudan BIT (2000) 73) Korea, Republic of - Mauritania BIT (2004) 74) Korea, Republic of - Myanmar BIT (2014) 75) Korea, Republic of - Rwanda BIT (2009) 76) Korea, Republic of - Senegal BIT (1984) 77) Korea, Republic of - United Republic		

BITs without sustainability provisions (developed countries and African LDCs)	BITs without sustainability provisions (developing countries and African LDCs)	BITs with sustainability provisions (developed countries and African LDCs)	BITs without sustainability provisions (between two LDCs)
Tanzania BIT (1965) 71) Germany - Zambia BIT (1966) 72) Guinea - Italy BIT (1964) 73) Indonesia - Netherlands BIT (1968) Terminated 74) Italy - Malawi BIT (2003) 75) Italy - United Republic of Tanzania BIT (2001) 76) Japan - Mozambique BIT (2013) 77) Japan - Myanmar BIT (2013) 78) Madagascar - Sweden BIT (1966) 79) Madagascar - Switzerland BIT (1964) Terminated 80) Madagascar - Switzerland BIT (2008) 81) Malawi - Netherlands BIT (2003) 82) Mali - Netherlands BIT (2003) 83) Mali - Switzerland BIT (1978) 84) Mauritania - Spain BIT (2008) 85) Mauritania - Switzerland BIT (1976)	of Tanzania BIT (1998) 78) Kuwait - Sudan BIT (2001) 79) Lebanon - Mauritania BIT (2004) 80) Madagascar - Mauritius BIT (2004) 81) Madagascar - South Africa BIT (2006) (not in force) 82) Mali - Morocco BIT (2014) 83) Mali - Tunisia BIT (1986) (not in force) 84) Mauritania - Mauritius BIT (2001) (not in force) 85) Mauritania - Morocco BIT (2000) 86) Mauritania - Tunisia BIT (1986) (not in force) 87) Mauritius - Mozambique BIT (1997) 88) Mauritius - Nepal BIT (1999) (not in force) 89) Mauritius - Rwanda BIT (2001) (not in force) 90) Mauritius - Senegal BIT (2002) 91) Morocco - Rwanda		

BITs without sustainability provisions (developed countries and African LDCs)	BITs without sustainability provisions (developing countries and African LDCs)	BITs with sustainability provisions (developed countries and African LDCs)	BITs without sustainability provisions (between two LDCs)
86) Mozambique - Netherlands BIT (2001) 87) Mozambique - Switzerland BIT (2002) 88) Mozambique - United Kingdom BIT (2004) 89) Mozambique - United States of America BIT (1998) 90) Nepal - United Kingdom BIT (1993) 91) Netherlands - Senegal BIT (1979) 92) Netherlands - Sudan BIT (1970) 93) Netherlands - Uganda BIT (1970) Terminated 94) Netherlands - Uganda BIT (2000) 95) Netherlands - Zambia BIT (2003) 96) Niger - Switzerland BIT (1962) 97) Romania - Senegal BIT (1980) 98) Senegal - Spain BIT (2007) 99) Senegal - Switzerland BIT (1962) 100) Senegal - United Kingdom BIT (1980) 101) Senegal - United States of America	BIT (2016) (not in force) 92) Morocco - Senegal BIT (2006) 93) Morocco - Sudan BIT (1999) 94) Mozambique - Portugal BIT (1996) 95) Mozambique - South Africa BIT (1997) (not in force) 96) Myanmar - Philippines BIT (1998) 97) Myanmar - Thailand BIT (2008) 98) Niger - Tunisia BIT (1992) (not in force) 99) Oman - Sudan BIT (1999) 100) Senegal - South Africa BIT (1998) 101) Senegal - Tunisia BIT (1984) 102) Senegal - Turkey BIT (2010) 103) South Africa - Uganda BIT (2000) 104) South Africa - United Republic of Tanzania BIT (2005) 105) Sudan - Tunisia BIT (2003) (not in force)		

BITs without sustainability provisions (developed countries and African LDCs)	BITs without sustainability provisions (developing countries and African LDCs)	BITs with sustainability provisions (developed countries and African LDCs)	BITs without sustainability provisions (between two LDCs)
BIT (1983) 102) Sierra Leone - United Kingdom BIT (2000) 103) Sudan - Switzerland BIT (1974) 104) Switzerland - Togo BIT (1964) 105) Switzerland - Uganda BIT (1971) 106) Switzerland - United Republic of Tanzania BIT (1965) Terminated 107) Switzerland - United Republic of Tanzania BIT (2004) 108) Switzerland - Zambia BIT (1994) 109) United Republic of Tanzania - United Kingdom BIT (1994)	106) Sudan - Turkey BIT (1999) (not in force) 107) Sudan - United Arab Emirates BIT (2001) 108) Togo - Tunisia BIT (1987) 109) United Republic of Tanzania - Turkey BIT (2011) (not in force)		

Annex 2. Sustainability Provisions in Canadian BITs with African LDCs[70]

Country	Sustainable development, SDGs and other sustainability mentions in the preamble	The right of state to regulate/ adopt sustainability measures (preamble)	General public policy exceptions	Non-lowering of societal standards	Possibility of *amicus curiae* submissions	CSR mentions (both preambles and substantive text)
Canada-Republic of Tanzania (2013)	X		X	X		
Canada-Benin (2013)	X		X	X		X
Canada-Senegal (2014)	X		X	X		X
Canada-Mali (2014)	X		X	X		X
Canada-Guinea (2015)	X		X	X		X
Canada-Burkina Faso (2015)	X	X	X	X	X	X

[70] Authors' compilation.