



14<sup>th</sup> Annual Forum  
of Developing Country  
Investment Negotiators  
ABUJA, NIGERIA



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# 14th Annual Forum of Developing Country Investment Negotiators

## Agenda for Coherence in International Investment Governance for Sustainable Development

### Introduction

The theme of the International Institute for Sustainable Development's 14th Annual Forum of Developing Country Investment Negotiators (Annual Forum) was **coherence in international investment governance**. The main objective of the event was to craft a more holistic approach to investment law and governance that promotes sustainable development. Based on discussions and experiences shared during the Annual Forum, participants identified key challenges and concerns that impair coherence in international investment governance, as well as systemic objectives to address these challenges. They also developed guiding principles to orient government efforts toward greater coherence in international investment governance and agreed on a roadmap of concrete steps to implement such principles. The outcome of the participants' work was compiled to form the below document, titled the *Agenda for Coherence in International Investment Governance for Sustainable Development (Agenda)*.

### Challenges and Concerns in International Investment Governance

Participants identified several challenges and concerns that developing economies face regarding coherence in international investment governance:

- i. The fragmentation of investment policies and legal instruments at the subnational, national, regional, and international levels.
- ii. The dynamic and constantly evolving, as well as highly specialized, character of the investment regime.
- iii. The significant lack of national coordination in relation to investment policies and legal instruments.



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- iv. The frequent changes in negotiators in developing economies and the lack of consistent positions in bilateral, regional, and multilateral investment negotiations and reform processes.
- v. The lack of coherence between the elaboration and implementation of various investment policies and legal instruments, including in dispute prevention and management.
- vi. The challenges that the increasing complexity of the international legal system pose to investment negotiators from developing economies.
- vii. The lack of coherence between the investment regime and other regimes of international law that are significantly important for sustainable development, in particular, the climate change regime, the environmental protection regime, the human rights regime, the global health regime, and trade-related issues.
- viii. Multiplication of forums for the reform of the investment regime and investment governance.
- ix. The lack of coordinated deliberations among developing economies aimed at addressing systemic reform in a coherent manner.
- x. The lack of coherence resulting from decisions rendered in the context of investor–state dispute settlement (ISDS), in particular, in investor–state arbitration.
- xi. The negative impact that the lack of coherence in the investment regime is actually having on the achievement of the Sustainable Development Goals (SDGs).

## **Systemic Objectives for Coherence in International Investment Governance**

Participants identified several clear and systemic objectives for developing economies' efforts to enhance coherence in international investment governance:

- i. To support a coherent approach to the reform of the investment regime at the sub-national, national, regional, and international levels.
- ii. To ensure that governments—in particular, governments of developing economies—act collectively to foster coherence within the investment regime.



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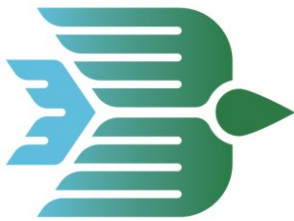
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- iii. To foster effective coherence between different investment-related instruments, in particular, between investment contracts, relevant national laws, and international investment agreements.
- iv. To ensure that reform efforts at the international, regional, national, and sub-national levels are mutually complementary and supportive.
- v. To strengthen the linkages between investment governance and sustainable development governance.
- vi. To ensure that reform efforts at the substantive and procedural levels are effectively coordinated in a holistic and integrated manner.
- vii. To establish a holistic framework for coherence within investment governance for sustainable development.

## **Guiding Principles to Ensure Coherence in International Investment**

Participants took the view that guiding principles to ensure coherence should encompass three main building blocks—coherence at substantive, procedural, and institutional levels.

- i. Achieving substantive coherence, *inter alia*, by
  - a. Reviewing existing investment instruments in order to identify inconsistencies with national efforts toward the SDGs and the 2030 Agenda for Sustainable Development.
  - b. Formulating and adopting common positions and views on substantive aspects related to the reform of the investment regime.
  - c. Developing strategies at the national and, where applicable, regional levels to advance the reform agenda for sustainable investment.
  - d. Building on best practices at the sub-national, national, regional, and international levels that foster the better integration of sustainable development objectives in investment law and policy-making.
  - e. Drafting and designing a new generation of investment provisions and instruments that balance and integrate the economic, social, and environmental dimensions of



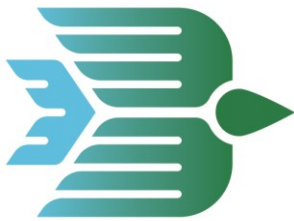
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sustainable development, as well as the specific developmental needs and capacities of developing economies.

- ii. Achieving procedural coherence, *inter alia*, by
  - a. Elaborating policies on the interaction between dispute prevention and dispute management.
  - b. Developing common positions and views on the reform of ISDS taking place in different forums.
  - c. Developing, where relevant, national and regional mechanisms for the settlement of investment disputes.
  - d. Encouraging the exchange of best practices, information, and experiences among developing economies on the prevention and management of investment disputes.
  - e. Enhancing transparency in ISDS.
  - f. Strengthening the capacity of developing economies to manage the risks associated with ISDS.
  - g. Fostering diversity and gender balance in the management of investment disputes.
  - h. Increasing and coordinating the participation of developing economies in forums where discussions on ISDS are taking place.
  - i. Assessing which institutional frameworks for management and settlement of international investment disputes are more conducive to coherence within investment governance.
- iii. Achieving institutional coherence, *inter alia*, by
  - a. Strengthening institutional coordination and continuity at the national level to align investment policies and legal instruments with those at the national, regional, and international levels.
  - b. Reinforcing institutional coordination among regional economic institutions or organizations in which developing economies are members to develop coherent investment policies for sustainable development.
  - c. Promoting the United Nations Conference on Trade and Development (UNCTAD) as the main and principal forum for the coordinated and coherent systemic reform of the investment regime for sustainable development to ensure that substantive and procedural coherence are achieved.



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## **Roadmap for Achieving Coherence in International Investment Governance for Sustainable Development**

Participants identified several steps to pave the way to coherence:

- i. A committee of experts and delegates from the Annual Forum shall be established to develop, by the 15th edition of the Annual Forum, Guidelines and Principles for Coherence within International Investment Governance for Sustainable Development.
- ii. A task force of delegates with adequate geographical representation shall report annually to the Annual Forum on progress made in different regions regarding the implementation of this Agenda and the challenges arising out of the implementation.
- iii. Delegates will continue to share experiences regarding the implementation of the Agenda during the sessions of the Annual Forum.
- iv. Developing economies are encouraged to solicit from UNCTAD more policy guidelines and publications on coherence in the investment regime.
- v. Governments are encouraged to create internal and systemic awareness of the need for coherence in international investment governance for decision-makers and propose, where possible, discussions through high-level policy frameworks within existing international and national institutions.
- vi. Governments are encouraged to build internal capacity, including with support from institutions, such as the International Institute for Sustainable Development, the South Centre, and UNCTAD, in particular in areas where they are facing challenges in implementing the Agenda.

The Annual Forum participants will share the content and principles of this Agenda with the relevant competent authorities and encourage initiatives for coherence in the investment regime for sustainable development.